

## Chapter 11

### The Claims of Community

In the previous chapter, I focussed on the positive case for free movement. I hope to have established the claim that there are good reasons to regard the right to move across borders as an important human freedom, and that readers see that there is at least a *prima facie* case for granting all human beings the mobility rights that citizens now enjoy in relation to their own states. I turn now to challenges that contend in various ways that the idea of open borders does not pay sufficient attention to the moral claims of community.

In this chapter, as in the previous one, I am not concerned with questions about the immediate feasibility of open borders but rather with its status as a moral ideal, a requirement of justice. Some will be impatient with this approach, dismissing it as utopian. But critiques of deeply entrenched injustices are always utopian. That is what it means to say the injustices are deeply entrenched.

Most people do not agree that justice requires free movement. They do not regard open borders as something that is right in principle but unrealistic. Rather they believe that states are morally entitled, as a matter of principle, to exercise discretionary control over immigration. From the perspective of that conventional view, the deepest objection to open borders is not that it is unachievable but that it is wrong about what morality requires. That is the sort of criticism I want to consider.

In the rest of this chapter, I will explore eight principled challenges to open borders: the limits of justice; self-determination; priority for compatriots; sovereignty; the character of community; the welfare state; culture; and public order. I move from stronger challenges that seek to justify far-reaching, discretionary control over immigration to weaker ones that seek only to show that the claims of community may outweigh the claims of free movement under certain circumstances. I am more sympathetic to the latter.

Freedom and equality are fundamental values but they are not the only values. Besides, the concepts of freedom and equality contain their own internal tensions and each stands in tension with the other. Despite the strong defense I offered of open borders in the previous chapter, I think there are few (if any) moral absolutes, especially when it comes to human action in the world. And so, as we shall see in this chapter, limits on free movement can sometimes be justifiable. But there is a vast difference between acknowledging qualifications to the case for open borders and endorsing the conventional view of the state's right to exercise discretionary control.

To avoid confusion, let me specify that when I speak in this chapter of "discretionary control over immigration" or "discretionary closure" as the opposite of open borders, I am not using these terms in an absolutist sense, just as I do not use the terms "open borders" or "free movement" in an absolutist sense. It is the conventional view that I want to challenge, not some artificially rigid idea. "Discretionary" is not the same as "arbitrary." Most of those who want to grant the state wide latitude in decisions about

admissions nevertheless accept some constraints like the ones I have discussed earlier about non-discrimination, family reunification, and so on.<sup>1</sup> As I argued before, those limits on discretion are quite compatible with the conventional view.

### **Bounded Justice**

One important challenge to the idea of open borders is that it exaggerates the moral claims that people outside a political community can make on those within. From this perspective, the demands of justice arise primarily within the context of a state, from common subordination to political authority and the many ways in which that inevitably affects people's lives. Freedom of movement is a legitimate human interest, but a limited one that can be satisfied within the boundaries of the state where a person lives. Equal opportunity and distributive justice are not moral principles that transcend borders. They are moral claims that people acquire from their participation in a political community and from the nature of their connections with the other members of that community. I will call this the bounded justice view.<sup>2</sup>

Most of those who take this view do not deny that we have some moral duties to people outside our political community. They recognize that states should not violate the human rights of outsiders. Beyond that, they think that democratic states have obligations to respond to the moral failures and incapacities of other states, to some degree. For example, they usually acknowledge that we have a duty to address the plight of refugees, at least in part by admitting some of them. More strikingly, most of these theorists believe that every human being has a moral right to live in a political community that respects basic freedoms and that gives people a reasonable chance at a decent life. Most also think that affluent democratic states have a moral obligation to assist those who are below this threshold. They see this as a moral obligation, not merely a matter of generosity, although some would resist using the language of justice in regard to this duty. Different authors define the threshold differently, but they generally agree that, however the threshold is defined, it is not being met in the world today for vast numbers of people and that rich democratic states are not doing enough, by far, to remedy this failure. So, many of these authors do not defend the status quo, but criticize it sharply. They think that democratic states today generally fail to meet their minimum moral obligations to outsiders.

At the same time, these theorists think that arguments for global justice, including the argument for open borders, fail to recognize the limits to justice claims by non-members.<sup>3</sup> Their view is that justice is primarily about relationships inside the state. There may be very significant differences between states in terms of the sorts of opportunities and life chances that inhabitants have, but this fact does not give rise to any strong moral claim for assistance from better off states to those less well off, or to a right to move from one state to another where prospects are better. In effect, if the bounded justice view were correct, it would short-circuit the discussion of open borders because restrictions on free movement would not really raise questions of justice at all.<sup>4</sup>

Like the advocates of bounded justice, I think that ongoing subjection within a political community has great moral significance. That is precisely why I argued in

earlier chapters that those who settle permanently within a political community should be regarded as members and given access to citizenship, and that these principles apply even if the immigrants have settled without authorization. Not everyone is a member, and membership does matter morally. Even if borders were open, there would still be important and legitimate distinctions between a state's responsibilities for those within its borders and its responsibilities for those outside. I explore this point further later in the chapter. Where I part company with the advocates of bounded justice is when they say that justice is only concerned with our connections to our political community and to our fellow citizens and that the exclusion of people who wish to join our community raises no important moral issues.

One immediate problem with the bounded justice view is that it simply presupposes the moral legitimacy of the coercion that is used to exclude peaceful immigrants who want only to enter in order to build decent lives for themselves and their families. One of the virtues of the open borders argument is that it brings this problem into view.

Refusal of entry is an exercise of coercive power.<sup>5</sup> (Borders have guards, the guards have guns.) Even – or in some cases, especially – on the bounded justice view, the exercise of coercion raises questions of justice. Coercion must be justifiable to the person being coerced.<sup>6</sup> The claim that freedom of movement is a human right raises the stakes higher. All of the advocates of bounded justice agree that it is unjust for states to violate the human rights of non-members. They extend the scope of justice that far. The advocates of bounded justice can, of course, deny that we should regard freedom of movement as a human right, but they cannot do so by appealing to the limits of bounded justice since bounded justice is, by definition, not concerned with human rights. Moreover, since bounded justice advocates usually acknowledge that states may have a duty to admit refugees, it seems hard to imagine how they can justify routinely turning away non-refugee immigrants on a discretionary basis without appealing, at least implicitly, to the moral legitimacy of the background arrangements that assign human beings to particular states and deny them a general right of entry to others. That takes us to the question of the moral justification of the way the world is organized.

The bounded justice view is that the primary problem of justice is the moral justification of the state's authority to those who are subject to it. That is certainly how democratic ideas emerged historically, but the inner logic of democratic commitments to human freedom and equality requires us to go deeper. It requires us to ask whether the way the world is currently organized is just or not, and, if not, what would be required to make it just.

Why does the way that the world is organized raise questions of justice? Because it is coercively imposed. From a democratic perspective, coercion is unjust if it is not justifiable to those who are subject to it. Human beings enter a world in which they are subject to the authority of a particular state only because the world is divided into independent sovereign states. That overarching framework is a background given, an imposed structure that makes the exercise of authority by individual states possible. It is

not the natural order of things. The world was organized differently in the past and could be organized differently again in the future. The current organization is maintained through the use of force, implicit and explicit. So, we are entitled, indeed obliged, to ask whether this coercively imposed structure can be justified to those who are subject to it.

Consider the billions of people who find themselves with limited life chances, given the way the world is organized. They see an international system that divides the world into distinct political units, most of which produce limited opportunities and a few of which offer much more. Why should they regard this overall arrangement as morally legitimate? Aren't they entitled to ask whether there is an alternative way to organize the world that would serve their interests better? If there is, why they should be expected to submit to the current one?<sup>7</sup>

Much of the contemporary debate about global justice has focussed on the question of whether different states are sufficiently interconnected to give rise to claims of distributive justice. It is a mistake, however, to imagine that questions of justice arise only if there are dense relationships across borders. In important ways, the international system itself establishes and limits the possibilities of such relationships. Through its initial assignment of people to states and its subsequent restrictions on movement, this system profoundly shapes the life chances of human beings, all of whom are subject to this system.<sup>8</sup> This way of organizing the world is a human construction with tremendous consequences for those who live under it. Questions about the justice or injustice of this structure are unavoidable.

Looking at this issue through the lens of immigration has some analytical advantages. As we saw in earlier chapters, even if we adopt the conventional view about the state's right to control immigration, we have to think about what justice requires with respect to the legal rights of those who are present in a state temporarily or without authorization. So, we cannot pretend that questions of justice, even economic justice, arise only when people have standing as members. It is the fact that they are subject to the authority of the state, even if only temporarily, that gives people standing to ask about the justice of the way they are treated. Furthermore, we saw in those chapters that it is possible to separate the question of what justice requires with respect to access to redistributive programs (which I argued could be restricted to citizens and established residents) from the question of what justice requires with respect to access to other legal rights, not only basic human rights (like the right to a fair trial or to freedom of expression which everyone present should possess) but also economic rights, like a right to workers' compensation (which I argued even unauthorized workers should enjoy). This means that redistribution is not the whole of justice, even economic justice, and that we can see that we are not limited to a choice between giving non-members equal rights and denying that they have any claims of justice at all. This already challenges the sharp line that advocates of bounded justice try to draw between what is owed to members and what is owed to others.

The argument for open borders presses this challenge to bounded justice further. For one thing, as I showed in the previous chapter, the argument for open borders does

not rest exclusively on claims about global justice. It also asserts that we should regard free movement as a basic human right, independent of its socioeconomic consequences, because of its vital link to human freedom. So, even if the bounded justice advocates were successful in excluding questions about global justice, (contrary to the arguments I have just advanced about the unavoidability of those questions), they would still have to explain why the denial of entry to potential immigrants does not raise questions of justice.

Social institutions, including the current norms governing the state system, are neither natural nor inevitable. We face questions every day about whether to affirm and maintain the institutions within which we live or whether to criticize and try to change them. If the institutions are just, we have a duty to maintain them. If they are unjust, we have a duty to try to change them.

Every day, through the use of force and the threat of force, states help to maintain an international order that assumes that states may exclude potential immigrants without taking the aspiring migrants' interests into account and without offering them any justification for their exclusion beyond the state's perception of its own interests. Are democratic states acting justly when they do this? We cannot simply rule that question out of court. We have to address it.

### **Communities of Character**

One famous effort to justify discretionary control over immigration is offered by Michael Walzer.<sup>9</sup> In a seminal discussion of the topic, he contends that human communities need the capacity to make decisions about who will be admitted to the community and who will not. Without closure, he says, there can be no "*communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life."<sup>10</sup> In the modern world, Walzer says, that closure should take place "at the level of the nation-state."<sup>11</sup> If we insist that states be open, Walzer contends, the result will be that neighborhoods will become closed -- "a thousand petty fortresses" in another famous phrase -- and if they are required to be open, we will have "a world of deracinated men and women."<sup>12</sup>

Walzer's justification of discretionary control over immigration is probably the one that is most often cited in normative discussions of this question. His language certainly captures and reinforces the conventional assumption. Does his argument stand up to scrutiny? Does it explain why states should be morally free to admit or exclude immigrants as they see fit?

I don't think so. "Communities of character" sound attractive, certainly in comparison with "petty fortresses" and "deracinated" individuals, but what makes communities of character possible? What enables them to prosper or causes them to fail?

Walzer presents “closure” as a necessary condition for communities of character. If by that he means that it is not possible to sustain a community of character unless there are people in the community who have lived there for most of their lives and who identify with the community and have a sense of its distinctiveness, he is probably right. But if he means that it is not possible to sustain a community of character unless it actively exercises control over the entrance into the community of people who are not born there, he is certainly wrong. Everything depends on how many are trying to get in. If very few people try to enter a community (relative to its size), they will normally pose no threat to the maintenance of the community. Closure, in the sense of active, discretionary management of who gets in is not necessary to protect communities of character unless a lot of people are trying to get in (again relative to the size of the existing community).

Why would that happen? Why would a community of character ever be faced with more people seeking entry than it could easily accommodate? The implicit presupposition of Walzer’s analysis is that communities of character are good for human beings. That is the context in which human beings can flourish and live the best lives (rather than in petty fortresses or as deracinated individuals).

Let’s assume that he is right about this. In that case, the first question that we ought to ask is why significant numbers of people would ever leave the communities of character in which they were born and raised and try to move elsewhere. Of course, a few might leave for personal reasons of one sort or another, but that would not pose any problems for the other communities that took them in. Why would large numbers abandon their own community of character if it is the best place for them?

Walzer himself asserts that people normally will not want to leave and will seek to do so (again, in large numbers) only if things are going very badly at home. Yet he also asserts that open borders between states will lead to “a world of deracinated men and women.” He does not say why he expects this to happen, but the only plausible account is that he implicitly assumes that there will be large differences between states that will induce people to try to move despite the built-in attractions of staying at home. Despite his claims about the importance of communities of character, he is worried that too many people will be willing to leave their own community of character for an unfamiliar one that offers better life chances.

If that is an accurate description of the logic underlying Walzer’s account, several more questions leap out. Why focus on the defensive measures (closure) needed to sustain a community under pressure from an unwanted influx of migrants rather than on the positive measures that would make closure unnecessary? Shouldn’t our first concern be to identify the conditions that would enable all (or most) communities of character to flourish to such an extent that most members of those communities will have no desire to move elsewhere? Wouldn’t that be the approach that would be best for most human beings? Wouldn’t it be morally preferable for communities of culture to flourish without closure, i.e., without overtly excluding others? Furthermore, if many people *are* seeking to leave their community of character to go somewhere else, don’t we have to weigh their reasons for seeking entry elsewhere against the desires of those already present to maintain their

community as it is? Walzer himself recognizes this elsewhere, setting no limits to entry in the case of refugees seeking asylum, as I noted in chapter nine. Why does he implicitly privilege the maintenance of communities of character above all else here?

Walzer's defense of discretionary control over immigration fails because he has no answer for these questions. Indeed, he does not even consider them. For arguments that attempt to do so, we have to look further.

### **Self-Determination and State Responsibility**

Some defenders of discretionary control over immigration have tried to address this challenge directly, offering both a justification for the inequalities between states and an account of why states must be morally free to restrict immigration. They argue that so long as the world is divided into independent states, significant inequalities between states are an inevitable and legitimate outcome of collective self-determination. Different political communities will make different choices in accordance with their different collective values as these are filtered through their political processes. It is fair to expect political communities to take responsibility for the consequences of their choices. Discretionary control over immigration is necessary to ensure that political communities are responsible for the consequences of their choices. If people were free to leave poorer states for richer ones, it would create incentives for states to act irresponsibly, because citizens could migrate elsewhere to avoid having to live with the consequences of their choices. Moreover, open borders would unfairly penalize states that had made wiser, long-term choices, requiring their citizens to accept the burdens of providing for the migrants. So, free movement across borders is not justifiable because it would undermine the possibility of collective self-determination.<sup>13</sup> Let's call this line of argument the state responsibility thesis.<sup>14</sup>

Let me unpack this argument a bit. David Miller elaborates the state responsibility thesis by inviting us to imagine two contrasting societies named Affluenza and Ecologia.<sup>15</sup> These societies start out from an equal resource base, but Affluenza uses up its resources in immediate consumption while Ecologia devotes its resources to sustainable development. Over time, as a result of their different policies, Ecologia has higher per capita resource levels than Affluenza. Miller argues that it would be wrong to redistribute resources from Ecologia to Affluenza to bring these societies (and hence their members) back to a position of resource equality. First, he says, redistribution would create perverse incentives, rewarding profligacy (Affluenza) rather than responsibility (Ecologia). Second, he contends, redistribution would be unfair because the citizens of Ecologia had made sacrifices for the sake of the long term. Their later advantages, and the disadvantages of Affluenza were a direct product of the choices made by each society. So, the inequalities must be left in place. Having established that self-determination will give rise to legitimate resource differences, Miller says that giving people the right to move from poorer societies to better endowed ones "would also undermine self-determination, in any world that we can realistically envisage."<sup>16</sup>

In sum, on Miller's account, the fact that the way the world is organized includes very significant inequalities between states and very significant differences between the life chances of people born in different states is morally legitimate because those inequalities are the inevitable result of community self-determination.<sup>17</sup> Furthermore, Miller's analysis implicitly recognizes that pressures for mass migration from one state to another are likely to be directly tied to the economic inequalities between states. Discretionary state control over immigration is morally legitimate, according to Miller, because it is a necessary corollary of the legitimate inequalities between states.

Does the state responsibility thesis hold up to scrutiny? I think not. The argument has four problems. First, it exaggerates the connection between self-determination and inequality. Second, it rests on a distorted picture of the effects of redistribution on incentives. Third, it misses the ongoing importance of the connection between equal starting points and responsibility. Fourth, and most important, it subsumes the moral claims of human beings under the claims of the community into which they are born and gives participation in a self-determining community a moral weight that it cannot bear.

Consider first the question of how much inequality between states would be justified by the state responsibility thesis if that thesis were correct. Miller's story assumes that all of the differences between states are due to choices that the states have made. What if existing inequalities owe more to the power relations between states than to their independent choices? If we accept the state responsibility thesis, shouldn't we try to eliminate inequalities that are a product of power rather than self-determination so that self-determination can have its proper impact? (I do not need to worry about how to do that because, like Miller with his hypothetical examples, I am only attempting to clarify principles here.)

How much of the inequality between states in the world today is due to power and how much to state self-determination? That is an empirical and historical question to which I do not pretend to have an answer.<sup>18</sup> To the extent that it is power rather than self-determination that explains actual inequalities, however, the inequalities are not morally justified by the state responsibility argument, and so restrictions on migration designed to preserve such inequalities are not justified either.

Power and self-determination are not the only options in explaining international inequality. Consider the role of luck which appears to play no role in Miller's story. Imagine Ecologia I and Ecologia II with the same collective values and goals and equal starting places. Because of external circumstances over which they have no control and could not reasonably have foreseen, Ecologia I winds up much better off than Ecologia II.

What if some of the people from Ecologia II decide that they would like to migrate to Ecologia I, thinking perhaps that they will find its basic values congenial but that it will offer better economic prospects? Is Ecologia I entitled to prevent them from coming? Well, not on the basis of the state responsibility thesis. The differences in outcomes between Ecologia I and Ecologia II do not derive from differences in collective

self-determination as the earlier differences between Ecologia and Affluenza did, but from luck.<sup>19</sup> So, why can the migrants from Ecologia II be refused entry to Ecologia I?

In sum, the state responsibility thesis cannot justify all of the existing inequalities between states and offers no reason to restrict migration to protect inequalities that are not the product of self-determination.

Consider now the claim that states would have no incentive to behave responsibly if there were redistributive mechanisms in place to compensate them for their failures. This claim rests implicitly on two implausible presuppositions: first, that any redistribution will have a drastic effect upon economic incentives; second, that states are rational actors motivated only by the pursuit of their own economic advantage. It is true that a radically egalitarian pattern of redistribution that eliminated all inequalities between states would also eliminate economic incentives for responsible behaviour. It does not follow that a more limited effort at redistribution would have dramatic effects on economic incentives for responsible behaviour. If a mechanism for redistribution between states had only modest effects on economic incentives for states to act responsibly, that might be a price worth paying if one thought the goal of redistribution worth pursuing for other reasons.

If one looks at the real world, the implausibility of any absolutist claim about the relation between incentives and responsibility becomes apparent. Within federal systems like the United States, Canada, and even the European Union, there are frequently mechanisms of internal redistribution from better off units to poorer ones. Few people think that the political leaders in the poorer units no longer have any incentives to act responsibly as a result. Indeed on the list of incentives for irresponsible political behaviour by public officials, this would rank rather low. Even in ordinary capitalist systems, the effect of redistributive taxation upon individual incentives depends upon a range of factors. There is no reason to think this would not also be true about redistribution between states.

This leads to the second point. It is a mistake to assume that states are inevitably motivated only by their economic advantage, narrowly conceived. One of the ironies of Miller's account (like that of Rawls) is that they evoke differential concern for the environment as a reason for different outcomes among states. But a great many environmental problems can be solved only if states can be persuaded not to adopt the narrow, strategic orientation that this state responsibility thesis rests upon. The challenge is to persuade states to behave responsibly in a context where immediate economic advantage discourages that. Making states responsible for the (domestic) consequences of their choices creates perverse incentives as well as positive ones. We have to be concerned therefore not only with the internal political culture of states but also with the political culture governing relations between states.<sup>20</sup> That requires cultivating broader norms of mutual responsibility. Redistribution from better off states to ones that are worse off is one of those norms of mutual responsibility that can help to correct for the negative effects of the conventional forms of state responsibility.

The third problem with the state responsibility thesis is that it drastically reduces the connection between human agency and responsibility for outcomes for all generations except the first. Consider a concrete example. Argentina and Canada faced very similar economic circumstances in the early 19th century (population, natural resources, infrastructure, etc.). Now Canada is much richer than Argentina. Assume, for the sake of this argument, that the current difference between the two states is entirely due to the good collective self-governance choices of Canadians and the bad collective self-governance choices of Argentinians.

According to the state responsibility thesis, it would not be fair to redistribute resources from the richer state (Canada) to the poorer one (Argentina). But that makes sense only if one thinks exclusively of the state as a single agent persisting through time. Argentina is responsible for its choices. But what does that presuppose about the relationship between the political community and the people who compose it? The human beings who were responsible for Argentina's policies in the nineteenth century are no longer alive. The current generation of Argentinians is not responsible for the choices that their ancestors made. Why is it fair to treat them as if they were?<sup>21</sup>

If we redistribute from Canada to Argentina, don't we undermine the incentives for states to act responsibly? As I argued in the previous section, this is a matter of degrees. Communities will still have incentives to use their resources effectively and to make wise public policy decisions if they reap only some of the benefits of good decisions and suffer only some of the harms of bad ones.

In thinking about state responsibility, we may find it helpful to reflect on the way in which similar issues arise with respect to individual responsibility. One common view is that it is reasonable to expect individuals to be responsible for the consequences of their choices, given a starting point of (relatively) equal circumstances.<sup>22</sup> This is basically the intuition that underlies the state responsibility thesis as well, but applied to communities rather than individuals.

Notice the way generations complicate the moral theory of responsibility for individuals. Because every individual is supposed to have a relatively equal starting point, society has an obligation to see to it that children are not (unduly) penalized by the bad choices of their parents. There is an obvious tension here because if we mitigate the bad consequences for children of poor life choices by their parents, we weaken the link between choice and responsibility, i.e., between the self-determination of individuals and their responsibility for the consequences of their choices. Some of the consequences of their choices that people care most about are the consequences for their children. If we don't mitigate these bad consequences, however, then it is only in the first generation that the link really holds between choice and responsibility. In all subsequent generations, the fate of individuals is highly shaped, for good or ill, by the choices of their ancestors. I don't mean to suggest that there is a simple solution to all this. The underlying idea of responsibility for choices made from an equal starting point generates internal tensions and requires tradeoffs. That is why we speak in the end only of relatively equal starting points.

If we think now about the problem of responsibility with respect to a self-determining political community, we face a problem that is similar in some respects but different in others. If we regard each community as a single agent, then it seems appropriate to say that each community should be responsible for the consequences of its choices, at least assuming some reasonably equal starting point. That is the basic logic of the state responsibility thesis. From this perspective, however, the problem of generations does not really arise, because each community exists (in principle) in perpetuity.

If we consider the human beings who make up each political community this neglect of the generational question is much less satisfactory. Over time, the entire human composition of the community changes. Why does this matter? Because the choices that we describe the political community as making are choices made by a particular set of human beings -- the citizens alive at the time and their representatives. On a theory of community self-determination, it makes sense to hold those citizens responsible for their decisions and to expect them to live with the consequences of those decisions. But over time, those people die. The people who come after them are *not* responsible for the decisions that their predecessors made. So, it does not seem fair (from a perspective that emphasizes the responsibility of citizens as agents) to make them live with the consequences (good or bad) of those prior decisions. They have their own claim to a relatively equal starting point, not only as individuals but also as members of a self-determining community.

You may object (as Miller does) that the members of a political community do not come along in discreet generations. As Hume famously observed, human beings are not like butterflies, one generation entering and another leaving all at once. Every political community is an intergenerational community, with new members entering through birth and others leaving through death.<sup>23</sup> (Leave aside migration for the moment.) It is simply not possible to limit the consequences of a decision made in the name of a political community to the members of the community who participated in that decision.

There is considerable truth in this, but it is not the whole story. Recall that when it comes to individuals we think that we need to make some effort to limit the effects of previous generations on subsequent ones and to create relatively equal starting points for everyone who comes along so as to maintain the link between choice and responsibility, even though this weakens the link between choice and responsibility at the same time by freeing parents of (full) responsibility for the effects their choices would otherwise have on the life chances of their children. We can see that the weakening of the link between choice and responsibility in the case of individuals is objectionable on grounds of incentives and fairness, but we think that is a price worth paying to avoid the more fundamental unfairness of allowing grossly unequal starting points to emerge over time. (I write here of principle, not practice, since we know that in actual democratic states we do permit grossly unequal starting points.) At the same time, in the case of individuals, we recognize that we can never make the starting points perfectly equal and that trying to do so would itself interfere with the choice-responsibility nexus by limiting the consequences of our choices for those we care about. (It would also conflict with other

values and principles.) So, we face tradeoffs, but we do not abandon the effort to create equal starting points altogether just because it cannot be perfect.

The same principles should apply to self-determining political communities. The choices that a self-determining community makes must have consequences for those who live in the community or the community would no longer be self-determining, and that includes consequences for later generations. But that does not mean that later generations have to bear the entire burden (or ought to reap the entire benefit) of the decisions made by earlier generations. It is true that there is no neat distinction between generations, but that does not preclude the existence of redistributive mechanisms and structures that could keep inequalities from growing too large so that we would not have to abandon altogether the idea of equal starting places for communities over time. The state responsibility thesis contends that redistribution would undermine self-determination. But the absence of redistribution neglects the preconditions that made the state responsibility thesis plausible in the first point, i.e., that communities should be responsible for the consequences of choices made *from an equal starting point*.

When Miller takes up the problem of later generations, he acknowledges that they do not enjoy an equal starting point but says first that that is due to the choices of their predecessors and then that they have no complaint of justice against them either because no one is entitled to any particular level of resources so long as it is sufficient “to sustain the institutions that make a decent life possible.”<sup>24</sup> So, in Miller’s analysis the concern with equal starting points entirely disappears after the first generation, despite the fact that those equal starting points played a crucial role in his account of the state responsibility principle. Miller asks rhetorically what charge of unfairness the second generation might level against the first. But the charge of unfairness that the second generation can raise is not directed against the first, as Miller assumes, but against the structure of community relationships. In the real world, the Argentinians have a complaint not just about the behaviour of their ancestors but about the structure of the international state system that places the current generation in Argentina at such a disadvantage compared with the current generation in Canada. What is unfair is a structure that gives all the weight to a principle of community responsibility and none to the principle of equal starting points for those who come later, even though it was the principle of equal starting points that made that the principle of community responsibility seem plausible in the first place.

The final and most important problem with the state responsibility thesis is that, on this account, the moral claims of individuals become almost entirely mediated through their membership in the communities to which they have been assigned at birth. This dynamic is particularly evident in Rawls’ version of the argument which parallels Miller’s in most respects. Rawls speaks of political communities as “peoples” rather than “states.” Having advanced the state responsibility thesis (using his language of “peoples” in place of “states”), Rawls makes this observation about immigration: “People must recognize that they cannot make up for failing to regulate their numbers or to care for their land ... by migrating into another people’s territory without their consent.”<sup>25</sup> In this formulation, which is repeated almost verbatim later, individual human beings who are

seeking to migrate from one society to another to pursue better lives for themselves and their families are seen, in effect, only as agents of the society they are trying to leave. The sentence suggests that the collective that has failed to care for its territory adequately is trying to offload its problems by sending migrants into the territory of other collectives. The migrants themselves are not seen as autonomous human beings, pursuing aspirations and trying to build better lives for themselves and for their children. The use of coercion to prevent them from doing so is not even identified as a regrettable constraint on human freedom.

Rawls goes on to say that in the theoretical context of his inquiry, i.e., in “a realistic utopia,” many of the causes of mass migration in the modern world would disappear: religious and ethnic persecution, political oppression, starvation, and the subordination of women (which leads, he says, to population pressure). So, he concludes, “The problem of immigration is not, then, simply left aside, but is eliminated as a serious problem in a realistic utopia.”<sup>26</sup>

Now this might sound like the argument that I have been advancing, namely that in a reasonably just world the differences between societies would be so small that relatively few people would want to move and so there would be no need or justification for restrictions on migration, since those who wanted to move could easily be accommodated. But Rawls is not in favour of open borders. Why not? The answer, I think, is that there is a big difference between the inequalities that I think a realistic utopia would permit and those that Rawls thinks are acceptable. As he makes clear elsewhere in his book, even in his realistic utopia, there would be considerable economic and other differences between societies as a result of their policy choices, and indeed some political communities would even be decent hierarchies rather than liberal democracies. In his only brief discussion of immigration later in the book, Rawls repeats his responsibility argument and says in a footnote that this entails “a least a qualified right to limit immigration” without saying what those qualifications are.<sup>27</sup> So, when Rawls says that immigration is “not a serious problem in a realistic utopia,” he is saying in effect that using coercion to restrict migration raises no serious moral issues so long as those seeking to migrate are living in conditions above some minimum threshold in their original society.

This is puzzling. What if I don't like the "people" into whom I am born? Perhaps I reject all of their fundamental values (and accept those of some other "people"). If we recognize the moral equality of all human beings, we should presumably have to explain why assigning someone to a "people" at birth (with a right to leave but no right of admittance elsewhere) adequately respects this moral equality, given the vast consequences of such an assignment for one's life chances and one's life projects. Why can't one have the right to change “peoples”? Of course, one can if another “people” is willing to let one in, but why should it be entirely up to them? I think that the reason that Rawls does not see any of these issues as a serious problem, at least in the sense of something that requires discussion, is that he is implicitly seeing individuals as having moral claims only as members, not as human beings.

Miller is more careful in his language but winds up at the same point. For example, he claims that people have no fundamental moral right to migrate so long as they live in a society that provides them with “an adequate range of options...defined in terms of generic human needs rather than in terms of the interests of any one person in particular.”<sup>28</sup> He acknowledges that exclusion involves coercion and so they have some moral claim: “They are owed an explanation for their exclusion.”<sup>29</sup> But the explanation he requires is simply that their exclusion must serve the perceived interests of the society that they are trying to enter: “An adequate explanation will be one that links immigration policy to the general goals of the society in question.”<sup>30</sup> So, the moral claim that potential immigrants have turns out to be very weak. Coercion requires a justification but not much of one.

As in Rawls’ case, I find Miller’s position puzzling. Why are the moral claims of ordinary migrants so weak? Unlike Rawls he sees the coercion involved in exclusion. He sees the need to justify that coercion to the person subject to it. But then the justification that he requires turns out to be minimal. Even if he has rejected the idea that free movement should be regarded as a human right, why doesn’t he think that the interests of the potential migrant in getting in should be at least weighed against the costs to the state of admitting her? Why is any legitimate public policy goal sufficient justification?

Miller appeals to the idea of priority for compatriots here, but, as I will argued in more detail below, granting some priority to compatriots is not the same as making their interests a trump. Miller does not even explore the question of whether this sort of priority is morally appropriate given that it entails coercion. He also appeals to the value of self-determination, but self-determination admits of degrees. Why is any hindrance to the state’s plans, no matter how small, sufficient to justify coercive exclusion?<sup>31</sup> Indeed, pushing in the other direction, we might say that the fact that exclusion entails coercion requires us to shift the burden of proof to the state. Perhaps the state should be obliged to show that it cannot achieve its policy goals in any other way than through restricting immigration, given that there are often many ways to pursue any given goal.

In the end, the state responsibility thesis makes collectives morally fundamental and ties the fate of individuals not to the choices they make but to the circumstances of their birth. Even if we think states should be held responsible intergenerationally, we have no reason to hold later generations of individuals responsible. As I acknowledged, we cannot entirely avoid some bad consequences for descendants, but having a migration option mitigates those consequences to some degree. It does not eliminate all the bad consequences because migration normally has significant costs for the migrants, and having a right to migrate for the sake of opportunity is not the same as having the opportunities one wants in the community into which one was born. Nevertheless, it reflects a reasonable balance of these competing moral considerations.

Whether they would characterize it this way or not, theorists like Miller and Rawls are offering principles for organizing the world, i.e., principles that justify a particular way of assigning rights and responsibilities both to political communities and to the people who live in those communities. Giving political communities a moral

license to restrict immigration for the sake of self-determination goes too far in subordinating individuals to the communities to which they initially belong. It solves the problem of collective responsibility for collective choices only by denying individuals the opportunity to make important choices for which they can be personally responsible. It also limits the freedom of human beings much more than is necessary to prevent them from taking advantage of others' sacrifices. This way of organizing the normative structure of political life does not do justice to the moral claims that every human being has to be treated as a free and equal moral person.

### **Priority for Compatriots**

Some people try to justify the inequalities between states and discretionary control over immigration as the morally legitimate result of our obligations to the fellow members of our political community. These obligations, they say, rightly take precedence over the claims of strangers. To insist on free movement is to ask us to ignore these ties and to treat everyone in the world alike. It requires a degree of altruism that is unrealistic. Indeed it rests upon an inhuman sort of cosmopolitanism that fails to give the proper moral weight to particular attachments and memberships. We are morally entitled to favor family, friends, and, yes, our fellow citizens over those with whom we do not have such ties.<sup>32</sup>

I do not disagree with the claim that we are entitled to care more for our nearest and dearest than for distant strangers. There may be some cosmopolitans who think that the idea that all human beings are of equal moral worth requires us, individually and collectively, to give the same weight to the interests and concerns of all human beings, always and everywhere, regardless of our relationships with them, but I am not one of them.<sup>33</sup> I do not think that the principle of equal moral worth entails this sort of abstract universalism, and my argument for open borders does not entail this extreme form of cosmopolitanism.

I am not denying the moral relevance of particularistic attachments. Rather I am arguing that the moral claims of particularistic attachments are limited. They are constrained by considerations of justice.<sup>34</sup> The question is not whether or not we may favour compatriots over outsiders but rather in what ways we may do so. Some ways of favouring compatriots are morally permissible, while others are morally unacceptable. The question is how to think about forcibly excluding peaceful outsiders seeking to enter and settle. I am arguing that *this* way of favouring the current members of our community is morally impermissible. Other ways of favouring compatriots are morally permissible and may even be required.

Consider the family. In many ways, I give priority to my sons over the children of other people. Most people do the same for their children. Indeed, a person would not be a good parent if she did not care much more for her own children than for the children of others. Should we think of states as extended families and of restrictions on immigration simply as a way of favouring our own?

There are many good reasons to be wary about drawing analogies between the family and the political community, not least the fact that the personal and intimate connections within the family (good and bad) are very different from the kinds of connections we can have with fellow citizens in a modern state. I will leave those sorts of worries aside here, however, and just draw attention to the moral limits on how we may favor family members over others.

To say that opposition to discretionary control over immigration means that one is opposed to favoring compatriots over strangers is like saying that opposition to nepotism means that one is opposed to favoring family members over others. The question is not *whether* one may favor one's own but *how* one may do so. The fact that I care most about my children doesn't mean I'd favor them over others no matter what. In many social contexts we think favoring family members is unfair (e.g., when calling balls and strikes in a baseball game). When the stakes are high (e.g., legal proceedings, decisions on appointments) we normally create institutional rules to try to prevent people from being able to favor their friends and relatives. In other words, our notions of justice constrain the extent and ways in which we think it is acceptable for us to favor family members.

Even when existing arrangements favor our children, we may think that these advantages are unjust and want to change them. For example, as the children of upper middle class professionals, my sons have enjoyed a variety of advantages in their life chances, but I think justice requires (and I would support) a set of economic and social policies that would greatly reduce the advantages that accrue to this sort of social position. I don't want to live in a social world where class and race and gender give my children advantages, because I want them to live in a social world that is just. That applies not only within the state but in the world as a whole. So, even if we are morally entitled to favor compatriots in some ways, it does not follow that we are entitled to favor them in this particular way, i.e., by excluding potential immigrants.

No one would claim that we are entitled to favor our compatriots by invading (peaceful) foreign countries and robbing their inhabitants or, more generally, by violating the human rights of those who are not our compatriots. The idea that restricting entry is a reasonable and even necessary way to favor compatriots already presupposes that there is nothing deeply wrong with restricting entry, that it does not violate any important moral claims of those trying to get in. In other words, it presupposes the very issues that are supposed to be under consideration.

Do we have special responsibilities to members of our political community? Of course. How could it be otherwise? Special responsibilities for those living within a political jurisdiction are a necessary corollary of having jurisdictions that make collective decisions, produce public services and collective goods, and collect taxes to pay for them. It is for the benefit of the people within our political community, not those living somewhere hundreds or thousands of miles away, that we build and maintain schools and hospitals, roads and sewers and that we collect garbage and supply water. Our fellow members are the ones whose needs and interests have to be the primary focus of those entrusted with the political power of the community. That will remain true whether we

have open borders or not. To say that we are entitled to care more for those on the inside than those on the outside, that we may legitimately give priority to our fellow members, is not, however, to say that we are entitled to keep people from entering and joining our community (nor is it to say that we have no obligations to those who remain outside, though that is a distinct question).

Think of this in very concrete terms. The Prime Minister of Great Britain is not as concerned with the well-being of Germans living in Germany as he is with the well-being of people who live in Britain, nor should he be. On the other hand, Germans have the right to bring themselves within the circle of the Prime Minister's concern by moving to the UK. If Massachusetts sets up some social program, it does not have to provide the benefits of that program to everyone in Georgia, but it cannot prevent people from moving from Georgia to Massachusetts where they will become members of the community who are (eventually) eligible for that program and will have to pay the taxes that support it.

Saying that borders should be open is not a matter of ignoring particularistic ties, much less of demonstrating some sort of inhuman altruism. It is simply a question of recognizing the limits on the ways in which we can promote the interests of current members of our community. We cannot promote their interests by violating the fundamental moral rights of people who are not yet members but who want to join. Of course, this presupposes that justice requires that people be able to move freely across state borders, but I have offered arguments in support of that view. The other position simply presupposes that states are entitled to limit free movement when it is to the advantage of current members to do so. That is the position that needs a defense.

Isn't it unfair if someone can come and claim the benefits of what our community has created without having contributed to their creation? There is something to that concern. As I noted in earlier chapters, it is not unreasonable to set some limits to participation by newcomers in redistributive social programs. Of course, appeals to reciprocity cut both ways, as the same chapters argued. Once people are contributing, they have to be included in the programs their contributions finance. Moreover, reciprocity cannot plausibly be construed as the whole of justice. It cannot explain what we owe as a matter of justice to the people in our own society who are unable to contribute. In talking about what the community has created, as people often do in this context, we simply assume that we already know the answer to the question of who belongs and who is entitled to join.

Even if justice is partly based on reciprocity (as I think is indeed the case), it does not follow that we are entitled to exclude others who would like to enter those reciprocal connections. For most citizens, membership in this cooperative scheme is not the result of some choice that they made as individuals but is an accident of birth. That is acceptable as a basis for the initial assignment of membership, as I have repeatedly argued, but not for exclusion of those who want to join. If absence from the cooperative scheme is not the result of a decision not to cooperate, but of a denial of the opportunity to do so, the argument from reciprocity loses its force.<sup>35</sup>

It is perfectly possible in principle to combine commitments based on reciprocity with openness to outsiders. We see this in practice within states. The citizens of Boston have obligations to one another that they do not owe to the citizens of New York but they are not entitled to keep people from moving from New York to Boston, thereby entering within their sphere of reciprocal justice. Again, the open borders argument is particularly effective in exposing the flaw in claims about the moral relevance of reciprocity, connection, and mutual engagement. If we say that we have obligations to one another because we “participate in... institutions which embody our collective commitment to justice” or, in older language, because we have all signed the social contract, how are we to respond to the outsider (the aspiring immigrant) who says “OK. I’ll be happy to participate and take on the same collective commitments to justice. I’ll sign your social contract.”<sup>36</sup> What is the justification for saying, “No. We won’t let you participate. You can’t sign.”? If connection and consent provide the foundation for justice, then a refusal to permit people to establish the relevant connections or to give their consent requires justification.<sup>37</sup>

## **Sovereignty**

One argument in defence of the state’s discretionary control over immigration is that a norm of open borders would be intrinsically incompatible with state sovereignty. A general right of free movement, some think, would require a world government with the power to enforce such a right. A world government would be a bad idea (for everyone) for reasons of excessive centralisation and risks of tyranny. So, we need to divide the world into independent political units like contemporary sovereign states. In a world divided into sovereign states, each state must have the power to control its own borders and so there can be no general right of free movement.

People often overstate the arguments against world government.<sup>38</sup> Nevertheless, that is not an argument that I want to pursue here. I indicated at the beginning of chapter ten that I would develop the case for open borders in the context of the assumption of a world divided into independent, sovereign states, each of which (normally) has a right to exercise sovereign power within its territory and to control admission to its territory. As we have seen at a number of points in this book, however, we should not confuse the claim that states have a moral right to exercise sovereign power with the claim that every exercise of sovereign power must be regarded as morally right. Accepting (as a background assumption) the legitimacy of state sovereignty does not require us to abandon the idea of moral criticism of state behaviour. The argument for open borders is one such criticism. It claims simply that it is morally wrong for states to exclude peaceful immigrants.

Some people, following Hobbes, think that any self-enforced limits on state power must be empty. So, they reject all talk of human rights or moral limits to state power. There are fewer who take that view today, however, and, unlike Hobbes, they rarely acknowledge that this also entails a rejection of constitutional democracy. As I observed in the introduction, the very idea of constitutional democracy is built upon the notion of self-limiting government, i.e., that states have the capacity to restrict the exercise of their power

in accordance with their norms and values. There is nothing in the nature of sovereignty that prevents a democratic state from recognizing that outsiders are morally entitled to enter and settle on its territory and that it has an obligation to permit them, at least under normal circumstances. It may be unlikely that democratic states will agree to recognize such a claim, but that does not make the idea intrinsically incompatible with sovereignty.<sup>39</sup>

The assumption that controlling borders is essential to sovereignty is actually of relatively recent vintage. For a long time, there was no connection between the idea of exercising political control over population flows and the sort of territorial jurisdiction that is the idea at the heart of modern sovereignty, i.e., the state's monopoly over the legitimate use of violence within a particular geographical space.<sup>40</sup> States in the modern form date back to the seventeenth century but they began to try to regulate entry and exit in a serious way only in the late nineteenth century. Passports were not introduced until World War I.<sup>41</sup> As I have said before, having open borders is not the same as having no borders.

Sovereignty and control over admissions are linked in the popular imagination and in political discourse, but they are often disentangled in actual political arrangements in the real world. Sovereignty itself is less simple than some assume. Federal systems often have complex separate and shared sovereignty arrangements.<sup>42</sup> Externally, in relation to other states, sovereignty may be unitary (though in a few cases even that power is divided). Internally, the central government has some powers and jurisdiction over some issues, and other units of government (provinces, states in the United States) have other powers and jurisdiction over other issues. The relationship between the central government and the other units is determined by constitutional arrangements. The central government does not have the final say in any simple or conventional sense. It is sheer dogma to insist that the sovereignty exercised by the component parts of a federal system is not real sovereignty. Like property, sovereignty is a bundle of rights that can be divided up in many different ways.<sup>43</sup>

Why does this complex picture of sovereignty matter? Because the sovereignty that federal units exercise co-exists with open borders among the various units. People *are* generally free to change their membership in sub-national political communities at will, despite the jurisdictional sovereignty that those sub-national units exercise over many important issues. Of course, it is true that such openness has dynamic effects and that the various units may have to take migration incentives into effect in planning public policies, but in an interdependent world, political units have to take into account many different factors that are outside the jurisdiction they control.

The fact that citizens of European Union states are largely free to move from one member state to another reveals starkly the ideological character of the claim that discretionary control over immigration is necessary for sovereignty. No one can seriously doubt that the European states are still real states today with most of the components of state sovereignty. Indeed, every European state has a more effective actual sovereignty than most states elsewhere in the world. Nevertheless, with minor qualifications, European states that are members of the European Union do not claim that they may

exercise discretionary control over the entry of immigrants from other EU states. They have agreed to limit their own sovereign power in this way. That is all that the open borders argument asks – only now in relation to the whole world and not just Europe. I recognize that the phrase “that is all” does not capture the practical significance of such a demand, but the point here is a conceptual one.

Someone may point out that European states did not adopt their open borders policy out of a commitment to justice or human rights but out of a concern for economic efficiency. In the first instance, they waited to implement the policy until the economies of the poorer states like Spain, Portugal, and Italy had improved sufficiently that the abolition of immigration restrictions within the EU would not lead to massive population movements from the poorer countries to the more affluent ones. For the same reason, they did not immediately grant the right of free movement within the EU to citizens of the states like Poland and the Czech Republic that joined later.

I accept these claims entirely. From my perspective, they simply confirm the fundamental point, namely that restrictions on migration are usually necessary to protect a community only when that community is so economically privileged relative to others that many outsiders would consider moving there. Hence, the absence of restrictions on immigration, even a legal commitment not to introduce restrictions, is not evidence of the absence of sovereignty.

Having a right to migrate across state borders does not require people to move, anymore than having a right to free mobility within a state requires people to move. Migration between states of the European Union is very low – less than 3% of the population – even though citizens of member states have a right to move (with minor qualifications).

Some people love novelty and adventure, but most people are not keen to leave home, family and friends and to move permanently to a place where they don't speak the language and don't know their way about. Most consider doing this only when they think they have a lot to gain. So, restrictions on migration usually serve as a protection for economic and political advantage. If the economic and political differences among states in the world as a whole were no greater than the economic and political differences among states in the EU, there would be no reason to see a right of free movement as a threat to sovereignty under most circumstances.

In insisting that the principle of free movement is not intrinsically incompatible with state sovereignty, I do not mean to deny that there are circumstances under which immigration could threaten a state's capacity to govern itself. A massive inflow of migrants within a short time might indeed have this effect. But there is no necessary and inevitable link between sovereignty and restrictions on migration. Given the case I developed in the previous chapter on behalf of free movement, any justification of limits to free movement has to appeal to more than the simple concept of state sovereignty. As a concept, sovereignty only requires that states themselves be the ones to decide what their immigration policies will be. It does not entail the idea that their immigration policies

must be morally unconstrained. In fact, as we have seen in chapters eight and nine, almost everyone agrees that state sovereignty is morally constrained in certain ways in the area of immigration. The question now is whether those conventional limits are the only ones states are morally obliged to respect, when we reflect upon immigration more deeply.

### **The Welfare State**

One important objection to the idea that we should let anyone join the political community who wants to do so is that opening borders like this would make the modern welfare state impossible. The welfare state that has developed in various forms in Europe and North America over the past sixty years or so, has done a lot through its regulatory and redistributive policies to soften the harsh edges of modern capitalism for those who live within its (the welfare state's) protective bounds. Although the welfare state has significant limitations, especially in the North American versions, it has nonetheless provided the majority of citizens who live in welfare states, and especially the least well off citizens, the opportunity to enjoy much more security in the material conditions of their lives than previous generations.

Why might open borders threaten this achievement and why might it be morally legitimate to protect it through discretionary closure? Critics have suggested three reasons to fear the effects of free movement on the welfare state: the opportunistic use of the freedom to move; the erosion of trust and solidarity; and the corrosive effects of unconstrained labour markets in a context of international inequality. Let me briefly elaborate on each of these points.

First, some worry about incentives to move in response to different levels of welfare state provision. Obviously, there are huge gaps between what rich and poor states can provide, but there is also some scope for legitimate variation among democratic states with similar levels of economic resources. So long as states are sovereign and self-governing, some states will have much more extensive welfare states than others, even if the others are comparably rich. The contrast between Scandinavia and the United States illustrates the point. If free movement is permitted, people with special need for the benefits provided by more extensive welfare regimes will have incentives to migrate to those states while those with higher incomes will have incentives to move to states with lower taxes and less extensive welfare regimes. This will make it difficult for the states with more extensive welfare states to maintain them and will create pressures for all states to adjust to the lowest common denominator.

Second, the welfare state is built, some argue, upon a sense of mutual identification, solidarity, and trust among the members of a society. These feelings and orientations make people willing to take a long-term perspective and even to sacrifice for one another. This makes it possible for the state to address the collective action problems that emerge in an individualistic, competitive economy and to provide protection and security for the most vulnerable. If borders were open and anyone who wanted to join a society could do so, the emotional preconditions of the welfare state would be eroded. If people felt as though they

were surrounded by strangers rather than true compatriots, it would no longer be possible to sustain community oriented attitudes and dispositions. People would take a much narrower, more self-interested approach to public life and they would be unwilling to support redistributive policies.<sup>44</sup>

Third, numbers also matter. Given the vast economic differences between rich states and poor states and the much higher number of people living in poor states, it is simply not possible to raise the living standards of people in the rest of the world to the level currently enjoyed within affluent welfare states even by the least prosperous. If borders were open, millions of people would move from poor states to rich ones for economic opportunities. This would have a particularly negative effect on those at the bottom of the economy. Most of the new immigrants would have limited skills. They would compete with those who were already at a disadvantage in a modern economy. Even if the immigrants themselves were not immediately eligible for unemployment benefits and income support, they would come so long as they had better prospects of employment than at home. Here there would be a potential reserve army of the unemployed greater than anything Marx could have imagined. Their willingness to work for less than the existing workforce expects would make it harder to enforce welfare state regulations governing work (hours, minimum wage, health and safety conditions) and would drive more of the settled population to rely on unemployment compensation and other income support programs. Other welfare state programs such as health care and education would come under strain, since immigration would bring in more people who were unable to bear their full share of the costs of such programs. Those at the top of the economic pyramid would not be much affected by this and might even gain. But it would hurt those in the middle and especially those at the bottom. Ultimately it would lead to the dismantling of the welfare state, something that has already occurred to some degree in many states under the competitive pressures of a globalized economy. Open borders would vastly accelerate this process. That is precisely why conservative, free market advocates like the *Wall Street Journal* favor open borders. And, from this perspective, that is also why those who see the welfare state as an important instrument of social justice should favour discretionary closure, not open borders.

Does concern for the fate of the welfare state provide us with sufficient reason to reject, or at least to significantly modify, the case for open borders? On the whole, I think not, for several reasons. As always in this chapter, I am focussing on questions of principle rather than on questions about immediate action. I consider the latter in the next chapter.

First, unlike the earlier arguments I have been considering, the welfare state argument is contingent and self-limiting. It does not actually pretend to justify discretionary control over immigration. On the contrary, on this account, closure is a regrettable necessity, not a free choice among alternatives that are equally acceptable from a moral perspective. To the extent that borders can be left open without harming the welfare state, borders should be left open.

Whether and to what extent free movement would harm the welfare state is an empirical question. Open borders might have relatively little impact on the viability of the

welfare state, either because the welfare state could function well with open borders – perhaps because of the positive contributions made by immigrants to the economy – or because the welfare state is already doomed by factors other than open borders – perhaps by the globalization of the international economic system. Some scholars think that one or the other of these hypotheses is more plausible as an empirical matter than the claim that open borders will undermine the welfare state.<sup>45</sup> I am in no position to assess that issue, but we cannot simply assume the accuracy of claims about the negative consequences of open borders. If either alternative hypothesis is true, then preserving the welfare state does not provide any reason to close borders.

Second, even if the claims about the negative consequences of open borders for the welfare state are correct, closure may not be the only way to prevent these negative consequences. In the absence of any direct refutation of my earlier arguments on behalf of free movement, even those who think that preventing the decline of the welfare state justifies restrictions on immigration are still obliged to seek the policy option that interferes as little as possible with the principle of free movement. For example, if we think it is likely that people will move to take opportunistic advantage of better welfare provisions in one state rather than another and we accept the view that preventing that is a legitimate goal, we should ask whether the problem could be reduced to manageable levels by measures short of discretionary closure, such as waiting periods for eligibility. The latter would be morally preferable because waiting periods for eligibility do not infringe on the right to free movement, and, as I have argued previously, they are morally defensible, at least for redistributive programs.

Third, to the extent that the willingness of current members to support the welfare state is eroded by the arrival of immigrants, we have to evaluate the moral legitimacy of this erosion. From a normative perspective, it matters enormously whether the unwillingness to support the welfare state grows out of morally objectionable attitudes such as racism or other forms of prejudice or simply out of what one might call legitimate indifference to the well-being of these new arrivals. Of course, as a practical matter, both sorts of attitudes may have the same effect on the viability of the welfare state, but from a principled perspective, concerned with moral justifications, the distinction is crucial. To the extent that the unwillingness of current citizens to support welfare programs once immigrants benefit from them is the product of morally impermissible attitudes and dispositions, then to that extent the negative effects on the welfare state cannot provide a deep justification for closure. If closure is to be justified at the level of principle, it cannot be on the basis of an underlying injustice.

Fourth, we need to clarify whether, from the perspective of domestic distributive justice, the welfare state is to be considered a morally required institutional arrangement (broadly speaking) or something that is optional – morally permissible, perhaps even admirable, but not, strictly speaking, a requirement of justice. Defenders of closure for the sake of the welfare state are somewhat ambiguous about this, perhaps because they are ambivalent. Some write as though the welfare state were clearly required as a matter of justice. To the extent that the welfare state is required by justice, however, any unwillingness on the part of citizens to support it would seem to be unjust. It would seem

harder to defend the idea of legitimate indifference which I have just argued is a necessary component of any morally justifiable argument that connects the threat to the welfare state to changing attitudes.<sup>46</sup>

Alternatively, we might argue that the welfare state is simply one choice that citizens make among alternative arrangements and that they are morally free not to have such institutions. There is presumably some range of alternative arrangements that would be morally permissible. Theories of justice rarely claim to determine all the details of institutional choices and policies. However, if what free movement erodes is not an institutional arrangement that is required by justice but rather one alternative arrangement among a set of otherwise acceptable ones, it becomes harder to see why that concern should be given sufficient moral weight to overcome the positive arguments previously advanced on behalf of open borders.

Finally, the welfare state argument makes claims about the consequences of open borders. The key question is consequences for whom? If we are concerned only with the consequences of the erosion of the welfare state for those already enjoying its protections, we run afoul of the objections already posed to giving such strong priority to the rights and interests of compatriots. If we take into account the consequences of open borders for all of those affected, it seems much less likely that we will conclude that preserving the welfare state is more in the interest of all than opening borders. For one thing, the claim that closing borders leaves more people better off economically goes very much against the grain of conventional economic theory which generally argues that there are substantial net gains to be had overall from mobility of the factors of production, including labour. For another, we have to specify how different consequences matter morally and why. I have argued that it requires an especially strong justification to restrict immigration because of the way that impinges on human freedom. If that argument is correct, it will appropriately skew any calculus we make about the effects of open borders, treating restrictions on movement as a very serious cost. It might be possible to tell some story about how protecting the welfare state through restricting immigration ultimately serves the interests of all human beings or, more cautiously, causes more good than harm, all things considered, but I am sceptical that the story will be persuasive.<sup>47</sup> In any event, any attempt to justify using restrictions to defend the welfare state will have to be a story about a transition to a more just international order in which these restrictions on immigration are no longer necessary.

In sum, the moral legitimacy of the welfare state argument for restricting immigration rests upon contestable empirical claims about the consequences of open borders and a questionable moral calculus of those consequences. It depends also on the erosion of solidarity not being due to morally problematic factors. And even if all those problems are overcome, the argument does not grant a moral *carte blanche* to states to restrict immigration, but requires them to remain as open as is consistent with the preservation of the welfare state.

## **Culture**

Immigrants usually come with national identities and cultural backgrounds that are different in important ways from those of most of the people in the society they are entering. May a democratic state keep out immigrants in order to protect and promote the culture of the community against the changes that the immigrants would bring?

I will set aside here concerns that immigrants will bring illiberal cultural values with them or that they will come in such numbers that the society will collapse because I will take up those issues in the next section. I want to focus in this section on what we might call historically specific, particularistic features of the public culture of a democratic state, features to which the current inhabitants may be attached but which have no intrinsic or necessary connection to democracy.

The immediate challenge, for my purposes, is to distinguish between ways in which a democratic state may legitimately seek to preserve a collective cultural heritage and ways in which it may not. Consider a question that lurks in the background of discussions of immigration in both Europe and North America – and sometimes not so far back. May a democratic state limit immigration so as to preserve its European and Christian cultural heritage? The question presupposes that this cultural inheritance is likely to be weakened if significant numbers of immigrants who are neither European nor Christian are admitted. Even if that presupposition were true – and it is problematic in a number of ways – excluding immigrants because they are not European or Christian would not be a morally legitimate way of seeking to preserve a democratic state’s collective culture because it would violate fundamental democratic commitments not to discriminate on the basis of race or religion.

We saw in chapter eight that, even on the assumption that states are generally free to control admissions, they are not free to exclude on the basis of race, ethnicity, religion, or any of the other characteristics that we regard as discriminatory when used as a basis for exclusion within the domestic context. As I argued in that chapter, these are constraints on state policy that are generally accepted even by those who oppose open borders and defend the legitimacy of control over immigration.<sup>48</sup> So, if these limits already apply to the kinds of immigration restrictions a state may deploy when it is assumed that the state has a moral right to exercise great discretionary control over immigration, it would seem that these limits should apply all the more to restrictions on immigration in a context where the claims of the potential migrants are to be given more weight. To put the point more concretely, a democratic state may not (legitimately) limit immigration for the sake of cultural preservation, if it defines the culture in terms of existing racial, ethnic, or religious patterns within the population.<sup>49</sup>

One way to pursue the task of distinguishing legitimate from illegitimate ways of preserving a state’s public culture is to recall the discussions in chapters three and four about acceptable (and unacceptable) requirements for naturalization and about the ways in which immigrants can (and cannot) be expected to adapt culturally to the receiving society. The central theme of those chapters was that democratic commitments to freedom and equality set severe limits to the kinds of cultural adaptations a democratic state can demand or even expect of immigrants. If a democratic state seeks to promote a national culture and

identity, it must limit itself to versions of culture and identity that are open to all of those within the state, regardless of their ancestry, their race, their religion, their ways of dressing and eating and living so long as they do not harm others. If the state is limited in the kind of public culture it can promote internally, it cannot justify restrictions on immigration as a way of preserving some more extensive set of cultural commitments. If the state is to restrict immigration for the sake of its public culture, it must be a public culture that it is morally entitled to pursue.

Given this analysis, are there any aspects of public culture that a state might be entitled to preserve through restrictions on immigration and that would not run afoul of these objections to discrimination? The most obvious candidate is language. I have already argued in previous chapters that language is fundamentally different from things like religion, race and ethnicity because of the facts that a shared language is unavoidable in modern public life and that it is such an important collective good. The state is entitled to require immigrants to send their children to schools where they will be educated in the official language and can reasonably expect adult immigrants themselves to make some effort to learn it. So, I have already argued that the state is entitled to use both coercive powers and social expectations to a much greater extent with respect to language than with respect to something like religion.

Why might a state want to ensure that its current language persists as the language of public life? From the perspective of current members, the answer is obvious. As we have already seen, it is necessary to have some shared language (or languages) in a modern society. If a group's native language is also the one that is used in the public schools, in public institutions, and in public life generally, they probably have good reasons to want that to continue. For one thing, there are obvious practical advantages to being comfortable with the dominant language in a society. For another, people are often attached to their native tongue (even if they speak another equally well) and want their language to maintain its public position because of that attachment. Thus, preserving an established language as the language of public life seems to me to be important and legitimate interests that a democratic majority may seek to promote, so long as it does so through legitimate means.

Not everyone will accept this argument that it can be morally legitimate for a democratic state to try to preserve (or perhaps establish) a language as the language of public life.<sup>50</sup> If it isn't, however, this form of cultural preservation will not offer a plausible reason for restricting free movement. I want to consider the claim that cultural preservation can offer a reason for restricting immigration, and, for those purposes, I want to assume that the preceding argument in favour of linguistic preservation is correct (as I think is actually the case).

Why might immigration pose a threat to the preservation of the current language as the language of public life? Unless the dominant language happens to be theirs as well (or one they already know), immigrants will not have the same practical incentives or emotional attachments as natives with respect to keeping the current language as the language of public life. If they have the option, they might prefer to have their own language (or at least one they already know) used in public life, and, if there are enough of

them, they might eventually be able to get their way through the normal democratic process. So, restricting immigration offers a way of making sure that this important dimension of the existing public culture is maintained and preserved. It makes it much more likely that the majority will have an ongoing interest in maintaining the current language as the language of public life. Is restricting immigration a justifiable means towards this end?

I think that the answer to that question depends crucially on the background conditions under which the restrictions are imposed. If the background conditions generating migration pressures are unjust, then the fact that the goal of cultural preservation is morally defensible taken by itself is not decisive. Under these conditions, cultural preservation cannot provide a justification for closure at any deep level of reflection. So long as the migration pressure is a symptom of a deeper injustice, closure cannot be justified. The danger is that appeal to cultural preservation will obscure the injustice of the background conditions that give rise to the migration pressure.

Consider Quebec which some political theorists have cited as an example of a case in which it is justifiable to restrict immigration to preserve a national culture.<sup>51</sup> Quebec has defined its national culture in a relatively open way that fits with the constraints I identified previously, but Quebec is deeply committed to keeping French as the language of public life. As part of that effort, it requires immigrants to Canada who settle in Quebec to enrol their children in French language public schools.<sup>52</sup>

It is ironic that Quebec is so often cited in arguments for the legitimacy of restricting immigration, because, as most people know, Quebec is not a state, but rather a province of Canada.<sup>53</sup> Why is that ironic? Because despite its deep commitment to the preservation of Quebec's national culture and, above all, to keeping French as the language of public life, Quebec actually has an open borders policy – not with the whole world, to be sure, but with other communities, most of whose members do not speak French. That is, it has an open borders policy with the other provinces of Canada, which have among them a non-francophone population that is more than four times as large as the francophone population of Quebec.

Canadians outside Quebec are free to move there, to set up residence, and to become citizens of Quebec. The Quebec government has no legal authority to prevent this. In principle, if enough anglophone Canadians moved into Quebec, they could constitute a democratic majority and disestablish French as the language of public life.

Despite this fact, Quebec nationalists are not up in arms, demanding that the Quebec government be granted this crucial power to protect Quebec culture. On the contrary, even those who advocate independent statehood for Quebec have been at pains to insist that, after independence, the new state would maintain open borders with the rest of Canada (and permit dual citizenship).

Why are Quebec nationalists so willing to tolerate open borders with the rest of Canada? Because there is no danger of Quebec being swamped by immigrants from this

source. You don't need to close your borders to protect your culture if there is no danger that enough immigrants will want to come to pose a threat.

The most important lesson to draw from the Quebec case (for this chapter) is that, in most circumstances, restricting immigration to protect culture will seem necessary only if the receiving society has some very significant advantages over the potential immigrants' societies of origin. English-speaking Canadians do not move to Quebec in large numbers, even though they could do so, because most anglophones prefer to live in an environment in which English is the language of public life, given that the economic opportunities in Quebec are not significantly different from those in the rest of Canada.

This is a typical pattern with respect to migration across deep cultural divides. Small numbers of people may be flexible or whimsical enough that they are willing to move for trivial reasons to a place whose national culture is very different from their own, especially one in which the language of public life is not their own native tongue. Most people, however, need a fairly serious reason to undertake such a challenge – either intimate personal ties or significant economic or professional opportunities that they cannot find at home.

If the migrants are few in number (relative to the established population), they can normally be easily absorbed and in any event will pose no serious threat to the existing culture. Over time, the children will be educated in the language of public life and will come to see that language as their own native tongue. It is only if those seeking admission are numerous (relative to the settled population), that the newcomers could pose a serious cultural challenge. That will happen only when there are very substantial differences between the material conditions in the migrants' country of origin and the one they are seeking to enter. So, the idea that immigration poses a cultural threat is almost always connected to the fact that closure is protecting non-cultural advantages. Without those advantages, there would be no threat and no reason to fear open borders.

Some will say, "So what? We are entitled to the economic advantages we have." But, of course, that is precisely the view that I have been challenging earlier in this chapter. If the bounded justice, state responsibility, and priority for compatriots arguments don't work, as I have argued, then we don't yet have an argument justifying the vast economic differences between states.

So far, I have been arguing that it is implausible to suppose that it would be necessary to restrict free movement for the sake of cultural preservation in a just world, that is, a world with only modest economic differences between states. But to clarify the issue further, let's suppose that even under just background conditions, some state did face an influx of immigrants that might swamp its national culture and transform its language from the language of the vast majority to the language of a minority. And let's assume further that keeping this from happening is a morally legitimate and important goal for the state. Would that justify granting the state discretionary control over immigration?

No. People often assume that we must choose between unconstrained open borders (come what may) and discretionary state control over migration where the state has no obligation to admit migrants unless it judges admission to be in the interest of current citizens. That seems plausible only if one is working with an implicit picture of what states may and may not do based on our current assumptions about what states are entitled to do. Here is an alternative principle. “People normally have the right to migrate and settle wherever they want, and to acquire the full rights of citizenship after some limited waiting period. States have the right to restrict migration only if they can show, on the basis of evidence in an impartial (but internal) forum, that further migration would endanger the survival of the national language and culture, and they may exercise this right of restriction only so long as and to the extent that the danger persists.” This principle leaves the power with the state but not the discretionary moral authority to exercise that power for any reason that seems good to the state.

The position I have just outlined might be described as free movement with a cultural caveat. The cultural caveat is not so different from other sorts of caveats that limit every democratic freedom. Whether it is freedom of speech or freedom of religious practice or freedom of (internal) movement, every freedom that involves human action in the world is constrained by caveats for emergencies and crises where normal freedoms may be suspended.<sup>54</sup>

My position takes culture seriously and gives it enough moral weight that it can justify limiting freedom of movement under some circumstances. It is possible to imagine cases where due to special circumstances, some groups (whether a small state or, more likely, some small sub-state group) needed to implement policies of closure (or partial closure) with respect to immigrants in order to protect a fragile, collective culture (and not some privileged economic position). Such cases are likely to be rare because we have to imagine both that enough people want to move into a particular community to threaten the viability of its culture, despite the presumed distinctiveness of its language and its current use in public life, despite the absence of any strong economic advantages to living in the community, and despite the many alternatives available to the potential migrants. It is possible to imagine such a scenario, but it seems likely that it would be uncommon.

In sum, even if we accept the view that the preservation of a national culture is an important and morally legitimate state interest, under just background conditions, it is unlikely to provide a justification for restricting immigration. Under some highly specific circumstances it might. We can allow for this possibility by adding a cultural caveat to the general principle of free movement. Like the welfare state argument, the cultural caveat is contingent and self-limiting. It only justifies restrictions on immigration if they threaten the culture and only to the extent that is necessary to protect it. Under existing conditions, appeals to cultural preservation as a justification for restrictions in immigration serve mainly to disguise the ways in which such restrictions protect non-cultural, and arguably illegitimate, interests.

### **Threats to National Security, Democratic Values, and Public Order**

One way to defend restrictions on migration as morally permissible (or even required) is to argue that free movement would impose costs on those in the receiving society that even those seeking to migrate could not reasonably expect the receiving society to bear. In this section I want to consider various ways in which people seeking to immigrate might be seen as threats to the receiving community so that restrictions on migration could be justified as a way of protecting the community against these threats. In general, I recognize that threats could emerge that would justify restrictions on immigration, but I argue that, properly understood, the restrictions that would be justifiable would be extremely limited under almost all plausible circumstances. So, these sorts of arguments only qualify the general case for open borders. They do not undermine the principle.

Earlier I said that I was presupposing, for purposes of this discussion, a world like our own, divided into separate states and further that I was presupposing at least the possibility that these states might face the possibility of violent threats from outsiders, whether state or non-state actors. Can a concern for national security justify limits on freedom of movement?

Yes, if all the caveats from chapter eight about the misuse of the national security rationale are included. My argument for open borders has been framed from the outset as an argument about the moral claims of ordinary, peaceful people seeking to build decent, secure lives for themselves and their families. It is not an argument for the admission of terrorists or invading armies.

Just as there can be moral limits on the exercise of sovereignty without denying sovereignty itself, there can be moral limits on the protection of national security without denying the fundamental importance of that goal. Like the welfare state and culture arguments, the national security rationale for restricting immigration is a contingent and self-limiting rationale, at least in principle. It provides a warrant only for excluding immigrants who pose a threat to national security, not for keeping anyone else out.

I recognize the irony of describing national security as a self-limiting rationale, given the way it has been used in practice, but as I argued in chapter eight it is entirely implausible to think of the vast majority of people seeking to migrate as threats to national security if one defines that concept in a reasonable way.

Another version of the threat argument focuses on the danger to basic democratic values posed by a large influx of people who come from undemocratic societies, even if they do not come with any hostile intent. Restrictions on undemocratic entrants would be justified only if there was good reason to believe that they would threaten the democratic character of the regime if admitted. In other words, like the national security argument, the argument about the dangers of undemocratic migrants is contingent and self-limiting. It provides no justification for restricting the entry of migrants who accept democratic norms for regulating public life, regardless of where they come from. It only justifies limiting the entry of those who do not when they would actually pose a threat to the maintenance of a democratic order.

Again, the discussion in chapter eight about the danger of abusing this justification is relevant. As I said at the outset, the argument for open borders is an argument about the injustice of excluding peaceful people whose only goal is to enter and settle in order to build decent and secure lives for themselves and their children. Even if we grant the principle that this could permit denying entry to some potential immigrants on the grounds that they are fundamentally hostile to democratic norms, it would be preposterous to suggest that it would justify the exclusion of most of those who are kept out now.

A third variant of the threat argument focuses on sheer numbers. Given the size of the potential demand, if rich states were to open their borders, the number of those coming might overwhelm the capacity of the societies to cope, leading to chaos and a breakdown of public order. One cannot assume that the potential immigrants would see the danger and refrain from coming because of the lag time between cause and effect, because of collective action problems, and so on. Call this the public order problem.

Note that the "public order" is not equivalent to the welfare state or whatever public policies are currently in place. It is a minimalist standard, referring only to the maintenance of law and order. A threat to public order could be used to justify restrictions on immigration on grounds that are compatible with respecting every individual as a free and equal moral person, because the breakdown of public order makes everyone worse off in terms of both liberty and welfare.

In order for a public order restriction to be justifiable in principle, the threats to public order must arise from sheer numbers and not from "backlash", i.e., violent or threatening antagonistic behaviour of the current population towards the newcomers. In the latter case, it is the current population, not the immigrants, who are posing the threat to public order, at least from the perspective of justice. This would not settle the question of what policy to pursue, given the range of feasible options, but it would preclude using public order as a deep justification for restrictions on immigration.

The public order restriction is different from the national security and democratic values rationales in one important respect. It presupposes a failure to create the background conditions of limited inequality between states that I have argued are required by justice. If there were no significant inequalities between states, we would have no reason to fear that open borders would give rise to a public order problem.

In some ways, the public order argument is reminiscent of Garrett Hardin's famous lifeboat ethics argument.<sup>55</sup> It does no one any good to take so many people into a lifeboat that it is swamped and everyone drowns. Fair enough. On the other hand, people in a lifeboat are positively obliged to take in as many as they can without jeopardizing the safety of the boat as a whole. They cannot let people drown if they are able to save them without risking their own lives. This positive duty is a feature of the lifeboat situation that those fond of this analogy often neglect.

If we want to use this analogy in the immigration context, it follows that the state is obliged to admit as many of those seeking entry as it can without jeopardizing public order. Like the other threat arguments, the public order argument is contingent and self-limiting. It only justifies restrictions to the extent that they are necessary to preserve public order. It does not justify control over admissions that simply puts the interests of the current population ahead of the interests of those trying to get in.

Like national security, public order is subject to expansive and problematic interpretations. Some people see a threat to public order in any new demand placed on a social system. We may need a safety margin in a lifeboat, but they want a safety margin of fifty empty places in a lifeboat built for sixty. Again, I think it would be a mistake to deny the moral relevance of public order in principle as a way of trying to prevent abusive interpretations. Instead, we should focus our critiques on the abusive interpretations themselves.

Every human right and every liberty is subject in principle to some sort of public order restriction. As Rawls puts it in discussing this problem, the hypothetical possibility of a threat is not enough. Rather there must be a "reasonable expectation" that damage will occur in the absence of restrictions and the expectation has to be based on "evidence and ways of reasoning acceptable to all."<sup>56</sup>

The same strictures apply to all attempts to justify restrictions on immigration for the sake of protecting national security, preserving democratic values, and maintaining public order. If those strictures are respected, these three concerns would qualify, but not extensively limit, free movement.

## **Conclusion**

I have tried to show in this chapter that there are no compelling arguments against free movement at the level of principle. Belonging need not entail exclusion.

In defending open borders, I am not arguing for a world in which human beings move frequently from one political community to another, with no sense of home or belonging and no deep attachment to place or people. Political communities require relatively stable, intergenerational populations in order to function effectively over time. This requirement of intergenerational stability would be compatible with open borders, however, if the other requirements of justice were met. Modest migration does not threaten intergenerational stability. Most people find it more attractive to stay in their community of origin – a place where they know the language, have friends and family, and feel at home – than to move, so long as the differences in life chances between home and elsewhere are not too great. Having open borders would not lead to mass migration, if the differences between political communities were as limited as justice requires.

What would a just world look like? I'm not sure of all the particulars, but I am reasonably confident of this. If a just world had states, they would be states with open borders.

## Notes to Chapter Eleven

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<sup>1</sup> David Miller's position is typical of those defending the state discretion view, and he recognizes various moral limits. See: (Miller, 2007, p. 222)

<sup>2</sup> Versions of this argument can be found in Blake, 2001; Macedo, 2004; D. Miller, 2007; Nagel, 2005; Rawls, 1999. For criticisms see Abizadeh 2007, Cohen and Sabel 2006, Julius 2006.

<sup>3</sup> The theorists listed in the previous note often have arguments for an egalitarian version of global distributive justice in mind and not my argument for open borders, but some of them are explicitly challenging my position and their arguments offer relevant challenges to mine, whatever their intended target.

<sup>4</sup> I do not think that the disagreement between advocates of bounded justice and their critics is a definitional dispute about the use of the word 'justice' and its cognates. There is little point in such disputes. The debate is about what sorts of issues raise important questions of morality and how far our moral obligations extend.

<sup>5</sup> It is not only the direct refusal of entry that we should see as an exercise of coercive power but the background rules that make people believe there is no point in seeking entry. In the modern world, contemporary means of communication enable most people to know something about life in other states and contemporary modes of transportation would make migration physically and economically feasible for many, in the absence of coercive restrictions. The existence of these coercive restrictions is so well known that it often acts in a pre-emptive way, effectively removing migration as an option from the minds of people who might otherwise consider it. From this perspective, we might say that, for many people, even the ongoing exercise of state power in their daily existence does not have as pervasive an impact on their lives as this prior determination of where they belong and where they may (or may not) enter.

<sup>6</sup> Blake is the bounded justice theorist who makes coercion especially central in his analysis. He acknowledges that the refusal of entry is an exercise of coercive power but he says that those refused entry are not subject to the pervasive coercion of the state. While that may be true in some respects with regard to daily life, it is hard to imagine an exercise of the state's coercive power short of imprisonment that has a more pervasive effect on a person's life than refusal of admission. This is what we might call a gateway decision. It has enormous implications for all the subsequent life choices a person makes. See the critique by Abizadeh 2007.

Nagel may be an exception to my claim that everyone recognizes that coercion must be justified to the one being coerced. Nagel seems to think that the state's exercise of coercion requires a positive justification only when those subject to the coercion are citizens who are expected to accept and uphold the law. It is not clear how this line of analysis would apply to people present on a temporary basis, perhaps even as tourists.

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Nagel explicitly mentions immigration law, saying that because foreign nationals excluded by the immigration laws are not expected to accept and uphold the laws, no justification of the laws (and their coercive exclusion) is due to them, so long as their “prepolitical human rights” are not violated by the law. This line of argument seems to have the interesting implication that foreign nationals are under no moral obligation to obey the law, so that those who enter and stay without authorization by the state violate the law but not a moral obligation. This raises further questions about what moral claims, if any, Nagel thinks unauthorized migrants have against the state once they are present, an issue I have explored in chapter seven. In any event, Nagel is simply assuming that that normal immigration laws do not violate any “prepolitical human rights” like the right to bodily integrity, freedom of expression and freedom of religion. (These are his examples of prepolitical human rights.) The whole point of my first argument in the previous chapter is that we should regard free movement as a basic human right like the others that he mentions. So, Nagel’s analysis leaves that issue on the table.

<sup>7</sup> I have said that I would focus on questions of principle rather than institutions, so I confine the following lengthy comment to the notes. One common objection to global justice arguments from a bounded justice perspective is that there is no institutional mechanism in place to secure compliance with the requirements of global justice. I find the objection puzzling. It seems to treat the absence of such institutions not as a challenge to be addressed and an obstacle to be overcome but as an explanation of why we are not obliged to try. Surely if we have an obligation to maintain just institutions, we also have an obligation to create just institutions where they do not yet exist. (See Abizadeh 2007.) Advocates of bounded justice recognize that we have moral duties to others outside our own states even though we do not yet have appropriate institutions to ensure that those duties are fulfilled. In that case, the absence of an institutional mechanism is not seen as an excuse for complacency but as a reason for action.

At a deeper level, the question of institutional arrangements is surely secondary to, and derivative from, the question of principles. We want institutional arrangements that will enact and reflect our principles of justice, not principles of justice that simply reflect our institutional arrangements. I do not mean to deny that we may create just institutions first in the course of coping with particular practical problems and only articulate their moral logic later. Nor do I mean to deny that some moral obligations grow out of the creation of institutions and do not exist prior to those institutions. But we cannot simply assume that the institutions we have are just or that they are sufficient from the perspective of justice. If we begin with the moral obligations that we have within existing institutions and arrangements and allow those to set limits to our moral horizons, we will simply reproduce and legitimate whatever moral defects they contain. This is obvious if we consider past institutional arrangements that we now consider unjust, including the absence of certain institutions.

To return to the feudalism analogy, we would not consider it sufficient from a moral perspective for those living under feudal arrangements to have asked what nobles owed to one another or even to have asked what they owed to peasants (e.g., *noblesse*

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*oblige*). Like the modern state system, the feudal class structure was a complex social institution with a pervasive effect on the lives of those subject to it and with its own powerful internal norms. Nevertheless, that reality did not render it above criticism. In that case, we can clearly see that it was appropriate to ask whether feudal institutional arrangements were just and whether they should have been replaced with something better.

We must ask the same question of our own institutions, including the current institutional arrangements for organizing the world politically. The mere fact that the modern state is a complex social institution with pervasive effects on those subject to it does not mean that we have to accept current norms about what is owed to outsiders or how one becomes a member. Of course, the fact that we have to ask questions about the justice of the current state system as we do about feudalism does not make the two morally equivalent. There are many salient differences between feudalism and current international arrangements. Perhaps current international arrangements are just or could be made so. But is there a way to make that case to those on the other side of the fence that separates the haves from the have-nots? In any event, we are obliged to consider that question. We cannot simply assume that one of the things the have-nots do not have is a right to ask such a question.

<sup>8</sup> For a recent work developing this point, see Shachar 2009.

<sup>9</sup> I provide a different, but complementary critique of Walzer's defense of closure in Carens 1987 and an appreciation of his strengths as a theorist in Carens 2000, chapter 2.

<sup>10</sup> See Walzer 1983 p. 38. Italics in original.

<sup>11</sup> Find page ref.

<sup>12</sup> Again find ref.

<sup>13</sup> David Miller (2007) is the one who has developed this line of argument most fully, but similar themes can be found in Rawls (1999) and Macedo (2004).

<sup>14</sup> Miller prefers the language of national responsibility and draws a distinction between state and nation, while Rawls and Macedo prefer to speak of peoples and distinguish between states and peoples. These distinctions are relevant to some issues but not to the ones I am pursuing here. All of these authors defend both discretionary control over immigration and economic inequality between political communities and to do so in the name of collective responsibility and the self-determination of the political community. For my purposes in this chapter, therefore, it is simpler to speak of state responsibility.

<sup>15</sup> Miller 2007: 68-75. (Miller's 2007 treatment draws on an earlier article published in 1999.) Miller's example and his overall argument are quite similar to the discussion in Rawls (1999, pp. 117-18). I focus primarily on Miller because his argument is a bit more

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fully developed. Miller and Rawls both actually compare two contrasting pairs of societies, but I don't think the second pair adds anything essential to the argument and it is simpler for purposes of exposition to consider only the first. One interesting feature of the contrast between the second pair of societies, labeled Condominium and Procreantia, is that the discussion presupposes that a democratic state is responsible for the size of its population and for the rate of population growth. Rawls is explicit on this point. (Rawls 1999: 8) This is not normally an issue that features so prominently in discussions of what democratic states are responsible for determining collectively. The topic raises interesting questions about the relationship between individual choice and collective responsibility, the acceptable means by which a state may exercise control over the size of its population, and so on. Neither Miller nor Rawls pursues these issues, however, and I won't either because they stray too far from my focus on immigration.

<sup>16</sup> Ibid.

<sup>17</sup> This does not mean that Miller thinks that rich states have no responsibility to help poor ones. He and Rawls both argue that rich states have a duty to help poor states achieve a level of development that will enable their citizens to lead decent lives, and in the current state of world affairs, this is a very demanding requirement. Nevertheless, he and Rawls both think that after this duty has been met, there will still be substantial inequalities between states. That is the issue that I am focusing on here.

<sup>18</sup> Rawls and Miller seem to think that most current inequalities between states are due to the responsibility factor. At one point Miller rejects Thomas Pogge's claim that the position of poor states today is largely due to historical injustice on the grounds that some former colonies like Malaysia have managed to succeed economically (Miller 2007, p. 251). Rawls uses similar examples. This rebuttal is unpersuasive. The occasional success of African Americans in the United States in the first half of the twentieth century does not show that racism and discrimination had no ill effects on African Americans as a group. Similarly, the fact that a few former colonies have succeeded does not prove that colonialism had no ill effects overall. Of course, this does not prove the opposite either, but given the role played by equal starting points in the state responsibility thesis (which I elaborate in the next section), the burden of proof should rest upon those defending inequality to establish that departures from equality are properly attributed to self-determination rather than to other factors. That would require empirical and historical evidence that neither Rawls nor Miller supplies. My defense of open borders does not rely on such contestable claims about the impact of history.

One ironic effect of the claims by Miller and Rawls about where responsibility lies for current inequalities between states is that if we place the template Affluenza/Ecologia on existing states, it looks as though the poor states of the world fall under the label Affluenza and can be blamed for profligacy, while the rich states fall under the label Ecologia and can be praised for their stewardship of their resources. That seems implausible. Neither Miller nor Rawls explicitly makes the connections I have just proposed between the labels and actual states, but I think the connections are implicit in

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their arguments.

<sup>19</sup> Are the differences between Ecologia I and Ecologia II morally justifiable? Should we try to reduce or eliminate such differences? That will depend in large part on one's judgment about the proper role of luck in human affairs and about the possibilities of constraining the effects of luck without interfering with other important moral considerations. There is a vast literature on luck egalitarianism, and that is not the only place where discussions of the moral relevance of luck can be found. See: (Nussbaum, 2001; Pitkin, 1999; Stone, 2007; Williams, 1982) I will not try to say anything here about how to answer that question.

<sup>20</sup> Rawls (1999) explicitly acknowledges the need for states to internalize norms with respect to international interactions but is not willing to accept any norm with respect to redistribution beyond the level required to enable every society to meet the basic needs of its people and to enable decent institutions to function.

<sup>21</sup> Elsewhere in his book Miller argues that it makes sense to think of later generations as inheriting responsibilities from earlier ones, but his argument there is concerned with the legitimacy of expecting later generations to make reparations for injustices done in the past. Miller argues that the later generations have (legitimately) inherited considerable benefits in terms of territory and capital and so inherit as well responsibilities for past wrongdoing for which reparations or apologies might be due, because the heirs have to take the bad with the good. This argument does not transpose so easily onto the issue of inequalities between states.

<sup>22</sup> There is a lot of debate about the adequacy of such an approach for a theory of individual responsibility, including questions about what would count as a starting point of (relatively) equal circumstances, but I leave such complexities aside here.

<sup>23</sup> It is worth noting that generational transformation in the context of collective continuity is not a unique feature of political communities but is a characteristic of every social institution (e.g., corporations, universities, public bureaucracies) that endures through time, though membership in other social institutions does not usually change primarily as a direct result of births and deaths.

<sup>24</sup> See Miller 2007 p. 72.

<sup>25</sup> See Rawls 1999 p. 8.

<sup>26</sup> Ibid. 9.

<sup>27</sup> Rawls also adds, "Another reason for limiting immigration is to protect a people's culture and its constitutional principles" and endorses Walzer's discussion of this issue. (Ibid., 39) I take up the question of whether protecting culture or constitutional principles provides a basis for limiting immigration later in this chapter.

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<sup>28</sup> Miller 2007, p. 207.

<sup>29</sup> Ibid., p. 222.

<sup>30</sup> Ibid.

<sup>31</sup> I am focusing on the question of principle here but one should not assume that it would be practically impossible to balance the interests of the potential immigrant in getting in against the interests of the state in keeping her out. Laws and policies often require such balancing judgments even in current immigration regimes.

<sup>32</sup> For the claim that free movement is incompatible with priority for compatriots, see Gibney, 2004; Macedo, 2004; D. Miller, 2007; Tamir, 1993.

<sup>33</sup> This extreme form of cosmopolitanism is rare – I do not say nonexistent – even among those who identify themselves as cosmopolitans.

<sup>34</sup> In criticizing open borders as insufficiently attuned to the claims of our fellow members in a political community, people often cite the work of Samuel Scheffler, the philosopher who has done the best work on the moral relevance of particular attachments. (See Scheffler 2001.) But Scheffler himself explicitly recognizes that the moral claims of our particularistic attachments are always open to what he calls “the distributive objection.” In other words, particularistic claims may be constrained by considerations of distributive justice. So, this just takes us back to the question of what distributive justice requires. Ironically, Scheffler himself suggests that one way to meet the distributive objection is to show “those who are not members of the putatively duty-generating groups and relationships are given the opportunity to join and voluntarily decline to do so.” (Ibid., p. 74) If we apply this logic to the international order, we might say that, from Scheffler’s perspective, significant economic differences between states would be justifiable only if borders were open. See the illuminating discussion in Azibadeh 2006. I do not know whether Scheffler himself would accept this extension and application of his analysis.

<sup>35</sup> See the discussion of Scheffler in the previous note for a related point.

<sup>36</sup> **FIND SOURCE OF INITIAL QUOTE IN THIS SENTENCE. BLAKE? MACEDO?**

<sup>37</sup> Michael Blake argues in a widely cited article that we are entitled to freedom of movement within the state as compensation for our common subjection to political coercion but then dismisses the significance of the political coercion that prevents people from entering the state to voluntarily submit to this common subjection. See Blake 2001.

<sup>38</sup> It is easy to dismiss the possibility or desirability of world government, but at an earlier point in human history, it seemed preposterous and naively utopian to suggest that a large

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political community could be organized as a democratic republic with equal legal rights for all citizens, protections for minorities, and effective limits on the powers of government. Every person with knowledge and experience of the world knew that such an arrangement was a chimera. As it has turned out, however, it has been possible to build a number of relatively stable states that approximate that model.

Even the difficulties posed by the size of the world population and the vast differences of language, culture and religion are often overstated. Consider the case of India which by itself contains almost a sixth of the world's population, hundreds of linguistic communities, and deep divisions along lines of religion and culture but which has functioned as a relatively stable federal democracy for over sixty years. Is it certain or even likely that peace and justice for the people in that territory would have been better served by dividing the region into smaller, more homogeneous independent states? If one sixth of the world can be organized as a single political community without all of the terrifying consequences that some assert would inevitably follow from a world government, why not the rest as well?

<sup>39</sup> David Miller offers a more moderate version of the sovereignty argument, but one that is subject to similar flaws. He first makes the case for the overwhelming advantages of a system of political authority built upon the principle of territorial jurisdiction. Then he goes on to argue that this principle of territorial jurisdiction has implications for immigration:

...a person who stands on any particular piece of ground is rightfully subject to the authority of the state whose laws apply there...And that authority must include the right to require him to leave, since a system of territorial authority cannot function without some control over who falls within its scope. (Miller 2007, pp. 215-16)

Miller says that he does not use the language of sovereignty in this context because he recognizes that there are limits to the authority of the state, in particular an obligation to respect the human rights of all those who are present or who seek to enter. He has argued previously that free movement is not a human right, however, so this concession to human rights does not interfere with his claim that the state has a right to exercise discretionary control over immigration.

Notice how Miller's argument slides implicitly from the logical claim that if the state is to exercise effective territorial jurisdiction it must have jurisdiction over all who are present to the much less obvious claim that its authority must include the right to require people to leave (and presumably to prevent them from entering in the first place). Miller treats this second claim as if it were a logical entailment of territorial jurisdiction, but that is clearly not the case. For example, modern states do not have a moral right to send their own citizens into exile or to prevent them from entering their country of citizenship (though they sometimes do both). Miller himself seems to recognize that there is no logically necessary connection between territorial jurisdiction and control over entry or exit since he acknowledges that human rights appropriately limit the state's power in this sphere. When

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he insists that “territorial authority cannot function without *some* (italics added) control over who falls within its scope,” this sounds like an empirical claim about the conditions of effective governance. It invites the questions “Why?” and “How much?” If the claim is merely that there would be some circumstances under which so many people might seek to enter a territory that the state could no longer maintain law and order and that the state must have sufficient control over immigration to prevent that, I would agree, as I indicate in my subsequent discussion of the public order constraint. But having enough control to maintain law and order is a very long way from having the power to exercise discretionary control over immigration, and Miller offers no argument for the latter. Miller’s implicit claim that the need for “some” control can be interpreted as the need for discretionary closure sounds plausible only against the background of the Hobbesian vision of unlimited sovereignty that he himself rejects.

<sup>40</sup> See Baubock 2010.

<sup>41</sup> See Torpey 2000.

<sup>42</sup> For more on this point, see Baubock 2004 and 2007; Norman 2006; Carens 2000, chapter 7.

<sup>43</sup> Some people suggest that we should think of the territory over which a state exercises jurisdiction as property owned by the state. They assume that it will follow that the state is morally entitled to exclude potential immigrants from its territory just as any property owner may exclude unwanted individuals from land that she owns. This conception drastically oversimplifies the concept of property and neglects the complications that follow from thinking of a state’s territory as property. For example, thinking of the state as collective property seems to authorize the state to engage in whatever redistribution it chooses, something that advocates of the property conception rarely embrace. On the other hand, if one wants to defend a private property approach, it is far from clear why the state should be entitled to interfere with individual owners’ choices about whom to hire or otherwise engage with on their property. For more on this point see my discussion of Nozick in Carens 1987; Kukathas, 2010; Steiner, 1992. As I suggest in the text, property is always a bundle of rights which can be constructed and constrained in many different ways, both morally and legally. In the real world, private property owners are not always entitled to exclude those who want to enter their property, especially if they are using it for commercial purposes. Moreover, property owned by a political unit is public property, not private property. While this does not necessarily guarantee that every citizen may enter that property – think of military bases – it is the case that the state’s ability to restrict access to public property, if it is held for the use of the public, is often constrained in many ways even in relation to people who are neither citizens nor residents. For a critique of the property model in immigration see Baubock 2010; Shachar 2009.

<sup>44</sup> These concerns already play a major role in debates about the consequences of immigration for the welfare state today, and that is a context in which the state exercises a lot of discretionary control. Obviously, free movement would greatly exacerbate the

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issue. Cite Putnam, Kymlicka and others.

<sup>45</sup> See Chang 1997.

<sup>46</sup> This is why I do not pursue the empirical debate about the relationship between diversity and social trust that has received so much attention in the recent political science literature.

<sup>47</sup> For versions of the argument that protecting the welfare state through restricting immigration will ultimately benefit even those outside current welfare states, see Van Parijs 1992, Woodward, 1992, and Isbister 2000.

<sup>48</sup> See, for example, Blake, 2002; Miller, 2007. Michael Walzer (1983) offers a hypothetical and qualified defense of the White Australia policy, though not of American racially exclusionary policies. For a critique, see Carens 1988.

<sup>49</sup> What about Israel? The idea that Israel can be both a Jewish state and a democratic one at the same time faces a number of deep tensions that have been explored most fully by Israeli scholars themselves, not all of whom affirm its possibility. If it is to be defended, however, it has to be on the grounds that special historical circumstances make the identity of Israel as a Jewish state legitimate and that this does not entail the subordination of non-Jewish citizens of Israel. For a recent effort at such a defense see Gans 2008.

<sup>50</sup> Cite Barry, Scheffler.

<sup>51</sup> See Kymlicka, 2001; Miller, 2007.

<sup>52</sup> I have defended this policy elsewhere (Carens 1995). Those who criticize Quebec's policy rarely take note of the fact that immigrants who settle in most of the other Canadian provinces are usually required to send their children to English language schools. They have no right to send their children to French language schools even when these are available.

<sup>53</sup> My use of Quebec in this context should not be taken as a general critique of Quebec nationalism. On the contrary, I am generally sympathetic to Quebec nationalism and have argued elsewhere that most of the policies it has adopted to preserve its distinct culture and society are quite compatible with liberal principles, contrary to the charges leveled by some liberals inside and outside Canada who refuse to recognize the ways in which public policies in the rest of Canada favour the English language or the ways in which Quebec is simply pursuing policies that these same liberals accept as morally legitimate when pursued in other political jurisdictions. See Carens 1995 and 2000.

<sup>54</sup> Some people argue that this means that those freedoms have no real meaning. See, for example, Agamben 2005. I do not accept that view.

<sup>55</sup> See Hardin 1974.

<sup>56</sup> See Rawls 1971, p. 213.