

Immigration and Freedom of Association*

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In this article I appeal to freedom of association to defend a state's right to control immigration over its territorial borders. Without denying that those of us in wealthy societies may have extremely demanding duties of global distributive justice, I ultimately reach the stark conclusion that every legitimate state has the right to close its doors to all potential immigrants, even refugees desperately seeking asylum from incompetent or corrupt political regimes that are either unable or unwilling to protect their citizens' basic moral rights.

This article is divided into four sections. First, I argue for a presumptive case in favor of a state's right to limit immigration as an instance of its more general right to freedom of association. In the second and third sections, I respond to egalitarian and libertarian cases for open borders. Finally, in the fourth section, I consider the permissibility of screening immigrants based upon their race, ethnicity or religion.

I. THE CASE FOR THE RIGHT TO CLOSED BORDERS

To appreciate the presumptive case in favor of a state's right to control its borders that can be built upon the right to freedom of association, notice both that (1) freedom of association is widely thought to be important and that (2) it includes the right not to associate and even, in many cases, the right to disassociate.

That freedom of association is highly valued is evident from our views on marriage and religion. In the past, it was thought appropriate for one's father to select one's marital partner or for one's state to

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determine the religion one practiced, but, thankfully, those times have (largely) passed. Today, virtually everyone agrees that we are entitled to marital and religious freedom of association; we take it for granted that each individual has a right to choose his or her marital partner and the associates with whom he or she practices his or her religion. Put plainly, among our most firmly settled convictions is the belief that each of us enjoys a morally privileged position of dominion over our self-regarding affairs, a position which entitles us to freedom of association in the marital and religious realms.

Second, notice that freedom of association includes a right to reject a potential association and (often) a right to disassociate. As Stuart White explains: "Freedom of association is widely seen as one of those basic freedoms which is fundamental to a genuinely free society. With the freedom to associate, however, there comes the freedom to refuse association. When a group of people get together to form an association of some kind (e.g., a religious association, a trade union, a sports club), they will frequently wish to exclude some people from joining their association. What makes it *their* association, serving their purposes, is that they can exercise this 'right to exclude.'"¹

In the case of matrimony, for instance, this freedom involves more than merely having the right to get married. One fully enjoys freedom of association only if one may choose whether or not to marry a second party who would have one as a partner. Thus, one must not only be permitted to marry a willing partner whom one accepts; one must also have the discretion to reject the proposal of any given suitor and even to remain single indefinitely if one so chooses. As David Gauthier puts it, "I may have the right to choose the woman of my choice who also chooses me, but not the woman of my choice who rejects me."² We understand religious self-determination similarly: whether, how, and with whom I attend to my humanity is up to me as an individual. If I elect to explore my religious nature in community with others, I have no duty to do so with anyone in particular, and I have no right to force others to allow me to join them in worship.

In light of our views on marriage and religious self-determination, the case for a state's right to control immigration might seem straightforward: just as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community. And just as an individual's freedom of association entitles

1. Stuart White, "Freedom of Association and the Right to Exclude," *Journal of Political Philosophy* 5 (1997): 373–91, 373.

2. David Gauthier, "Breaking Up: An Essay on Secession," *Canadian Journal of Philosophy* 24 (1994): 357–92, 360–61.

one to remain single, a state's freedom of association entitles it to exclude all foreigners from its political community. There are at least two reasons that this inference from an individual's to a state's right to freedom of association might strike some as problematic, however. First, presumably there are morally relevant differences between individuals and groups, and these differences might explain why only individuals can have a right to self-determination. Second, even if it is possible for groups to have rights, presumably the interests a group of citizens might have in controlling immigration are nowhere near as important as an individual's interest in having a decisive say regarding who he or she marries. Let us consider these two issues in turn.

In response to concerns about the differences between individuals and groups, let me begin by highlighting some commonly held convictions which illustrate that we typically posit at least a presumptive group right to freedom of association. Think, for instance, of the controversy that has surrounded groups like the Boy Scouts of America or the Augusta National Golf Club, both of which have faced considerable public pressure and even legal challenges regarding their rights to freedom of association. In particular, some have contested the Boy Scouts' right to exclude homosexuals and atheists, while others have criticized Augusta National's exclusion of women.³ These cases raise a number of thorny issues. We need not adjudicate either of these conflicts here, however, because the requisite point for our purposes is a minimal one. Specifically, notice that even those who insist that the Boy Scouts should be legally forced to include gays and atheists or that Augusta National cannot justify their continued exclusion of women typically concede that there are weighty reasons in favor of allowing these groups to determine their own membership. That is, even activists lobbying for intervention usually acknowledge that there are reasons to respect these groups' rights to autonomy; the activists claim only that the *prima facie* case in favor of group self-determination is liable to be outweighed in sufficiently compelling instances (e.g., when society as a whole discriminates against women or privileges theism and heterosexuality over atheism and homosexuality). The key point, of course, is that questioning Augusta National's group right to determine its own membership does not require one to deny that groups have a presumptive right to freedom of association because one could simply assert that this presumptive right is vulnerable to being overridden. And because I seek at this stage to defend only a presumptive case in favor of a state's right to control its own borders, it is enough to note how uncontroversial it is to posit a group's right to freedom of association.

There is still room to question my slide from an individual's to a

3. Some also object to the Boy Scouts' refusal to admit girls.

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state's right to freedom of association, however, because, unlike the Boy Scouts and the Augusta National Golf Club, political states do not owe their membership to the autonomous choices of their constituents. The nonvoluntary nature of political states can raise complex problems for those who would defend a state's right to political self-determination (problems I address at length elsewhere), but here I would like merely to highlight some of the unpalatable implications that follow from denying a country's right to freedom of association.⁴ In particular, consider the moral dynamics of regional associations like the North American Free Trade Agreement (NAFTA) or the European Union (EU). If legitimate states did not enjoy a right to freedom of association—a right which entitles them to decline invitations to associate with others—then they would not be in a position to either accept or reject the terms of these regional associations. Think of Canada's choice to join NAFTA, or Slovenia's decision to enter the EU, for instance. No one believes that it would be permissible to force Canada into NAFTA or to coerce Slovenia to join the EU. (Of course, nor may Canada or Slovenia unilaterally insert themselves into these associations!) And the reason it is wrong to forcibly include these countries is because Canada's and Slovenia's rights to self-determination entitle them to associate (or not) with other countries as they see fit. Put plainly, if one denies that legitimate states like Canada and Slovenia have a right to freedom of association, one could not explain why they would be righteously aggrieved at being forced into these mergers.

Indeed, there would be even more awkward implications because, without positing a right to freedom of association, we could not satisfactorily explain what is wrong with one country forcibly annexing another. Imagine, for instance, that a series of plebiscites revealed both that an overwhelming majority of Americans wanted to merge with Canada and that an equally high proportion of Canadians preferred to maintain their independence. Would it be permissible for the United States to forcibly annex Canada? I assume without argument that, even if the United States could execute this unilateral merger without disrupting the peace or violating the individual rights of any Canadians, this hostile takeover would be impermissible. The crucial point for our purposes is that one cannot explain the wrongness of unilateral annexations like this unless one supposes that countries like Canada enjoy a

4. For an extended discussion of some of the issues associated with group autonomy, see chap. 3 of my book *A Theory of Secession* (New York: Cambridge University Press, 2005).

right to autonomy, a right which accords Canadians the freedom to associate with others as they see fit.⁵

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If the analysis to this point has been sound, then there is no reason to doubt that groups, even political states, can have rights to autonomy analogous to those enjoyed by individuals. Even if one agrees that legitimate states can have rights to self-determination, though, one might still question the argument sketched above on the grounds that the intimacy of marriage makes freedom of association immeasurably more important in the marital context than in the political realm. After all, in the vast majority of cases, fellow citizens will never even meet one another. On this point, consider Stuart White's contention that "if the formation of a specific association is essential to the individual's ability to exercise properly his/her liberties of conscience and expression, *or to his/her ability to form and enjoy intimate attachments*, then exclusion rules which are genuinely necessary to protect the association's primary purposes have an especially strong presumption of legitimacy."⁶ Transposing White's reasoning, one might insist that, since there is no intimacy among compatriots, it is not at all clear why we need to respect freedom of association for groups of citizens.⁷

I concede that freedom of association is much more important for individuals in the marital context than for groups of citizens in the political realm, but my argument does not rely upon these two types of freedom of association being equally important. Notice, for instance, that being able to choose the associates with whom one worships is also less important than having discretion over one's marital partner, but no one concludes from this that we need not respect freedom of association in the religious realm. It is important to recognize that I seek at this stage to establish only that there is a *prima facie* case in favor of each legitimate state's right to control immigration (it will be the burden of the remainder of this article to show that competing considerations are not as weighty as one might think). Nonetheless, let me say a bit more about this presumptive case.

5. Here one might be tempted to object that Canada's right to independence is more straightforwardly accounted for in terms of its right to self-determination. But, as I shall argue below, it is misleading to contrast freedom of association with self-determination because freedom of association is actually a central component of the more general right to self-determination. In the case of political states, for instance, a state cannot fully enjoy the right to political self-determination unless its rights to freedom of association are respected.

6. White, "Freedom of Association and the Right to Exclude," 381 (emphasis added).

7. It should be noted White is not necessarily committed to this line of argument because his analysis is explicitly restricted to "secondary" groups (which I take to be groups within states) which adopt "categorical" exclusion (i.e., exclusion based upon an individual's race, gender, sexuality, or religion).

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In my view, autonomous individuals and legitimate states both have rights to autonomy. This means that they occupy morally privileged positions of dominion over their self-regarding affairs. Such a position can be outweighed by sufficiently compelling considerations, of course, but in general people and states have a right to order their own affairs as they please. Freedom of association is not something that requires an elaborate justification, then, since it is simply one component of the self-determination which is owed to all autonomous individuals and legitimate states. As a consequence, I think that there is a very natural and straightforward case to be made in favor of freedom of association in all realms. Just as one need not explain how playing golf is inextricably related to the development of one's moral personality, say, in order to justify one's right to play golf, neither must one show that one's membership in a golf club is crucial to one's basic interests to establish the club members' right to freedom of association. And if no one doubts that golf clubs have a presumptive right to exclude others, then there seems no reason to suspect that a group of citizens cannot also have the right to freedom of association, even if control over membership in a country is not nearly as significant as control regarding one's potential spouse.

What is more, for several reasons it seems clear that control over membership in one's state is extremely important. To see this, think about why people might care about the membership rules for their golf club. It is tempting to think that club members would be irrational to care about who else are (or could become) members; after all, they are not forced to actually play golf with those members they dislike. But this perspective misses something important. Members of golf clubs typically care about the membership rules because they care about how the club is organized and the new members have a say in how the club is organized. Some members might want to dramatically increase the number of members, for instance, because the increased numbers will mean that each individual is required to pay less. Other members might oppose expanding the membership because of concerns about the difficulty of securing desirable tee times, the wear and tear on the course, and the increased time it takes to play a round if there are more people on the course at any given time.

And if there is nothing mysterious about people caring about who are (or could become) members of their golf clubs, there is certainly nothing irrational about people being heavily invested in their country's immigration policy. Again, to note the lack of intimacy among compatriots is to miss an important part of the story. It is no good to tell citizens that they need not personally (let alone intimately) associate with any fellow citizens they happen to dislike because fellow citizens nonetheless remain political associates; the country's course will be

charted by the members of this civic association. The point is that people rightly care very deeply about their countries, and, as a consequence, they rightly care about those policies which will effect how these political communities evolve. And since a country's immigration policy affects who will share in controlling the country's future, it is a matter of considerable importance.

These examples of the golf club and the political state point toward a more general lesson that is worth emphasizing: because the members of a group can change, an important part of group self-determination is having control over what the "self" is. In other words, unlike individual self-determination, a significant component of group self-determination is having control over the group which in turn gets to be self-determining. It stands to reason, then, that if there is any group whose self-determination we care about, we should be concerned about its rules for membership. This explains why freedom of association is such an integral part of the self-determination to which some groups (including legitimate states) are entitled. If so, then anyone who denies that we should care about the freedom of association of nonintimate groups would seem to be committed to the more sweeping claim that we should not care about the self-determination of any nonintimate groups. But, unless one implausibly believes that we should care only about intimate groups, then why should we suppose that only the self-determination of intimate groups matters? Thus, people rightly care deeply about their political states, despite these states being large, anonymous, and multicultural, and, as a consequence, people rightly care about the rules for gaining membership in these states. Or, put another way, the very same reasoning which understandably leads people to jealously guard their state's sovereignty also motivates them to keep an eye on who can gain membership in this sovereign state.

A second, less obvious, reason to care about immigration policy has to do with one's duties of distributive justice. As I will argue in the next section, it seems reasonable to think that we have special distributive responsibilities to our fellow citizens. If this is right, then in the same way that one might be reluctant to form intimate relationships because of the moral freight attached, one might want to limit the number of people with whom one shares a morally significant political relationship. Thus, just as golf club members can disagree about the costs and benefits of adding new members, some citizens might want to open the doors to new immigrants (e.g., in order to expand the labor force), while others would much rather forgo these advantages than incur special obligations to a greater number of people.

Finally, rather than continue to list reasons why citizens ought to care about issues of political membership, let me merely point out that citizens today obviously do care passionately about immigration. I do

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not insist that the current fervor over political membership is entirely rational, but it is worth noting that anyone who submits that freedom of association in this context is of no real importance is committed to labeling all those who care about this issue as patently irrational. Thus, even though the relationship among citizens does not involve the morally relevant intimacy of that between marital partners, the considerations quickly canvassed above, as well as the behavior of actual citizens, indicate that we need not conclude that control over immigration is therefore of negligible significance. If so, then neither the observation that (1) individual persons are importantly disanalogous to political states nor the fact that (2) freedom of association is much more important for individuals in the marital context than for groups of citizens in the political realm should lead us to abandon our initial comparison between marriage and immigration. As a consequence, we have no reason to abandon the claim that, like autonomous individuals, legitimate political regimes are entitled to a degree of self-determination, one important component of which is freedom of association. In sum, the conclusion initially offered only tentatively can now be endorsed with greater conviction: just as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community. And just as an individual's freedom of association entitles him or her to remain single, a state's freedom of association entitles it to exclude all foreigners from its political community.

Before turning to the case against political freedom of association, I would like to highlight two features of the view I am advancing here: (1) I defend a deontological right to limit immigration rather than a consequential account of what would be best, and (2) my view might be dubbed "universalist" rather than "particularist" insofar as it neither suggests nor implies that only distinct nations, cultures, or other "communities of character" are entitled to limit immigration. Consider each of these points in turn.

First, let me stress that I seek to defend a deontological conclusion about how legitimate states are entitled to act, not a consequential prescription for how to maximize happiness or a practical recipe for how states might best promote their own interests. I understand that groups can have weighty reasons to limit immigration in certain circumstances, but what the best policy would be for any given state's constituents (and/or for those foreigners affected) will presumably depend upon a variety of empirical matters, matters about which others are more knowledgeable. Thus, I doubt that any one-size-fits-all immigration policy exists, and I, qua philosopher, have no special qualification to comment on the empirical information that would be relevant to fashioning the best policy for any given state. However, if anything, I am personally inclined

toward more open borders. My parents were born and raised in different countries, so I would not even be here to write this article if people were not free to cross political borders. What is more, my family and I have profited enormously from having lived and worked in several different countries, so it should come as no surprise that I believe that, just as few individuals flourish in personal isolation, open borders are typically (and within limits) best for political communities and their constituents. Still, just as one might defend the right to divorce without believing that many couples should in fact separate, I defend a legitimate state's right to control its borders without suggesting that strict limits on immigration would necessarily maximize the interests of either the state's constituents or humanity as a whole. My aim is merely to show that whatever deontological reasons there are to respect freedom of association count in favor of allowing political communities to set their own immigration policy.

I hasten to emphasize, however, that, while I conceive of freedom of association in deontological terms, I do not thereby suppose that it is necessarily absolute. I consider freedom of association a deontological matter because it is something to which a party can be entitled (it is something to which people can have a moral right), and I do not believe that matters of entitlement can be adequately cashed out in exclusively consequential terms. In saying this, however, I do not thereby commit myself to the view that such a right must be perfectly general and absolute. A right can be independent of, and largely immune from, consequential calculus without being entirely invulnerable to being outweighed by all competing considerations. (Prince William has a right to marry anyone who will have him, for instance. And while this right gives him the discretion to marry any number of people, presumably it would be defeated if his marrying a particular person would set off a chain of events leading to World War III.) In this regard, my views tend to resemble those of W. D. Ross more than those of Immanuel Kant. Moreover, like Ross, I know of no algorithm for determining in advance when and under what circumstances a party's right to freedom of association would be defeated. In the end, then, I see nothing contradictory about conceiving of freedom of association as a deontological consideration (and thus of speaking of a right to choose one's associates) and simultaneously conceding that the case in favor of freedom of association is merely presumptive.

The second aspect of my account worth highlighting is that my defense of freedom of association makes no mention of a political community's distinctive character or culture. I emphasize this to distinguish myself from those who argue that ethnic, cultural, or national groups have a right to limit immigration in order to preserve their distinctive characters. In particular, the most compelling treatments of the morality

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of immigration with which I am familiar are Michael Walzer's seminal discussion of membership in *Spheres of Justice* and David Miller's recent article, "Immigration: The Case for Limits."⁸ Other ways in which my account diverges from theirs will become apparent in due course; for now, notice that Walzer and Miller both emphasize the importance of preserving culture. As Walzer puts it: "Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life."⁹

In a similar vein, Miller suggests that "the public culture of their country is something that people have an interest in controlling: they want to be able to shape the way that their nation develops, including the values that are contained in the public culture."¹⁰ He is especially interested in political groups being able to preserve their distinctive identities because he believes that states must maintain a decent level of social solidarity in order to secure social justice. Unless compatriots sufficiently identify with one another, Miller argues, it is unlikely that the political climate will engender mutual trust or fellow feeling, elements liberal democratic states need if they are to inspire their constituents to make the sacrifices necessary to sustain a healthy democracy and an equitable welfare state.

In contrast to authors like Walzer and Miller, my account emphasizes that anyone is entitled to freedom of association. Thus, just as few would suggest that individuals have a right to marry only people of their own ethnicity, culture, nationality, or character, I do not believe that a group's right to limit immigration depends upon its members sharing any distinctive ethnic/cultural/national characteristics.

Now, I could certainly see why distinct cultural groups might in certain circumstances be more interested in or more inclined to exclude others, but I deny that they alone have the right to do so, since I believe that everyone—not just members of distinct nations—is entitled to free-

8. See Michael Walzer, *Spheres of Justice* (New York: Basic, 1983), 31–63; and David Miller, "Immigration: The Case for Limits," in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher Heath Wellman (Malden, MA: Blackwell, 2005), 193–206. In *Toward a Theory of Immigration* (New York: Palgrave, 2001), the only monograph I know of which defends a state's right to craft its own immigration policy, Peter Meilander takes a similar tack, arguing that legitimate national identities have a right to defend themselves against the threat posed by immigration.

9. Walzer, *Spheres of Justice*, 62.

10. Miller, "Immigration: The Case for Limits," 200. Miller also stresses the role that limiting immigration can play in curbing population growth, but his flagship argument features the importance of preserving culture.

dom of association. To see why, think again of groups like the Boy Scouts or the Augusta National Golf Club. I presume that no one would suggest that the Boy Scouts are entitled to freedom of association only because they are all heterosexual theists or that Augusta National's claim to group autonomy depends upon their membership being all male. Indeed, if anything, it is just the opposite: the group autonomy of the Boy Scouts and Augusta National is challenged precisely because the former explicitly exclude gays and atheists and the latter has no female members. And since more diverse groups of scouts or golf club members would be at least equally entitled to freedom of association, there seems no reason to believe that only groups whose members share a distinctive characteristic are entitled to freedom of association. If so, then we need not suppose that only populations with distinct characters are entitled to limit immigration into their territories. To reiterate: even if it is true that countries whose populations understand themselves to be importantly distinct from (most) foreigners exhibit the greatest interest in excluding nonnatives, we should not infer from this that only these groups are entitled to control their territorial borders.

In sum, the commonly prized value of freedom of association provides the basic normative building blocks for a presumptive case in favor of each legitimate state's right to exclude others from its territory. But, while freedom of association provides a weighty consideration in favor of a state's right to limit immigration, it is obviously not the only value of importance. Thus, even if my reasoning to this point has been sound, the case in favor of a state's dominion is only presumptive and may be outweighed by competing considerations. With this in mind, let us now review the arguments in favor of open borders to see if they defeat a state's right to limit immigration.

II. THE EGALITARIAN CASE FOR OPEN BORDERS

Egalitarians survey the vast inequalities among states and then allege that it is horribly unjust that people should have such dramatically different life prospects simply because they are born in different countries. The force of this view is not difficult to appreciate. Given that one's country of birth is a function of brute luck, it seems grossly unfair that one's place of birth would so profoundly affect one's life prospects. Some believe that the solution is clear: political borders must be opened, so that no one is denied access to the benefits of wealthy societies. Although he couches his argument in terms of a principle of humanity rather than equality, Chandran Kukathas makes this point particularly forcefully: "A principle of humanity suggests that very good reasons must be offered to justify turning the disadvantaged away. It would be bad enough to meet such people with indifference and to deny them positive assistance. It would be even worse to deny them the opportunity to help

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themselves. To go to the length of denying one's fellow citizens the right to help those who are badly off, whether by employing them or by simply taking them in, seems even more difficult to justify—if, indeed, it is not entirely perverse.”¹¹

For several reasons, this case for open borders presents an especially imposing obstacle to the *prima facie* case for the right to restrict immigration outlined above. For starters, both its moral and empirical premises appear unexceptionable. How could one plausibly deny either that all humans are in some fundamental sense equally deserving of moral consideration or that the staggering inequalities across the globe dramatically affect people's prospects for living a decent life? Indeed, looked at from this perspective, sorting humans according to the countries in which they were born appears tantamount to a geographical caste system. As Joseph Carens famously argues: “Citizenship in Western liberal democracies is the modern equivalent to 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.”¹² What is more, notice that advocating this position does not require one to deny the importance of freedom of association: an egalitarian who presses this objection can agree that we should generally be free to choose our associates, as long as the resulting associations do not lead to unjust arrangements. Thus, allowing states to limit immigration is regarded as problematic on this view only because countries cannot enjoy this form of freedom of association without people's life prospects being seriously affected by morally irrelevant matters, that is, factors entirely beyond their control.

Despite the intuitive appeal of this line of reasoning, I will counter this objection with two arguments. First, I suggest that the most compelling understanding of equality does not require us to guarantee that no one's life prospects are affected by matters of luck; more minimally, equality demands that we address those inequalities that render people vulnerable to oppressive relationships. If this is correct, then the particular theory of equality required to motivate the egalitarian case for open borders is suspect and should be rejected in favor of a theory of relational equality. Second, even if luck egalitarianism is the best theory of equality, it would not generate a duty to leave borders open, because a wealthy state's redistributive responsibilities can be discharged without including the recipients in the union. Consider each of these responses in turn.

11. Chandran Kukathas, “The Case for Open Immigration,” in Cohen and Wellman, *Contemporary Debates in Applied Ethics*, 207–20, 211.

12. Joseph H. Carens, “Aliens and Citizens: The Case for Open Borders,” *Review of Politics* 49 (1987): 251–73, 252.

I should begin by acknowledging the obvious appeal of luck egalitarianism. After all, it does seem unfair that some people's life prospects are dramatically worse than others when neither the poorly off nor the well off did anything to deserve their initial starting points. And it is hard to deny that the world would be better if everyone enjoyed roughly equal prospects for a rewarding life. It is important to recognize, though, that luck egalitarianism is not the only game in town. In *Political Philosophy*, for instance, Jean Hampton recommends an approach she ascribes to Aristotle: "We want, he says, a society in which people treat each other as equals (no one should be allowed to be the master of another or the slave of another) and in which these equals treat each other as partners—or 'civic friends.' The way to get that is to pursue not exact equality of resources but sufficient equality to ensure that no one is able to use his greater wealth to gain political advantage over others in a way that damages their partnership."¹³

Now, one might be struck by Hampton's suggestion that we need not pursue "exact" equality, but I want to call attention to another, related feature of her view: its relational nature. As Hampton emphasizes, Aristotle is concerned with equality because he sees it as necessary to sustain the desired relationships among fellow citizens. We need not concern ourselves with securing exact equality, then, because (political) relationships are not undermined by slight disparities in wealth; clearly, compatriots can interact as political equals even if some have more than others, regardless of whether or not their unequal resources are deserved.

Others share Hampton's preference for relational theories of equality, but no one, to my knowledge, has better motivated this approach than Elizabeth Anderson.¹⁴ Key to Anderson's defense of relational equality is the question: "What is the point of equality?" In her view, answering this question reveals most clearly why relational theories are preferable to those which fixate on luck. The crucial point is that we should care about inequality principally to the extent that subordinates are dominated in oppressive relationships. For this reason, Anderson insists that we should be "fundamentally concerned with the relation-

13. Jean Hampton, *Political Philosophy* (Boulder, CO: Westview, 1996), 158.

14. Other prominent defenses include David Miller, "What Kind of Equality Should the Left Pursue?" in *Equality*, ed. Jane Franklin (London: Institute for Public Policy Research, 1997), 83–99; Jonathan Wolff, "Fairness, Respect, and the Egalitarian Ethos," *Philosophy & Public Affairs* 27 (1998): 97–122; Andrew Mason, "Equality, Personal Responsibility, and Gender Socialisation," *Proceedings of Aristotelian Society* 100 (1999–2000): 227–46; and Samuel Scheffler, "What Is Egalitarianism?" *Philosophy & Public Affairs* 31 (2003): 5–39.

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ships within which the goods are distributed, not only the distribution of goods themselves.”¹⁵

To appreciate the force of this point, compare two possible inequalities. The first exists between two societies, A and B. Assume that everyone in A is equally well off; everyone in B is doing equally poorly; and no one in either A or B knows anything of the other society’s existence, since they are on opposite sides of the earth and have never had any contact. The second inequality mirrors the disparity between the As and Bs, except that it exists within a single society C. And because the Cs share a single political community, not only are they aware that others are faring considerably better/worse but also their relationships are affected by these inequalities. I take it as uncontroversial that the inequality among the Cs is much more worrisome than the same inequality between the As and Bs. In other words, whether or not we should care about the inequality between the As and Bs, clearly we should be much more concerned to eliminate the inequality among the Cs. Based in part upon reasoning like this, Anderson concludes: “Negatively, people are entitled to whatever capabilities are necessary to enable them to avoid or escape entanglement in oppressive relationships. Positively, they are entitled to the capabilities necessary for functioning as an equal citizen in a democratic state.”¹⁶

Arguments like Anderson’s convince me that we should be keenly aware of the relationships within which the goods are distributed, but I stop short of concluding that relational equality is the one correct theory of equality. In my view, luck equality matters, but it matters considerably less than relational equality. In other words, although I would not hesitate to eliminate the inequality between the As and Bs if I could do so by waving a magic wand, this inequality is not sufficiently worrisome that I would necessarily interfere in the internal affairs of the As in order to eliminate the inequality between them and the Bs. However, because I am much more concerned about the inequality among the Cs, I would be correspondingly less reluctant to demand that the wealthy Cs take measures to ensure that the less well off Cs are not entangled in oppressive relationships.

As a consequence, while I do not think that there is nothing of moral consequence to be gained from realizing luck equality, I do accept a more modest claim: even if achieving relational equality is important enough to trump other values like freedom of association, realizing luck equality is not important enough to deny people their rights to self-determination. And this more modest conclusion has important impli-

15. Elizabeth S. Anderson, “What Is the Point of Equality?” *Ethics* 109 (1999), 287–337, 314.

16. Anderson, “What Is the Point of Equality?” 316.

cations for the morality of immigration. Most obviously, even if we would prefer a world with no inequality between the As and the Bs, eliminating this inequality is not important enough to justify limiting the As' right to freedom of association. In short, given that the moral importance of any particular inequality is a function of the relationship in which the goods are distributed, the lack of a robust relationship between the constituents of a wealthy state and the citizens of a poorer country implies that this admittedly lamentable inequality does not generate sufficient moral reasons to obligate the wealthy state to open its borders, even if nothing but luck explains why those living outside of the territorial borders have dramatically worse prospects of living a rewarding life.

Here two potential objections present themselves. First, although it is not false to say that the citizens of some countries are relatively well off while the constituents of others are relatively poorly off (as I do in my example of the As and Bs), this cryptic description is nonetheless misleading insofar as it fails to capture that, in the real world, those in the developed countries are staggeringly wealthy in comparison to the masses who are imperiled (when not outright killed) by eviscerating poverty. In short, given the radical inequality and objective plight that make Carens's reference to "feudal privilege" apt, it is not so easy to dismiss global inequality merely because it does not exist between compatriots. Second, because of the history of colonization, as well as the current levels of international trade (among other things), it is simply not the case that the world's wealthy and poor are unconnected and unaware of each other (as I stipulate in my example of the As and Bs). On the contrary, one consequence of the emerging global basic structure is that virtually all of the world's people now share some type of relationship, so presumably even relational egalitarians cannot dismiss the moral significance of global inequality. I think there are important truths in both of these objections, so I will consider each in turn.

To begin, the twin facts that the world's poor are so desperately needy and the world's wealthy are so spectacularly well off that they could effectively help the impoverished without sacrificing anything of real consequence is unquestionably morally significant, but in my mind these facts indicate that the real issue is not about equality. Rather than being exercised merely because some are relatively worse off through no fault of their own, we are (or at least should be) concerned simply because others are suffering in objectively horrible circumstances.¹⁷ What is more, the reason that we may have a duty to help is not because mere luck explains why we are doing better than they (presumably we

17. Harry Frankfurt makes a similar point in "Equality as a Moral Ideal," *Ethics* 98 (1987): 21–43.

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would be obligated to relieve their suffering even if our relative standing was fully attributable to morally relevant factors like our hard work). Instead, our duty to help stems most straightforwardly from samaritanism: one has a natural duty to assist others when they are sufficiently imperiled and one can help them at no unreasonable cost to oneself.¹⁸ As a result, I am inclined to respond to the first objection in disjunctive fashion: if the less well off Bs are not doing terribly badly in objective terms, then the inequality between the As and Bs does not generate a duty on the part of the As to help the Bs. If the Bs are clearly suffering in absolute poverty, on the other hand, then the As may indeed have stringent duties to help, but these duties spring from a samaritan source rather than from the mere fact that the As are (for morally arbitrary reasons) doing better than the Bs.¹⁹ If this is right, then even the previously unfathomable inequalities we now see in the real world do not sufficiently buttress the luck egalitarian's case for open borders.

Regarding the second objection, I am inclined to agree that the emerging global infrastructure entails that virtually all of us have increasingly substantial relationships with people all over the world. And as a relational egalitarian, it seems to follow that the more robust these relationships become, the more concerned we should be about the inequalities within them. But I can concede all of this without jettisoning my response to the egalitarian case for open borders because my account has never relied upon the claim that being fellow citizens of a country is the only morally relevant relationship.²⁰ On the contrary, my account requires only that the less ambitious (and more plausible) claim that the relationship among compatriots is one relationship with morally relevant implications for inequality. To see the significance of this point, notice what I would say about inequalities within a particular state. Even though I think that the relationship shared among compatriots is relevant when assessing the inequalities among two people, I would never allege that no relationships within a state are morally relevant. Because familial relations are particularly liable to oppression, for instance, we might worry about the inequalities between wife and husband, between

18. Incidentally, this point both explains, and is confirmed by, the fact that Chandran Kukathas's quote listed earlier is offered under the banner of a principle of "humanity" rather than one of equality.

19. I do not claim that Michael Blake would follow me in putting this point in terms of samaritanism, but in some important respects the position I outline here squares well with what he says about international distributive justice in his excellent article "Distributive Justice, State Coercion, and Autonomy," *Philosophy & Public Affairs* 30 (2001): 257–96.

20. This appears to be another respect in which my views diverge from those which Blake develops in "Distributive Justice, State Coercion, and Autonomy." According to Blake, the relationship among compatriots is singled out because the state's coercion is key to determining when relative equality is important.

the parents and children, or among the children in a way that we would not among compatriots who are not members of the same family. For example, we would likely be less comfortable with a scenario in which a family paid for the sons but not the daughters to go to college than one in which one set of parents paid for the children's college expenses and another set of parents did not. Thus, there is nothing about my insistence on the moral relevance of the relationship among compatriots that forces me to deny the possibility of other relationships within the states which are significant for the purposes of inequality. And if I can acknowledge important relationships within a state, there seems no reason why I cannot accept that citizens of separate states can stand in relationships which matter from the point of equality. Most important, notice that conceding this last point does not undermine my response to the egalitarian case for open borders, because I can still insist that (whatever other relationships there are which matter from the standpoint of equality) the relationship between fellow citizens is one particularly important relationship which explains why we need not necessarily restrict the liberty of the better-off citizens in one country merely because nothing but luck explains why they are faring so much better than the citizens of a foreign state.

Finally, a persistent critic might counter that, even if the case based on luck egalitarianism fails, both samaritanism and the morally relevant relationships among foreigners explain why we have duties to those outside of our borders. In response, I suggest that these duties, even if stringent, can be fully satisfied without necessarily allowing those to whom we are duty bound entry to our country. That this is so will become apparent shortly when I explain why, even if luck egalitarianism is correct, it cannot shoulder the argumentative burden required of it by the case for open borders.

Before turning to this argument, though, it is worth noting that, while he does not use the luck/relational equality terminology, Walzer implicitly endorses the position on equality for which I am lobbying here. This occurs most clearly in his important discussion of Germany's bringing in "guest workers" from countries like Turkey. Here Walzer argues that, while Germans are not morally obligated to admit these workers, they nonetheless may not bring the workers in as political subordinates. He writes: "Democratic citizens, then, have a choice: if they want to bring in new workers, they must be prepared to enlarge their own membership; if they are unwilling to accept new members, they must find ways within the limits of the domestic labor market to get socially necessary work done. And those are their only choices."²¹

Now at first glance Walzer's position seems curious. After all, if

21. Walzer, *Spheres of Justice*, 61.

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prospective immigrants have no right to entry, how can they have a conditional right to equality if admitted? (By comparison, if Miriam has no right that Patrick sell her his gently used copy of *Spheres of Justice*, presumably Miriam would thereby also lack the conditional right to a cheap price if Patrick chose to sell it to her.) One would think that the right to equal treatment either gives the prospective workers a right to equal citizenship within Germany or it does not, but it could not generate a conditional right which depends upon the choice of the Germans. Reflecting upon the distinction between luck and relational theories of equality shows why this is not so, however. Walzer's positing a conditional right to equality-if-admitted makes perfect sense if he is implicitly presuming a relational theory of equality (as I believe he is), because such a theory implies that the same inequalities which would clearly be pernicious among compatriots might well be benign when present between foreigners. Thus, there is nothing inconsistent about Walzer's voicing no objection to an inequality between Germans and Turks, on the one hand, and objecting to this same inequality when it exists between two people (whatever their nationality) subject to the same political community within Germany, on the other hand.

In light of Walzer's analysis, we are now in a position to conclude the first prong of our critique of the egalitarian case for open borders with two points. First, this case depends upon a particular theory of equality, luck egalitarianism, which leading theorists have rejected on grounds that have nothing to do with immigration. Second, without explicitly weighing in on this topic, one of the most prominent and sophisticated discussions of immigration implicitly endorses relational equality by staking out positions which presuppose that the moral importance of any inequality is a function not only of its magnitude but also of the relationship in which the goods are distributed. For the sake of argument, however, let us assume that I am wrong to criticize luck egalitarianism. Suppose that luck egalitarianism is the best theory of equality, or that securing luck equality is as least as important as securing relational equality, or at the very least that realizing luck equality is sufficiently important to justify restricting people's rights to freedom of association. Even if we grant one of these assumptions, it would still not follow that legitimate states are therefore not entitled to freedom of association. To see why, consider how marital freedom of association is typically combined with the demands of domestic distributive justice.

Even the most zealous critics of inequality typically recommend neither that we must abolish marriage nor that wealthy couples must literally open up their marriages to the less well off. Instead, it is standard to keep separate our rights to freedom of association and our duties of distributive justice, so that wealthy people are able to marry whomever they choose and then are required to transfer a portion of their wealth

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to others no matter whom (or even whether) they marry. Admittedly, history includes radical movements like the Khmer Rouge, who abolished marriage because it was thought to be inconsistent with their quest for complete equality, but most egalitarians rightly shy away from this degree of fanaticism.²² Indeed, consider this: despite the enormous disagreement about what type of responsibilities the likes of Bill Gates and Warren Buffet have in virtue of their staggering wealth, no one alleges that, unlike the rest of us, these billionaires are required to marry poor spouses. And just as our domestic redistribution of wealth among individuals has not led us to prohibit marriage, global redistribution does not require us to open all political borders. Instead, even if we presume that wealthy societies have extensive distributive duties, these duties are distinct and can be kept separate from the societies' rights to freedom of association. To reiterate: if wealthy couples need not open up their marriages to those less well off, why think that wealthy countries must open their borders to less fortunate immigrants? Just as relatively wealthy families are required merely to transfer some of their wealth to others, why cannot wealthy countries fully discharge their global distributive duties without including the recipients in their political union, simply by transferring the required level of funds abroad?²³

Thus, no matter how substantial their duties of distributive justice, wealthier countries need not open their borders. At most, affluent societies are duty bound to choose between allowing needy foreigners to enter their society or sending some of their wealth to those less fortunate. In fact, David Miller has pressed this point even further, suggesting

22. As Jonathan Glover explains in his book *Humanity* (New Haven, CT: Yale University Press, 2001): "The idea of the family was attacked. People who were allowed to stay in their villages had to share everything, down to pots and pans. Communal meals for hundreds of families together were compulsory. Many families were split up, with men and women being forced to sleep in segregated communal dormitories" (303).

23. Here one might reassert the objection to my analogy between immigration and marriage. In particular, because political unions are not nearly as intimate as marriages, an egalitarian might consistently protect freedom of association in the marital realm without being similarly impressed with a state's right to craft its own immigration policy. I agree that it would be more of an imposition to restrict one's discretion to select one's spouse, but this concession does not trouble me because I need not press the marriage analogy as far as this objection presumes. My limited hope is that our firmly held and familiar views on marriage will confirm my contention about a state's right to control its territorial borders need not conflict with its duties of distributive justice, even when the latter are cashed out in starkly luck egalitarian terms. If this is right, then arguments like Peter Singer's (which compares refugees to people desperately clamoring for shelter from the fallout of a nuclear bomb) are fallacious because, unlike those exposed to the fallout (whose only hope is to be admitted to the shelter), potential immigrants can be effectively helped without being admitted into one's country. See Peter Singer, "Insiders and Outsiders," *Practical Ethics* (Cambridge: Cambridge University Press, 1993), 247–63.

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that it would be better if wealthier countries sent resources abroad. He puts it as follows:

People everywhere have a right to a decent life. But before jumping to the conclusion that the way to respond to global injustice is to encourage people whose lives are less than decent to migrate elsewhere, we should consider the fact that this policy will do little to help the very poor, who are unlikely to have the resources to move to a richer country. Indeed, a policy of open migration may make such people worse off still, if it allows doctors, engineers, and other professionals to move from economically undeveloped to economically developed societies in search of higher incomes, thereby depriving their countries of origin of vital skills. Equalizing opportunity for the few may diminish opportunities for the many.²⁴

If Miller is right about this, then the ardent egalitarian not only may be in no position to demand that affluent societies open their borders but she also may be forced to insist that states not do so, since sending aid abroad is a better way to rescue those most imperiled by poverty.

Even if legitimate states have no duty to open their borders to the world's poor, however, surely it would be unconscionable for a state to slam its doors on people desperately fleeing unjust regimes. After all, even authors like Walzer, who are in general prepared to defend a state's right to control its membership, make an exception for refugees.²⁵ The core idea behind this exception is that, unlike those who merely lack exportable resources, some asylum seekers are actively threatened by their states, and thus they cannot be helped by an international transfer of goods; their only escape from peril is to be granted asylum.

As implausible as it might initially seem, I suggest that, even in cases of asylum seekers desperately in need of a political safe haven, a state is not required to take them in. I adopt this stance not because I am unmoved by the plight of asylum seekers but because I am not convinced that the only way to help victims of political injustice is by sheltering them in one's political territory. In my view, these people might also be

24. Miller, "Immigration: The Case for Limits," 198–99. Thomas Pogge and Eric Cavallero have offered similar arguments. See Pogge's "Migration and Poverty," in : *Citizenship and Exclusion*, ed. Veit M. Bader (Houndmills: Macmillan, 1997), 12–27; and Cavallero's "An Immigration-Pressure Model of Global Distributive Justice," *Politics, Philosophy and Economics* 5 (2006): 97–127.

25. It is important to note, though, that those who make an exception for refugees (as defined by international law) apparently cannot do so on principled grounds. As theorists like Andrew Shacknove and Michael Dummett have pointed out, restricting the status of refugees to those who have crossed an international border because of a well-founded fear of persecution is morally arbitrary. See Andrew Shacknove, "Who Is a Refugee?" *Ethics* 95 (1985): 274–84; and Michael Dummett, *On Immigration and Refugees* (New York: Routledge, 2001).

helped in something like the fashion in which wealthy societies could choose to assist impoverished foreigners: by, as it were, exporting justice. Admittedly, one cannot ship justice in a box, but one can intervene, militarily if necessary, in an unjust political environment to ensure that those currently vulnerable to the state are made safe in their homelands.²⁶ Let me be clear: I am not suggesting that this is always easy or even advisable, nor do I assert that states are necessarily obligated to take this course of action. I claim instead that where asylum seekers are genuinely left vulnerable because their government is either unable or unwilling to protect their basic rights, then their government is illegitimate, it has no claim to political self-determination, and thus it stands in no position to protest if a third party were to intervene on behalf of (some of) its constituents. Think, for instance, of the Kurds in Iraq. One way to help them is to allow them to emigrate en masse. Another option, though, is to use military force to create a safe haven and no-fly zone in Northern Iraq. And since the Iraqi government was the party threatening the Kurds, it had no right to object to this interference with its sovereignty. I suspect that Walzer stops short of this conclusion only because he wrongly, I think, respects the political self-determination of virtually all states, even those persecuting asylum seekers.²⁷

Walzer and I diverge on this point, then, not because I am less impressed than he by the plight of asylum seekers but because he is more impressed than I by the claims to political self-determination of failed and rogue states, those regimes either unable or unwilling to secure their citizens' basic moral rights. Thus, I once again conclude that affluent societies have a duty to help but that it is a disjunctive duty: just as global poverty requires wealthy states to either export aid or import unfortunate people, the presence of those desperately seeking political asylum renders those of us in just political communities duty bound either to grant asylum or to ensure that these refugees no longer need fear their domestic regimes. Miller seems to me to get it just right when he suggests: "The lesson for other states, confronted with people whose lives are less than decent, is that they have a choice: they must either ensure that the basic rights of such people are protected in the places where they live—by aid, by intervention, or by some other means—or they must help them to move to other communities where

26. Of course, interventions will typically take time, and in these cases the intervening state should not return the refugees to their home state (at least without protecting them) until the intervention is successfully completed.

27. For more on the permissibility of armed humanitarian intervention (as well as a more expanded critique of Walzer's position), see Andrew Altman and Christopher Heath Wellman, "From Humanitarian Intervention to Assassination," *Ethics* 118 (2008): 228–57.

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their lives will go better. Simply shutting one's borders and doing nothing else is not a morally defensible option here."²⁸

Before turning to what might be called the "libertarian" case for open borders, I would like to emphasize that nothing in the preceding critique of the egalitarian case for open borders is intended as a rejection of egalitarianism or as a defense of the status quo. On the contrary, I believe that most of us in affluent societies have pressing restitutive, samaritan, and egalitarian duties to do considerably more to help the masses of people in the world tragically imperiled by poverty, and I even think that one good way to provide this assistance is to allow more immigrants from poorer countries. If sound, the arguments of this section establish merely that egalitarian considerations do not by themselves generate a moral duty which requires wealthy countries to open their borders, in part because the egalitarian case for open borders depends upon a suspect theory of equality, but also because wealthy countries have the discretion to discharge their distributive responsibilities in other manners.

III. THE LIBERTARIAN CASE FOR OPEN BORDERS

To motivate the libertarian case for open borders, Carens imagines the following scenario. "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."²⁹ As this example illustrates, libertarian arguments against restricting immigration can take either of two forms, depending upon whether they focus on property rights or rights to free movement. The former emphasizes the rights of those within the state and contends that limiting immigration violates individual property owners' rights to invite foreigners to visit their private property. The latter stresses the rights of foreigners, claiming that closing territorial borders wrongly restricts an individual's right to freedom of movement.

According to the first type of argument, states may not limit immigration because doing so wrongly restricts their constituents' rights to private property. The appeal of this idea is apparent: if a farmer owns a piece of property, then she occupies a position of moral dominion over that land which gives her the discretion to determine who may and who may not enter that land. If the farmer's government denies foreigners access to its political territory, however, then it thereby effectively denies the farmer the right to invite foreigners onto her land.

28. Miller, "Immigration: The Case for Limits," 198.

29. Carens, "Aliens and Citizens: The Case for Open Borders," 253.

Thus, since a state cannot limit immigration to its territory without also limiting its constituents' property rights, political communities clearly are not morally entitled to control who crosses their borders.

It is worth noting that this argument is not skeptical of the moral importance of freedom of association; it merely questions why the state should get to enjoy this right when its doing so necessarily limits the ability of its individual constituents to do so. In a conflict between an individual's right versus a state's right, a libertarian will typically argue that the individual's right should take precedence. When the state as a whole gets to limit immigration, however, its doing so effectively curtails the rights of its citizens to unilaterally invite foreigners onto their land. And because inviting others to join one on one's privately owned land is one type of freedom of association, it is impossible to grant a state the right to control its borders without stripping property owners of their rights to freedom of association. So if either party should have priority in claiming the right to freedom of association, it is the individual, not the state.

In response, I concede that there is a conflict between a state's sovereignty over its territory and an individual property owner's dominion over her land, but in this case I am inclined to favor the claims of a (duly limited) state. I am a staunch defender of individual self-determination, but the crucial point here is that one cannot consistently insist that property rights are totally unlimited without committing oneself to anarchism. This is because political states are functionally incompatible with extending unlimited dominion to their constituents. States must be sufficiently territorially contiguous in order to perform their requisite functions, and achieving contiguity requires them to nonconsensually coerce all those within their territorial borders.³⁰ Thus, while it is perfectly intelligible to claim that individual dominion should always take precedence over state sovereignty, one cannot maintain this position without implicitly endorsing anarchism. To reiterate, effective political society would not be possible unless some crucial decisions were made by the group as a whole, and (as this example of the conflict between a state's controlling its territory and an individual controlling her land indicates) all areas of group sovereignty imply a corresponding lack of individual dominion. In light of this, I suggest that, in the choice

30. This inference from libertarianism to anarchism is admittedly very quick. I defend this claim at greater length in my essay "Liberalism, Samaritanism and Political Legitimacy," *Philosophy & Public Affairs* 25 (1996): 211–37. Very briefly, though, notice that even the most minimal state must nonconsensually force all constituents within the territory to do at least two things: (1) defer to the state's judgments regarding criminal punishments (e.g., individuals must refrain from vigilante justice) and (2) pay taxes so that the state has enough money to maintain its monopolistic coercive power over the criminal law.

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between unlimited property rights and the anarchy it entails versus limited property rights and the statism it allows, one should favor the latter.

Of course, one might eschew anarchism and still suggest that individual property rights take precedence over a state's right to control its borders, but this position would require an additional argument designed specifically to show why the individual should take precedence over the group in matters of freedom of association. We should not presume in advance that such an argument could not be furnished, but there are several reasons to be skeptical of this approach.

To begin, notice that, in matters unrelated to immigration, we take it for granted that the group as a whole has a right to freedom of association. Consider again, for instance, Canada's participation in NAFTA or Slovenia's membership in the European Union. In these cases, everyone acknowledges that Canadians as a whole must determine whether they would like to join NAFTA and that Slovenians as a group should decide whether or not Slovenia will enter the EU. If each individual's right to freedom of association must always take precedence over the group's, on the other hand, then it follows that every single Canadian had the right to veto Canada's involvement in NAFTA or a single Slovenian citizen would be entitled unilaterally to block Slovenia's membership in the EU. I presume without argument that this position is untenable. And if no one thinks that individuals have the right to veto their country's entrance into associations like NAFTA or the EU, then we seem similarly committed to denying that individuals have a right to veto their country's immigration policy.³¹

At this point one might answer that a country's limiting immigration is in principle distinct from joining NAFTA, the EU, or even the merger between East and West Germany because the latter three are all acts of association, whereas restricting immigration is a refusal to associate. The idea is that, of course an individual may not appeal to the value of freedom of association to criticize any of these mergers because each expands her possibilities for association. But this carries no implications for whether an individual might rightfully object to her state's restricting immigration, which limits the people with whom one may associate.

The distinction between expanding and limiting association is a real one, but I nonetheless doubt that it will do the necessary work. To see why, consider an uncontested secession like Norway's break from

31. A thorough-going libertarian might well deny that states are entitled to determine the terms of international trade, but of course this is not because there is anything distinctive about international trade. Such a libertarian will deny that a state has any moral dominion which each individual has not voluntarily surrendered. And since no state has garnered the morally valid consent of all of its constituents, staunch (and consistent) libertarians must reject all forms of statism.

Sweden in 1905. In this case, more than 99 percent of the Norwegians voted in favor of political divorce and Sweden as a country did not resist the separation.³² Whatever one thinks about the justifiability of state-breaking, this seems like a paradigmatic case of permissible secession. If each individual's right to freedom of association trumps the state's right to self-determination in those cases in which the group as a whole seeks to disassociate from others, however, then Norway's secession was unjustified; it was impermissible because every last Norwegian (if not also each Swede) had the right unilaterally to veto the political divorce and the plebiscite in favor of separation did not garner unanimous consent. Again, I presume without argument that this position is implausible. And if an individual's claim to freedom of association does not trump her state's right in the case of secession, there seems good reason to believe that an individual's right would be equally impotent in the realm of immigration.

A second reason to doubt that an individual's dominion over her private property takes precedence over the state's control of its territorial borders stems from the twin facts that (1) an inability to invite foreigners onto one's land is typically not an onerous imposition and (2) bringing outsiders into the political community has real consequences for one's compatriots. I will explain below why being unable to invite foreigners onto one's land is in most cases not a huge limitation of one's dominion over one's property. To appreciate why inviting foreigners to live permanently on one's property has consequences for others, one need only reflect upon the implications of the relational theory of equality outlined above. In particular, recall Walzer's conclusion that affluent societies have no obligation to invite guest workers into their territory but that they are obligated to treat as political equals all those they do admit. The idea here is that once an individual enters the territory and becomes subject to the dictates of the state, she becomes more vulnerable than outsiders to political oppression.³³ Thus, Walzer rightly concludes that all those who enter the territory for an indefinite period must be welcomed as equal members of the political community. If so, however, this explains why a person's inviting foreigners onto her land has important moral implications for all of the state's citizens. This invitation

32. In a referendum in August of 1905, 368,392 Norwegians voted in favor of political divorce and only 184 voted against.

33. Walzer (*Spheres of Justice*, 59) characterizes the situation of guest workers as follows: "These guests experience the state as a pervasive and frightening power that shapes their lives and regulates their every move—and never asks for their opinion. Departure is only a formal option; deportation, a continuous practical threat. As a group, they constitute a disenfranchised class. They are typically an exploited or oppressed class as well, and they are exploited or oppressed at least in part because they are disenfranchised, incapable of organizing effectively for self-defense."

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does not merely entitle the invitee to stay on one's land; it morally requires all of one's fellow citizens to share the benefits of equal political standing with this new member of the political community. And because the costs of extending the benefits of political membership can be substantial, it makes sense that each individual should not have the right unilaterally to invite in as many foreigners as she would like. It is only appropriate that the group as a whole should decide with whom the benefits of membership should be shared.³⁴

Although I think the preceding considerations show why the libertarian is wrong to assume that the state's right to freedom of association must give way to individual property rights, I do think there is room for an intermediate position that accommodates in a principled way both associational and property rights, giving each right its due. And this is important because a state should not restrict individual dominion any more than is necessary. In particular, while I am skeptical that an individual has the right to invite foreigners to live on her land indefinitely, I do not see why property owners may not invite outsiders to visit for limited periods. In fact, one need not even object to a guest worker arrangement, as long as the worker does not stay too long.³⁵ Indeed, this strikes me as an appealing compromise, because allowing for these sponsored visits gives property owners greater dominion over their land than the status quo without creating any additional imposition upon their compatriots (since citizens are not obligated to extend the benefits of political membership to those foreigners visiting for a limited amount of time). What is more, this solution enables us to avoid the standard practical problem of foreigners entering the country on a limited visa and then staying indefinitely, because the state could require the property owner to be responsible (putting up collateral, perhaps) for all those she invites to visit. In the end, then, I am inclined to conclude that a property owner's dominion over her land might well entitle her to invite foreigners to visit her land but that it would not justify a more sweeping curtailment of a state's right to control immigration into its territory. And once we make room for this additional right for property owners, one gets a better sense of why the remaining

34. One might object that this argument presumes a relational theory of equality, which a libertarian might reject. I do not worry about this argument's reliance upon the relational theory of equality, however, both because those drawn to libertarianism are likely to be much less uncomfortable with relational egalitarianism than with luck egalitarianism and because one cannot summarily dismiss all concerns regarding inequality on the grounds that they require some type of positive rights unless one is willing to embrace anarchism (since statism also requires the existence of positive rights).

35. I suspect that Walzer himself would not even object to this, since presumably a key factor triggering his concern about the Turkish guest workers in Germany was the extended duration of their stays.

restrictions upon their dominion over their property is rarely terribly onerous.

At this stage a libertarian might concede all that I have argued so far and still insist that states may not restrict immigration, not because doing so unjustifiably limits the property rights of its citizens but because it violates foreigners' rights to freedom of movement. Surely each of us has a right to migrate as we please; if not, then states would be justified prohibiting emigration or even free migration within the country. And just as our rights to freedom of movement allow us to leave or travel within our country, they entitle us to enter other countries as well. As Carens emphasizes: "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 basic that it overrides the claims of local political communities, on what grounds can we restrict freedom of movement across states?"³⁶ Thus, unless one is prepared to accept a state's right to deny either emigration or internal migration, consistency appears to demand that states not limit immigration either.³⁷

My response to this second prong of the libertarian case for open borders is analogous to my arguments above: I concede that there is a right to freedom of movement, and I certainly believe that states must take great care not to violate the individual rights of either constituents or foreigners, but I do not think that the right to free movement is perfectly general and absolute. My right to freedom of movement does not entitle me to enter your house without your permission, for instance, so why think that this right gives me a valid claim to enter a foreign country without that country's permission? Some might counter that this response essentially denies the right in question, but this is not so. No one says that I am denied my right to marriage merely because I cannot unilaterally choose to marry you against your will. So, just as my freedom of association in the marital realm remains intact despite your right to not associate with me, there seems no reason why my right to freedom of movement does not similarly remain intact despite foreign states' retaining the right exclude me. David Miller captures this point nicely:

The right of exit is a right held against a person's current state of residence not to prevent her from leaving the state (and perhaps

36. Carens, "Aliens and Citizens: The Case for Open Borders," 267.

37. As Phillip Cole puts it, "one cannot consistently assert that there is a fundamental human right to emigration but no such right to immigration; the liberal asymmetry position is not merely ethically, but also conceptually, incoherent" (*Philosophies of Exclusion: Liberal Political Theory and Immigration* [Edinburgh, Edinburgh University Press, 2000] , 46).

aiding her in that endeavor by, say, providing a passport). But it does not entail an obligation on any other state to let that person in. Obviously if no state were ever to grant entry rights to people who were not already its citizens, the right of exit would have no value. But suppose that states are generally willing to consider entry applications from people who might want to migrate, and that most people would get offers from at least one such state: then the position as far as the right of exit goes is pretty much the same as with the right to marry, where by no means everyone is able to wed the partner they would ideally like to have, but most have the opportunity to marry *someone*.³⁸

What is more, there is no inconsistency in insisting upon freedom of emigration and internal migration, on the one hand, and allowing states to restrict immigration, on the other hand. First and most important, distinguishing between immigration and emigration makes perfect sense given that freedom of association includes the option not to associate; one may unilaterally emigrate because one is never forced to associate with others, but one may not unilaterally immigrate because neither are others required to associate with you. Second, as we have seen above, immigration is importantly different because, unlike either emigration or internal migration, it can involve costs to those who must include you as an equal in their political community.³⁹ Third, a state that denies emigration (or perhaps even one that denies internal migration, for that matter) treats its citizens as tantamount to political property insofar as it forces them to remain in the union, regardless of their preferences. As unpleasant as it might be to be denied the right to enter a country, on the other hand, this rejection no more treats one like property than does a romantic partner who declines one's marriage proposal. Thus, there appears to be nothing inconsistent about requiring states to permit open emigration while simultaneously allowing them to limit immigration.

Notice, though, the following: just as I earlier suggested amending the status quo to give greater dominion to property owners, here we might explore ways to create more room for those interested in entering foreign countries. In particular, given that the pivotal issue involves the twin facts that (1) countries may not admit people for indefinite periods without extending them equal membership rights and (2) groups of citizens have the right to control membership in their political communities, this suggests that even legitimate states do not necessarily have the right to bar foreigners from visiting for a duly limited period. The

38. Miller, "Immigration: The Case for Limits," 197.

39. I should acknowledge that, when the level of welfare benefits varies considerably from province to province, the stakes of internal migration can also be much higher.

host countries might have a valid concern about huge numbers of visitors illegally staying beyond the terms of their visa, but, again, it is not clear that this worry could not be satisfactorily addressed by some mechanism such as the visitor putting up sufficient collateral. If so, then the arguments for limiting immigration offered in this article would leave much more room for freedom of movement than the status quo, since it would allow most people to travel freely around the world (as tourists, to family or doctors, or even to study or work) as long as they did not stay indefinitely in some place without the permission of the host political community.

Despite this important qualification, I am no more impressed by the second prong of the libertarian case for open borders than by the first. In both instances, the libertarian gestures toward an important right, but the existence of this right could defeat the presumptive case for a state's claim to control its borders only if the right is wrongly presumed to be perfectly general and absolute. In the end, then, neither the egalitarian nor the libertarian case for open borders undermines the case that can be made on behalf of a legitimate state's right to restrict immigration.

IV. A QUESTION OF CRITERIA

In *Who Are We?* Samuel Huntington worries not only about the raw number of immigrants entering the United States but is especially concerned that so many are from Mexico.⁴⁰ He views the United States as defined not just in terms of its distinctive American creed but also by its Anglo-Protestant culture. Thus, unless it more stringently limits the flow of Mexican immigrants, America will forever lose its distinctive—and distinctly valuable—character. This provocative proposal raises a difficult and important question, a question to which Walzer and Miller give two distinct answers, neither of which I find fully satisfying. Assuming that states have the right to control who, if anyone, may enter their territories, does it follow that a country may adopt a policy that explicitly excludes people based upon their race, religion or ethnicity? What if a country wanted to admit only whites, for instance?⁴¹ This question is especially difficult, I think, because, if the state is genuinely at liberty to exclude everyone, how could an applicant righteously complain about not being admitted? On the other hand, most take it for granted that, even if a business is not required to hire anyone, it may not adopt a

40. Samuel Huntington, *Who Are We?* (New York: Simon & Schuster, 2004).

41. Although this is less clear, it may be that a country which de facto discriminates according to these types of criteria may be just as blameworthy as one which has a de jure policy to do so. See, e.g., Dummett's discussion of British immigration practices in *On Immigration and Refugees*.

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policy to hire only whites. And if a company cannot select employees in this way, presumably a state may not screen potential immigrants according to this type of criterion.

Walzer explores this question in terms of "White Australia," Australia's erstwhile policy to admit only whites. Walzer concludes that Australians would in fact be permitted to admit only whites, but only if they ceded a portion of their territory to those who needed it to survive. He writes: "Assuming, then, that there actually is superfluous land, the claim of necessity would force a political community like that of White Australia to confront a radical choice. Its members could yield land for the sake of homogeneity, or they could give up homogeneity (agree to the creation of a multiracial society) for the sake of the land. And those would be their only choices. White Australia could survive only as Little Australia."⁴² Thus, Walzer appears to believe that, while Australia was not at liberty to simply turn its back upon needy nonwhites, there is nothing inherently unjust about an immigration policy that discriminates based upon race.

Miller diverges from Walzer on this question, arguing that, even if the state is at liberty to exclude everyone, it wrongs potential applicants for admission by excluding them based on a category like race. As he puts it:

I have tried to hold a balance between the interest that migrants have in entering the country they want to live in, and the interest that political communities having (*sic*) in determining their own character. Although the first of these interests is not strong enough to justify a right of migration, it is still substantial, and so the immigrants who are refused entry are owed an explanation. To be told that they belong to the wrong race or sex (or have the wrong color) is insulting, given that these features do not connect to anything of real significance to the society they want to join. Even tennis clubs are not entitled to discriminate among applicants on grounds such as these.⁴³

I must admit to being torn between these two views. I am tempted by Walzer's position because, as much as I abhor racism, I believe that racist individuals cannot permissibly be forced to marry someone (or adopt a child) outside of their race. And if the importance of freedom of association entitles racist individuals to marry exclusively within their race, why does it not similarly entitle racist citizens to exclude immigrants based upon race? At the very least, one must explain why the immigration case is dissimilar to the marital one. In the end, though, I reject Walzer's

42. Walzer, *Spheres of Justice*, 47.

43. Miller, "Immigration: The Case for Limits," 204.

position because I think that such an explanation can be furnished. Yet I am also not entirely persuaded by Miller's explanation.

As noted above, Miller suggests that a state may not exclude immigrants based upon a category like race because doing so wrongly insults applicants of the rejected race. I am not sure that this account suffices, though. I do not doubt that the rejected applicants might feel horribly insulted, but I am not convinced that they have a right not to be insulted in this way. By analogy, I would expect a black person to be insulted by a racist white who would never consider marrying someone who is black, but I would not say that this black person has a right not to be insulted in this way. Because of these concerns, I would like to suggest an alternative explanation as to why states may not limit immigration according to racist criteria.⁴⁴ In doing so, I will focus upon the rights of those already within the political community rather than the rights of those who might want to enter. I shift the emphasis from foreign immigrants to citizens of the state whose policy is in question because, given the relational theory of equality detailed above, it makes sense to presume that we may have responsibilities to our compatriots that we do not equally owe to foreigners.⁴⁵ In particular, we have a special duty to respect our fellow citizens as equal partners in the political cooperative. With this in mind, I suggest that a country may not institute an immigration policy which excludes entry to members of a given race because such a policy would wrongly disrespect those citizens in the dispreferred category.

Even if we assume that there is a special responsibility not to treat one's compatriots as less than equal partners, someone might still question how an immigration policy (which cannot evict any current citizens) could possibly affect any of a state's constituents. To see how such a policy might disrespect existing citizens, consider the analogous situation from the familial context. Rather than focusing upon racists who are unwilling to marry outside of their race, imagine a family of two white parents with two children, one white and another black. (For the

44. The view I advance here is similar to that which Michael Blake develops in "Immigration," in *A Companion to Applied Ethics*, ed. R.G. Frey and Christopher Heath Wellman (Malden, MA: Blackwell, 2003), 224–37.

45. My favoring the relational theory of equality also explains why I do not accept Carens's rejection of Walzer's view. Carens invokes the distinction between the private and public spheres to explain why, while you "can pick your friends on the basis of whatever criteria you want," you may not invoke categories like race to discriminate among applicants for immigration ("Aliens and Citizens: The Case for Open Borders," 267). For reasons that the relational theory of equality helps illuminate, though, even if one should not use racial categories to discriminate among applicants (for positions within the public sphere) within a given community, it does not follow that these categories may not be used when deciding who should get in to this community.

purposes of this thought-experiment, imagine that white parents sometimes gave birth to black children, and vice versa.) Now, imagine the parents announcing that, as much as they would love to have a third child, they have decided against it for fear that she might be black. I take it as obvious how hurtful this announcement could be to the existing black child, even though the decision not to have any additional children obviously does not threaten his or her chances of coming into existence. In light of this analogy, it is not difficult to see how black Australians, for instance, might feel disrespected by an immigration policy banning entry to nonwhites. Even though this policy in and of itself in no way threatens blacks with expulsion, it sends a clear message that, qua blacks, they are not equally valued as partners in the political union. As Blake comments: "Even if a hypothetical pure society could close the borders to preserve itself, a modern multi-ethnic democracy could not do so without implicitly treating some individuals already present within the society as second class citizens. Seeking to eliminate the presence of a given group from your society by selective immigration is insulting to the members of that group already present."⁴⁶ Thus, unless Australia were already composed exclusively of white constituents (and no state is completely homogenous), it would be impermissible to institute immigration policies designed to approximate a "White Australia," not because such policies might insult potential black immigrants (though no doubt it would) but because they would fail to treat nonwhite Australians as equals. And because no state is completely without minorities who would be disrespected by an immigration policy which invoked racial/ethnic/religious categories, no state may exclude potential immigrants on these types of criteria.

A possible exception to this rule might be a religious state like Israel. When a country is designed as a state for Jews, it might be thought entirely appropriate to deny non-Jews entry. I am not so sure about this conclusion, however, because I do not see why a state's being designed to cater especially to a specific group should license it to disrespect those subjects not in the favored group. Thus, assuming that I am right that barring all but Jewish immigrants would treat the current non-Jewish citizens as less than equal members of the political community, only a state that was completely Jewish could permissibly adopt such an anti-non-Semitic immigration policy.

Of course, in the case of Israel, the moral horror of the holocaust makes it tempting to accept an immigration policy that excludes non-Semites. After all, as Hannah Arendt famously emphasized, an early but crucial step toward rendering the Jews vulnerable to inhumane treatment was stripping them of their citizenship. Against the backdrop of

46. Blake, "Immigration," 233.

this tragic history, the idea of a state prepared to act as a safe haven for all and only Jews might seem unobjectionable. In my view, however, while this type of consideration could well justify Israel's controversial Law of Return (which automatically grants admission to all Jews), it would not justify Israel's admitting all and only Jews.⁴⁷ An immigration policy that summarily rejected all non-Jews might be acceptable for a state which included no non-Jewish subjects, but because roughly 20 percent of Israel's population is not Jewish, it may not adopt such an immigration policy. Even a wrong that follows on the heels of the utterly horrific wrong of the holocaust (like all second wrongs) does not make a right. To emphasize: whether or not we are sympathetic to the idea of a state designed especially to serve a specific racial, ethnic, or religious constituency, such a state is not exempt from the requirement to treat all of its subjects as equal citizens. So if I am right that restricting immigration according to racial, ethnic, or religious criteria wrongs the current subjects in the banned groups, then only a state completely devoid of people in the banned category could permissibly institute this type of immigration policy. As a result, Australia is not free to reject potential immigrants based upon their race, and even Israel is not free to exclude non-Jews simply because they are not Jewish.

CONCLUSION

In this article I have tried first to construct a presumptive case in favor of a state's right to set its own immigration policy and then to defend this *prima facie* case against the formidable arguments that have been made on behalf of open borders. If my arguments are sound, then we should conclude that, even if egalitarians are right that those of us in wealthy societies have demanding duties of global distributive justice and even if libertarians are correct that individuals have rights both to freedom of movement and to control their private property, legitimate states are entitled to reject all potential immigrants, even those desperately seeking asylum from corrupt governments.

47. Defenders of Israel's Law of Return often cite the Convention on the Elimination of All Forms of Racial Discrimination Article I (3), which allows states to give a group preferential treatment in immigration (as long as no group is discriminated against). More important, in my view, is the historical context in which the Law of Return was enacted. Given how many Jews were massacred for lack of a political safe haven, it is altogether understandable that Israel would decide, with the Knesset's first law, to open its doors to Jewish people everywhere. (Here we might invoke the Convention on the Elimination of All Forms of Racial Discrimination Article I (4), which permits preferential treatment as a remedy for past discrimination.)

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QUERIES TO THE AUTHOR

1. AU: You requested on p. 6, line 17 that “nation-state” be changed to “political state. I have made that same change in footnote 5—correct?