

Open Borders and the Claims of Community

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Prepared for discussion at the NYU Colloquium in Legal, Moral and Political
Philosophy, September 15, 2011.

To: Colloquium Members

From: Joe Carens

The attached paper contains selected excerpts from two chapters of a book I am completing on the ethics of immigration. The full chapters are available on the Colloquium website. In the interests of keeping the text to a manageable length, I have removed not only substantial portions of the text but also all of the substantive endnotes except for note 12 (which I thought would be of particular interest to this group).

Chapter 10

The Case for Open Borders

Borders have guards and the guards have guns. This is an obvious fact of political life but one that is easily hidden from view – at least from the view of those of us who are citizens of affluent Western democracies. If we see the guards at all, we find them reassuring because we think of them as there to protect us rather than to keep us out. To Africans in small, leaky vessels seeking to avoid patrol boats while they cross the Mediterranean to southern Europe or to Mexicans willing to risk death from heat and exposure in the Arizona desert to evade the fences and border patrols, it is quite different. To these people, the borders, guards, and guns are all too apparent, their goal of exclusion all too real. What justifies the use of force against such people? Perhaps borders and guards can be justified as a way of keeping out terrorists, armed invaders, or criminals. But most of those trying to get in are not like that. They are ordinary, peaceful people, seeking only the opportunity to build decent, secure lives for themselves and their families. On what moral grounds can we deny entry to these sorts of people? What gives anyone the right to point guns at *them*?

To many people the answer to this question will seem obvious. The power to admit or exclude non-citizens is inherent in sovereignty and essential for any political community that seeks to exercise self-determination. Every state has the legal and moral right to exercise control over admissions in pursuit of its own national interest and of the common good of the members of its community, even if that means denying entry to peaceful, needy foreigners. States may choose to be generous in admitting immigrants, but, in most cases at least, they are under no moral obligation to do so.

I want to challenge that view. In this chapter and the next, I will argue that, in principle, borders should generally be open and people should normally be free to leave their country of origin and settle in another. This critique of exclusion has particular force with respect to restrictions on movement from developing states to Europe and North America, but it applies more generally.

The Basic Challenge of Open Borders

In the context of the modern state system, birthright citizenship in Western democracies is the moral equivalent of feudal class privilege – an inherited status that greatly enhances one's life chances. To be born a citizen of an affluent state in Europe or North America is like being born into the nobility (even though many of us belong to the lesser nobility). To be born a citizen of a poor country in Asia or Africa is like being born into the peasantry in the Middle Ages (even if there are a few rich peasants and some peasants manage to gain entry to the nobility). Like feudal birthright privileges, contemporary social arrangements not only grant great advantages on the basis of birth but also legally restrict mobility, making it extremely difficult for those born into a socially disadvantaged position to overcome that disadvantage, no matter how talented

they are or how hard they work. Like feudal practices, these contemporary social arrangements are hard to justify when one thinks about them closely.

Reformers in the late Middle Ages objected to the way feudalism restricted freedom, including the freedom of individuals to move from one place to another in search of a better life – a constraint that was crucial to the maintenance of the feudal system. Modern practices of citizenship and state control over borders tie people to the land of their birth almost as effectively. Limiting entry to rich liberal democratic states is a crucial mechanism for protecting a birthright privilege. If the feudal practices protecting birthright privileges were wrong, what justifies the modern ones?

The analogy I have just drawn with feudalism is designed to give readers pause about the conventional view that restrictions on immigration by liberal democratic states are normally justified. Now let me outline the positive case for open borders. I start from three basic interrelated assumptions. First, there is no natural social order. The institutions and practices that govern human beings are ones that human beings have created and can change, at least in principle. Second, in evaluating the moral status of alternative forms of political and social organization, we must start from the premise that all human beings are of equal moral worth. Third, restrictions on the freedom of human beings require a moral justification. These three assumptions are not just my views. They undergird the claim to moral legitimacy of every contemporary liberal democratic regime.

The assumption that all human beings are of equal moral worth does not mean that no legal distinctions can be drawn among different groups of people, nor does the requirement that restrictions on freedom be justified mean that coercion is never defensible. But these two assumptions, together with the assumption that the social order is not naturally given, mean that we have to give reasons for our institutions and practices, reasons that take a certain form. It is never enough to justify a set of social arrangements governing human beings to say that these arrangements are good for us, without regard for others, whoever the “us” may be. We have to appeal to principles and arguments that take everyone’s interests into account or that explain why the social arrangements are reasonable and fair to everyone who is subject to them.

Given these three assumptions there is at least a *prima facie* case that borders should be open, for three interrelated reasons. First, the right to go where you want is itself an important human freedom. It is precisely this freedom, and all that this freedom makes possible, that is taken away by imprisonment. Freedom of movement is also a prerequisite to many other freedoms. If people are to be free to live their lives as they choose, so long as this does not interfere with the legitimate claims of others, they have to be free to move where they want. Of course, there are many restrictions on freedom of movement besides restrictions on immigration. Traffic controls, requirements to respect the property of others, imprisonment for criminal offenses and many other practices set limits on human mobility. But all of these restrictions on freedom of movement require some sort of moral justification, i.e., some argument as to why the restriction on freedom is in the interest of, and fair to, all those who are subject to it. So, from this perspective,

we should not simply assume that states are entitled to control immigration more or less at will, (as the conventional moral view does). We should insist on a justification for this power, a justification that takes into account the interests of those excluded as well as the interests of those already inside and that makes the case that restricting immigration is fair to all. There are some sorts of restrictions on immigration that meet this standard, but the ones that do are much fewer and weaker than generally thought.

The second reason why borders should normally be open is that freedom of movement is essential for equality of opportunity. Within liberal democratic states we all recognize, at least in principle, that access to social positions should be determined by an individual's actual talents and effort and not limited on the basis of birth-related characteristics such as class, race, or gender that are not relevant to the capacity to performance in the position. This ideal of equal opportunity is intimately linked to the view that all human beings are of equal moral worth, that there are no natural hierarchies of birth that entitle people to social positions. But you have to be able to move to where the opportunities are in order to take advantage of them. So, freedom of movement is an essential prerequisite for equality of opportunity.

It is in the linkages between freedom of movement and equality of opportunity that the analogy with feudalism cuts most deeply. Under feudalism, there was no commitment to equal opportunity. The circumstances of one's birth largely determined one's opportunities, and restrictions on freedom of movement were an essential element in maintaining the limitations on the opportunities of those with talent and motivation but the wrong class background. (Of course, gender was another pervasive constraint.) In the modern world, we have created a social order in which there is a commitment to equality of opportunity for people *within* liberal democratic states (at least to some extent), but no pretense of, or even aspiration to, equality of opportunity for people *across* states. The opportunities for people in one state are simply closed to those from another (for the most part). Since the range of opportunities varies so greatly among states, this means that in our world, as in feudalism, the social circumstances of one's birth largely determine one's opportunities. It also means that restrictions on freedom of movement are an essential element in maintaining this arrangement, i.e., in limiting the opportunities of people with talents and motivations but the wrong social circumstances of birth. Again, the challenge for those who would defend restrictions on immigration is to justify the ways in which these restrictions contribute to inequality of opportunity. As I will argue, that is hard to do.

A third, closely related point is that a commitment to equal moral worth entails some commitment to keeping economic, social, and political inequalities as low as possible, partly as a means of realizing equal freedom and equal opportunity and partly as a desirable end in itself. Freedom of movement would contribute to a reduction of existing political, social, and economic inequalities. There are millions of people in poor states today who long for the freedom and economic opportunity they could find in Europe or North America. Many of them take great risks to come. If the borders were open, millions more would move. The exclusion of so many poor and desperate people

seems hard to justify from a perspective that takes seriously the claims of all individuals as free and equal moral persons.

This preliminary case for open borders will generate a host of questions and objections. In the rest of this paper, I will try to identify the questions and objections that I find most challenging and illuminating, using my responses to clarify, qualify, and deepen my defence of free movement. In my discussion I will treat the terms open borders and free movement as equivalent.

The Nature of the Inquiry

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Open Borders and Common Sense

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Why Mobility Matters

In my preliminary discussion above, I sketched an argument for the freedom to move across borders as an important freedom in itself and as a necessary means to achieve equality of opportunity and to reduce economic inequalities. In this section I want to deepen my defense of the first claim, i.e., that the right to move freely across borders is an important human freedom.

For the moment, I want to focus exclusively on the reasons we have for thinking that mobility matters and that the ability to move freely across borders might be the sort of vital interest that could deserve protection as a basic human right. This is only one side of the argument, of course. For a fair assessment, we have to consider not only what is at stake for people who want to move but also what is at stake for those who want to restrict their movements. As we shall see subsequently, there are plausible reasons for restricting human mobility under some circumstances, though I will argue that none of these justifiable restrictions prevents us from viewing free movement as a basic human right. The next chapter will discuss the moral considerations (such as duties to compatriots or rights to protect a political community's culture or its capacity for self-determination) that many think make it justifiable for states to restrict immigration despite its impact on human freedom. For the moment, however, I want to focus only on the positive side – the case for seeing free movement as a vital human interest.

Let me begin with a clarification. One objection to the idea of free movement is that there are many good reasons to restrict human mobility: respect for private property, traffic regulations, imprisonment for criminal offenses, quarantines in medical emergencies involving highly contagious diseases, prohibitions on settling on indigenous land, and so on.¹ I think that I can address this general objection fairly easily, because it rests on a misunderstanding of the purpose of my argument for a right to free movement. My goal is not to generate an inquiry into free mobility in general but to challenge the view that it is morally acceptable for democratic states to keep borders closed to most non-citizens and to prevent peaceful people from entering and establishing residence. It is an argument about why democratic states should normally have open borders, not an argument about the movement of bodies in physical space.

All rights (or almost all rights), even fundamental human rights, are subject to restrictions and qualifications, as we can see from the language of human rights documents as well as from actual interpretations and practices. In chapter five, in asking what legal rights residents should have, I suggested that we take as given the legal rights of citizens – even though these rights vary from one liberal democratic state to another in a number of significant ways – and simply ask whether residents should enjoy the same rights as citizens. If we pursue a similar strategy here, we should be able to set aside most of the concerns raised in this initial objection, at least for the purposes of this book. Instead of sorting out the various ways of restricting mobility and asking whether each of these is justified, let us simply take the mobility rights of citizens as given (again with the recognition that the precise content of mobility rights of citizens will vary somewhat from one state to another) and ask whether non-citizens not yet present should (normally) enjoy whatever mobility rights citizens enjoy both within a given democratic state and also with respect to entry and exit.

When I refer to a right of free movement in the rest of this chapter, it should always be taken to include the sorts of restrictions and qualifications that we find on the free movement of citizens in existing liberal democratic states. Note that the mobility rights that citizens enjoy both in terms of freedom of internal mobility and in terms of entry and exit are characterized as human rights in international documents and often guaranteed as fundamental rights in domestic constitutions. So, recognizing this sort of qualification does not undercut the claim that free movement should be regarded as a basic human right.

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I am trying to construct an account of the ethics of immigration that is not tied to a particular theoretical account of justice or freedom. I want to draw on principles and commitments common to all (or, at least, most) contemporary democratic theories and accepted by most people who think of themselves as democrats. For that reason, rather than construct my own theory of the moral importance of mobility, I want to focus on a comparison of the reasons why people might want to move across borders with the reasons why people might want to move within the boundaries of the state. My general contention is that every reason why someone might want to move within a state could also be a reason for moving across state borders. If that argument is correct, then moving across state borders will be just as important or unimportant to individuals as moving within state borders. If people see the ability to move freely within a state's borders as an important freedom, then they should also see the ability to move across state borders as an important freedom. That will not settle the question of whether borders should be open, because the reasons states have for restricting entry may be more powerful than the reasons states have for restricting internal movement. But establishing the importance of internal mobility as a form of human freedom is an important first step in making a principled case for open borders.

How important are the reasons for moving within a state? We cannot answer this question just by considering how many people move and trying to assess the weight of their reasons for doing so. As with many rights and freedoms, freedom of movement can be an

important right, even if one never exercises it personally. It matters greatly that every citizen is free to run for public office, rather than having that option legally restricted to a predetermined elite, even though most people never run for office. Having a right to a fair trial is important, even though you will never make use of this right unless you are accused of a crime. Having a right to freedom of religion can be important, even if you live in a community in which your religion is shared by the vast majority so that your own religious practices are never actually under threat. So, too, having the right to move freely can be important, even if you always live in the same place.

Instead of trying to identify and assess the specific reasons why people move within states, I want to point to the practices of liberal democratic states with respect to internal mobility and the ways in which those practices are justified. We can infer the importance of internal mobility as a human freedom from these practices. We generally treat free movement by citizens within their own states as a basic human right. Many human rights documents and state constitutions give it this status.² Why? These practices make sense only if we think of freedom of movement (for citizens, within their own states) as a vital human interest. Otherwise we would not elevate it to the status of a basic right in all these important documents. In other words, freedom of movement within states is not important because it is in our human rights documents and domestic constitutions. Rather it is in our human rights documents and domestic constitutions because we think it is important.

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If this distinction between the interests at stake in moving within states and the interests at stake in moving between states is treated as self-evident, it simply presupposes the very issues that I am trying to interrogate. Many authors have explored the reasons states have to restrict entry, and I consider those arguments in the next chapter. But that is quite different from exploring the reasons people have to want to move within state borders and across state borders. I cannot think of a single case where an author has tried to spell out differences between the human interests at stake in these freedoms (as distinct from arguments about why it is more important for states to be able to limit entry than to restrict internal movement). The usual move is just to suggest the intuitive implausibility of claiming that a German or a Canadian could have a fundamental human interest in moving to the United States.³ The problem with this sort of intuitive appeal is that it draws implicitly upon the very moral views about the state and exclusion that the open borders argument is trying to challenge. The examples work only if readers assume that states have unfettered moral discretion to exclude immigrants who have no special claims (like family members or refugees). ... It should go without saying that an argument that aims to challenge conventional moral views will not fit well with conventional moral intuitions about that issue. So, claims about our immediate intuitions regarding movement across borders cannot help to assess such an argument.

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The Global Justice Challenge

My general argument for open borders has two components, one linking it to freedom and the other to equality. The previous section elaborated the freedom argument. Here I want to pursue the link between free movement and equality. One important objection to my argument for open borders is that it greatly overstates the moral importance of being able to move freely across state borders from an egalitarian perspective, at least in most circumstances.⁴ Leaving aside special cases like family reunification or refugees, the critics say, the real problems to which my argument points are the vast inequalities between rich states and poor states, and especially the fact that so many people live in desperate poverty. These are the underlying conditions that make people want to move, and they cannot be addressed effectively by opening borders. Even if borders were open, the critics say, it would do little to help most of the poor because most of them could not and would not move. Indeed, one might object that there is something morally perverse in suggesting that the solution to the problems of the global poor and disadvantaged is to make it possible for them to come to rich states, especially if one sees the problems they face as due in no small part to our own actions and institutions, as some of the critics insist is the case. Our most important moral priority, from this perspective, should be to transform the underlying conditions and, especially, to help the least well off emerge from extreme poverty. It is a matter of achieving global distributive justice. What global justice requires is a massive transfer of resources from rich states to poor states and a transformation of the international economic order, not open borders.

In many ways, I agree with this line of argument. I agree, for example, that reducing international inequalities and, especially, eliminating extreme poverty, are more urgent and more fundamental moral tasks than opening borders. ...

As I have explained above, I am concerned in this chapter, primarily with questions of fundamental principle rather than questions about strategies for action. At the level of principle, there is no conflict between open borders and a view of global distributive justice that requires great reductions in the inequalities between states. On the contrary, these ideals fit well together. Significant reductions in the inequalities between states would transform open borders from a critical but unrealisable ideal into a feasible arrangement, precisely because reducing inequality would reduce the pressure to move and eliminate fears of open borders creating vast dislocations.⁵ Free movement ought therefore to be seen as part of global distributive justice. It would be an important institutional feature of a just world. ...

Those who would dismiss the importance of open borders because of its secondary importance for the task of reducing international inequalities miss two important points at the level of principle. First, the argument for open borders makes a crucial contribution to the critique of international inequality because it makes it harder for rich states to claim that they bear no responsibility for the persistence of inequality and the plight of the poor. Second, in a context of international inequality, freedom of movement is an important moral goal because of its contribution to equality of opportunity, quite apart from its effects on the overall level of inequality. ...

Even if free movement did little or nothing to reduce overall inequality (though I think that is implausible), it would still be an important moral goal. To return to my initial analogy, defenders of feudalism could plausibly have argued (and indeed some did) that opening careers to talents would do nothing to benefit most peasants. Vast social inequalities persisted after the end of feudalism, but that did not make the abolition of feudal birthright privileges morally unimportant. This change made positions in social hierarchies less dependent on the social circumstances of a person's birth and more dependent on one's personal capacities and efforts.⁶ Ending the formal barriers to equality of opportunity created by restrictions on immigration would not a cure-all either, but it would clearly contribute to global equality of opportunity and so would be a significant moral advance over an arrangement like the current one that generates such barriers. ...

Human Rights and Moral Priorities

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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. ...

To avoid confusion, let me specify that when I speak in this chapter of 'discretionary control over immigration by the state' 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.⁷ 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.⁸

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.⁹ 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.¹⁰

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.¹¹ (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.¹² 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 a 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?¹³

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.¹⁴ 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 perhaps 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 temporary 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 they acting justly when they do so? We cannot simply rule that question out of court. We have to address it.

Communities of Character

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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 states 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, using because citizens could avoid having to live with the consequences of their choices through migration. 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.¹⁵ Let's call this line of argument the state responsibility thesis.¹⁶

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.¹⁷ 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.”¹⁸

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 state self-determination.¹⁹ 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.²⁰ 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.²¹ 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.²² 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.²³ 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?²⁴

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.²⁵ 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 human 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.²⁶ (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 liberal 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 (as well as conflicting 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, of course, 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.”²⁷ 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."²⁸ 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."²⁹

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.³⁰ 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."³¹ He acknowledges that exclusion involves coercion and so they have some moral claim: "They are owed an explanation for their exclusion."³² 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."³³ 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 ideal 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?³⁴ 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

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Sovereignty

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The Welfare State

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Culture

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Threats to National Security, Democratic Values, and Public Order

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¹ See, for example, Miller 2004 and 2007; Woodward 1992.

² See: Government of Canada, 1982.; United Nations, 1948; "Transcript of the Constitution of the United States - Official," n.d.

³ Cite examples from Kymlicka and Blake.

⁴ Variants of this argument can be found in Kymlicka 2001, Pogge 1997, and Seglow 2005.

⁵ See Baubock 2010 for an elaboration of one version this argument.

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⁷ David Miller's position is typical of those defending the state discretion view, and he recognizes various moral limits. See Miller, 2007, p. 222.

⁸ Versions of this argument can be found in Blake, 2001; Macedo, 2004; Miller, 2007; Nagel, 2005; Rawls, 1999. For criticisms see Abizadeh 2007, Cohen and Sabel 2006, Julius 2006.

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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. 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.

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¹⁴ For a recent work developing this point, see Shachar, 2009.

¹⁵ 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).

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¹⁷ Miller 2007: 68-75.

¹⁸ Ibid.

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²⁷ See Miller, 2007 p. 72.

²⁸ See Rawls, 1999 p. 8.

²⁹ Ibid., 9.

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³¹ Miller 2007, p. 207.

³² Ibid., p. 222.

³³ Ibid.

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