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Aliens and Citizens: The Case for Open Borders

Joseph H. Carens

Many poor and oppressed people wish to leave their countries of origin in the third world to come to affluent Western societies. This essay argues that there is little justification for keeping them out. The essay draws on three contemporary approaches to political theory—the Rawlsian, the Nozickean, and the utilitarian—to construct arguments for open borders. The fact that all three theories converge upon the same results on this issue, despite their significant disagreements on others, strengthens the case for open borders and reveals its roots in our deep commitment to respect all human beings as free and equal moral persons. The final part of the essay considers communitarian objections to this conclusion, especially those of Michael Walzer.

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. To Haitians in small, leaky boats confronted by armed Coast Guard cutters, to Salvadorans dying from heat and lack of air after being smuggled into the Arizona desert, to Guatemalans crawling through rat-infested sewer pipes from Mexico to California—to these people the borders, guards and guns are all too apparent. What justifies the use of force against such people? Perhaps borders and guards can be justified as a way of keeping out criminals, subversives, or armed invaders. 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 these sorts of people be kept out? What gives anyone the right to point guns at *them*?

To most people the answer to this question will seem obvious. The power to admit or exclude aliens is inherent in sovereignty and essential for any political community. Every state has the legal and moral right to exercise that power in pursuit of its own national interest, even if that means denying entry to peaceful, needy foreigners. States may choose to be generous in admitting immigrants, but they are under no obligation to do so.[1]

I want to challenge that view. In this essay I will argue that borders should generally be open and that people should normally be free to leave their country of origin and settle in another, subject only to the sorts of constraints that bind current citizens in their new country. The argument is strongest, I believe, when applied

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to the migration of people from third world countries to those of the first world. Citizenship in Western liberal democracies is the modern equivalent of feudal privilege—an inherited status that greatly enhances one's life chances. Like feudal birthright privileges, restrictive citizenship is hard to justify when one thinks about it closely.

In developing this argument I will draw upon three contemporary approaches to political theory: first that of Robert Nozick; second that of John Rawls; third that of the utilitarians. Of the three, I find Rawls the most illuminating, and I will spend the most time on the arguments that flow from his theory. But I do not want to tie my case too closely to his particular formulations (which I will modify in any event). My strategy is to take advantage of three well-articulated theoretical approaches that many people find persuasive to construct a variety of arguments for (relatively) open borders. I will argue that all three approaches lead to the same basic conclusion: there is little justification for restricting immigration. Each of these theories begins with some kind of assumption about the equal moral worth of individuals. In one way or another, each treats the individual as prior to the community. These foundations provide little basis for drawing fundamental distinctions between citizens and aliens who seek to become citizens. The fact that all three theories converge upon the same basic result with regard to immigration despite their significant differences in other areas strengthens the case for open borders. In the final part of the essay I will consider communitarian objections to my argument, especially those of Michael Walzer, the best contemporary defender of the view I am challenging.

Aliens and Property Rights

One popular position on immigration goes something like this: "It's our country. We can let in or keep out whomever we want." This could be interpreted as a claim that the right to exclude aliens is based on property rights, perhaps collective or national property rights. Would this sort of claim receive support from theories in which property rights play a central role? I think not, because those theories emphasize *individual* property rights and the concept of collective or national property rights would undermine the individual rights that these theories wish to protect.

Consider Robert Nozick as a contemporary representative of

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the property rights tradition. Following Locke, Nozick assumes that individuals in the state of nature have rights, including the right to acquire and use property. All individuals have the same natural rights—that is the assumption about moral equality that underlies this tradition—although the exercise of those rights leads to material inequalities. The "inconveniences" of the state of nature justify the creation of a minimal state whose sole task is to protect people within a given territory against violations of their rights.[2]

Would this minimal state be justified in restricting immigration? Nozick never answers this question directly, but his argument at a number of points suggests not. According to Nozick the state has no right to do anything other than enforce the rights which individuals already enjoy in the state of nature. Citizenship gives rise to no distinctive claim. The state is obliged to protect the rights of citizens and noncitizens equally because it enjoys a *de facto* monopoly over the enforcement of rights within its territory. Individuals have the right to enter into voluntary exchanges with other individuals. They possess this right as individuals, not as citizens. The state may not interfere with such exchanges so long as they do not violate someone else's rights.[3]

Note what this implies for immigration. Suppose a farmer from the United States wanted to hire workers from Mexico. The government would have no right to prohibit him from doing this. To prevent the Mexicans from coming would violate the rights of both the American farmer and the Mexican workers to engage in voluntary transactions. Of course, American workers might be disadvantaged by this competition with foreign workers. But Nozick explicitly denies that anyone has a right to be protected against competitive disadvantage. (To count that sort of thing as a harm would undermine the foundations of *individual* property rights.) Even if the Mexicans did not have job offers from an American, a Nozickean government would have no grounds for preventing them from entering the country. So long as they were peaceful and did not steal, trespass on private property, or otherwise violate the rights of other individuals, their entry and their actions would be none of the state's business.

Does this mean that Nozick's theory provides no basis for the exclusion of aliens? Not exactly. It means rather that it provides no basis for the *state* to exclude aliens and no basis for individuals to exclude aliens that could not be used to exclude citizens as well.

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Poor aliens could not afford to live in affluent suburbs (except in the servants' quarters), but that would be true of poor citizens too. Individual property owners could refuse to hire aliens, to rent them houses, to sell them food, and so on, but in a Nozickean world they could do the same things to their fellow citizens. In other words, individuals may do what they like with their own personal property. They may normally exclude whomever they want from land they own. But they have this right to exclude as individuals, not as members of a collective. They cannot prevent other individuals from acting differently (hiring aliens, renting them houses, etc.).[4]

Is there any room for collective action to restrict entry in Nozick's theory? In the final section of his book, Nozick draws a distinction between nations (or states) and small face-to-face communities. People may voluntarily construct small communities on principles quite different from the ones that govern the state so long as individuals are free to leave these communities. For example, people may choose to pool their property and to make collective decisions on the basis of majority rule. Nozick argues that this sort of community has a right to restrict membership to those whom it wishes to admit and to control entry to its land. But such a community may also redistribute its jointly held property as it chooses. This is not an option that Nozick (or any other property rights theorist) intends to grant to the state.[5]

This shows why the claim "It's our country. We can admit or exclude whomever we want" is ultimately incompatible with a property rights theory like Nozick's. Property cannot serve as a protection for individuals *against* the collective if property is collectively owned. If the notion of collective ownership is used to justify keeping aliens out, it opens the possibility of using the same notion to justify redistributing income or whatever else the majority decides. Nozick explicitly says that the land of a nation is not the collective property of its citizens. It follows that the control that the state can legitimately exercise over that land is limited to the enforcement of the rights of individual owners. Prohibiting people from entering a territory because they did not happen to be born there or otherwise gain the credentials of citizenship is no part of any state's legitimate mandate. The state has no right to restrict immigration.

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Migration and the Original Position

In contrast to Nozick, John Rawls provides a justification for an activist state with positive responsibilities for social welfare. Even so, the approach to immigration suggested by *A Theory of Justice* leaves little room for restrictions in principle. I say "suggested" because Rawls himself explicitly assumes a closed system in which questions about immigration could not arise. I will argue, however, that Rawls's approach is applicable to a broader context than the one he considers. In what follows I assume a general familiarity with Rawls's theory, briefly recalling the main points and then focusing on those issues that are relevant to my inquiry.

Rawls asks what principles people would choose to govern society if they had to choose from behind a "veil of ignorance," knowing nothing about their own personal situations (class, race, sex, natural talents, religious beliefs, individual goals and values, and so on). He argues that people in this original position would choose two principles. The first principle would guarantee equal liberty to all. The second would permit social and economic inequalities so long as they were to the advantage of the least well off (the difference principle) and attached to positions open to all under fair conditions of equal opportunity. People in the original position would give priority to the first principle, forbidding a reduction of basic liberties for the sake of economic gains.[6]

Rawls also draws a distinction between ideal and nonideal theory. In ideal theory one assumes that, even after the "veil of ignorance" is lifted, people will accept and generally abide by the principles chosen in the original position and that there are no historical obstacles to the realization of just institutions. In nonideal theory, one takes account of both historical obstacles and the unjust actions of others. Nonideal theory is thus more immediately relevant to practical problems, but ideal theory is more fundamental, establishing the ultimate goal of social reform and a basis for judging the relative importance of departures from the ideal (*e.g.*, the priority of liberty).[7]

Like a number of other commentators, I want to claim that many of the reasons that make the original position useful in thinking about questions of justice within a given society also make it useful for thinking about justice across different societies.[8] Cases like migration and trade, where people interact across gov-

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ernmental boundaries, raise questions about whether the background conditions of the interactions are fair. Moreover, anyone who wants to be moral will feel obliged to justify the use of force against other human beings, whether they are members of the same society or not. In thinking about these matters we don't want to be biased by self-interested or partisan considerations, and we don't want existing injustices (if any) to warp our reflections. Moreover, we can take it as a basic presupposition that we should treat all human beings, not just members of our own society, as free and equal moral persons.[9]

The original position offers a strategy of moral reasoning that helps to address these concerns. The purpose of the "veil of ignorance" is "to nullify the effects of specific contingencies which put men at odds" because natural and social contingencies are "arbitrary from a moral point of view" and therefore are factors which ought not to influence the choice of principles of justice.[10] Whether one is a citizen of a rich nation or a poor one, whether one is already a citizen of a particular state or an alien who wishes to become a citizen—this is the sort of specific contingency that could set people at odds. A fair procedure for choosing principles of justice must therefore exclude knowledge of these circumstances, just as it excludes knowledge of one's race or sex or social class. We should therefore take a global, not a national, view of the original position.

One objection to this global approach is that it ignores the extent to which Rawls's use of the original position and the "veil of ignorance" depends upon a particular understanding of moral personality that is characteristic of modern democratic societies but may not be shared by other societies.[11] Let us grant the objection and ask whether it really matters.

The understanding of moral personality in question is essentially the view that all people are free and equal moral persons. Even if this view of moral personality is not shared by people in other societies, it is not a view that applies only to people who share it. Many members of our own society do not share it, as illustrated by the recent demonstrations by white racists in Forsythe County, Georgia. We criticize the racists and reject their views but do not deprive them of their status as free and equal citizens because of their beliefs. Nor is our belief in moral equality limited to members of our own society. Indeed our commitment to civic equality is derived from our convictions about moral equal-

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ity, not vice versa. So, whatever we think about the justice of borders and the limitations of the claims of aliens, our views must be compatible with a respect for all other human beings as moral persons.

A related objection emphasizes the "constructivist" nature of Rawls's theory, particularly in its later formulations.[12] The theory only makes sense, it is said, in a situation where people already share liberal-democratic values. But if we presuppose a context of shared values, what need have we for a "veil of ignorance"? Why not move directly from the shared values to an agreement on principles of justice and corresponding institutions? The "veil of ignorance" offers a way of thinking about principles of justice in a context where people have deep, unresolvable disagreements about matters of fundamental importance and yet still want to find a way to live together in peaceful cooperation on terms that are fair to all. That seems to be just as appropriate a context for considering the problem of worldwide justice as it is considering the problem of domestic justice.

To read Rawls's theory only as a constructive interpretation of existing social values is to undermine its potential as a constructive critique of those values. For example, racism has deep roots in American public culture, and in the not-too-distant past people like those in Forsythe County constituted a majority in the United States. If we think the racists are wrong and Rawls is right about our obligation to treat all members of our society as free and equal moral persons, it is surely not just because the public culture has changed and the racists are now in the minority. I gladly concede that I am using the original position in a way that Rawls himself does not intend, but I think that this extension is warranted by the nature of the questions I am addressing and the virtues of Rawls's approach as a general method of moral reasoning.

Let us therefore assume a global view of the original position. Those in the original position would be prevented by the "veil of ignorance" from knowing their place of birth or whether they were members of one particular society rather than another. They would presumably choose the same two principles of justice. (I will simply assume that Rawls's argument for the two principles is correct, though the point is disputed.) These principles would apply globally, and the next task would be to design institutions to implement the principles—still from the perspective of the original position. Would these institutions include sovereign states as they

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currently exist? In ideal theory, where we can assume away historical obstacles and the dangers of injustice, some of the reasons for defending the integrity of existing states disappear. But ideal theory does not require the elimination of all linguistic, cultural, and historical differences. Let us assume that a general case for decentralization of power to respect these sorts of factors would justify the existence of autonomous political communities comparable to modern states.[13] That does not mean that all the existing features of state sovereignty would be justified. State sovereignty would be (morally) constrained by the principles of justice. For example, no state could restrict religious freedom and inequalities among states would be restricted by an international difference principle.

What about freedom of movement among states? Would it be regarded as a basic liberty in a global system of equal liberties, or would states have the right to limit entry and exit? Even in an ideal world people might have powerful reasons to want to migrate from one state to another. Economic opportunities for particular individuals might vary greatly from one state to another even if economic inequalities among states were reduced by an international difference principle. One might fall in love with a citizen from another land, one might belong to a religion which has few followers in one's native land and many in another, one might seek cultural opportunities that are only available in another society. More generally, one has only to ask whether the right to migrate freely *within* a given society is an important liberty. The same sorts of considerations make migration across state boundaries important.[14]

Behind the "veil of ignorance," in considering possible restrictions on freedom, one adopts the perspective of the one who would be most disadvantaged by the restrictions, in this case the perspective of the alien who wants to immigrate. In the original position, then, one would insist that the right to migrate be included in the system of basic liberties for the same reasons that one would insist that the right to religious freedom be included: it might prove essential to one's plan of life. Once the "veil of ignorance" is lifted, of course, one might not make use of the right, but that is true of other rights and liberties as well. So, the basic agreement among those in the original position would be to permit no restrictions on migration (whether emigration or immigration).

There is one important qualification to this. According to

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Rawls, liberty may be restricted for the sake of liberty even in ideal theory and all liberties depend on the existence of public order and security.[15] (Let us call this the public order restriction.) Suppose that unrestricted immigration would lead to chaos and the breakdown of order. Then all would be worse off in terms of their basic liberties. Even adopting the perspective of the worst-off and recognizing the priority of liberty, those in the original position would endorse restrictions on immigration in such circumstances. This would be a case of restricting liberty for the sake of liberty and every individual would agree to such restrictions even though, once the "veil of ignorance" was lifted, one might find that it was one's own freedom to immigrate which had been curtailed.

Rawls warns against any attempt to use this sort of public order argument in an expansive fashion or as an excuse for restrictions on liberty undertaken for other reasons. The hypothetical possibility of a threat to public order is not enough. Restrictions would be justified only if there were a "reasonable expectation" that unlimited immigration would damage the public order and this expectation would have to be based on "evidence and ways of reasoning acceptable to all."[16] Moreover, restrictions would be justified only to the extent necessary to preserve public order. A need for some restrictions would not justify any level of restrictions whatsoever. Finally, the threat to public order posed by unlimited immigration could not be the product of antagonistic reactions (*e.g.*, riots) from current citizens. This discussion takes place in the context of ideal theory and in this context it is assumed that people try to act justly. Rioting to prevent others from exercising legitimate freedoms would not be just. So, the threat to public order would have to be one that emerged as the unintended cumulative effect of individually just actions.

In ideal theory we face a world of just states with an international difference principle. Under such conditions, the likelihood of mass migrations threatening to the public order of any particular state seems small. So, there is little room for restrictions on immigration in ideal theory. But what about nonideal theory, where one takes into account both historical contingencies and the unjust actions of others?

In the nonideal, real world there are vast economic inequalities among nations (presumably much larger than would exist under an international difference principle). Moreover, people disagree about the nature of justice and often fail to live up to whatever

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principles they profess. Most states consider it necessary to protect themselves against the possibility of armed invasion or covert subversion. And many states deprive their own citizens of basic rights and liberties. How does all this affect what justice requires with regard to migration?

First, the conditions of the real world greatly strengthen the case for state sovereignty, especially in those states that have relatively just domestic institutions. National security is a crucial form of public order. So, states are clearly entitled to prevent the entry of people (whether armed invaders or subversives) whose goal is the overthrow of just institutions. On the other hand, the strictures against an expansive use of the public order argument also apply to claims about national security.

A related concern is the claim that immigrants from societies where liberal democratic values are weak or absent would pose a threat to the maintenance of a just public order. Again the distinction between reasonable expectations and hypothetical speculations is crucial. These sorts of arguments were used during the nineteenth century against Catholics and Jews from Europe and against all Asians and Africans. If we judge those arguments to have been proven wrong (not to say ignorant and bigoted) by history, we should be wary of resurrecting them in another guise.

A more realistic concern is the sheer size of the potential demand. If a rich country like the United States were simply to open its doors, the number of people from poor countries seeking to immigrate might truly be overwhelming, even if their goals and beliefs posed no threat to national security or liberal democratic values.[17] Under these conditions, it seems likely that some restrictions on immigration would be justified under the public order principle. But it is important to recall all the qualifications that apply to this. In particular, the need for some restriction would not justify any level of restriction whatsoever or restrictions for other reasons, but only that level of restriction essential to maintain public order. This would surely imply a much less restrictive policy than the one currently in force which is shaped by so many other considerations besides the need to maintain public order.

Rawls asserts that the priority accorded to liberty normally holds under nonideal conditions as well. This suggests that, if there are restrictions on immigration for public order reasons, priority should be given to those seeking to immigrate because they have been denied basic liberties over those seeking to immigrate

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simply for economic opportunities. There is a further complication, however. The priority of liberty holds absolutely only in the long run. Under nonideal conditions it can sometimes be justifiable to restrict liberty for the sake of economic gains, if that will improve the position of the worst-off and speed the creation of conditions in which all will enjoy equal and full liberties. Would it be justifiable to restrict immigration for the sake of the worst-off?

We have to be wary of hypocritical uses of this sort of argument. If rich states are really concerned with the worst-off in poor states, they can presumably help more by transferring resources and reforming international economic institutions than by restricting immigration. Indeed, there is reason to suppose more open immigration would help some of the worst-off, not hurt them. At the least, those who immigrate presumably gain themselves and often send money back home as well.

Perhaps the ones who come are not the worst-off, however. It is plausible to suppose that the worst-off don't have the resources to leave. That is still no reason to keep others from coming unless their departure hurts those left behind. But let's suppose it does, as the brain-drain hypothesis suggests. If we assume some restrictions on immigration would be justified for public order reasons, this would suggest that we should give priority to the least skilled among potential immigrants because their departure would presumably have little or no harmful effect on those left behind. It might also suggest that compensation was due to poor countries when skilled people emigrate. But to say that we should actually try to keep people from emigrating (by denying them a place to go) because they represent a valuable resource to their country of origin would be a dramatic departure from the liberal tradition in general and from the specific priority that Rawls attaches to liberty even under nonideal conditions.[18]

Consider the implications of this analysis for some of the conventional arguments for restrictions on immigration. First, one could not justify restrictions on the grounds that those born in a given territory or born of parents who were citizens were more entitled to the benefits of citizenship than those born elsewhere or born of alien parents. Birthplace and parentage are natural contingencies that are "arbitrary from a moral point of view." One of the primary goals of the original position is to minimize the effects of such contingencies upon the distribution of social benefits. To assign citizenship on the basis of birth might be an acceptable

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procedure, but only if it did not preclude individuals from making different choices later when they reached maturity.

Second, one could not justify restrictions on the grounds that immigration would reduce the economic well-being of current citizens. That line of argument is drastically limited by two considerations: the perspective of the worst-off and the priority of liberty. In order to establish the current citizens' perspective as the relevant worst-off position, it would be necessary to show that immigration would reduce the economic well-being of current citizens below the level the potential immigrants would enjoy if they were not permitted to immigrate. But even if this could be established, it would not justify restrictions on immigration because of the priority of liberty. So, the economic concerns of current citizens are essentially rendered irrelevant.

Third, the effect of immigration on the particular culture and history of the society would not be a relevant moral consideration, so long as there was no threat to basic liberal democratic values. This conclusion is less apparent from what I have said so far, but it follows from what Rawls says in his discussion of perfectionism.[19] The principle of perfectionism would require social institutions to be arranged so as to maximize the achievement of human excellence in art, science, or culture regardless of the effect of such arrangements on equality and freedom. (For example, slavery in ancient Athens has sometimes been defended on the grounds that it was essential to Athenian cultural achievements.) One variant of this position might be the claim that restrictions on immigration would be necessary to preserve the unity and coherence of a culture (assuming that the culture was worth preserving). Rawls argues that in the original position no one would accept any perfectionist standard because no one would be willing to risk the possibility of being required to forego some important right or freedom for the sake of an ideal that might prove irrelevant to one's own concerns. So, restrictions on immigration for the sake of preserving a distinctive culture would be ruled out.

In sum, nonideal theory provides more grounds for restricting immigration than ideal theory, but these grounds are severely limited. And ideal theory holds up the principle of free migration as an essential part of the just social order toward which we should strive.

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Aliens in the Calculus

A utilitarian approach to the problem of immigration can take into account some of the concerns that the original position excludes but even utilitarianism does not provide much support for the sorts of restrictions on immigration that are common today. The fundamental principle of utilitarianism is "maximize utility," and the utilitarian commitment to moral equality is reflected in the assumption that everyone is to count for one and no one for more than one when utility is calculated. Of course, these broad formulations cover over deep disagreements among utilitarians. For example, how is "utility" to be defined? Is it subjective or objective? Is it a question of happiness or welfare as in classical utilitarianism or preferences or interests as in some more recent versions?[20]

However these questions are answered, any utilitarian approach would give more weight to some reasons for restricting immigration than Rawls's approach would. For example, if more immigration would hurt some citizens economically, that would count against a more open immigration policy in any utilitarian theory I am familiar with. But that would not settle the question of whether restrictions were justified, for other citizens might gain economically from more immigration and that would count in favor of a more open policy. More importantly, the economic effects of more immigration on noncitizens would also have to be considered. If we focus only on economic consequences, the best immigration policy from a utilitarian perspective would be the one that maximized overall economic gains. In this calculation, current citizens would enjoy no privileged position. The gains and losses of aliens would count just as much. Now the dominant view among both classical and neoclassical economists is that the free mobility of capital and labor is essential to the maximization of overall economic gains. But the free mobility of labor requires open borders. So, despite the fact that the economic costs to current citizens are morally relevant in the utilitarian framework, they would probably not be sufficient to justify restrictions.

Economic consequences are not the only ones that utilitarians consider. For example, if immigration would affect the existing culture or way of life in a society in ways that current citizens found undesirable, that would count against open immigration in many versions of utilitarianism. But not in all. Utilitarians dis-

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agree about whether all pleasures (or desires or interests) are to count or only some. For example, should a sadist's pleasure be given moral weight and balanced against his victim's pain or should that sort of pleasure be disregarded? What about racial prejudice? That is clearly relevant to the question of immigration. Should a white racist's unhappiness at the prospect of associating with people of color be counted in the calculus of utility as an argument in favor of racial exclusion as reflected, say, in the White Australia policy? What about the desire to preserve a distinctive local culture as a reason for restricting immigration? That is sometimes linked to racial prejudice but by no means always.

Different utilitarians will answer these sorts of questions in different ways. Some argue that only long-term, rational, or otherwise refined pleasures (or desires or interests) should count. Others insist that we should not look behind the raw data in making our calculations. Everyone's preferences should count, not merely the preferences someone else finds acceptable. I favor the former approach, a reconstructive or filtering approach to utility, but I won't try to defend that here. Even if one takes the raw data approach, which seems to leave more room for reasons to restrict immigration, the final outcome is still likely to favor much more open immigration than is common today. Whatever the method of calculation, the concerns of aliens must be counted too. Under current conditions, when so many millions of poor and oppressed people feel they have so much to gain from migration to the advanced industrial states, it seems hard to believe that a utilitarian calculus which took the interests of aliens seriously would justify significantly greater limits on immigration than the ones entailed by the public order restriction implied by the Rawlsian approach.

The Communitarian Challenge

The three theories I have discussed conflict with one another on many important issues but not (deeply) on the question of immigration. Each leads on its own terms to a position far more favorable to open immigration than the conventional moral view. It is true that, in terms of numbers, even a public order restriction might exclude millions of potential immigrants given the size of the potential demand. Nevertheless, if the arguments I have developed here were accepted, they would require a radical transforma-

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tion both of current immigration policies and of conventional moral thinking about the question of immigration.

Some may feel that I have wrenched these theories out of context. Each is rooted in the liberal tradition. Liberalism, it might be said, emerged with the modern state and presupposes it. Liberal theories were not designed to deal with questions about aliens. They assumed the context of the sovereign state. As a historical observation this has some truth, but it is not clear why it should have normative force. The same wrenching out of context complaint could as reasonably have been leveled at those who first constructed liberal arguments for the extension of full citizenship to women and members of the working class. Liberal theories also assumed the right to exclude them. Liberal theories focus attention on the need to justify the use of force by the state. Questions about the exclusion of aliens arise naturally from that context. Liberal principles (like most principles) have implications that the original advocates of the principles did not entirely foresee. That is part of what makes social criticism possible.

Others may think that my analysis merely illustrates the inadequacy of liberal theory, especially its inability to give sufficient weight to the value of community.[21] That indictment of liberal theory may or may not be correct, but my findings about immigration rest primarily on assumptions that I think no defensible moral theory can reject: that our social institutions and public policies must respect all human beings as moral persons and that this respect entails recognition, in some form, of the freedom and equality of every human being. Perhaps some other approach can accept these assumptions while still making room for greater restrictions on immigration. To test that possibility, I will consider the views of the theorist who has done the most to translate the communitarian critique into a positive alternative vision: Michael Walzer.

Unlike Rawls and the others, Walzer treats the question of membership as central to his theory of justice, and he comes to the opposite conclusion about immigration from the one that I have defended:

> Across a considerable range of the decisions that are made, states are simply free to take strangers in (or not).[22]

Walzer differs from the other theorists I have considered not only

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in his conclusions but also in his basic approach. He eschews the search for universal principles and is concerned instead with "the particularism of history, culture, and membership."[23] He thinks that questions of distributive justice should be addressed not from behind a "veil of ignorance" but from the perspective of membership in a political community in which people share a common culture and a common understanding about justice.

I cannot do full justice here to Walzer's rich and subtle discussion of the problem of membership, but I can draw attention to the main points of his argument and to some of the areas of our disagreement. Walzer's central claim is that exclusion is justified by the right of communities to self-determination. The right to exclude is constrained in three important ways, however. First, we have an obligation to provide aid to others who are in dire need, even if we have no established bonds with them, provided that we can do so without excessive cost to ourselves. So, we may be obliged to admit some needy strangers or at least to provide them with some of our resources and perhaps even territory. Second, once people are admitted as residents and participants in the economy, they must be entitled to acquire citizenship, if they wish. Here the constraint flows from principles of justice not mutual aid. The notion of permanent "guest workers" conflicts with the underlying rationale of communal self-determination which justified the right to exclude in the first place. Third, new states or governments may not expel existing inhabitants even if they are regarded as alien by most of the rest of the population.[24]

In developing his argument, Walzer compares the idea of open states with our experience of neighborhoods as a form of open association.[25] But in thinking about what open states would be like, we have a better comparison at hand. We can draw upon our experience of cities, provinces, or states in the American sense. These are familiar political communities whose borders are open. Unlike neighborhoods and like countries, they are formally organized communities with boundaries, distinctions between citizens and noncitizens, and elected officials who are expected to pursue policies that benefit the members of the community that elected them. They often have distinctive cultures and ways of life. Think of the differences between New York City and Waycross, Georgia, or between California and Kansas. These sorts of differences are often much greater than the differences across nation-states. Seattle has more in common with Vancouver than it does with many

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American communities. But cities and provinces and American states cannot restrict immigration (from other parts of the country). So, these cases call into question Walzer's claim that distinctiveness depends on the possibility of formal closure. What makes for distinctiveness and what erodes it is much more complex than political control of admissions.

This does not mean that control over admissions is unimportant. Often local communities would like to restrict immigration. The people of California wanted to keep out poor Oklahomans during the Depression. Now the people of Oregon would like to keep out the Californians. Internal migrations can be substantial. They can transform the character of communities. (Think of the migrations from the rural South to the urban North.) They can place strains on the local economy and make it difficult to maintain locally funded social programs. Despite all this, we do not think these political communities should be able to control their borders. The right to free migration takes priority.

Why should this be so? Is it just a choice that we make as a larger community (*i.e.*, the nation state) to restrict the self-determination of local communities in this way? Could we legitimately permit them to exclude? Not easily. No liberal state restricts internal mobility. Those states that do restrict internal mobility are criticized for denying basic human freedoms. If freedom of movement within the state is so important that it overrides the claims of local political communities, on what grounds can we restrict freedom of movement across states? This requires a stronger case for the *moral* distinctiveness of the nation-state as a form of community than Walzer's discussion of neighborhoods provides.

Walzer also draws an analogy between states and clubs.[26] Clubs may generally admit or exclude whomever they want, although any particular decision may be criticized through an appeal to the character of the club and the shared understandings of its members. So, too, with states. This analogy ignores the familiar distinction between public and private, a distinction that Walzer makes use of elsewhere.[27] There is a deep tension between the right of freedom of association and the right to equal treatment. One way to address this tension is to say that in the private sphere freedom of association prevails and in the public sphere equal treatment does. You can pick your friends on the basis of whatever criteria you wish, but in selecting people for offices you must treat all candidates fairly. Drawing a line between public and private is

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often problematic, but it is clear that clubs are normally at one end of the scale and states at the other. So, the fact that private clubs may admit or exclude whomever they choose says nothing about the appropriate admission standards for states. When the state acts it must treat individuals equally.

Against this, one may object that the requirement of equal treatment applies fully only to those who are already *members* of the community. That is accurate as a description of practice but the question is why it should be so. At one time, the requirement of equal treatment did not extend fully to various groups (workers, blacks, women). On the whole, the history of liberalism reflects a tendency to expand both the definition of the public sphere and the requirements of equal treatment. In the United States today, for example, in contrast to earlier times, both public agencies and private corporations may not legally exclude women simply because they are women (although private clubs still may). A white shopkeeper may no longer exclude blacks from his store (although he may exclude them from his home). I think these recent developments, like the earlier extension of the franchise, reflect something fundamental about the inner logic of liberalism.[28] The extension of the right to immigrate reflects the same logic: equal treatment of individuals in the public sphere.

As I noted at the beginning of this section, Walzer asserts that the political community is constrained by principles of justice from admitting permanent guest workers without giving them the opportunity to become citizens. There is some ambiguity about whether this claim is intended to apply to all political communities or only to ones like ours. If states have a right to self-determination, broadly conceived, they must have a right to choose political forms and political practices different from those of liberal democracies. That presumably includes the right to establish categories of second-class citizens (or, at least, temporary guest workers) and also the right to determine other aspects of admissions policy in accordance with their own principles.[29] But if the question is what *our* society (or one with the same basic values) ought to do, then the matter is different both for guest workers and for other aliens. It is right to assert that *our* society ought to admit guest workers to full citizenship. Anything else is incompatible with our liberal democratic principles. But so is a restrictive policy on immigration.

Any approach like Walzer's that seeks its ground in the tradi-

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tion and culture of *our* community must confront, as a methodological paradox, the fact that liberalism is a central part of our culture. The enormous intellectual popularity of Rawls and Nozick and the enduring influence of utilitarianism attest to their ability to communicate contemporary understandings and shared meanings in a language that has legitimacy and power in our culture. These theories would not make such sense to a Buddhist monk in medieval Japan. But their individualistic assumptions and their language of universal, ahistorical reason makes sense to us because of *our* tradition, *our* culture, *our* community. For people in a different moral tradition, one that assumed fundamental moral differences between those inside the society and those outside, restrictions on immigration might be easy to justify. Those who are *other* simply might not count, or at least not count as much. But we cannot dismiss the aliens on the ground that they are other, because *we* are the products of a liberal culture.

The point goes still deeper. To take *our* community as a starting point is to take a community that expresses its moral views in terms of universal principles. Walzer's own arguments reflect this. When he asserts that states may not expel existing inhabitants whom the majority or the new government regards as alien, he is making a claim about what is right and wrong for *any* state not just our own or one that shares our basic values. He develops the argument by drawing on Hobbes. That is an argument from a particular tradition, one that may not be shared by new states that want to expel some of their inhabitants. Nonetheless, Walzer makes a universal claim (and one I consider correct). He makes the same sort of argument when he insists that states may not legitimately restrict *e*migration.[30] This applies to all political communities not just those that share our understanding of the relation of individual and collective.

Recognition of the particularity of our own culture should not prevent us from making these sorts of claims. We should not try to force others to accept our views, and we should be ready to listen to others and learn from them. But respect for the diversity of communities does not require us to abandon all claims about what other states ought to do. If my arguments are correct, the general case for open borders is deeply rooted in the fundamental values of our tradition. No moral argument will seem acceptable to *us*, if it directly challenges the assumption of the equal moral worth of all individuals. If restrictions on immigration are to be

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justified, they have to be based on arguments that respect that principle. Walzer's theory has many virtues that I have not explored here, but it does not supply an adequate argument for the state's right to exclude.

Conclusion

Free migration may not be immediately achievable, but it is a goal toward which we should strive. And we have an obligation to open our borders much more fully than we do now. The current restrictions on immigration in Western democracies—even in the most open ones like Canada and the United States—are not justifiable. Like feudal barriers to mobility, they protect unjust privilege.

Does it follow that there is *no* room for distinctions between aliens and citizens, no theory of citizenship, no boundaries for the community? Not at all. To say that membership is open to all who wish to join is not to say that there is no distinction between members and nonmembers. Those who choose to cooperate together in the state have special rights and obligations not shared by noncitizens. Respecting the particular choices and commitments that individuals make flows naturally from a commitment to the idea of equal moral worth. (Indeed, consent as a justification for political obligation is least problematic in the case of immigrants.) What is *not* readily compatible with the idea of equal moral worth is the exclusion of those who want to join. If people want to sign the social contract, they should be permitted to do so.

Open borders would threaten the distinctive character of different political communities only because we assume that so many people would move if they could. If the migrants were few, it would not matter. A few immigrants could always be absorbed without changing the character of the community. And, as Walzer observes, most human beings do not love to move.[31] They normally feel attached to their native land and to the particular language, culture, and community in which they grew up and in which they feel at home. They seek to move only when life is very difficult where they are. Their concerns are rarely frivolous. So, it is right to weigh the claims of those who want to move against the claims of those who want to preserve the community as it is. And if we don't unfairly tip the scales, the case for exclusion will rarely triumph.

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People live in communities with bonds and bounds, but these may be of different kinds. In a liberal society, the bonds and bounds should be compatible with liberal principles. Open immigration would change the character of the community but it would not leave the community without any character. It might destroy old ways of life, highly valued by some, but it would make possible new ways of life, highly valued by others. The whites in Forsythe County who want to keep out blacks are trying to preserve a way of life that is valuable to them. To deny such communities the right to exclude does limit their ability to shape their future character and destiny, but it does not utterly destroy their capacity for self-determination. Many aspects of communal life remain potentially subject to collective control. Moreover, constraining the kinds of choices that people and communities may make is what principles of justice are for. They set limits on what people seeking to abide by these principles may do. To commit ourselves to open borders would not be to abandon the idea of communal character but to reaffirm it. It would be an affirmation of the liberal character of the community and of its commitment to principles of justice.

Notes

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[1]The conventional assumption is captured by the Select Commission on Immigration and Refugee Policy: "Our policy—while providing opportunity to a portion of the world's population—must be guided by the basic national interests of the people of the United States." From *U.S. Immigration Policy and the National Interest: The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy to the Congress and the President of the United States* (1 March 1981). The best theoretical defense of the conventional assumption (with some modifications) is Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), pp. 31-63. A few theorists have challenged the conventional assumption. See Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980), pp. 89-95; Judith Lichtenberg, "National Boundaries and Moral Boundaries: A Cosmopolitan View" in *Boundaries: National Autonomy and Its Limits,* ed. Peter G. Brown and Henry Shue (Totowa, NJ: Rowman and Littlefield, 1981), pp. 79-100, and Roger Nett, "The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth," *Ethics* 81:212-27. Frederick Whelan has also explored these issues in two inter-

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esting unpublished papers.

[2]Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 10-25, 88-119.

[3]*Ibid.*, pp. 108-113. Citizens, in Nozick's view, are simply consumers purchasing impartial, efficient protection of preexisting natural rights. Nozick uses the terms "citizen," "client" and "customer" interchangeably.

[4]Nozick interprets the Lockean proviso as implying that property rights in land may not so restrict an individual's freedom of movement as to deny him effective liberty. This further limits the possibility of excluding aliens. See p. 55.

[5]*Ibid.*, pp. 320-23.

[6]John Rawls, *A Theory of Justice* (Cambridge, MA.: Harvard University Press, 1971), pp. 60-65, 136-42, 243-48.

[7]*Ibid.*, pp. 8-9, 244-48.

[8]The argument for a global view of the original position has been developed most fully in Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979), pp. 125-76, especially 129-36 and 143-53. For earlier criticisms of Rawls along the same lines, see Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1973), pp. 128-33 and Thomas M. Scanlon, "Rawls's Theory of Justice," *University of Pennsylvania Law Review* 121, no. 5 (May 1973): 1066-67. For more recent discussions, see David A. J. Richards, "International Distributive Justice," in *Ethics, Economics, and the Law*, eds. J. Roland Pennock and John Chapman (New York: New York University Press, 1982), pp. 275-99 and Charles Beitz, "Cosmopolitan Ideals and National Sentiments," *The Journal of Philosophy* 80, no. 10 (October 1983): 591-600. None of these discussions fully explores the implications of a global view of the original position for the issue of immigration, although the recent essay by Beitz touches on the topic.

[9]Respecting others as free and equal moral persons does not imply that one cannot distinguish friends from strangers or citizens from aliens. See the conclusion for an elaboration.

[10]Rawls, *Justice*, pp. 136, 72.

[11]John Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy* 77, no. 9 (September 1980): 515-72.

[12]*Ibid.* See also John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14 (Summer 1985): 223-51.

[13]Compare Beitz, *Political Theory*, p. 183.

[14]For more on the comparison of mobility within a country and mobility across countries, see Joseph H. Carens, "Migration and the Welfare State" in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton: Princeton University Press, 1987).

[15]Rawls, *Justice*, pp. 212-13.

[16]*Ibid.*, p. 213.

[17]For statistics on current and projected levels of immigration to the U.S., see Michael S. Teitelbaum, "Right Versus Right: Immigration and Refugee Policy in the United States," *Foreign Affairs* 59 (1980): 21-59.

[18]For the deep roots of the right to emigrate in the liberal tradition, see Frederick Whelan, "Citizenship and the Right to Leave," *American Political Science Review* 75, no. 3 (September 1981): 636-53.

[19]Rawls, *Justice*, pp. 325-32.

[20]For recent discussions of utilitarianism, see Richard Brandt, *A Theory of the Good and the Right* (Oxford: Oxford University Press, 1979); Peter Singer, *Practical Ethics* (Cambridge: Cambridge University Press, 1979); R. M. Hare, *Moral Thinking* (Oxford: Oxford University Press, 1981); and Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge Uni-

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versity Press, 1982).

[21]For recent communitarian critiques of liberalism, see Alasdair MacIntyre, *After Virtue* (Notre Dame: Notre Dame University Press, 1981) and Michael Sandel, *Liberalism and the Limits of Justice* (New York: Cambridge University Press, 1982). For a critique of the critics, see Amy Gutmann, "Communitarian Critics of Liberalism," *Philosophy and Public Affairs* 14 (Summer 1985): 308-322.

[22]Walzer, *Spheres*, p. 61.

[23]*Ibid.*, p. 5.

[24]*Ibid.*, pp. 33, 45-48, 55-61, 42-44.

[25]*Ibid.*, pp. 36-39.

[26]*Ibid.*, pp. 39-41.

[27]*Ibid.*, pp. 129-64.

[28]I am not arguing that the changes in treatment of women, blacks, and workers were *brought about* by the inner logic of liberalism. These changes resulted from changes in social conditions and from political struggles, including ideological struggles in which arguments about the implications of liberal principles played some role, though not necessarily a decisive one. But from a philosophical perspective, it is important to understand where principles lead, even if one does not assume that people's actions in the world will always be governed by the principles they espouse.

[29]Compare Walzer's claim that the caste system would be just if accepted by the villages affected (*ibid.*, pp. 313-15).

[30]*Ibid.*, pp. 39-40.

[31]*Ibid.*, p. 38.

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