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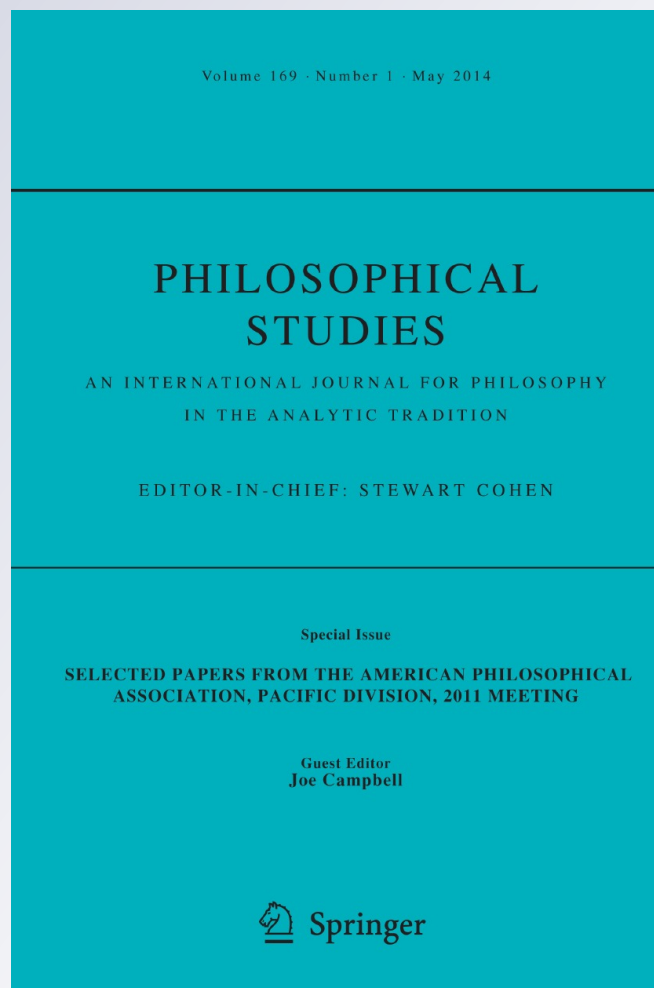
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Do duties to outsiders entail open borders? A reply to Wellman

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In his controversial article, “Immigration and Freedom of Association,” Christopher Heath Wellman argues that legitimate states have a right to close their borders to all immigrants, including refugees.¹ His argument proceeds in two stages. The first seeks to establish that states have a general right to freedom of association, which includes a *prima facie* right to exclude immigrants. The second aims to show that this right is not outweighed by standard egalitarian and libertarian considerations, and thus that states have an actual, all things considered right to close their borders to all immigrants.

This paper focuses on the second stage of Wellman’s argument, specifically, his rejection of the egalitarian argument for open borders. According to this argument, affluent societies have stringent egalitarian duties to outsiders and these duties require such societies to maintain open borders. In response, Wellman grants that affluent societies have egalitarian duties to outsiders, but denies that these duties entail open borders. He considers two types of egalitarian duties: luck and relational. In his view, luck egalitarian duties to outsiders are too weak to outweigh the right to freedom of association, and although relational egalitarian duties are stringent enough to require action, they may be discharged by “exporting justice” in the form of material aid instead of opening borders.²

Wellman’s argument has considerable force in the abstract. However, concerns emerge when we examine it in light of the complex, global economic context in which migration presently occurs. In particular, I will raise two objections to Wellman’s central claim that societies may discharge their duties to outsiders by either providing aid or opening borders. First, I will identify two cases in which

¹ See Wellman (2008).

² Wellman also suggests that certain duties to outsiders can be discharged through military intervention; however, I will not discuss this argument here.

societies cannot discharge their egalitarian duties by transferring aid, either because opening borders is the only way to discharge these duties or because aid would be inappropriate. Then I will briefly discuss some additional, non-egalitarian moral considerations that Wellman fails to address, suggesting that they too may justify a duty to maintain open borders that cannot be discharged by transferring aid. Given these objections, I will conclude that Wellman underestimates the moral considerations that weigh against the *prima facie* right to exclude immigrants, and thus that his argument fails to prove that states have an actual, all things considered right to close their borders in all cases.

To explain these objections, it will be helpful to begin with a brief summary of Wellman's response to the egalitarian argument for open borders, beginning with the luck egalitarian version of this argument. According to luck egalitarianism, justice demands that variations in people's life prospects should be attributable to their choices and not to differences in their unchosen circumstances. It follows that agents have distributive duties to mitigate those inequalities in life prospects that arise from brute luck. Since one's place of birth is a matter of chance, affluent societies are obligated to diminish the vast differences in life prospects among societies. Borders maintain these inequalities by preventing would-be migrants from accessing the benefits and opportunities available in affluent societies. Thus, justice requires affluent societies to maintain open borders.

Wellman contends that this argument overstates the normative force of luck equality. To defend this claim, he appeals to a familiar thought experiment in which two types of inequality are compared.³ The first type of inequality exists between two independent societies, A and B. Members of A are considerably better off than members of B; however, no one in either society is aware of the disparity between them. The second kind of inequality takes place within a single society, C. Members of C are aware that some of their fellows are faring considerably better (or worse) than they are and these disparities affect the relationships among them. Wellman thinks it is quite clear that "the inequality among the Cs is much more worrisome than the same inequality between the As and Bs."⁴ It follows, he argues, that luck inequality, which exists in the case of A and B, has less moral force than the inequality that arises in C. Wellman concludes that luck egalitarian duties are too weak to justify restrictions on the right to freedom of association, and thus, that the luck egalitarian case for open borders fails.⁵

Wellman believes that relational egalitarianism offers a more plausible theory of equality. According to this view, inequalities are morally problematic not if they arise from luck, but rather, if they render people vulnerable to oppressive social relationships. It follows that agents who are involved in oppressive relationships have a duty to mitigate the conditions that contribute to oppression within them. In the paradigmatic case, citizens of a state have duties to their compatriots to

³ Wellman, p. 122.

⁴ Ibid.

⁵ Although my criticisms take issue with broader concerns about Wellman's argument, it is worth noting that this thought experiment does not entail the conclusion he draws from it. Even if it were true that luck equality is less morally weighty than other types of equality, it does not necessarily follow that luck equality is not sufficiently important to justify restrictions on the right to freedom of association.

eliminate inequalities that would inhibit mutually respectful citizenship. However, Wellman rightly acknowledges that other relationships may also be robust enough to generate relational egalitarian duties, including relationships between citizens and outsiders. One might be tempted to argue that relational egalitarianism generates duties to admit desperately needy immigrants, such as those attempting to escape abject poverty or political oppression by their own governments. However, Wellman insists that societies may discharge their relational egalitarian duties to outsiders without opening their borders. This is because societies have discretion over how they discharge these duties: they may either open their borders or “export justice” in the form of material aid. Thus, he contends, the relational egalitarian argument for open borders also fails.⁶

I am sympathetic to relational theories of equality, and I agree that these theories generate stringent duties to outsiders. However, I am concerned that Wellman’s analysis of these duties presupposes an overly simplistic picture of the economic and political context in which migration presently occurs. In particular, it underestimates the complexity of the relationships created by economic globalization. Wellman also seems to assume that migration is an autonomous process, driven by poverty or political oppression within sending countries, and uninfluenced by the interests, institutions, and policies of receiving countries, except insofar as they explicitly regulate immigration. Thus, in the remainder of this paper, I will consider Wellman’s argument in light of a familiar, real-world example: recent immigration to the United States from Mexico. I will begin with a brief discussion of the relationship between regional economic integration and migration, focusing on two well-known initiatives: the Border Industrialization Project and the North American Free Trade Agreement.

When the Bracero Program, a longstanding guest-worker program that permitted male Mexican laborers to work legally in the U.S. agricultural sector, ended in 1964, the Mexican government sought ways to provide jobs for the returning Braceros. The Border Industrialization Program (BIP), which was modeled on the Export Processing Zones in Southeast Asia and other regions, was central to this goal. This program aimed to draw U.S. assembly plants—maquiladoras—to an enhanced industrial production zone along the northern Mexican border. Binational investment and trade liberalization agreements were essential to this process. The Mexican government eased legal restrictions on foreign investment and the United States allowed U.S. corporations to export components to Mexico duty-free and then re-import assembled products paying taxes only on their increased value (that is, the relatively small cost of labor inputs).⁷ As a result, maquiladoras in the apparel, electronics, and auto parts industries proliferated along the border, providing U.S. corporations with a source of cheap labor and Mexican workers with low-wage jobs.

⁶ Wellman recognizes that duties to outsiders may also be justified on samaritan grounds. As he explains, samaritanism maintains that “one has a natural duty to assist other when they are sufficiently imperiled and one can help them at no unreasonable cost to oneself.” He pursues a similar line of argument against this justification for open borders: as with egalitarian duties, samaritan duties to outsiders may be discharged by providing aid instead of opening borders. See Wellman, p. 124–30.

⁷ Mexico also waived duties on the importation of machinery, equipment, raw materials, and components for use in the maquiladoras, provided the end products were exported back to the United States.

Although proponents of the BIP claimed that the initiative would reduce migration pressures, many migration theorists link maquiladora work to increased labor migration.⁸ Some scholars argue that the growth of maquiladoras has directly contributed to labor migration by putting pressure on the traditional manufacturing sector in Mexico, driving down wages and causing unemployment among male industrial workers.⁹ Others, such as Saskia Sassen, argue the BIP has also indirectly stimulated labor migration by disrupting traditional work structures.¹⁰ The main form of this disruption has been the recruitment of young women into industrial jobs, leading to male unemployment. The stated goal of the BIP is to provide jobs for returning Braceros; however, maquiladora managers overwhelmingly prefer young, female workers, who are perceived to be more dexterous, docile, and willing to work for low wages. This “feminization” of the industrial labor force has made it very difficult for former Braceros and displaced traditional industrial workers to obtain employment in the industrial zones. The BIP has further increased male unemployment, argues Sassen, by removing women from unpaid work in rural areas.¹¹ Village economies and rural households are highly dependent upon the traditional work of women, who help to produce goods for family consumption or for sale in local markets. Thus, the departure of women from rural areas has reduced opportunities for making a living for their male partners. Moreover, shrinking traditional economic opportunities in rural areas have made it difficult for both male and female workers to return home when they become ill or are fired, or when firms move their factories into countries where labor is cheaper, as did large numbers in the early 2000s.

Some migration theorists also argue that employment in the maquiladoras provides workers with the skills, knowledge, experience, and social networks that facilitate migration.¹² Sassen suggests that working in industries that produce goods for U.S. consumption reduces the subjective distance between Mexico and the United States, making emigration a viable option for maquiladora workers.¹³ Other scholars contend that crucial information about crossing the border is circulated among maquiladora workers and that supervisors often help workers obtain passports and visas that allow them to enter the United States legally.¹⁴

⁸ Early scholarly debates about the BIP were characterized by disagreement about the effects of the program, with some theorists arguing that the maquiladoras would have a “sponge effect,” providing jobs for people who would otherwise cross the border in search of work. However, there is now fairly widespread consensus that the BIP promotes migration. See Massey and Espinosa (1997), pp. 969, 988–89 and Kopinak (2005), pp. 2–3.

⁹ For a discussion of this line of argument, see Kopinak, p. 3.

¹⁰ Sassen (1988), ch. 2 and (2001).

¹¹ *Ibid.*

¹² *Ibid.*; Kopinak, pp. 6–8.

¹³ Sassen (1988), ch. 2 and (2001).

¹⁴ Although the visas available to maquiladora workers do not permit them to work in the United States, some find jobs and subsequently decide to overstay their visas. Interestingly, even those workers who initially do not intend to cross the border often get their documents during their employment in maquiladoras and some later decide to enter the United States. See Kopinak, pp. 6–8.

Similar arguments have been made about the North American Free Trade Agreement (NAFTA), which eliminated virtually all duties, quotas, special fees and taxes, and other barriers to trade and investment among the United States, Canada, and Mexico. While most trade between the United States and Canada was already duty-free, the implementation of NAFTA brought about the immediate elimination of tariffs on more than one half of U.S. imports from Mexico and more than one third of U.S. exports to Mexico, including agricultural products. NAFTA also eliminated barriers to capital mobility in most sectors of the economy by issuing new rules for expanded investment in telecommunications, banking, insurance, biogenetics, and computers.

Early proponents of NAFTA insisted that the agreement would reduce undocumented immigration to the United States by promoting economic development in Mexico. However, migration theorists argue that NAFTA has actually accelerated labor migration by contributing to unemployment and displacement among Mexican workers.¹⁵ They identify NAFTA's devastating effects on rural agriculture as a particularly important contributor to migration pressures.¹⁶ According to this analysis, NAFTA's agricultural trade provisions have put small-scale farmers out of business, and few jobs have been created in the areas in which these farmers were displaced. The new jobs that have been added to the economy, such as those in export processing, are not open to these displaced farmers, since supervisors prefer to hire female workers. Some of farmers displaced by NAFTA have moved to urban areas of Mexico, where they have found employment in 3-D (dirty, dangerous, and difficult) jobs. Others have been unable to find alternative employment in Mexico and have subsequently migrated to the United States, where large-scale agricultural operations, which have benefitted significantly from NAFTA, have created a high demand for cheap migrant labor.

The impacts of NAFTA on Mexico's corn industry are a frequently cited example of this process.¹⁷ Prior to the implementation of NAFTA, Mexico provided support to rural areas through a system of subsidies for corn growers and reduced prices of locally produced corn products for consumers. Mexico withdrew this support upon the implementation of NAFTA; however, the agreement allowed the United States to export large quantities of heavily subsidized corn to Mexico, undercutting local producers. As a result, small farmers found it impossible to sell corn at prices that covered the cost of production. Since NAFTA failed to include any provisions to help rural corn farmers respond to these conditions, large numbers of rural corn farmers were forced to abandon their farms. Most of these workers subsequently migrated to urban areas in Mexico or to the United States.

Relational egalitarians, such as Elizabeth Anderson, understand equality in terms of social relationships.¹⁸ We often think of social relationships as more or less intimate, personal associations among persons; however, relational egalitarians are primarily

¹⁵ Massey and Espinosa; Fernández-Kelly and Massey (2007); and Andreas (1998/1999).

¹⁶ Fernández-Kelly and Massey, pp. 99, 105–06, 116; Andreas, pp. 608–10; Massey and Espinosa, pp. 968–9; and Hing (2010), ch. 1.

¹⁷ Hing, Ch. 1.

¹⁸ Anderson (1999).

concerned with the structural relationships among occupants of various social positions. For instance, factory workers stand in a specific relationship to their employers, and consumers stand in a particular relationship to workers. These structural relationships may be equal in the sense that they express respect for the equal moral status of the occupants of each position, or they may be unequal in the sense that they render the occupants of particular positions vulnerable to oppression. Relational egalitarians maintain that justice requires abolishing these oppressive social relationships.

My discussion of the BIP and NAFTA suggests that economic integration has created a complex web of structural relationships among participants in the regional economy, including those among U.S. owned corporations and Mexican workers, Mexican migrants and U.S. citizens, and U.S. consumers and Mexican workers. From the perspective of relational egalitarianism, these relationships are morally problematic because they tend to foster the forms of social oppression that relational egalitarians reject. Echoing Iris Marion Young's account, Anderson explains that oppression occurs within relationships in which some parties "dominate, exploit, marginalize, demean and inflict violence upon others."¹⁹ Maquiladora work is notoriously exploitative. Workers are paid extremely low wages and provided with no sick time or vacation. They are required to work long shifts in uncomfortable and dangerous environments; factories are often terribly hot, with limited ventilation, excessive noise, insufficient lighting, poor sanitation, and inadequate emergency equipment. Female workers are routinely subjected to a wide range of workplace abuses, including domination, sexual harassment, and violence, and all workers are subject to coercion should they attempt to organize collective bargaining unions. Unemployed rural agriculture and industrial workers are also vulnerable to oppression. Marginalized in the Mexican economy, they may be subjected to severe material deprivation, as well as to workplace exploitation upon migrating to urban centers.

It follows that the emerging regional economy generates relational egalitarian duties to mitigate social oppression within it, including the exploitation and marginalization of Mexican workers. Of course, thorny questions arise regarding exactly what these duties entail.²⁰ As we know, Wellman argues that societies may discharge their relational egalitarian duties to outsiders by either providing aid or opening their borders. However, the examples I have considered suggest two cases in which a society cannot discharge its egalitarian duty to eliminate oppression by providing material aid: first, when opening borders is the only way to discharge this duty; and second, when the provision of aid would be an inappropriate means for discharging this duty. I will consider each in turn.

First, one could argue that low-wage workers will continue to be oppressed as long as goods and capital are allowed to flow freely across national borders and labor migration is prohibited. According to this view, North American trade liberalization has created a

¹⁹ Anderson, p. 313.

²⁰ Questions also arise regarding exactly who bears these duties. However, it is clear that the U.S. and Mexican governments are at least partly responsible for the human costs of the BIP and NAFTA, and assuming that citizens of democratic states are collectively responsible for the policies of their governments, it follows that citizens of the United States bear a share of the duties generated by these policies. Relational egalitarians also suggest that U.S. consumers have a collective duty to mitigate the oppression of Mexican workers who produce goods sold in the United States. See Anderson, p. 321, fn 78.

single, *de facto* transnational society, encompassing (at least parts of) the United States and Mexico. Within this new transnational society, existing national borders enforce a kind of apartheid, segregating ethnic groups and enforcing the kind of caste system that egalitarians reject. Thus, the duty to eliminate oppression can be discharged only by opening the U.S.–Mexico border because the border itself promotes oppression. My own view is that this argument gains force as a regional economy becomes progressively more integrated. Although the United States and Mexico may not yet qualify as a single transnational society in the morally relevant sense, even regional economies governed by fair trade policies may eventually reach a degree of social, economic, and political integration at which closed national borders would clearly promote oppression. Once this point is reached, it will not be possible to discharge the duty to eliminate oppression by transferring aid.

The second case in which a society cannot discharge its duty to eliminate oppression by transferring aid—that is, when the provision of aid would be inappropriate—occurs in the context of moderate regional economic integration. It may initially appear that transferring aid would be an appropriate way for a society to fulfill its duty to eliminate oppression. For instance, one could argue that the United States could discharge its duty to mitigate the most oppressive effects of NAFTA by sending aid to Mexico. According to some accounts, structural “underdevelopment” in Mexico contributed to the sharp rise in unemployment in the traditional manufacturing and agricultural sectors associated with the implementation of NAFTA. Thus, it follows that aid would reduce the marginalization of unemployed workers if it were used to enhance infrastructure in Mexico, thus helping to rehabilitate these key economic sectors.

However, while transferring aid may be an appropriate means for a society to discharge its *samaritan* duties in some cases, such as in the wake of the recent tsunami in Japan, it is often not appropriate for fulfilling its *relational egalitarian* duties for at least two reasons. First, the provision of material aid may itself create relationships of dependency that enable donor nations to dominate recipient nations, for instance, by setting conditions for its use or by leveraging the possibility of continued aid to gain an unfair advantage in negotiations over other policies.²¹ Second, it is unlikely that foreign aid could remedy the deep, pervasive economic and power inequalities that contribute to the oppressive relationships associated with trade liberalization. For example, it would not mitigate the conditions that promote the exploitation of Mexican workers by U.S. corporations, such as the wage gap between the United States and Mexico and lack of worker protection provisions in NAFTA.

These cases cast doubt on Wellman’s claim that societies may discharge their relational egalitarian duties by providing aid rather than opening borders, thus posing a challenge to his argument against the egalitarian case for open borders. Before concluding, however, I would like to raise some additional non-egalitarian moral considerations that may establish a duty to outsiders that also cannot be discharged by the provision of aid. I have argued that the examples of the BIP and NAFTA suggest that regional economic integration generates relational egalitarian duties to mitigate oppression. Agents acquire these duties by virtue of their

²¹ Miller (2010), pp. 143–54.

participation in oppressive structural relationships, regardless of their personal liability for the harms associated with them. However, transnational duties may also arise from other sources. For instance, the standard liability model of responsibility suggests that agents acquire duties by virtue of their causal connection to harm. More precisely, it maintains that agents are obligated to remedy harms for which they are causally responsible, provided their actions are shown to be voluntary and performed with adequate knowledge of the situation. When applied to the global context, the liability model assigns duties to agents, which may be collective entities, such as democratic states, whose actions can be shown to be causally responsible for harm to outsiders.

Importantly, the examples of the BIP and NAFTA suggest that these initiatives are at least partly causally responsible for labor migration from Mexico to the United States. As we have seen, migration theorists argue that these policies have produced large pools of potential emigrants, comprised of unemployed workers in the traditional manufacturing and agricultural sectors and employed maquiladora workers, along with a high demand for low-wage workers in the United States. They further argue that the BIP and NAFTA have established cultural and ideological linkages between the United States and Mexico that make migration a viable option for many Mexican workers. In doing so, these initiatives have helped to generate three of the most important preconditions for labor migration: incentives for emigration, demand for immigrant labor, and migration-facilitating networks.

If this analysis is correct, and if United States has used its power to shape the BIP and NAFTA to reflect its interests, as is widely argued, then the U.S. has played an important causal role in producing recent labor migration from Mexico. According to the liability model, this causal responsibility generates a duty to respond to the harms associated with these migration flows. More specifically, it requires the United States to help mitigate the harmful conditions that have stimulated these migration flows, including the marginalization, deprivation, and poverty produced by the BIP and NAFTA. Arguably, the United States could discharge this duty by opening its borders to labor migrants, provided, of course, they are granted full employment and social rights upon settling in the U.S. However, as with relational egalitarian duties to outsiders, the duty to mitigate harm cannot be discharged simply by transferring aid to Mexico, since the provision of aid would not alter the deep, structural conditions that have produced the relevant migration flows. While aid may go some distance toward improving economic conditions in Mexico, it would not undo the most significant migration-producing conditions associated with the BIP and NAFTA, such as the dislocation of rural farmers, the gendered division of labor in industrial processing, the growing international wage-gap, and the high demand for cheap labor in the United States. Thus, this duty to outsiders is again more demanding than Wellman acknowledges: it cannot be discharged simply by transferring aid to Mexico.

I have defended two central claims in my critique of Wellman's argument against the egalitarian case for open borders. The first is that stringent duties to outsiders can be derived from relational egalitarianism and the liability model of responsibility. The second is that states cannot discharge these duties by transferring aid instead of opening borders in two general cases: if opening borders is the only way to discharge these duties; and if transferring aid would be an inappropriate means

for fulfilling these duties. Of course, Wellman could respond to my critique by employing the same logic he used against the relational egalitarian argument; that is, he could grant my central claims, but insist that they do not entail open borders because states can fulfill these duties by enacting fairer regional economic policies instead of opening borders. Thus, his conclusion still stands: states have an actual, all things considered right to close their borders in all cases.

In response, I should first point out that a state could not fulfill its duty to outsiders by implementing fairer regional economic policies in the first case because opening borders is the only way to discharge this duty in this case. However, I agree that implementing fair regional economic policies would be a reasonable means of fulfilling duties to outsiders in the second case. Indeed, since much of the oppression and harm suffered by Mexican workers has been exacerbated if not caused by unfair regional economic policies, recasting these policies is likely the most desirable way to mitigate these injustices. Yet rather than blunting my critique of Wellman's argument, this fact highlights a further concern about it. Wellman is able to defend his thesis that states have an actual, all things considered right to exclude all immigrants only by systematically stipulating that states will fulfill those duties to outsiders that would otherwise constrain the *prima facie* right to exclude. This move is technically available to him insofar as we understand an actual, all things considered right in highly idealized terms. However, it yields normative prescriptions that are appropriate only for an ideal world, quite unlike our own. In our world, immigration occurs in the context of stark global economic inequalities and deeply unfair regional economic initiatives. While these unjust background conditions certainly should be remedied, until significant progress is made, abstract appeals to aid transfers or fair trade policies merely obscure the most important considerations bearing on the morality of national borders. Thus, Wellman's rejoinder may ring hollow to those readers, including myself, who believe that answering the most pressing normative questions regarding immigration requires addressing immigration in its current, real world context, including the persistent injustices that characterize it. Open borders may be a second-best solution in this context, but they are urgently demanded by justice.

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