

## CHAPTER THIRTEEN

# Immigration: The Case for Limits

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It is not easy to write about immigration from a philosophical perspective – not easy at least if you are writing in a society (and this now includes most societies in the Western world) in which immigration has become a highly charged political issue. Those who speak freely and openly about the issue tend to come from the far Right: they are fascists or racists who believe that it is wrong in principle for their political community to admit immigrants who do not conform to the approved cultural or racial stereotype. Most liberal, conservative, and social democratic politicians support quite strict immigration controls in practice, but they generally refrain from spelling out the justification for such controls, preferring instead to highlight the practical difficulties involved in resettling immigrants, and raising the spectre of a right-wing backlash if too many immigrants are admitted. Why are they so reticent? One reason is that it is not easy to set out the arguments for limiting immigration without at the same time projecting a negative image of those immigrants who have already been admitted, thereby playing directly into the hands of the far Right ideologues who would like to see such immigrants deprived of their full rights of citizenship and/or repatriated to their countries of origin. Is it possible *both* to argue that every member of the political community, native or immigrant, must be treated as a full citizen, enjoying equal status and the equal respect of his or her fellows, *and* to argue that there are good grounds for setting upper bounds both to the rate and the overall numbers of immigrants who are admitted? Yes, it is, but it requires dexterity, and always carries with it the risk of being misunderstood.

In this chapter, I shall explain why nation-states may be justified in imposing restrictive immigration policies if they so choose. The argument is laid out in three stages. First, I canvass three arguments that purport to justify an unlimited right of migration between states and show why each of them fails. Second, I give two reasons, one having to do with culture, the other with population, that can justify states in

limiting immigration. Third, I consider whether states nonetheless have a duty to admit a special class of potential immigrants – namely refugees – and also how far they are allowed to pick and choose among the immigrants they do admit. The third section, in other words, lays down some conditions that an ethical immigration policy must meet. But I begin by showing why there is no general right to choose one's country of residence or citizenship.

## **Can There Be an Unlimited Right of Migration Between States?**

Liberal political philosophers who write about migration usually begin from the premise that people should be allowed to choose where in the world to locate themselves unless it can be shown that allowing an unlimited right of migration would have harmful consequences that outweigh the value of freedom of choice (see, for instance, Carens, 1987; Hampton, 1995). In other words, the central value appealed to is simply freedom itself. Just as I should be free to decide who to marry, what job to take, what religion (if any) to profess, so I should be free to decide whether to live in Nigeria, or France, or the USA. Now these philosophers usually concede that in practice some limits may have to be placed on this freedom – for instance, if high rates of migration would result in social chaos or the breakdown of liberal states that could not accommodate so many migrants without losing their liberal character. In these instances, the exercise of free choice would become self-defeating. But the presumption is that people should be free to choose where to live unless there are strong reasons for restricting their choice.

I want to challenge this presumption. Of course there is always *some* value in people having more options to choose between, in this case options as to where to live, but we usually draw a line between *basic* freedoms that people should have as a matter of right and what we might call *bare* freedoms that do not warrant that kind of protection. It would be good from my point of view if I were free to purchase an Aston Martin tomorrow, but that is not going to count as a morally significant freedom – my desire is not one that imposes any kind of obligation on others to meet it. In order to argue against immigration restrictions, therefore, liberal philosophers must do more than show that there is some value to people in being able to migrate, or that they often *want* to migrate (as indeed they do, in increasing numbers). It needs to be demonstrated that this freedom has the kind of weight or significance that could turn it into a right, and that should therefore prohibit states from pursuing immigration policies that limit freedom of movement.

I shall examine three arguments that have been offered to defend a right to migrate. The first starts with the general right to freedom of movement, and claims that this must include the freedom to move into, and take up residence in, states other than one's own. The second begins with a person's right to *exit* from her current state – a right that is widely recognized in international law – and claims that a right of exit is pointless unless it is matched by a right of entry into other states. The third appeals to international distributive justice. Given the huge inequalities in living standards that currently exist between rich and poor states, it is said, people who live in poor

states have a claim of justice that can only be met by allowing them to migrate and take advantage of the opportunities that rich states provide.

The idea of a right to freedom of movement is not in itself objectionable. We are talking here about what are usually called basic rights or human rights, and I shall assume (since there is no space to defend the point) that such rights are justified by pointing to the vital interests that they protect (Griffin, 2001; Nickel, 1987; Shue, 1980). They correspond to conditions in whose absence human beings cannot live decent lives, no matter what particular values and plans of life they choose to pursue. Being able to move freely in physical space is just such a condition, as we can see by thinking about people whose legs are shackled or who are confined in small spaces. A wider freedom of movement can also be justified by thinking about the interests that it serves instrumentally: if I cannot move about over a fairly wide area, it may be impossible for me to find a job, to practice my religion, or to find a suitable marriage partner. Since these all qualify as vital interests, it is fairly clear that freedom of movement qualifies as a basic human right.

What is less clear, however, is the physical extent of that right, in the sense of how much of the earth's surface I must be able to move to in order to say that I enjoy it. Even in liberal societies that make no attempt to confine people within particular geographical areas, freedom of movement is severely restricted in a number of ways. I cannot, in general, move to places that other people's bodies now occupy (I cannot just push them aside). I cannot move on to private property without the consent of its owner, except perhaps in emergencies or where a special right of access exists – and since most land is privately owned, this means that a large proportion of physical space does not fall within the ambit of a *right* to free movement. Even access to public space is heavily regulated: there are traffic laws that tell me where and at what speed I may drive my car, parks have opening and closing hours, the police can control my movements up and down the streets, and so forth. These are very familiar observations, but they are worth making simply to highlight how hedged about with qualifications the existing right of free movement in liberal societies actually is. Yet few would argue that because of these limitations, people in these societies are deprived of one of their human rights. Some liberals might argue in favor of expanding the right – for instance, in Britain there has been a protracted campaign to establish a legal right to roam on uncultivated privately owned land such as moors and fells, a right that will finally become effective by 2005. But even the advocates of such a right would be hard-pressed to show that some vital interest was being injured by the more restrictive property laws that have existed up to now.

The point here is that liberal societies in general offer their members *sufficient* freedom of movement to protect the interests that the human right to free movement is intended to protect, even though the extent of free movement is very far from absolute. So how could one attempt to show that the right in question must include the right to move to some other country and settle there? What vital interest requires the right to be interpreted in such an extensive way? Contingently, of course, it may be true that moving to another country is the only way for an individual to escape persecution, to find work, to obtain necessary medical care, and so forth. In these circumstances the person concerned may have the right to move, not to any state that she chooses, but to *some* state where these interests can be protected. But here the

right to move serves only as a remedial right: its existence depends on the fact that the person's vital interests cannot be secured in the country where she currently resides. In a world of decent states – states that were able to secure their citizens' basic rights to security, food, work, medical care, and so forth – the right to move across borders could not be justified in this way.

Our present world is not, of course, a world of decent states, and this gives rise to the issue of refugees, which I shall discuss in the final section of this chapter. But if we leave aside for the moment cases where the right to move freely across borders depends upon the right to avoid persecution, starvation, or other threats to basic interests, how might we try to give it a more general rationale? One reason a person may want to migrate is in order to participate in a culture that does not exist in his native land – for instance he wants to work at an occupation for which there is no demand at home, or to join a religious community which, again, is not represented in the country from which he comes. These might be central components in his plan of life, so he will find it very frustrating if he is not able to move. But does this ground a right to free movement across borders? It seems to me that it does not. What a person can legitimately demand access to is an *adequate* range of options to choose between – a reasonable choice of occupation, religion, cultural activities, marriage partners, and so forth. Adequacy here is defined in terms of generic human interests rather than in terms of the interests of any one person in particular – so, for example, a would-be opera singer living in a society which provides for various forms of musical expression, but not for opera, can have an adequate range of options in this area even though the option she most prefers is not available. So long as they adhere to the standards of decency sketched above, all contemporary states are able to provide such an adequate range internally. So although people certainly have an *interest* in being able to migrate internationally, they do not have a basic interest of the kind that would be required to ground a human right. It is more like my interest in having an Aston Martin than my interest in having access to *some* means of physical mobility.

I turn next to the argument that because people have a right to leave the society they currently belong to, they must also have a right to enter other societies, since the first right is practically meaningless unless the second exists – there is no unoccupied space in the world to exit *to*, so unless the right to leave society A is accompanied by the right to enter societies B, C, D, etc., it has no real force (Cole, 2000; Dummett, 1992).

The right of exit is certainly an important human right, but once again it is worth examining why it has the significance that it does. Its importance is partly instrumental: knowing that their subjects have the right to leave inhibits states from mistreating them in various ways, so it helps to preserve the conditions of what I earlier called “decency.” However, even in the case of decent states the right of exit remains important, and that is because by being deprived of exit rights individuals are forced to remain in association with others whom they may find deeply uncongenial – think of the militant atheist in a society where almost everyone devoutly practices the same religion, or the religious puritan in a society where most people behave like libertines. On the other hand, the right of exit from state A does not appear to entail an unrestricted right to enter any society of the immigrant's choice – indeed, it seems that it can be exercised provided that at least one other society, society B say, is willing to

take him in. It might seem that we can generate a general right to migrate by iteration: the person who leaves A for B then has the right to exit from B, which entails that C, at least, must grant him the right to enter, and so forth. But this move fails, because our person's right of exit from A depended on the claim that he might find continued association with the other citizens of A intolerable, and he cannot plausibly continue making the same claim in the case of each society that is willing to take him in. Given the political and cultural diversity of societies in the real world, it is simply unconvincing to argue that only an unlimited choice of which one to join will prevent people being forced into associations that are repugnant to them.

It is also important to stress that there are many rights whose exercise is contingent on finding partners who are willing to cooperate in the exercise, and it may be that the right of exit falls into this category. Take the right to marry as an example. This is a right held against the state to allow people to marry the partners of their choice (and perhaps to provide the legal framework within which marriages can be contracted). It is obviously not a right to have a marriage partner provided – whether any given person can exercise the right depends entirely on whether he is able to find someone willing to marry him, and many people are not so lucky. 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 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 states are generally willing to consider entry applications from people who 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*.

So once the right of exit is properly understood, it does not entail an unlimited right to migrate to the society of one's choice. But now, finally, in this part of the chapter, I want to consider an argument for migration rights that appeals to distributive justice. It begins from the assumption of the fundamental moral equality of human beings. It then points out that, in the world in which we live, a person's life prospects depend heavily on the society into which she happens to be born, so that the only way to achieve equal opportunities is to allow people to move to the places where they can develop and exercise their talents, through employment and in other ways. In other words, there is something fundamentally unfair about a world in which people are condemned to relative poverty through no fault of their own when others have much greater opportunities, whereas if people were free to live and work wherever they wished, then each person could choose whether to stay in the community that had raised him or to look for a better life elsewhere.

The question we must ask here is whether justice demands equality of opportunity at the global level, as the argument I have just sketched assumes, or whether this principle only applies *inside* societies, among those who are already citizens of the same political community (see, for instance, Caney, 2001). Note to begin with that embracing the moral equality of all human beings – accepting that every human being is equally an object of moral concern – does not yet tell us what we are required to

do for them as a result of that equality. One answer *might* be that we should attempt to provide everyone with equal opportunities to pursue their goals in life. But another, equally plausible, answer is that we should play our part in ensuring that their basic rights are respected, where these are understood as rights to a certain minimum level of security, freedom, resources, and so forth – a level adequate to protect their basic interests, as suggested earlier in this chapter. These basic rights can be universally protected and yet some people have greater opportunities than others to pursue certain aims, as a result of living in more affluent or culturally richer societies.

Is it nonetheless unfair if opportunities are unequal in this way? That depends upon what we believe about the *scope* of distributive justice, the kind of justice that involves comparing how well different people are faring by some standard. According to Michael Walzer, “the idea of distributive justice presupposes a bounded world within which distributions take place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves” (1983: 31). The main reason that Walzer gives for this view is that the very goods whose distribution is a matter of justice gain their meaning and value within particular political communities. Another relevant consideration is that the stock of goods that is available at any time to be divided up will depend on the past history of the community in question, including decisions about, for example, the economic system under which production will take place. These considerations tell against the view that justice at global level should be understood in terms of the equal distribution, at any moment, of a single good, whether this good is understood as “resources” or “opportunity” or “welfare” (Miller, 1999). The basic rights view avoids these difficulties, because it is plausible to think that whatever the cultural values of a particular society, and whatever its historical record, no human being should be allowed to fall below the minimum level of provision that protects his or her basic interests.

But what if somebody does fall below this threshold? Does this not give him the right to migrate to a place where the minimum level is guaranteed? Perhaps, but it depends on whether the minimum *could* be provided in the political community he belongs to now, or whether that community is so oppressive, or so dysfunctional, that escape is the only option. So here we encounter again the issue of refugees, to be discussed in my final section. Meanwhile, 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 their lives will be better. Simply shutting one’s borders and doing nothing else is not a morally defensible option here. 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. Persisting global injustice does impose on rich states



the obligation to make a serious contribution to the relief of global poverty, but in most instances they should contribute to improving conditions of life on the ground, as it were, rather than bypassing the problem by allowing (inevitably selective) inward migration.

## Justifications for Limiting Immigration

I have shown that there is no general right to migrate to the country of one's choice. Does it follow that states have a free hand in choosing who, if anyone, to admit to membership? One might think that it does, using the analogy of a private club. Suppose that the members of a tennis club decide that once the membership roster has reached 100, no new members will be taken in. They do not have to justify this decision to would-be members who are excluded: if they decide that 100 members is enough, that's entirely their prerogative. But notice what makes this argument convincing. First, the benefit that is being denied to new applicants is the (relatively superficial) benefit of being able to play tennis. Second, it's a reasonable assumption that the rejected applicants can join another club, or start one of their own. It would be different if the tennis club occupied the only site within a 50-mile radius that is suitable for laying tennis courts: we might then think that they had some obligation to admit new members up to a reasonable total. In the case of states, the advantages that they deny to would-be immigrants who are refused entry are very substantial; and because states monopolize stretches of territory, and in other ways provide benefits that cannot be replicated elsewhere, the "go and start your own club" response to immigrants is not very plausible.

So in order to show that states are entitled to close their borders to immigrants, we have to do more than show that the latter lack the human right to migrate. Potential immigrants have a *claim* to be let in – if nothing else they usually have a strong *desire* to enter – and so any state that wants to control immigration must have good reasons for doing so. In this section, I shall outline two good reasons that states may have for restricting immigration. One has to do with preserving culture, the other with controlling population. I don't claim that these reasons will apply to every state, but they do apply to many liberal democracies that are currently having to decide how to respond to potentially very large flows of immigrants from less economically developed societies (other states may face larger flows still, but the political issues will be different).

The first reason assumes that the states in question require a common public culture that in part constitutes the political identity of their members, and that serves valuable functions in supporting democracy and other social goals. There is no space here to justify this assumption in any detail, so I must refer the reader to other writings where I have tried to do so (Miller, 1995 and 2000). What I want to do here is to consider how the need to protect the public culture bears upon the issue of immigration. In general terms we can say (a) that immigrants will enter with cultural values, including *political* values, that are more or less different from the public culture of the community they enter; (b) that as a result of living in that community, they will absorb some part of the existing public culture, modifying their own values in the process;

and (c) that their presence will also change the public culture in various ways – for instance, a society in which an established religion had formed an important part of national identity will typically exhibit greater religious diversity after accepting immigrants, and as a consequence religion will play a less significant part in defining that identity.

Immigration, in other words, is likely to change a society's public culture rather than destroy it. And since public cultures always change over time, as a result of social factors that are quite independent of immigration (participation in the established religion might have been declining in any case), it doesn't on the face of it seem that states have any good reason to restrict immigration on that basis. They might have reason to limit the *flow* of immigrants, on the grounds that the process of acculturation outlined above may break down if too many come in too quickly. But so long as a viable public culture is maintained, it should not matter that its character changes as a result of taking in people with different cultural values (Perry, 1995).

What this overlooks, however, is 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. They may not of course succeed: valued cultural features can be eroded by economic and other forces that evade political control. But they may certainly have good reason to try, and in particular to try to maintain cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches backward historically. Cultural continuity, it should be stressed, is not the same as cultural rigidity: the most valuable cultures are those that can develop and adapt to new circumstances, including the presence of new subcultures associated with immigrants.

Consider the example of language. In many states today the national language is under pressure from the spread of international languages, especially English. People have an incentive to learn and use one of the international languages for economic and other purposes, and so there is a danger that the national language will wither away over the course of two or three generations. If this were to happen, one of the community's most important distinguishing characteristics would have disappeared, its literature would become inaccessible except in translation, and so forth. So the states in question adopt policies to insure, for instance, that the national language is used in schools and in the media, and that exposure to foreign languages through imports is restricted. What effect would a significant influx of immigrants who did not already speak the national language have in these circumstances? It is likely that their choice of second language would be English, or one of the other international languages. So their presence would increase the incentive among natives to defect from use of the national language in everyday transactions, and make the project of language-preservation harder to carry through. The state has good reason to limit immigration, or at least to differentiate sharply among prospective immigrants between those who speak the national language and those who don't, as the government of Quebec has done in recent years.

Language isn't the only feature to which the argument for cultural continuity applies. There is an internal relationship between a nation's culture and its physical



shape – its public and religious buildings, the way its towns and villages are laid out, the pattern of the landscape, and so forth. People feel at home in a place in part because they can see that their surroundings bear the imprint of past generations whose values were recognizably their own. This doesn't rule out cultural change, but again it gives a reason for wanting to stay in control of the process – for teaching children to value their cultural heritage and to regard themselves as having a responsibility to preserve the parts of it that are worth preserving, for example. The “any public culture will do” position ignores this internal connection between the cultural and physical features of the community.

How restrictive an immigration policy this dictates depends on the empirical question of how easy or difficult it is to create a symbiosis between the existing public culture and the new cultural values of the immigrants, and this will vary hugely from case to case (in particular the experience of immigration itself is quite central to the public cultures of some states, but not to others). Most liberal democracies are now multicultural, and this is widely regarded as a source of cultural richness. But the more culturally diverse a society becomes, the greater need it has for a unifying public culture to bind its members together, and this culture has to connect to the history and physical shape of the society in question – it can't be invented from scratch (Kymlicka, 2001: esp. part IV; Miller, 1995: ch. 4). So a political judgment needs to be made about the scale and type of immigration that will enrich rather than dislocate the existing public culture.

The second reason for states to limit immigration that I want to consider concerns population size.<sup>1</sup> This is a huge, and hugely controversial, topic, and all I can do here is to sketch an argument that links together the issues of immigration and population control. The latter issue really arises at two different levels: global and national. At the global level, there is a concern that the carrying capacity of the earth may be stretched to breaking point if the total number of human beings continues to rise as it has over the last half century or so. At national level, there is a concern about the effect of population growth on quality of life and the natural environment. Let me look at each level in turn.

Although there is disagreement about just how many people the earth can sustain before resource depletion – the availability of water, for example – becomes acute, it would be hard to maintain that there is *no* upper limit. Although projections of population growth over the century ahead indicate a leveling off in the rate of increase, we must also expect – indeed should welcome – increases in the standard of living in the developing world that will mean that resource consumption per capita will also rise significantly. In such a world it is in all our interests that states whose populations are growing rapidly should adopt birth control measures and other policies to restrict the rate of growth, as both China and India have done in past decades. But such states have little or no incentive to adopt such policies if they can “export” their surplus population through international migration, and since the policies in question are usually unpopular, they have a positive incentive not to pursue them. A viable population policy at global level requires each state to be responsible for stabilizing, or even possibly reducing, its population over time, and this is going to be impossible to achieve if there are no restrictions on the movement of people between states.

At national level, the effects of population growth may be less catastrophic, but

can still be detrimental to important cultural values. What we think about this issue may be conditioned to some extent by the population density of the state in which we live. Those of us who live in relatively small and crowded states experience daily the way in which the sheer number of our fellow citizens, with their needs for housing, mobility, recreation, and so forth, impacts on the physical environment, so that it becomes harder to enjoy access to open space, to move from place to place without encountering congestion, to preserve important wildlife habitats, and so on. It's true, of course, that the problems arise not simply from population size, but also from a population that wants to live in a certain way – to move around a lot, to have high levels of consumption, and so on – so we could deal with them by collectively changing the way that we live, rather than by restricting or reducing population size (De-Shalit, 2000). Perhaps we should. But this, it seems to me, is a matter for political decision: members of a territorial community have the right to decide whether to restrict their numbers, or to live in a more ecologically and humanly sound way, or to do neither and bear the costs of a high-consumption, high-mobility lifestyle in a crowded territory. If restricting numbers is part of the solution, then controlling immigration is a natural corollary.

What I have tried to do in this section is to suggest why states may have good reason to limit immigration. I concede that would-be immigrants may have a strong interest in being admitted – a strong economic interest, for example – but in general they have no obligation-conferring *right* to be admitted, for reasons given in the previous section. On the other side, nation-states have a strong and legitimate interest in determining who comes in and who does not. Without the right to exclude, they could not be what Michael Walzer has called “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” (1983: 62). It remains now to see what conditions an admissions policy must meet if it is to be ethically justified.

## **Conditions for an Ethical Immigration Policy**

~~I shall consider two issues. The first is the issue of refugees, usually defined as people who have fled their home country as a result of a well founded fear of persecution or violence. What obligations do states have to admit persons in that category? The second is the issue of discrimination in admissions policy. If a state decides to admit some immigrants (who are not refugees) but refuses entry to others, what criteria can it legitimately use in making its selection?~~

~~As I indicated in the first section of this chapter, people whose basic rights are being threatened or violated in their current place of residence clearly do have the right to move to somewhere that offers them greater security. Prima facie, then, states have an obligation to admit refugees, indeed “refugees” defined more broadly than is often the case to include people who are being deprived of rights to subsistence, basic healthcare, etc. (Gibney, 1999; Shacknove, 1985). But this need not involve treating them as long term immigrants. They may be offered temporary sanctuary in states that are able to protect them, and then be asked to return to their original country~~