

The Open Borders Debate on Immigration

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Abstract

Global migration raises important ethical issues. One of the most significant is the question of whether liberal democratic societies have strong moral obligations to admit immigrants. Historically, most philosophers have argued that liberal states are morally free to restrict immigration at their discretion, with few exceptions. Recently, however, liberal egalitarians have begun to challenge this conventional view in two lines of argument. The first contends that immigration restrictions are inconsistent with basic liberal egalitarian values, including freedom and moral equality. The second maintains that affluent, liberal democratic societies are morally obligated to admit immigrants as a partial response to global injustices, such as poverty and human rights violations. This article surveys the main philosophical arguments for these positions on immigration and discusses the critical responses to these arguments.

1. Introduction

Global migration raises several important ethical issues. One of the most significant is the question of whether liberal democratic societies have strong moral obligations to admit immigrants. However, despite the theoretical and practical importance of this question, it has received little attention by philosophers. Those philosophers who have addressed immigration have typically defended the conventional view on immigration, which maintains that liberal states have broad discretion over immigration policy.¹ According to this position, such states will typically admit immigrants whose talents, assets, characteristics, or skills are perceived to be in the national interest, but they are morally free to restrict immigration as they see fit, with few exceptions.

Recently, however, some liberal egalitarians have begun to challenge this conventional view in two lines of argument. The first, defended most prominently by Joseph Carens, maintains that immigration restrictions are inconsistent with basic liberal egalitarian ideals, including freedom, equal opportunity, and moral equality.² It follows, argues Carens, that liberal states have a *prima facie* duty to maintain open borders, welcoming all prospective immigrants who seek admission.³ The second line of argument, advanced by Frederick Whelan and myself, contends that affluent, liberal democratic societies are morally obligated to admit needy immigrants as a partial response to real-world global injustices, such as poverty and human rights violations.⁴ We conclude that liberal states have much broader duties to admit immigrants than the conventional position implies, yet without defending open borders *per se*.

This article surveys these three philosophical positions on immigration – the conventional view, the open borders position, and nonideal approaches – explicating the central arguments for each and discussing the critical responses to these arguments.

2. *The Conventional View on Immigration*

The conventional view on immigration maintains that states have a broad right to control their borders, including a right to regulate immigration in accordance with national priorities. Michael Walzer offers the best known philosophical defense of this position.⁵ As a communitarian, Walzer understands political membership as a social good, constituted by the shared understandings of a political community. This implies, he believes, that those individuals who are already members of a political community should be free to distribute membership in their community – that is, to determine who is admitted to and excluded from it – in accordance with their understanding of the nature of their community. It follows that we must know something about the nature of liberal democratic societies in order to determine what sorts of immigration policies are appropriate for them. However, since political communities tend to be large and abstract, their nature can be difficult to grasp. Thus, Walzer finds it helpful to compare liberal democratic societies to other, smaller associations that we understand more readily. By examining the nature of neighborhoods, clubs, and families, and the membership policies that govern them, he attempts to discover which immigration policies are appropriate for liberal democracies.

The first model Walzer considers is that of the neighborhood, a random association of individuals living in close proximity to one another. Neighborhoods have no formal legal admission policies; people move into neighborhoods for reasons of their own, constrained only by market contingencies. While residents may choose not to welcome newcomers, the state does not prevent individuals from settling in whatever neighborhood they choose. Should liberal democratic societies adopt membership policies analogous to those of the neighborhoods? That is, should liberal states maintain open borders, permitting individuals to settle in whatever country they wish, subject only to market capacities? Walzer argues that they should not. Citizens must be able to regulate immigration as necessary to protect their freedom, welfare, and culture. Thus, if states were unable to control immigration at the national level, neighborhoods would take up the task, becoming, in Walzer's words, 'a thousand petty fortresses' (*Spheres of Justice* 39). Since such local closure is undesirable in liberal societies, liberal states are morally free to regulate immigration. There is, however, one important caveat. The general right to regulate immigration includes the right to prevent immigration, but it does not entail a corresponding right to restrict emigration. With the exception of national emergencies, citizens must be free to exit their country as they wish.

Based on these considerations, Walzer suggests that liberal democratic societies are like clubs: both are free to make their own admission decisions, admitting and excluding would-be members in accordance with shared understandings, and neither may bar withdrawals. However, despite these parallels, Walzer points out that the club analogy fails to capture an essential moral feature of liberal societies. Unlike club members, citizens believe that they have moral obligations to certain groups of outsiders, particularly those 'recognized as national or ethnic "relatives"' (*Spheres of Justice* 41). In this sense, liberal democratic societies are like families, 'for it is a feature of families that their members are morally connected to people they have not chosen, who live outside the household' (*Spheres of Justice* 41). This kinship affinity has implications for immigrant admission policies. In particular, it implies that priority in admission should be given to the relatives of current citizens and in some cases, to displaced ethnic nationals.

Walzer also defends an additional constraint on liberal immigration policies. Since admission decisions involve distributing a good – membership – to foreigners, these decisions are governed by the principle of collective mutual aid, which applies to relations

between strangers. This principle maintains that a society is obligated to provide positive assistance to strangers if such help ‘is needed or urgently needed’ by the beneficiaries, and if ‘the risks and costs of giving it are relatively low’ for the benefactor (*Spheres of Justice* 33). It follows, argues Walzer, that liberal democratic societies are obligated to help needy foreigners if their need is acute and if the costs and risks of providing aid are comparably negligible. Affluent societies can usually fulfill these duties by exporting some of their wealth to poorer societies in the form of economic aid. However, in the case of refugees seeking asylum – individuals who flee their countries to escape political or religious persecution – the duties of mutual aid can be fulfilled only through territorial admission. Thus, Walzer defends a moderate version of the conventional view on immigration, which maintains that liberal states have a broad right to regulate immigration in accordance with national priorities, and relatively limited obligations to grant admission priority to the relatives of current citizens, displaced ethnic nationals, and some refugees narrowly defined.

3. *The Open Borders Position*

Some liberal egalitarian thinkers, most notably Joseph Carens, have raised a broad challenge to the conventional view.⁶ In contrast to Walzer, they maintain that a consistent application of liberal principles implies not that liberal states have broad authority to regulate immigration, but rather that such states have a *prima facie* duty to maintain open borders. In his early work, Carens defends this view by arguing that the three main theoretical approaches to liberalism – utilitarianism, liberal egalitarianism, and libertarianism – all imply that liberal states should maintain open borders.⁷ Of these approaches, Carens is most interested in Rawlsian liberal egalitarianism. According to his cosmopolitan reading of Rawls, parties in the original position are to choose principles of justice that apply globally rather than in the context of the nation-state. Carens argues that parties in this global original position would identify freedom of international movement as a basic liberty, possessed by all persons. He concludes that since freedom of international movement includes the right to immigrate to the country of one’s choice, liberal states have a *prima facie* duty to maintain open borders.⁸

More recently, Carens has developed two additional arguments in support of open borders.⁹ These arguments forego specifically Rawlsian concepts, drawing instead on general liberal egalitarian ideals. The first contends that the liberal commitment to freedom implies a basic human right to free international movement. The argument rests on an analogy between free mobility within a nation-state and free international mobility. Carens begins by acknowledging that free internal mobility is an important liberal freedom. Liberals believe that ‘people should be free to pursue their own projects and to make their own choices about how to live their lives so long as this does not interfere with the legitimate claims of other individuals to do likewise’ (*‘Migration and Morality’* 26). Thus, since restrictions on internal movement would unjustly curtail such freedom, free internal mobility is widely recognized as a basic right of liberal citizenship. Carens then argues that the ability to move across state borders is an equally important freedom because, in his view, every reason an individual might have for moving within a country could also apply to moving across state borders. To name just a few:

one might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one’s native state and many in another; one may wish to pursue cultural opportunities that are only available in another land (*‘Migration and Morality’* 28).

It follows, Carens contends, that liberals should regard freedom of international movement as a basic human right. Moreover, he concludes, because this right includes a general right to immigrate, liberal states have a *prima facie* duty to maintain open borders.

Carens' second argument for open borders draws upon the liberal egalitarian ideals of moral equality and equal opportunity. At minimum, these ideas require that rights and desirable social positions be distributed on the basis of people's capacities and talents, not according to unchosen, morally arbitrary characteristics, such as race and sex. However, Carens believes that citizenship is just as morally arbitrary as these characteristics because people no more choose their parentage or place of birth than their sex or race. It follows, he argues, that citizenship status is not an appropriate basis for distributing rights and social positions. Yet immigration restrictions do just this: they prevent a group of people, foreign nationals, from accessing the rights and social positions available to citizens. Thus, since such citizenship-based exclusions are as morally offensive as other more widely recognized forms of discrimination, states should maintain open borders.

Carens believes that these arguments establish a strong presumption for open borders. Nevertheless, he acknowledges that certain limitations on immigration may sometimes be justified. Following Rawls, Carens maintains that liberties can justifiably be restricted for the sake of preserving the interests that they protect. It follows that limitations on particular liberties, including freedom of international movement, are legitimate if they are necessary to preserve important freedoms in the long-run. However, because such limitations involve overriding a basic right, they can be justified only by the strongest of reasons and only on the basis of rationales that are compatible with liberal egalitarian commitments. Carens suggests that states may legitimately limit immigration insofar as is necessary to maintain public order, ensure national security, and protect liberal institutions from erosion by immigrants with illiberal political values.¹⁰

4. Evaluating the Open Borders Position

While Carens' arguments for open borders have been enormously influential, they have also been subject to a number of objections. I will discuss two here. The first contends that Carens overstates the moral importance of free international mobility, and thus fails to establish that freedom of international movement is a genuine human right.¹¹ A prominent version of this objection, offered by David Miller, rests on the distinction between *basic* interests and *bare* interests.¹² A basic interest is one that is so vital that it should be protected by a right. A bare interest, on the other hand, is a legitimate interest, but it is generally not important enough to deserve such protection. Carens suggests that the interest in free international mobility is a basic interest on the grounds that it is equally as important as the interest in free mobility within a nation-state. Miller counters that while this may be true in certain cases, the analogy between free internal mobility and free international mobility does not hold in general. He acknowledges that individuals have a basic interest in being able to move freely within the borders of their country of citizenship. Some persons also have a basic interest in free international mobility, suggests Miller, provided that immigration is the only way to escape persecution or avoid starvation. Such individuals may have a right to move to some state where their basic rights can be secured, if not the state of their choice. However, Miller insists that most persons have only a bare interest in free international mobility. For instance, they may wish to move to another country in order to participate in a culture that does not exist in their home country. As long as their basic rights are being secured by their own government and they have an adequate range of opportunities in their home country – that is, a

reasonable choice of occupations, cultural activities, and so on – then their interest in moving to a new country does not warrant protection as a right. Thus, he concludes, the right to freedom of international movement is at best a remedial right of those persons whose basic rights cannot be secured in their home country; it is not a basic human right as Carens contends.¹³

A second objection, offered by Michael Blake, takes issue with Carens' suggestion that immigration restrictions violate the ideal of moral equality.¹⁴ Blake acknowledges that citizenship, like race and ethnicity, is *morally arbitrary* in the sense that all are produced by factors over which we have no control. However, he denies that citizenship is *morally irrelevant*, as Carens suggests. On the contrary, argues Blake, citizenship is morally significant because it marks out the boundaries of the state's authority; that is, the state has coercive authority over citizens that it does not have over foreigners. In liberal states, state authority must be justified to those who are subject to it. However, since foreigners are generally not subject to the authority of states other than their own, they are not entitled to this same justification. This explains why liberal states may withhold certain rights from foreigners without affronting their status as moral equals. Certain rights, suggests Blake, arise from the need to justify state authority. If a state is to be authorized to exercise coercive power, it owes some substantive protections and guarantees, in the form of rights, to those who are subject to this power. However, since foreigners generally do not live under authority of the state in question, that state owes no such guarantees to them. Blake gives the example of political rights. No liberal state is legitimate unless it grants political rights to citizens, yet such states need not extend these same political rights to foreigners. Blake contends that specific guarantees of liberty, including the right to free mobility, also arise from the need to justify state authority. Liberal states cannot deny free mobility to their citizens and expect them to accept its authority. However, such states need not grant admission to foreigners because they have no claim to such justification. Thus, Blake concludes, liberal states may legitimately restrict immigration without violating the ideal of moral equality.

5. *Nonideal Approaches to Immigration*

A second line of response to the conventional view on immigration argues that liberal democratic societies are obligated to admit needy immigrants as a partial response to real world global injustices, such as poverty and human rights violations. Proponents of this view contend that liberal states have far broader duties to admit immigrants than the conventional view acknowledges, without defending a right to freedom of international movement. I will discuss two such nonideal arguments. The first, the global poverty argument, contends that affluent states should maintain open borders because migration is an effective way of mitigating global poverty. This argument rests on two basic claims: (a) members of affluent societies have strong obligations to mitigate global poverty; and (b) policies favoring open borders are an effective means for fulfilling these obligations, at least in many cases.

Arguments for the first of these claims take two broad forms, depending on the general theoretical orientation of their advocates. The first conceptualizes the duty to mitigate global poverty as a humanitarian moral obligation. Proponents, such as Peter Singer, typically argue that individuals are obligated to alleviate severe poverty, regardless of the nationality or geographical location of those affected, provided they can do so without comparable sacrifice.¹⁵ Such philosophers usually attempt to establish that mitigating global poverty is a moral obligation, not simply an act of charity or supererogation,

as traditionally understood. The second type of argument maintains that affluent societies are obligated to transfer some of their wealth to poor societies based on principles of global distributive justice. Some proponents, such as Charles Beitz, attempt to establish that liberal egalitarian principles, particularly redistributive principles, should be applied at the global level.¹⁶ Others understand global redistributive obligations primarily as compensatory duties. For instance, Thomas Pogge argues that affluent societies are obligated to transfer some of their wealth to poorer societies because these affluent societies are at least partly responsible for that poverty.¹⁷

If these arguments are successful, they establish that members of affluent societies have strong obligations to mitigate global poverty. Many strategies for fulfilling these obligations have been offered, including direct transfers of material aid and the implementation of an international taxation scheme or a global resource dividend. However, some theorists argue that open borders policies should serve as at least a partial alternative to these strategies. Frederick Whelan gives several reasons for favoring open borders over foreign aid.¹⁸ First, while traditional aid is frequently wasted through inefficient administration, spent on ill-conceived projects, or diverted by corrupt elites, opportunities for immigration would directly benefit those individuals who take advantage of them. Second, because open immigration is a collective response to global poverty, it would not place an unfair burden on some affluent individuals. Finally, unlike traditional aid, more open immigration policies would expand the scope of human liberty as well as minimizing economic inequalities, and thus such policies are more consistent with the traditional commitments of liberalism.

A second nonideal approach to immigration, which I have recently defended, argues that liberal democratic states have a moral obligation to admit prospective immigrants who would otherwise stand to be seriously harmed by those states' policies.¹⁹ The basis for this view is the relatively uncontroversial claim that societies should not violate the human rights of individuals, regardless of their nationality, and societies that breach this duty must stop such violations immediately and compensate their victims.²⁰ How does this principle bear upon immigrant admissions? In an ideal world, societies will simply refrain from violating human rights. However, in the nonideal world, societies breach this duty all too often, thereby incurring further duties to stop such violations and compensate the victims. Of course, the best means of discharging these latter duties will vary according to context. Ideally, a society will simply stop violating human rights and compensate victims in their own communities. In some cases, however, immigrant admissions will be an appropriate means of fulfilling these duties. Indeed, admissions will be mandatory if the resettlement of victims or potential victims is the only means by which these duties can be discharged.

Consider the duty to stop violating human rights. All too often, one society creates rights-violating conditions in another society that cannot be quickly or easily remedied. If such conditions cannot be rectified before additional human right violations occur, then resettling the individuals at risk is the only way to prevent these further violations. In such cases, the responsible society must admit these individuals as immigrants. For instance, suppose one country's military has damaged the infrastructure of another country significantly, producing widespread shortages of food and medical care among the civilian population. If this damage cannot be repaired before additional human rights violations occur, then the responsible society must offer admission to those individuals who would otherwise be harmed.²¹

Immigrant admissions will also be required if resettlement is the only means by which to compensate individuals for past human right violations. It is commonly understood

that fair compensation requires the responsible party to ‘make the injured party whole’ by rendering her at least as well off as before the harm occurred. Given this understanding, rights-violating societies will be able to compensate victims in their home countries in many cases. Under some circumstances, however, compensation will not be possible as long as victims continue to live in their own communities. For instance, individuals with severe injuries or illnesses may need to be relocated in order to receive proper medical treatment. Or local roads, transportation systems, schools, hospitals, and food production facilities may have been damaged so extensively that fair compensation is impossible under local conditions. In such cases, the rights-violating society must grant admission to the harmed individuals and compensate them there.²²

6. *Evaluating Nonideal Approaches*

These nonideal approaches to immigration have at least two advantages over the standard open borders position. First, their supporting arguments are not subject to the objection that freedom of international movement is not a genuine human right. Unlike Carens’ arguments, these approaches appeal only to widely recognized human rights, such as subsistence rights, and not to controversial rights, such as the right to freedom of international movement, to make the case for more open borders. These nonideal arguments are also immune Blake’s objection that immigration restrictions are generally consistent with the ideal of moral equality. As we have seen, the global poverty and global harm arguments establish that some prospective immigrants, such as the global poor, have a very strong moral claim, if not a right, to admission to relatively affluent societies. Such claims to admission arise independently of the need to justify state authority, either from obligations to mitigate global poverty or to refrain from violating human rights. Thus, even if Blake were correct that there is no general right to territorial admission, liberal states cannot ignore these claims without affronting the moral equality of the individuals who hold them.

Despite these advantages, however, nonideal approaches to immigration are subject to two types of objections. The first takes issue with the specific arguments themselves. In response to the global poverty argument, for instance, some philosophers reject the claim that members of affluent societies have strong obligations to mitigate global poverty. Others accept this claim but deny that open immigration policies are an appropriate means for fulfilling these obligations. For example, Pogge argues that migration will not solve the problem of poverty, for two reasons.²³ First, the number of needy persons in the world, which he estimates is at least 1.3 billion, far exceeds the number of immigrants that affluent countries could admit. Thus, open borders would leave much poverty unmitigated. Second, increased migration to affluent countries will not help the worst-off. Assuming that affluent countries may legitimately place some upper limit number of immigrants they admit, prospective immigrants will have to compete for the available positions. Affluent countries are likely to prefer immigrants with skills, education, and native endowments that are perceived to be in the national interest. Since the better-off are typically relatively advantaged in terms of these characteristics, they are more likely to be admitted. This advantage also extends to remittances. It is often argued that remittances by those who have been admitted to and allowed to work in one of the affluent countries help to ease poverty in their home country. While it is true that many immigrants send money home, the families to whom this money is being sent are often among the more privileged in the poor country in question.

Another type of objection to nonideal approaches to immigration raises concerns about the methodology they employ. To determine the ways in which existing injustices bear on immigration arrangements, nonideal approaches must take certain features of the non-ideal world as given, at least for the time being. These features include the injustices that are thought to be relevant to immigration, such as poverty and human right violations. Nonideal approaches, including both considered here, also tacitly additional features of the nonideal world, such as a general right to regulate immigration. To the extent that these approaches replace critical inquiry into the fundamental morality of such features, they could inadvertently contribute to the legitimization of unjust arrangements. This suggests that normative analyses of immigration should address the issue at the level of both ideal and nonideal theory. However, work remains to be done to determine precisely how these approaches could be made compatible.

7. In Closing

This article has surveyed several philosophical arguments for three main positions on immigration. While I have not attempted to defend any particular position in this debate, I have tried to convey a sense of the main arguments on offer, as well as some critical responses to these arguments. In doing so, I hope to have stimulated further interest in the ethical issues associated with contemporary global migration.

Short Biography

Shelley Wilcox is an Associate Professor of philosophy at San Francisco State University. She works in the areas of social and political philosophy, feminist philosophy, and applied ethics, with a special interest in global justice, immigration, and urban environmental issues. She has published articles on the ethics of immigration in *Social Theory and Practice* and *Journal of Social Philosophy* as well as in several anthologies. She is currently working on a book manuscript on urban environmental ethics.

Notes

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¹ In particular, see Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* Chapter 2.

² Carens, 'Aliens and Citizens: The case for Open Borders' 229–54; Carens, 'Migration and Morality: A Liberal Egalitarian Perspective' 25–47.

³ As the duty to maintain open borders is a *prima facie* duty, states may impose immigration restrictions if they have a legitimate interest in doing so. Such cases are discussed below.

⁴ Whelan, 'Citizenship and Freedom of Movement: An Open Admission Policy?' 3–39; Wilcox, 'Immigrant Admissions and Global Relations of Harm' 274–91.

⁵ Michael Walzer, *Spheres of Justice*.

⁶ Philip Cole also criticizes Walzer's neighborhood, club, and family analogies in particular. See Cole, *Philosophies of Exclusion*, Chapter 4.

⁷ Joseph Carens, 'Aliens and Citizens'.

⁸ Joseph Carens, 'Aliens and Citizens' 233–41.

⁹ Joseph Carens, 'Migration and Morality: A Liberal Egalitarian Perspective'.

¹⁰ Joseph Carens, 'Migration and Morality: A Liberal Egalitarian Perspective' 28–34.

¹¹ David Miller, 'Immigration: The Case for Limits' 194–99.

¹² David Miller, 'Immigration: The Case for Limits' 194.

¹³ Miller further argues that immigration restrictions can be defended on liberal egalitarian grounds. See 'Immigration: The Case for Limits' 199–202.

¹⁴ Blake, 'Immigration' 224–37.

¹⁵ Singer, 'Famine, Affluence and Morality' 229–43.

¹⁶ Beitz, *Political Theory and International Relations*; Beitz, 'Cosmopolitan Ideals and National Sentiment' 591–9.

¹⁷ Pogge, *World Poverty and Human Rights*.

¹⁸ Whelan, 'Citizenship and Freedom of Movement: An Open Borders Policy?' 3–39.

¹⁹ Wilcox, 'Immigrant Admissions and Global Relations of Harm' 274–91.

²⁰ While this general principle is highly intuitive and firmly grounded in liberal thought, some of these aspects need explanation and defense. For instance, the principle assigns the duty not to impose human right deficits to societies rather than individuals. It should also be noted that the term 'human rights violations' refers to both negative and positive human rights. See Wilcox, 'Immigrant Admissions and Global Relations of Harm'.

²¹ Other more controversial examples could also be given, for example, if the unfair trade policies of one country led to human right violations in another country that could not be remedied before additional violations were produced.

²² It is important to distinguish between immigrant admissions and forced relocation. This argument should not be interpreted as requiring people to resettle against their will, as forcing people to do so could cause them serious harm. Instead, it requires societies to grant admission to those persons who choose to immigrate as the best means to escape imminent human right violations for which those societies are collectively responsible. Such immigrants must be given the opportunity to return to their country of origin if they wish to do so once conditions have improved there; however, they cannot be required to return to their homeland if they have lived in the receiving society long enough to establish significant social, economic, cultural, or political ties with it or its members. In this case, immigrants must be granted the right to full citizenship. See Wilcox, 'Immigrant Admissions and Global Relations of Harm' 286.

²³ Pogge, 'Migration and Poverty' 710–20.

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