

**Joseph H. Carens**

**Who Belongs? Immigration, Democracy and Citizenship**

**Chapter 10**

**The Claims of Community**

**Note to Stanford Workshop:**

As the title above indicates, the attached paper is a chapter in a book I am writing on the ethics of immigration. In the first several chapters of the book I take up a series of questions about the ethics of immigration, given a background assumption that the state is morally entitled to control entry for the most part. I call this the conventional assumption. In the chapter that immediately precedes the one you have, I drop that assumption. I then argue that, at the level of principle, a commitment to freedom and equality as fundamental moral values would require states to have open borders. I defend this claim both on the grounds that we should regard freedom of movement as a basic human right and on the grounds that it is only in a world of open borders that we could meet the requirements of global distributive justice with respect to both opportunities and outcomes. I also argue that these two grounds for open borders are complementary rather than conflicting and I respond to a number of other objections. Finally, I concede that this line of argument is both counterintuitive and impractical and defend its normative importance despite these limitations.

The chapter that I have asked you to read then takes up another set of objections to the open borders argument. These are not objections about its infeasibility or impracticality but rather objections grounded in principle. In various ways, the objections contend that the idea of open borders does not adequately respect the moral claims of political communities.

I think that the chapter I have given you is intelligible on its own, at least with the brief summary that I have just provided. I have asked you to read this one rather than the previous one because I have just finished it and have not yet had any feedback about it. So I welcome challenges and suggestions (including ideas about what I can eliminate to make this shorter – sorry about the length). But on the off chance that there are masochists among you who want to pursue the argument further, I have asked Kathleen Barcos to post the previous chapter “The Case for Open Borders” on the website.

## Open Borders and the Claims of Community

In the previous chapter, I focussed on the positive case for open borders. I turn now to challenges to that idea. One challenge that may occur to readers of this book is that free movement makes membership meaningless. One of the central themes of the first part of this book was that membership matters, that belonging is something of moral importance. Immigrants' moral claims to legal rights and to various forms of social support in their new states derive in large part from the fact that they belong, that they are members of the societies in which they live. Are those claims about the significance of membership and belonging really compatible with my argument for open borders?

Some people may think something like the following: The idea of open borders rests implicitly upon a conception of human life that sees people only as isolated individuals, primarily motivated by economic concerns. It ignores the ways in which human beings are connected to particular historical communities, culturally and politically. It is one thing to say that political communities must genuinely include all those who live permanently within their boundaries, quite another to claim that they must accept anyone who wants to join. The latter springs from a cosmopolitan perspective that cannot do justice to the claims of our particular attachments. It demands that political communities give the same importance to the interests of outsiders as they do to the interests of their own members. This ignores the legitimate responsibility that a political community has to give priority to its own members, to those who belong. It would make collective self-governance impossible. To suggest that citizenship can be seen as a form of feudal privilege, as the open borders argument does is to ignore citizenship's essential role in just institutions.

In my view, these concerns about the implications of my argument for open borders are understandable but misguided. In defending open borders, I am not arguing for a world in which human beings move frequently from one political community to another, with no sense of home or belonging and no deep attachment to place or people. Political communities require relatively stable, intergenerational populations in order to function effectively over time. This requirement of intergenerational stability is compatible with open borders, however, if the other requirements of justice are met. Most people find it more attractive to stay in their community of origin – a place where they know the language, have friends and family, and feel at home – than to move, so long as the differences in life chances between home and elsewhere are not too great. So, a policy of open borders does not necessarily entail mass migration, and modest migration does not threaten intergenerational stability.

What about the challenge that it is unreasonable to compare democratic citizenship with feudal status because democratic citizenship plays a crucial role in just institutions? When I criticize birthright citizenship in Western democracies as a form of feudal privilege, it is not the role that citizenship plays *within* liberal democracies that I am challenging but the limitations imposed on access to that status. It is not the way citizenship makes participation possible that is morally objectionable but the way it is used to exclude. I am not arguing that the circumstances of one's birth should have no implications for one's membership in a political community. On the contrary, as I argued in chapter two, we are

born into families and into wider communities. Children have moral claims to citizenship precisely because of the social ties of birthplace and parentage. My critique of birthright citizenship is not an objection to the initial attribution of membership in a particular community but to the subsequent exclusion from the possibility of moving to a new community and acquiring that status. What is objectionable is not the initial assignment but the ongoing imprisonment of people within their communities of birth, not belonging but exclusion. It is simply not true that the former necessarily entails the latter.

These preliminary comments just set the table. The challenges that I have outlined require fuller elaboration as do my responses to those challenges. In this chapter, as in the previous one, I am not concerned with questions about the immediate feasibility of open borders but rather with its status as a moral ideal, a requirement of justice. Some will be impatient with this approach, dismissing it as utopian. But critiques of deeply entrenched injustices are always utopian. That is what it means to say the injustices are deeply entrenched. The important question, and the one I am addressing here, is whether justice, properly understood, really requires free movement. Most people think that is not the case. They do not regard open borders as something that is right in principle but unrealistic. Rather they believe that states are morally entitled to exercise discretionary control over immigration as a matter of fundamental principle. From this perspective, the deepest objection to open borders is not that it is unachievable but rather that it is wrong, at least if thought of as a moral requirement. Whatever the merits of the arguments advanced on behalf of free movement in the previous chapter, they are outweighed by other moral considerations, above all by the claims of community and the moral importance of membership.

I do not entirely reject the claim that there are tensions between open borders and the claims of community. In the discussion that follows I will try to show how concerns for community and membership require us to clarify the case for open borders in some respects and to qualify it in others. Nevertheless, I will argue that the morally defensible limits on freedom of movement, when they are properly understood, do not greatly alter my argument for open borders. On the contrary, as I will show, at the level of principle, a commitment to open borders is compatible with a deep appreciation for the value of community and the importance of belonging.

In the rest of this chapter, I will articulate and explore the principled challenges to open borders that grow out of concerns for community. I begin with the claim that the kinds of arguments that I am trying to make about our commitments to freedom and equality are fundamentally misplaced because these commitments only apply within the boundaries of the state. Next I consider the relationship between sovereignty and immigration because many people think that the principle of open borders is inherently incompatible with state sovereignty. I then turn to the threats that some say free movement would pose to national security, to democratic values, and to public order. After that, I consider questions about whether the open borders argument fails to give the priority that is due to those with whom we share a political community. Next, I ask whether preservation of a welfare state might make limits on immigration morally permissible. Then I consider whether the desire to maintain a shared culture can justify restrictions on immigration.

Finally, I take up the argument that free movement is incompatible with communal self-determination and with the shared responsibility that flows from collective self-governance and sustains it.

Some of these challenges can be found in a stronger form that seeks to justify far-reaching, discretionary control over immigration by the state and in a weaker form that seeks only to show that the claims of community may outweigh the claims of free movement under certain circumstances. I am more sympathetic to the latter. Freedom and equality are fundamental values but they are not the only values. Besides, the concepts of freedom and equality contain their own internal tensions and each stands in tension with the other. Despite the strong defense I offered of open borders in the previous chapter, I think there are few (if any) moral absolutes, especially when it comes to human action in the world. But there is a vast difference between acknowledging qualifications and limits, and endorsing the conventional view of the state's right to exercise discretionary control. The latter abandons the ideal of open borders altogether.

The topics that I am discussing intersect and overlap in a number of ways. The order of exposition is not random, but it could certainly be constructed differently, and one could easily add other topics as well. Nevertheless, I have tried to present what I see as the most important principled challenges to the idea of open borders as fairly and as effectively as I can. This chapter only considers questions of fundamental principle and therefore sets aside a range of other considerations that affect the question of what policies we should try to pursue in the real world. I pursue some of those issues in the next chapter.

To avoid confusion, let me specify that when I speak in this chapter of 'discretionary control over immigration by the state' or 'discretionary closure' as the opposite of open borders, I am not using these terms in an absolutist sense, just as I do not use the terms "open borders" or "free movement" in an absolutist sense. "Discretionary" is not the same as "arbitrary." I have argued in previous chapters that people sometimes have special claims to admission through family reunification or refugee status or even settled residence in the case of irregular migrants who have established a claim over time and that all potential immigrants have a right not to be subject to morally objectionable forms of discrimination. Most of those who reject my open borders argument and want to grant the state wide latitude in decisions about admissions nevertheless accept these sorts of constraints on the state's right to control immigration (even though they may disagree with me about some of the details). For example, David Miller argues against any general right to free movement but says that those seeking admission have a moral claim that has to be considered and that they cannot be excluded arbitrarily.<sup>1</sup> As Miller unpacks what he means by such statements, however, it becomes clear that he wants to recognize certain kinds of special claims to admission (e.g., family reunification, asylum claims by refugees) to which states ought to give great weight and that he thinks that states should not discriminate in selecting or excluding immigrants. Beyond that, however, so far as I can tell, Miller just means that states must have some reason for denying entry to ordinary immigrants (i.e., ones who have no special claim). States must have some legitimate public policy objective that might be hindered in some way by the admission of these immigrants, but they do not

need more than that to deny admission. So, Miller is an advocate of discretionary closure in the sense in which I am using the term, and so are many others.

### **Bounded Justice**

One important challenge to the idea of open borders is that it exaggerates the moral claims that people outside a political community can make on those within, or on the political community itself. From this perspective, the demands of liberal justice arise primarily within the context of a state, from common subordination to political authority and the many ways in which that inevitably affects people's lives. Freedom of movement is a legitimate human interest, but a limited one that can be satisfied within the limits of the state. Equal opportunity and distributive justice are moral claims that are justified only within the state and because of the moral context it creates.<sup>2</sup>

Most of those who take this view do not deny that we have some moral duties to people outside our political community. They recognize, of course, that we should not violate the human rights of outsiders by our own actions, individually and collectively. Beyond that, they generally think that liberal democratic states have obligations to respond to the moral failures and incapacities of other states, to some degree. For example, they acknowledge that we have a duty to address the plight of refugees, at least in part by admitting some of them. More strikingly, most of these theorists believe that every human being has a moral right to live in a political community that respects basic freedoms and that gives people a reasonable chance at a decent life. Most also think that affluent liberal democratic states have a moral obligation to assist those who are below this threshold and they see this obligation as a matter of justice, not charity. Different authors define the threshold differently, but they generally agree that, however the threshold is defined, it is not being met in the world today for vast numbers of people and that liberal democratic states are not doing enough, by far, to remedy this failure. So, many critics of open borders take a position that is not a defense of the status quo but a sharp critique of it. They think that liberal democratic states today generally fail to meet their minimum moral obligations to outsiders. At the same time, they also think that my argument for open borders goes much too far and fails to recognize the limits to justice claims by non-members.<sup>3</sup> There may be very significant differences between states in terms of the sorts of opportunities and life chances that inhabitants have, but this fact does not give rise to any strong moral claim for redress, much less to a right to move from one community to another where prospects are better.

I do not deny the moral significance of ongoing subjection within a political community or of the pervasive impact of political authority. On the contrary, as I argued in chapter three, that is why those who settle permanently within a political community should be regarded as members and given access to citizenship. Not everyone is a member, and membership does matter morally. Even if borders were open, there would still be important and legitimate distinctions between a state's responsibilities for those within its borders and its responsibilities for those outside, and related distinctions between the legal rights of members and non-members. I explore this point further below. Where I part company with the critics is when they say that our connections to our

political community and to our fellow citizens provide a justification for limiting so sharply the claims of outsiders and especially for excluding those who wish to join our community.

Defenders of bounded justice, as I shall call them, claim that the primary problem of moral justification from a liberal perspective is the justification of the state's authority to those who are subject to it. That is certainly how liberal theory emerged historically, but the inner logic of liberal commitments to human freedom and equality requires us to go deeper.

I normally dislike imaginary examples, but in this case I think one might help to illuminate the moral importance of the overarching normative structure of the international state system as compared with what goes on within individual states. Imagine a camp with 10 cabins, 10 counsellors, and 200 campers. Each cabin is assigned a counsellor who is in charge of the cabin and each camper is randomly assigned to a cabin. Some cabins have 30 or 40 campers in them, others 4 or 5, others in between, but the numbers do not correspond to the size of the cabin or its capacity to house campers. Moreover, some of the cabins have much better provisions, furniture, and facilities than others. Some of the cabins with the fewest campers have much better resources, in absolute terms, than the cabins with the most campers. The obligations of one cabin to another are minimal, beyond respecting the other cabin's autonomy and making sure that no camper is without food or a place to sleep. No camper may change cabins without the permission of the counsellor in the cabin she wants to join, permission that is rarely granted. Camp life occurs for the most part within the cabin and among cabinmates.

Given this context, would we think that the most important moral question to ask about the camp was whether each counsellor had treated the campers in her cabin fairly? Might we not think that it was the initial arrangement that deserved the most critical scrutiny?

If we start from a recognition of the equal moral worth of all human beings and from the view that coercion needs to be justified, then the most important question is not how to justify the state's authority to those subject to it, but how to justify dividing the world into different and unequal states and assigning the better off states such limited moral responsibilities for those outside their own borders as well as the freedom to exclude most of those who might want to move. In other words, it is the overall organization of political authority that requires justification, as much as, or more than, its exercise within a particular state.

Consider the billions of people who find themselves with limited life chances, given the way the world is organized. How do we justify this arrangement to them? Their complaint is not only about the failures of their own states. It is a complaint about an international system that divides a world into distinct political units, so many of which produce such limited opportunities and a few of which offer such enhanced life chances. Why should they regard this overall arrangement as morally legitimate?

The defenders of bounded justice recognize (in part) the power of this complaint. That is why they acknowledge that states have duties beyond their borders to assist people elsewhere in achieving an opportunity for a decent life. But even if the threshold conditions of bounded justice were met, why should those at this minimum threshold accept this as sufficient and morally legitimate? The question recurs, what can we say to them to explain why they should accept this way of organizing the world?

One way to justify it would be to argue that any alternative arrangement would leave more people worse off. If true, this would be a form of justification that took everyone seriously as a free and equal person. To establish such a claim, however, it is not enough to show that having open borders (and redistributive responsibilities between states) would have costs. It is necessary to show that the costs would outweigh the gains, considering the effects on everyone. Another way to justify the current arrangement is to show that this is the only way to respect some fundamental right to which every human being is entitled or to argue that the material differences between states are morally justified and that better off states have a fundamental moral entitlement to closure to protect their advantages. Those are the sorts of argument required. In the sections that follow I'll consider whether preserving a welfare state, sustaining a shared culture, and maintaining democratic self-governance can meet that requirement. Remember that we are not concerned here with what is politically feasible in the here and now, where those with privilege and power are likely to use their power to protect their privilege. We are concerned with what is morally right in principle if people seek to act justly. Remember also that it is not a question of choosing only between the status quo and a world government with all its defects (real and imagined). There are many possible alternatives to consider, among them the one I am proposing: that states accept a duty to keep their borders open.

It is striking that defenders of bounded justice rarely confront this challenge of trying to justify existing international arrangements (or their preferred alternative) to those from poor states.<sup>4</sup> It is as though they did not consider those overarching arrangements to be coercive because there is no single agent with overall authority. It is true, for the most part, that power is exercised directly only by state authorities (like the counsellors in the camp). But, of course, the initial assignment of human beings to states is coercive, not voluntary, and states exercise coercion to see that people stay where they were assigned, at least in the sense of preventing them from entering without permission. Philosophers sometimes like to imagine a world in which the people in different political communities not only have no dealings with one another but also have no knowledge of one another. In reality, in the modern world, contemporary means of communication enable most people to know something about life in other states and contemporary modes of transportation would make migration physically and economically feasible for many, in the absence of coercive restrictions. Indeed, the existence of these coercive restrictions is so well known that it often acts in a pre-emptive way, effectively removing migration as an option from the minds of people who might otherwise consider it. From this perspective, we might say that, for many people, even the ongoing exercise of state power in their daily existence does not have as pervasive an impact on their lives as this prior determination of where they belong and where they may (or may not) enter.

Much of the contemporary debate about global justice has focussed on the question of whether different states are sufficiently interconnected to give rise to claims of distributive justice. It is a mistake, however, to imagine that questions of international justice arise only if there are thick relationships across borders. In important ways, the international system itself establishes and limits the possibilities of such relationships. Through its initial assignment and subsequent restrictions on movement, this system profoundly shapes the life chances of human beings, all of whom are subject to this system.<sup>5</sup> This way of organizing the world is not given by nature. It is a human construction with tremendous consequences for those who live under it. It requires justification. Questions about the justice or injustice of this structure are unavoidable.

Someone may object from a bounded justice perspective that it is unreasonable to hold existing states and contemporary human beings responsible for the way the world is now structured, as though this had been deliberately created in its current form. And, they might say, such a structure cannot be easily changed. The real world is not an imaginary summer camp that we can reorganize at will to suit our views of what is fair. But my argument does not depend on assigning responsibility for the way things are now, (though in some cases that may be appropriate), nor does it assume that the current international system is easily changed. Whatever the origins of current arrangements, if we maintain and reinforce existing institutions, we become responsible for them. The fact that the current arrangements are deeply entrenched does not relieve us of the responsibility to make critical judgments. Social institutions, including the current norms governing the state system, are neither natural nor inevitable. We face questions every day about whether to affirm and maintain the institutions within which we live or whether to criticize and try to change them. If the institutions are just, we have a duty to maintain them. If they are unjust, we have a duty to try to change them. Every day, through the use of force and the threat of force, states help to maintain an international order that assumes that states may exclude potential migrants without taking the aspiring migrants' interests into account and without offering them any justification for their exclusion beyond the state's perception of its own interests. Are they acting justly when they do so? We cannot simply rule that question out of court. We have to address it.

One common objection to open borders from a bounded justice perspective is that there is no institutional mechanism in place to secure compliance with open borders (or compliance with strong redistributive claims). I find the objection puzzling. It seems to treat the absence of such institutions not as a challenge to be addressed and an obstacle to be overcome but as an explanation of why we are not obliged to try. Surely if we have an obligation to maintain just institutions, we also have an obligation to create just institutions where they do not yet exist. Advocates of bounded justice recognize this themselves when they say that we have moral duties to others outside our own states even though we do not yet have appropriate institutions to ensure that those duties are fulfilled. In that case, the absence of an institutional mechanism is not seen as an excuse for complacency but as a reason for action. So, the absence of institutions to realize open borders cannot be regarded as a decisive reason to reject it as a requirement of justice. Of course, it is possible that as we think through what would be entailed in institutionalizing

open borders, we will come to see that every way of doing so entails moral costs even greater than the moral cost of foregoing open borders, but we cannot just assume that to be the case.

At a deeper level, the question of institutional arrangements is surely secondary to and derivative from the question of principles. We want institutional arrangements that will enact and reflect our principles of justice, not principles of justice that simply reflect our institutional arrangements. I do not mean to deny that we may create just institutions first in the course of coping with particular practical problems and only articulate their moral logic later. But we cannot simply assume that the institutions we have are just. If we begin with the moral obligations that we have within existing institutions and arrangements and allow those to set limits to our moral horizons, we will simply reproduce and legitimate whatever moral defects they contain. This is obvious if we consider past institutional arrangements that we now consider unjust. To return to the feudalism analogy, we would not consider it sufficient from a moral perspective for those living under feudal arrangements to have asked what nobles owed to one another or even to have asked what they owed to peasants (e.g., *noblesse oblige*). Like the modern state system, the feudal class structure was a complex social institution with a pervasive effect on the lives of those subject to it and with its own powerful internal norms. Nevertheless, that reality did not render it above criticism. In that case, we can clearly see that it was appropriate to ask whether feudal institutional arrangements were just.<sup>6</sup> We must ask the same question of our own institutions, including the current institutional arrangements for organizing the world politically. The mere fact that the modern state is a complex social institution with pervasive effects on those subject to it does not mean that we have to accept current norms about what is owed to outsiders or how one becomes a member. Of course, the fact that we have to ask questions about the justice of the current state system as we do about feudalism does not make the two morally equivalent. There are many salient differences between feudalism and current international arrangements. Perhaps current international arrangements are just or could be made just without opening borders. But is there a way to make that case to those on the other side of the fence that separates the haves from the have-nots? In any event, defenders of closure are obliged to try. They cannot simply assume that the have-nots do not even have a right to ask the question.

## **Sovereignty**

One argument in defence of the state's discretionary control over immigration is that a norm of open borders would be intrinsically incompatible with state sovereignty. A general right of free movement, some suggest, would require a world government with the power to enforce such a right. A world government would be a bad idea (for everyone) for reasons of excessive centralisation and risks of tyranny. So, we need to divide the world into independent political units like contemporary sovereign states. In a world divided into sovereign states, each state must have the power to control its own borders and so there can be no general right of free movement.

It is all too easy to be glib in dismissing the possibility or desirability of world government. At an earlier point in human history, it seemed preposterous and naively utopian to suggest that a large political community could be organized as a democratic republic with equal legal rights for all citizens, protections for minorities, and effective limits on the powers of government. Every person with knowledge and experience of the world knew that such an arrangement was a chimera. As it has turned out, however, it has been possible to build a number of relatively stable states that approximate that model. Even the difficulties posed by the size of the world population and the vast differences of language, culture and religion are often overstated. Consider the case of India which by itself contains almost a sixth of the world's population, hundreds of linguistic communities, and deep divisions along lines of religion and culture but which has functioned as a relatively stable federal democracy for over sixty years. Is it certain or even likely that peace and justice for the people in that territory would have been better served by dividing the region into smaller, more homogeneous independent states? If one sixth of the world can be organized as a single political community without all of the terrifying consequences that some assert would inevitably follow from a world government, why not the rest as well?

Despite this cautionary note about the dangers of simply acquiescing to the conventional view of world government, I want simply to assume in the rest of this chapter that the conventional view about the possibilities of world order is correct and that the best way to organize the world politically is something like the current system of formally independent sovereign states. Adopting this assumption makes my task harder and so strengthens my conclusions if my argument is successful. In another context, one might want to challenge the assumption more fully.

If we assume that the world is appropriately divided into independent states, each of which (normally) has a moral right to exercise sovereign power within its territory and to control admission to its territory, does it follow that the open borders argument collapses? Not at all. Some people confuse the claim that states have a moral right to exercise sovereign power within their territory (including over their borders) with the claim that every exercise of sovereign power must be regarded as morally right. The latter is an implausible form of positivism. It denies the possibility of any sort of critical moral perspective on a state's actions. Every human rights claim is subject to the objection that it sets moral limits to state sovereignty. That is the whole point of human rights claims in relation to states, i.e., to assert that some exercises of state power are morally wrong. Accepting (as a background assumption) the legitimacy of state sovereignty does not require us to abandon the idea of moral criticism of state behaviour. The argument for open borders is one such criticism. It claims simply that it is morally wrong for states to exclude peaceful immigrants.

Does the claim that borders should be open require some reconfiguration of political authority, some new institutional arrangement to make states live up to this ideal? No, not necessarily. We can think that states are morally obliged to behave in certain ways without thinking that there should be an overarching authority to make them do so. The claim that something is a human right or a moral obligation says nothing about how that

right or obligation is to be enforced. In fact, in the world today where human rights have come to play an important role, most human rights claims are enforced by states against themselves. That is, states themselves limit their own actions and policies in accordance with the human rights norms that they recognize and respect. There may be good reasons for creating new international institutions with the power to enforce human rights (such as, for example, the International Criminal Court), but there may also be good arguments against such institutions. In any event, as I argued above, the question of what principles we should accept is primary and the question of what institutions can best realise those principles is secondary.

Some people, following Hobbes, think that any self-enforced limits on state power must be empty. So, they reject all talk of human rights or moral limits to state power. There are fewer who take that view today, however, and, unlike Hobbes, they rarely acknowledge that this also entails a rejection of liberal democracy. The very idea of liberal democracy is built upon the notion of self-limiting government, i.e., that states have the capacity to restrict the exercise of their power in accordance with their norms and values. There is nothing intrinsically impossible about the idea of a democratic state recognizing that human beings are morally entitled to enter and settle on its territory if they choose to do so and that it has an obligation to permit them, at least under normal circumstances. It may be unlikely that democratic states will agree to recognize such a claim, but that does not make the idea intrinsically incompatible with sovereignty.

David Miller offers a more moderate version of the sovereignty argument, but one that is subject to similar flaws. He first makes the case for the overwhelming advantages of a system of political authority built upon the principle of territorial jurisdiction. Then he goes on to argue that this principle of territorial jurisdiction has implications for immigration:

...a person who stands on any particular piece of ground is rightfully subject to the authority of the state whose laws apply there...And that authority must include the right to require him to leave, since a system of territorial authority cannot function without some control over who falls within its scope.<sup>7</sup>

Miller says that he does not use the language of sovereignty in this context because he recognizes that there are limits to the authority of the state, in particular an obligation to respect the human rights of all those who are present or who seek to enter. He has argued previously that free movement is not a human right, however, so this concession to human rights does not interfere with his claim that the state has a right to exercise discretionary control over immigration.

Notice how Miller's argument slides implicitly from the logical claim that if the state is to exercise effective territorial jurisdiction it must have jurisdiction over all who are present to the much less obvious claim that its authority must include the right to require people to leave (and presumably to prevent them from entering in the first place). Miller treats this second claim as if it were a logical entailment of territorial jurisdiction, but that is

clearly not the case. For example, modern states do not have a moral right to send their own citizens into exile or to prevent them from entering their country of citizenship (though they sometimes do both). Miller himself seems to recognize that there is no logically necessary connection between territorial jurisdiction and control over entry or exit since he acknowledges that human rights appropriately limit the state's power in this sphere. When he insists that "territorial authority cannot function without *some* (italics added) control over who falls within its scope," this sounds like an empirical claim about the conditions of effective governance. It invites the questions "Why?" and "How much?" If the claim is merely that there would be some circumstances under which so many people might seek to enter a territory that the state could no longer maintain law and order and that the state must have sufficient control over immigration to prevent that, I would agree, as I indicate in the next section in my discussion of the public order constraint. But having enough control to maintain law and order is a very long way from having the power to exercise discretionary control over immigration, and Miller offers no argument for the latter. Miller's implicit claim that the need for "some" control can be interpreted as the need for discretionary closure sounds plausible only against the background of the Hobbesian vision of unlimited sovereignty that he himself rejects.

As Rainer Baubock has observed, for a long time, there was no connection between the idea of exercising political control over population flows and the sort of territorial jurisdiction which is the idea at the heart of modern sovereignty, i.e., the state's monopoly over the legitimate use of violence within a particular geographical space.<sup>8</sup> States in the modern form date back to the seventeenth century but they began to try to regulate entry and exit in a serious way only in the late nineteenth century. Passports were not introduced until World War I.<sup>9</sup> Having open borders is not the same as having no borders.

Sovereignty and control over admissions are often linked in the popular imagination and in political discourse, but they are often disentangled in actual political arrangements in the real world. Sovereignty itself is less simple than some assume. Federal systems often have complex separate and shared sovereignty arrangements.<sup>10</sup> Externally, in relation to other states, sovereignty may be unitary (though in a few cases even that power is divided). Internally, the central government has some powers and jurisdiction over some issues, and other units of government (provinces, states in the United States) have other powers and jurisdiction over other issues. The relationship between the central government and the other units is determined by constitutional arrangements. The central government does not have the final say in any simple or conventional sense. It is sheer dogma to insist that the sovereignty exercised by the component parts of a federal system is not real sovereignty. Like property, sovereignty is a bundle of rights that can be divided up in many different ways.<sup>11</sup> Yet the sovereignty that federal units exercise co-exists with open borders among the various units. People *are* generally free to change their membership in sub-national political communities at will, despite the jurisdictional sovereignty that those sub-national units exercise over many important issues. Of course, it is true that such openness has dynamic effects and that the various units may have to take migration incentives into effect in planning public

policies, but in an interdependent world, political units have to take into account many different factors that are outside the jurisdiction they control.

The fact that citizens of European Union states are largely free to move from one member state to another reveals starkly the ideological character of the claim that control over immigration is inherent in sovereignty. No one can seriously doubt that the European states are still real states today with most of the components of state sovereignty. Indeed, every European state has a more effective actual sovereignty than most states elsewhere in the world. Nevertheless, European states that are members of the European Union do not have the power to control immigration from other EU states. And it is a purely formal point to say that they could reacquire that power by withdrawing from the EU.

Someone may point out that the EU did not adopt its (internal) open borders policy out of a commitment to justice or human rights but out of a concern for economic efficiency. In the first instance, it waited to implement the policy until the economies of the poorer states like Spain, Portugal, and Italy had improved sufficiently that the abolition of immigration restrictions within the EU would not lead to massive population movements from the poorer countries to the more affluent ones. For the same reason it did not immediately grant the right of free movement within the EU to citizens of the states like Poland and the Czech Republic that joined later. I accept these claims entirely. From my perspective, they simply confirm the fundamental point, namely that restrictions on migration are usually necessary to protect a community only when that community is so economically privileged relative to others that many outsiders would consider moving there. Hence, the absence of restrictions on immigration, even a legal commitment not to introduce restrictions, is not evidence of the absence of sovereignty.

Having a right to migrate across state borders does not require people to move, anymore than having a right to free mobility within a state requires people to move. Migration between states of the European Union is very low – less than 3% of the population – even though citizens of member states have a right to move (with minor qualifications). Some people love novelty and adventure, but most people are not keen to leave home, family and friends and to move permanently to a place where they don't speak the language and don't know their way about. Most consider doing this only when they think they have a lot to gain. So, restrictions on migration usually serve as a protection for economic and political advantage. If the economic and political differences among states in the world as a whole were no greater than the economic and political differences among states in the EU, there would be no reason to see a right of free movement as a threat to sovereignty under most circumstances.

In insisting that the principle of free movement is not intrinsically incompatible with state sovereignty, I do not mean to deny that there are circumstances under which immigration could threaten a state's capacity to govern itself. A massive inflow of migrants within a short time might indeed have this effect. What I mean to deny here is only that there is a necessary and inevitable link between sovereignty and restrictions on migration. Given the case I developed in the previous chapter on behalf of free

movement, any justification of limits to free movement has to appeal to more than the simple concept of state sovereignty. As a concept, sovereignty only requires that states themselves be the ones to decide what their immigration policies will be. It does not entail the idea that their immigration policies must be morally unconstrained. In fact, as we have seen in chapters seven and eight, almost everyone agrees that state sovereignty is morally constrained in certain ways in the area of immigration. The question now is whether those conventional limits are the only ones states are morally obliged to respect, when we reflect upon immigration more deeply.

### **Threats to National Security, Liberal Democratic Values, and Public Order**

One way to defend restrictions on migration as morally permissible (or even required) is to argue that free movement would impose costs on those in the receiving society that even those seeking to migrate could not reasonably expect the receiving society to bear. In this section I want to consider various ways in which people seeking to immigrate might be seen as threats to the receiving community so that restrictions on migration could be justified as a way of protecting the community against these threats. In general, I recognize that threats can emerge that would justify restrictions on immigration, but I argue that, properly understood, the restrictions that would be justifiable would be extremely limited under almost all plausible circumstances. So, these sorts of arguments only qualify the general case for open borders. They do not undermine the principle.

Earlier I said that I was presupposing, for purposes of this discussion, a world like our own, divided into separate states and further that I was presupposing at least the possibility that these states might face the possibility of violent threats from outsiders, whether state or non-state actors. Can a concern for national security justify restricting immigration?

To some people this question will seem absurd. In their view, protection of national security is the fundamental responsibility of every state, so, of course one can prevent people from immigrating if they pose a threat to national security. At one level I agree. My argument for open borders has been framed from the outset as an argument about the moral claims of ordinary, peaceful people seeking to build decent, secure lives for themselves and their families. It is not an argument for the admission of terrorists or invading armies.

At another level, however, this sort of response is too quick. It obscures the issues that I am trying to investigate. Some people simply use the label of national security to smuggle back in the assumption that states are morally entitled to exercise unlimited discretion over the admission of foreigners. But just as there can be moral limits on the exercise of sovereignty without denying sovereignty itself, there can be moral limits on the protection of national security without denying the fundamental importance of that goal.

First, it is important to see that even if one simply accepts an unqualified version of the national security rationale for limiting immigration, it is, nevertheless, a self-limiting rationale, at least in principle. It provides a warrant for excluding immigrants who pose a threat to national security, not a justification for keeping anyone else out.

I recognize the irony of describing national security as a self-limiting rationale. The concept of national security can be and has been interpreted in such an expansive manner that it can be used to justify excluding anyone whom state authorities choose to keep out for any reason whatsoever. It has often been used in just that way in the past. In the wake of 9/11, Muslims, especially Arab Muslims, found it much harder to gain entry to states in Europe and North America, especially the United States. During much of the twentieth century, the United States used national security as a justification for excluding people identified as gays or lesbians, as well as all sorts of people whose views did not conform to the reigning American ideology. And if national security is linked to a state's economic performance (as it often is), any economic costs connected with immigration can be seen as threatening national security. It is all too easy to construct any category of immigrants as dangerous under the national security banner. To the extent that the national security rationale has been limited in practice, it is largely due to the efforts of NGOs and other actors in civil society who have scrutinized and challenged the actions of states and immigration bureaucracies. Nevertheless, we should not allow the failures of practice to muddle our thinking about principle. Every category is subject to interpretation, expansion, and abuse. That does not mean that we should do without categories but rather that we should insist upon sensible standards and criteria. Even if one accepts the idea that each state must be the final judge of what threatens its own security, it does not follow that states are free to do whatever they want. The vast majority of immigrants (actual and potential) cannot be construed as threats to national security under any plausible definition of that term. A principled use of the national security rationale would justify a very limited restriction of the general right to free movement and no more.

A second version of the threat argument focuses on the danger to basic liberal democratic values posed by a large influx of people who come from non-liberal societies, even if they do not come with any hostile intent. To put it another way, are people committed to treating all individuals as free and equal moral persons obliged to admit people who are not so committed? This is close to the familiar question of the toleration of the intolerant in liberal regimes. One conventional answer (which I accept) is that democratic regimes are obliged to tolerate the intolerant and respect their liberties so long as they do not pose an actual threat to the maintenance of democratic institutions. When they do pose a threat, however, their liberties may be curtailed in order to preserve the regime. The justification for this approach is that the claims to equal liberty by those hostile to liberal democratic principles derive their moral basis from the very principles to which they are hostile and from institutions which, by hypothesis, they will undermine. In the immigration context, that answer would imply that restrictions on illiberal and undemocratic entrants would be justified only if one had good reason to believe that they would threaten the liberal democratic character of the regime if admitted. In other words, like the national security argument, the argument about the dangers of illiberal migrants is self-limiting. It provides no justification for restricting the entry of migrants who accept liberal democratic values and only justifies limiting the entry of those who do not when they would actually pose a threat to the maintenance of a liberal democratic order.

In thinking about this issue, we must not conflate particular policy preferences or preferred dispositions with the requirements of a liberal democratic order. As I argued in chapter six in my discussion of what liberal democratic states can expect of immigrants by way of cultural adaptation, liberal democratic commitments to freedom of thought and conscience themselves set significant limits to the kinds of demands one can make of immigrants, actual or potential. In the current environment, this fear of the illiberal other is often a code for fear of Muslims who are assumed to hold views that are fundamentally incompatible with liberal democracy. But as I observed previously, anyone who reads the anti-immigrant literature from the nineteenth and early twentieth century in the United States is bound to be struck by the similarity between the doubts and fears expressed then with respect to Catholics and Jews from Europe and all immigrants from Asia and the doubts and fears expressed now with respect to Muslims. One finds the same rhetoric about alien invasions, with Asians, Catholics and Jews portrayed as threatening and unassimilable because of their illiberal and undemocratic values.<sup>12</sup> Nobody today would defend those earlier views (or at least nobody should). We should apply the same skepticism to contemporary prejudices, paying attention to the ways in which the overwhelming majority of Muslim immigrants to Europe and North America have embraced the fundamental norms of liberal democracy like their predecessors. It is worth noting as well that most of the potential migrants to Europe and North America from Asia, Africa, and Latin America are not Muslims, and that many potential migrants, Muslim and non-Muslim, want to come precisely because they want to live in liberal democratic regimes (and rightly object, on liberal democratic grounds, to the discrimination and exclusion to which they are often subjected after they arrive). As I said at the outset, the argument for open borders is an argument about the injustice of excluding peaceful people whose only goal is enter and settle in order to build decent and secure lives for themselves and their children. Even if we grant the principle that this could permit denying entry to some potential immigrants on the grounds that they are fundamentally hostile to liberal democratic norms, it is preposterous to suggest that it would justify the exclusion of most of those who are kept out now.

A third variant of the threat argument focuses not on the hostility of those seeking entry but on sheer numbers. Given the size of the potential demand, if rich states were to open their borders, the number of those coming might overwhelm the capacity of the society to cope, leading to chaos and a breakdown of public order. One cannot assume that the potential immigrants would see the danger and refrain from coming because of the lag time between cause and effect, because of collective action problems, and so on. Call this the public order problem. Note that the "public order" is not equivalent to the welfare state or whatever public policies are currently in place. It is a minimalist standard, referring only to the maintenance of law and order. A threat to public order could be used to justify restrictions on immigration on grounds that are compatible with respecting every individual as a free and equal moral person, because the breakdown of public order makes everyone worse off in terms of both liberty and welfare.

In some ways, the public order argument is reminiscent of Garrett Hardin's famous lifeboat ethics argument.<sup>13</sup> It does no one any good to take so many people into a lifeboat that it is swamped and everyone drowns. Fair enough. On the other hand, people in a lifeboat are positively obliged to take in as many as they can without jeopardizing the

safety of the boat as a whole. They cannot let people drown if they are able to save them without risking their own lives. This positive duty is a feature of the lifeboat situation that those fond of this analogy often neglect. If we want to use this analogy in the immigration context, it follows that the state is obliged to admit as many of those seeking entry as it can without jeopardizing public order. Like the other threat arguments, the public order argument is self-limiting. It does not justify control over admissions that simply puts the interests of the current population ahead of the interests of those trying to get in.

Like national security, public order is subject to expansive and problematic interpretations. Some people see a threat to public order in any new demand placed on a social system. We may need a safety margin in a lifeboat, but they want a safety margin of fifty empty places in a lifeboat built for sixty. Again, I think it would be a mistake to deny the moral relevance of public order in principle as a way of trying to prevent abusive interpretations. Instead, we should focus our critiques on the abusive interpretations themselves. As Rawls puts it in a related context where he acknowledges that liberties may sometimes be restricted for the sake of public order and security, the hypothetical possibility of a threat is not enough. Rather there must be a "reasonable expectation" that damage will occur in the absence of restrictions and the expectation has to be based on "evidence and ways of reasoning acceptable to all."<sup>14</sup> The same strictures apply to all attempts to justify restrictions on immigration for the sake of national security, liberal democratic values, and public order. If those strictures are respected, these three concerns would qualify, but not extensively limit, free movement.

Finally, the public order argument works at the level of ideal theory only in the context of two important background assumptions. First, the argument presupposes the moral legitimacy of significant inequalities between states. If there were no significant inequalities, we would have no reason to fear that open borders would give rise to a public order problem. Of course, in a formal sense, the public order restriction applies independently of the likelihood of the need to invoke it, but that sort of formal public order restriction applies to every human right and every liberty.<sup>15</sup> What makes the restriction seem salient in the case of free movement is precisely the assumption that we are likely to have to invoke it. On the other hand, if there were significant inequalities but the inequalities were not morally justifiable, any public order restriction on immigration would be inextricably linked to the maintenance of a morally illegitimate form of public order and so would lack a deep basis in moral principle. As we proceed in the chapter, I will discuss further the appropriateness of this background assumption about the legitimacy of international inequality. The second background assumption is that the threats to public order arise from sheer numbers and not from "backlash", i.e., violent or threatening antagonistic behaviour of the current population towards the newcomers. In the latter case, it is the current population, not the immigrants, who are posing the threat to public order, at least from the perspective of justice. This would not settle the question of what policy to pursue, given the range of feasible options, but it would preclude using public order as a deep justification for restrictions on immigration.

### **Priority for Compatriots**

Some will argue that the open borders argument fails to recognize that our obligations to those who are fellow members of our political community rightly take precedence over the claims of strangers. To insist on free movement is to ask us to ignore these ties and to treat everyone in the world alike. It requires a degree of altruism that is unrealistic. Indeed it rests upon an inhuman sort of cosmopolitanism that fails to give the proper moral weight to particular attachments and memberships. We are morally entitled to favour family, friends, and, yes, our fellow citizens over those with whom we do not have such ties.<sup>16</sup>

I do not disagree with the claim that we are entitled to care more for our nearest and dearest than for distant strangers. There may be some cosmopolitans who think that the idea that all human beings are of equal moral worth requires us, individually and collectively, to give the same weight to the interests and concerns of all human beings, always and everywhere, regardless of our relationships with them, but I am not one of them.<sup>17</sup> I do not think that the principle of equal moral worth entails this sort of abstract universalism, and my argument for open borders does not entail this extreme form of cosmopolitanism.

I am not denying the moral relevance of particularistic attachments. Rather I am arguing that the moral claims of particularistic attachments are limited. They are constrained by considerations of justice.<sup>18</sup> The question is not whether or not we may favour compatriots over outsiders but rather in what ways we may do so. Some ways of favouring compatriots are morally permissible, while others are morally unacceptable. The question is how to think about forcibly excluding peaceful outsiders seeking to enter and settle. I am arguing that *this* way of favouring the current members of our community is morally impermissible. Other ways of favouring compatriots are morally permissible and may even be required.

Consider the family. In many ways, I give priority to my sons over the children of other people. Most people do the same for their children. Indeed, you would not be a good parent if you did not care much more for your own children than for the children of others. Should we think of states as extended families and of restrictions on immigration simply as a way of favouring our own?

There are many good reasons to be wary about drawing analogies between the family and the political community, not least the fact that the personal and intimate connections within the family (good and bad) are very different from the kinds of connections we can have with fellow citizens in a modern state. I will leave those sorts of worries aside here, however, and just draw attention to the moral limits on how we may favour family members over others. To say that opposition to discretionary control over immigration means that one is opposed to favouring compatriots over strangers is like saying that opposition to nepotism means that one is opposed to favouring family members over others. The question is not *whether* one may favour one's own but *how* one may do so. The fact that I care most about my children doesn't mean I'd favour them over others no matter what. In many social contexts we think favouring family members is unfair (e.g., when calling balls and strikes in a baseball game). When the stakes are

high (e.g., legal proceedings, decisions on appointments) we normally create institutional rules to try to prevent people from being able to favour their friends and relatives. In other words, our notions of justice constrain the extent and ways in which we think it is acceptable for us to favour family members. Even when existing arrangements favour our children, we may think that these advantages are unjust and want to change them. For example, as the children of upper middle class professionals, my children enjoy a variety of advantages in their life chances, but I think justice requires (and I would support) a set of economic and social policies that would greatly reduce the advantages that accrue to this sort of social position. I don't want to live in a social world where class and race and gender give my children advantages, because I want them to live in a social world that is just. That applies not only within the state but in the world as a whole. So, even if we are morally entitled to favour compatriots in some ways, it is not self-evident that we are entitled to favour them in this particular way, i.e., by excluding potential immigrants. Perhaps that form of preferential treatment goes too far.

That is precisely what I have been arguing. No one would claim that we are entitled to favour our compatriots by invading (peaceful) foreign countries and robbing their inhabitants or, more generally, by violating the human rights of those who are not our compatriots. The idea that restricting entry is a reasonable and even necessary way to favour compatriots already presupposes that there is nothing deeply wrong with restricting entry, that it does not violate any important moral claims of those trying to get in. In other words, it presupposes the very issues that are supposed to be under consideration.

Do we have special responsibilities to members of our political community? Of course. How could it be otherwise? Special responsibilities for those living within a political jurisdiction is a necessary corollary of creating jurisdictions that produce public services and collective goods and collect taxes to pay for them. It is for the benefit of the people within our political community, not those living somewhere hundreds or thousands of miles away, that we build and maintain schools and hospitals, roads and sewers, that we collect garbage and supply water. They are the ones whose needs and interests have to be the primary focus of those entrusted with the political power of the community. That will remain true whether we have open borders or not. To say that we are entitled to care more for those on the inside than those on the outside, that we may legitimately give priority to our fellow members, is not, however, to say that we are entitled to keep people from entering and joining our community (nor is it to say that we have no obligations to those who choose to remain outside, though that is a distinct question).

Think of this in very concrete terms. The Prime Minister of Great Britain is not as concerned with the well-being of Germans living in Germany as he is with the well-being of people who live in Britain, nor should he be. On the other hand, Germans have the right to bring themselves within the circle of the Prime Minister's concern by moving to the UK. If Massachusetts sets up some social program, it does not have to provide the benefits of that program to everyone in Georgia, but it cannot prevent people from moving from Georgia to Massachusetts where they will become members of the

community who are (eventually) eligible for that program and will have to pay the taxes that support it.

Saying that borders should be open is not a matter of ignoring particularistic ties, much less of demonstrating some sort of inhuman altruism. It is simply a question of recognizing the limits on the ways in which we can promote the interests of current members of our community. We cannot promote their interests by violating the fundamental moral rights of people who are not yet members but who want to join. Of course, this presupposes that justice requires that people be able to move freely across state borders, but I have offered arguments in support of that view. The other position simply presupposes that states are entitled to limit free movement when it is to the advantage of current members to do so. That is the position that needs a defence.

Isn't it unfair if someone can come and claim the benefits of what our community has created without having contributed to their creation? There is something to that concern. As I noted in chapters two and three, it is not unreasonable to set some limits to participation by newcomers in redistributive social programs. Of course, appeals to reciprocity cut both ways, as the same chapters argued. Once people are contributing, they have to be included in the programs their contributions finance. Moreover, reciprocity cannot plausibly be construed as the whole of justice. It cannot explain what we owe as a matter of justice to the people in our own society who are unable to contribute. In talking about what the community has created, as people often do in this context, we simply assume that we already know the answer to the question of who belongs and who is entitled to join.

Even if justice is partly based on reciprocity (as I think is indeed the case), it does not follow that we are entitled to exclude others who would like to enter those reciprocal connections. For most citizens, membership in this cooperative scheme is not the result of some choice that they made as individuals but is an accident of birth. That is acceptable as a basis for the initial assignment of membership, as I have repeatedly argued, but not for exclusion of those who want to join. If absence from the cooperative scheme is not the result of a decision not to cooperate, but of a denial of the opportunity to do so, the argument from reciprocity loses its force.<sup>19</sup>

It is perfectly possible in principle to combine commitments based on reciprocity with openness to outsiders. We see this in practice within states. The citizens of Boston have obligations to one another that they do not owe to the citizens of New York but they are not entitled to keep people from moving from New York to Boston, thereby entering within their sphere of reciprocal justice. Again, the open borders argument is particularly effective in exposing the flaw in claims about the moral relevance of reciprocity, connection, and mutual engagement. If we say that we have obligations to one another because we “participate in... institutions which embody our collective commitment to justice” or, in older language, because we have all signed the social contract, how are we to respond to the outsider (the aspiring immigrant) who says “OK. I’ll be happy to participate and take on the same collective commitments to justice. I’ll sign your social contract.”<sup>20</sup> What is the justification for saying, “No. We won’t let you participate. You

can't sign."? If connection and consent provide the foundation for justice, then a refusal to permit people to establish the relevant connections or to give their consent requires justification.<sup>21</sup>

## **The Welfare State**

One objection to the idea that we should let anyone join the political community who wants to do so is that opening borders like this would make the modern welfare state impossible. The welfare state that has developed in various forms in Europe and North America over the past sixty years or so, has done a lot through its regulatory and redistributive policies to soften the harsh edges of modern capitalism for those who live within its (the welfare state's) protective bounds. Although the welfare state has significant limitations, especially in the North American versions, it has nonetheless provided the majority of citizens who live in welfare states, and especially the least well off citizens, the opportunity to enjoy much more security in the material conditions of their lives than previous generations.

Why might open borders threaten this achievement and why might it be morally legitimate to protect it through discretionary closure? Critics have suggested three reasons to fear the effects of free movement on the welfare state: the opportunistic use of the freedom to move; the erosion of trust and solidarity; and the corrosive effects of unconstrained labour markets in a context of international inequality. Let me briefly elaborate on each of these points.

First, some worry about incentives to move in response to different levels of welfare state provision. Obviously, there are huge gaps between what rich and poor states can provide, but there is also some scope for legitimate variation among liberal democratic states with similar levels of economic resources. So long as states are sovereign and self-governing, some states will have much more extensive welfare states than others, even if the others are comparably rich. The contrast between Scandinavia and the United States illustrates the point. If free movement is permitted, people with special need for the benefits provided by more extensive welfare regimes will have incentives to migrate to those states while those with higher incomes will have incentives to move to states with lower taxes and less extensive welfare regimes. This will make it difficult for the states with more extensive welfare states to maintain them and will create pressures for all states to adjust to the lowest common denominator.

Second, the welfare state is built, some argue, upon a sense of mutual identification, solidarity, and trust among the members of a society. These feelings and orientations make people willing to take a long-term perspective and even to sacrifice for one another. This makes it possible for the state to address the collective action problems that emerge in an individualistic, competitive economy and to provide protection and security for the most vulnerable. If borders were open and anyone who wanted to join a society could do so, the emotional preconditions of the welfare state would be eroded. If people felt as though they were surrounded by strangers rather than true compatriots, it would no longer be possible to sustain community oriented attitudes and dispositions. People would take a much narrower,

more self-interested approach to public life and they would be unwilling to support redistributive policies.

Third, numbers also matter. Given the vast economic differences between rich states and poor states and the much higher number of people living in poor states, it is simply not possible to raise the living standards of people in the rest of the world to the level currently enjoyed within affluent welfare states even by the least prosperous. If borders were open, millions of people would move from poor states to rich ones for economic opportunities. This would have a particularly negative effect on those at the bottom of the economy. Most of the new immigrants would have limited skills. They would compete with those who were already at a disadvantage in a modern economy. Even if the immigrants themselves were not immediately eligible for unemployment benefits and income support, they would come so long as they had better prospects of employment than at home. Here there would be a potential reserve army of the unemployed greater than anything Marx could have imagined. Their willingness to work for less than the existing workforce expects would make it harder to enforce welfare state regulations governing work (hours, minimum wage, health and safety conditions) and would drive more of the settled population to rely on unemployment compensation and other income support programs. Other welfare state programs such as health care and education would come under strain, since immigration would bring in more people who were unable to bear their full share of the costs of such programs. Those at the top of the economic pyramid would not be much affected by this and might even gain. But it would hurt those in the middle and especially those at the bottom. Ultimately it would lead to the dismantling of the welfare state, something that has already occurred to some degree in many states under the competitive pressures of a globalized economy. Open borders would vastly accelerate this process. That is precisely why conservative, free market advocates like the *Wall Street Journal* favour open borders. And, from this perspective, that is also why those who see the welfare state as an important instrument of social justice should favour discretionary closure, not open borders.

Does concern for the fate of the welfare state provide us with sufficient reason to reject, or at least to significantly modify, the case for open borders? On the whole, I think not. As always in this chapter, I am focussing on questions of principle rather than on questions about immediate action. I consider the latter in the next chapter.

First, we should notice that the welfare state argument rests on contestable empirical premises about the economic consequences of opening borders. To what extent are people actually likely to move to take opportunistic advantage of better welfare provisions in one state rather than another? To the extent that opportunistic movement does exist and on the assumption that preventing it is a legitimate goal, could it be reduced to manageable levels by measures short of discretionary closure, such as waiting periods for eligibility? The latter would presumably be morally preferable because they would be less restrictive. More broadly, we can say that if opening borders had relatively little impact on the viability of the welfare state, either because the welfare state could function well even with open borders – perhaps because of the positive contributions made by immigrants to the economy – or because the welfare state is already doomed by factors other than open

borders – perhaps the previously mentioned globalisation of the international economic system – then preserving the welfare state would not provide any reason to close borders. Some scholars think that one or the other of these hypotheses is more plausible as an empirical matter than the claim that open borders will undermine the welfare state.<sup>22</sup> Certainly it is appropriate to remember that many welfare state programs are, at least to a considerable degree, compulsory contributory insurance schemes whose goal is to spread risks over the affected population rather than to redistribute from the better off to the worse off. Moreover, immigrants normally come seeking jobs not welfare benefits and they contribute economically.

Second, to the extent that the willingness of current members to support the welfare state is eroded by the arrival of immigrants, we have to evaluate the moral legitimacy of this erosion. From a normative perspective, it matters enormously whether the unwillingness to support the welfare state grows out of morally objectionable attitudes such as racism or other forms of prejudice or simply out of what one might call legitimate indifference to the well-being of these new arrivals. (Compare the distinction between sheer numbers and backlash in the public order argument.) Of course, as a practical matter, both sorts of attitudes may have the same effect on the viability of the welfare state, but from a principled perspective such as we are pursuing in this chapter, the distinction is crucial. To the extent that the unwillingness of current citizens to support welfare programs once immigrants benefit from them is the product of morally impermissible attitudes and dispositions, then to that extent the negative effects on the welfare state cannot provide a deep justification for closure. If closure is to be justified at the level of principle, it cannot be on the basis of an underlying injustice.

Third, we need to clarify whether, from the perspective of domestic distributive justice, the welfare state is to be considered a morally required institutional arrangement (broadly speaking) or something that is optional – morally permissible, perhaps even admirable, but not, strictly speaking, a requirement of justice. Defenders of closure for the sake of the welfare state are somewhat ambiguous about this, perhaps because they are ambivalent. Some write as though the welfare state were clearly required as a matter of justice. To the extent that the welfare state is required by justice, however, any unwillingness on the part of citizens to support it would seem to be unjust. It would seem harder to defend the idea of legitimate indifference which I have just argued is necessary if the threat to the welfare state is connected to changing attitudes.<sup>23</sup>

Alternatively, we might argue that the welfare state is simply one choice that citizens make among alternative arrangements and that they are morally free not to have such institutions. There is presumably some range of alternative arrangements that would be morally permissible. Theories of justice rarely claim to determine all the details of institutional choices and policies. However, if what free movement erodes is not an institutional arrangement that is required by justice but rather one alternative arrangement among a set of otherwise acceptable ones, it becomes harder to see why that concern should be given sufficient moral weight to overcome the positive arguments previously advanced on behalf of open borders. One could perhaps argue that democratic self-governance is a fundamentally important moral consideration and that it must include the

opportunity to create a welfare state if that is what citizens want, but that is a rather roundabout way to defend the welfare state. The real question from that perspective has to do with the scope and importance of collective self-determination as over against claims to free movement, and I will explore that question in the final section of the chapter.

Fourth, we have to distinguish among different versions of the welfare state argument. I will consider three that capture the main ways in which concern for the welfare state is used to defend closure. First, the most universalistic version argues that the decline of the welfare state would be bad for everyone.<sup>24</sup> It would not only hurt those in the rich states who currently benefit directly from the welfare state but it would remove the welfare state as a model to which developing societies could aspire and which they could use as a guide as their economies grow. Here the appeal is to the net gains for all human beings over time if we preserve the welfare state now by forcibly excluding most of those who would otherwise enter and settle in rich states, unintentionally undermining the developed welfare regimes. On this view the welfare state is a collective good whose beneficiaries include not just the people currently inside the regime but most of those forcibly excluded (or at least their descendants). The provision of collective goods can sometimes justify restrictions on individual choices (as I observed in chapter four), so while closure to protect the welfare state clearly limits individual rights to free movement, it might be justified if this enhances freedom and equality for all, or at least for most, in the long run.<sup>25</sup>

This argument for the welfare state has the form that I said earlier (in the section on bounded justice) would be required to meet the challenge of open borders, because it takes seriously the claims of all to be free and equal moral persons. But is it plausible? As Arash Abizadeh observes, this sort of defense of closure is both temporary and conditional.<sup>26</sup> It is temporary because it provides no justification for restrictions on free movement in the long run. The claim is that closure is needed to consolidate and expand the welfare state throughout the world. Once that has been achieved, states could and presumably should be open because on this account closure is a regrettable necessity, not a discretionary choice among fundamentally acceptable alternatives. It is conditional because whether closure is justified depends on whether and to what extent closure actually enhances the spread of welfare state regimes throughout the world. The claim is that closure ultimately benefits all humanity, not just those living in existing welfare states. For this claim to be true, we have to observe a particular pattern of development (the gradual expansion of the welfare state throughout the world) and a particular causal explanation of that development (the expansion is made possible by closure). In addition, for this welfare state argument to qualify as a principled argument, the need for closure now and the obstacles to the more rapid development of the welfare state elsewhere cannot be due to the unwillingness of those in rich welfare states to share what they have, because this version of the welfare state argument presupposes both that justice requires global diffusion of the welfare state and that those in established welfare states have duties towards those in states that do not yet benefit from these institutions. As we just saw, one cannot construct a principled justification for closure on the grounds that people are unwilling to do what justice requires, regardless of how relevant that may be to the question of what course of action is likely to be prudent and effective.

Given all these qualifications, it seems to me that this version of the welfare state argument for closure rests on very shaky foundations. It may not be logically impossible, but it is an argument with empirical components for which there seems to me to be little support. It is the sort of argument that seems likely to be more persuasive to those living inside existing welfare states than to those on the outside, and that alone should give us pause. The idea of moral hazard applies to moral arguments as well as to insurance policies.<sup>27</sup>

A second possible version of the welfare state argument also has a universalistic form but makes much weaker claims about the benefits of preserving the contemporary welfare state. It is more pessimistic and more modest. In this version, the argument is simply that free movement would create net losses of well-being if one were to take all of its effects into account. This argument makes no claims about the long-term prospects of the welfare state as a model for the rest of the world. It merely asserts that the welfare state does a lot of good now for those people who have the good fortune to live in such a regime, that the welfare state would be eroded by open borders, and that any gains for those able to move would be outweighed by losses for others, either those left behind or those in the receiving states whose situations were rendered worse off by the consequent erosion of the welfare state. I have not seen anyone actually put forward a full-fledged version of this argument but it is sometimes implicit in empirical studies that raise questions about the benefits of remittances, the costs of the brain drain, the negative economic effects of immigration, and so on. I suspect that some who are drawn to a welfare state defense of closure may retreat to this argument as they become aware of the weaknesses of the first and third versions.

At bottom this second argument rests on a utilitarian, or at least a consequentialist, calculus of the effects of open borders. The erosion of the welfare state would be only one such consequence. The argument is universalistic because it gives equal weight to the interests of all human beings and does not privilege the claims of current members of welfare states over outsiders. Because the argument rests on claims about the predicted empirical consequences of open borders, it is not possible to refute it decisively (or to confirm it decisively either) since we do not live in a world of open borders and are not likely to do so in the foreseeable future. I am a political theorist, not an empirical social scientist, and so I leave it to others to assess the validity of the empirical hypotheses on which this argument rests. But I can offer four reasons to be sceptical that this version of the welfare state argument will ultimately provide a robust defense of closure. First, this line of argument goes very much against the grain of conventional economic theory which generally argues that there are substantial net gains to be had overall from mobility of the factors of production, including labour. Of course, this does not settle the question of how those gains are to be distributed but neither does the generic consequentialist argument that I outlined. One could include distributive considerations, of course, but the particular criteria would have to be justified. The next three reasons for scepticism are philosophical points that limit the moral relevance of the empirical claims in this argument. Even if open borders had the net negative empirical consequences that this argument claims, that would not prove that closure was deeply justified from a moral perspective. As I argued earlier in this section, we have to evaluate the reasons why open borders might cause problems (to

the extent that it would). If the problems are the result of people acting unjustly, then the problems do not make closure justified. Here I am assuming, contrary to some philosophical views, that any satisfactory consequentialist calculus will have to deploy a moral filter. Moreover, even if we are concerned with consequences, it does not follow that we have to weigh all interests equally. If we regard free movement as a human right (as I have argued we should), then it deserves extra weight in our moral calculus. Like many other human rights, it may not be absolute, but that does not mean that it is simply reducible to one interest like any other. It requires an especially strong justification to restrict entry and settlement I have argued, and that will (appropriately) skew any calculus we make about the effects of open borders. Finally, like the earlier arguments about the threats to national security and public order posed by open borders, arguments about its negative consequences are self-limiting. They do not justify discretionary control over entry. On the contrary, in a consequentialist framework, to the extent that opening borders and allowing people to move freely leads to better overall consequences than closing them, then to that extent we should keep the borders open. As I argued in the previous chapter, it is highly unlikely that an approach that weighs the interests of everyone equally will justify anything remotely approaching the restrictions characteristic of the modern world.

The third version of the welfare state argument is more particularistic. The claim is that open borders would lead to the decline of the welfare state and this would be bad for the least well off members of those welfare states. We have a duty, as a matter of justice, to protect our disadvantaged compatriots from this decline and so closure to protect the welfare state is both justified and required. In this version of the argument, the effects of closure on non-members are really not given much weight, at least if they have reached some threshold level of decent human existence, even though that level may be well below that of members of the welfare state that is refusing admission.

This argument gains its appeal by focussing our attention on the plight of the most disadvantaged among the citizenry. The main objections to the argument are ones I have already addressed just above and in the earlier sections on bounded justice and priority for compatriots. First, framing the problem as a conflict between poor citizens and potential immigrants presupposes that it is not possible to help both. To the extent that this impossibility arises not from an absolute limitation on economic resources but from the unwillingness of the better off to do what justice requires of them, this framework misrepresents the moral problem. As I have argued at several points, you cannot provide a deep justification for discretionary closure if what makes closure necessary is some injustice by those in the receiving society. Second, treating a subset of the citizenry as the exclusive focus of moral concern neglects the question of what justifies the underlying normative state structure that assumes that we are entitled to give almost absolute priority to compatriots. Again, this would be obvious if we were looking at a structure that everyone today sees as unjust. To return to the feudalism argument, imagine that the feudal class system had some provisions to protect the interests of impoverished lesser nobility, an arrangement that would be threatened if careers were opened to talents and people outside the nobility permitted to travel freely in search of opportunity. Other members of the nobility might even have felt a moral duty to protect their fellow nobles from falling into poverty. Nevertheless, from a wider perspective, the nobility's sense of duty to their fellow

nobles and the benefits of the arrangement to the impoverished nobility would not be sufficient moral justification for excluding the non-nobility from opportunities, even if these opportunities would threaten the arrangement that helps the impoverished nobility. This particularistic version of the welfare state argument seems plausible then only because it draws implicitly on an assumption about the moral legitimacy of the background normative structure of the state system as it currently exists, an assumption called into question by my previous arguments. In the final section of the chapter, however, I will consider an attempt to justify this underlying structure in the name of self-determination.

In sum, even if open borders would have negative consequences for the welfare state, it is hard to see why this would offer an adequate moral justification for restrictions on migration, so long as one is focussed on questions of fundamental principle.

## **Culture**

Immigrants usually come with national identities and cultural backgrounds that are different in important ways from those of most of the people in the society they are entering. May a liberal democratic state keep out immigrants in order to protect and promote the culture of the community against the changes that the immigrants would bring?

I will set aside here concerns that immigrants will bring illiberal cultural values with them or that they will come in such numbers that the society will collapse or that their cultural differences from the majority will undermine the social solidarity required to maintain an effective welfare state, because I have discussed those issues earlier in the chapter. I want to focus in this section on what we might call historically specific, particularistic features of the public culture of a liberal democratic state, features to which the current inhabitants may be attached but which have no intrinsic or necessary connection to liberal democracy.

One of the difficulties in thinking about this question is trying to specify just what a liberal democratic state is entitled to try to promote and preserve when it comes to culture. For some, a liberal democratic state has no business at all protecting or promoting particular cultural commitments.<sup>28</sup> From that perspective, cultural concerns clearly cannot warrant restrictions on immigration. For others, the preservation of culture is ultimately a question of the right of a democratic community to determine its own future direction. From that perspective, the question of the preservation of a national culture is indistinguishable from the general question of the relationship between control over immigration and the possibilities of democratic self-determination over time. Again, I will pursue that topic in the final section of the chapter.

The immediate challenge, for my purposes, is to distinguish between ways in which a liberal democratic state may legitimately seek to preserve a collective cultural heritage and ways in which it may not. Consider a question that lurks in the background of discussions of immigration in both Europe and North America – and sometimes not so far back. May a liberal democratic state limit immigration so as to preserve its European and

Christian cultural heritage? The question presupposes that this cultural inheritance is likely to be weakened if significant numbers of immigrants who are neither European nor Christian are admitted. Even if that presupposition were true – and it is problematic in a number of ways – excluding immigrants because they are not European or Christian would not be a morally legitimate way of seeking to preserve a liberal democratic state’s collective culture because it would violate fundamental liberal democratic commitments not to discriminate on the basis of race or religion.

One way to pursue this task of distinguishing legitimate from illegitimate ways of preserving a state’s public culture is to recall the discussions in chapters two and six about acceptable (and unacceptable) requirements for naturalization and about the ways in which immigrants can (and cannot) be expected to adapt culturally to the receiving society. The central theme of those chapters was that liberal commitments to freedom and equality set severe limits to the kinds of cultural adaptations a liberal democratic state can demand or even expect of immigrants. If a liberal democratic state seeks to promote a national culture and identity, it must limit itself to thin versions of culture and identity – ones that are open to all of those within the state, regardless of their ancestry, their race, their religion, their ways of dressing and eating and living so long as they do not harm others. I argued that the state can require children to be educated in the national language and to learn about the history of the country, that it can (perhaps) require that those seeking naturalisation to demonstrate modest competence in the national language and a modest knowledge of its history and institutions, and that it can normally require the use of the national language in public institutions. But I argued that there is relatively little else that the state may do by way of compulsion to protect and promote the national culture with respect to current residents and citizens. If the state is limited in the kind of public culture it can promote internally, it cannot justify restrictions on immigration as a way of preserving some thicker, more extensive set of cultural commitments. If the state is to restrict immigration for the sake of its public culture, it must be a public culture that it is morally entitled to pursue.

We saw in chapter seven that, even on the assumption that states are generally free to control admissions, they are not free to exclude on the basis of race, ethnicity, religion, or any of the other characteristics that we regard as discriminatory when used as a basis for exclusion within the domestic context. As I argued in that chapter, these are constraints on state policy that are generally accepted even by those who oppose open borders and defend the legitimacy of control over immigration.<sup>29</sup> So, if these limits already apply to the kinds of immigration restrictions a state may deploy when it is assumed that the state has a moral right to exercise great discretionary control over immigration, it would seem that these limits should apply all the more to restrictions on immigration in a context where the claims of the potential migrants are to be given more weight. To put the point more concretely, a liberal democratic state may not (legitimately) limit immigration for the sake of cultural preservation, if it defines the culture in terms of existing racial, ethnic, or religious patterns within the population.<sup>30</sup>

I want to offer one important clarification. It is possible to distinguish between a policy that selects or excludes particular immigrants on the basis of race or religion and a policy that simply limits the overall number of newcomers admitted. The former overtly

discriminates; the latter does not. People have many reasons for advocating restrictions on immigration that are not motivated by racial, ethnic, or religious considerations. I am not arguing that policies limiting numbers are always discriminatory in the way that policies that select or exclude on this basis are. But if the underlying justification for restrictions on immigration is the preservation of a state's public culture and if that public culture is identified with the racial, ethnic or religious characteristics of the current population, then the restrictions are discriminatory and morally unacceptable.

Given this analysis, are there any aspects of public culture that a state might be entitled to preserve through restrictions on immigration and that would not run afoul of these objections to discrimination? The most obvious candidate is language. I have already argued in previous chapters that language is fundamentally different from things like religion, race and ethnicity because of the facts that a shared language is unavoidable in modern public life and that it is such an important collective good. The state is entitled to require immigrants to send their children to schools where they will be educated in the official language and can reasonably expect adult immigrants themselves to make some effort to learn it. So, I have already argued that the state is entitled to use both coercive powers and social expectations to a much greater extent with respect to language than with respect to something like religion.

Why might a state want to ensure that its current language persists as the language of public life? From the perspective of current members, the answer is obvious. As we have already seen, it is necessary to have some shared language (or languages) in a modern society. If a group's native language is also the one that is used in the public schools, in public institutions, and in public life generally, they probably have good reasons to want that to continue. For one thing, there are obvious practical advantages to being comfortable with the dominant language in a society. For another, people are often attached to their native tongue (even if they speak another equally well) and want their language to maintain its public position because of that attachment.

Why might immigration pose a threat to the preservation of the current language as the language of public life? Unless the dominant language happens to be theirs as well (or one they already know), immigrants will not have the same practical incentives or emotional attachments as natives with respect to keeping the current language as the language of public life. If they have the option, they might prefer to have their own language (or at least one they already know) used in public life, and, if there are enough of them, they might be able to get their way through the normal democratic process. So, restricting immigration offers a way of making sure that this important dimension of the existing public culture is maintained and preserved. Is it a justifiable means towards this end?

A number of liberal theorists have argued that it is. Will Kymlicka and David Miller, two of the most prominent advocates of what is usually called the liberal nationalist or liberal culturalist position, have both defended the idea that restricting immigration may be one legitimate way of pursuing the goal of preserving a national culture, and both use language as the prime example of the cultural preservation they have in mind.<sup>31</sup> Both cite

with approval the preference that Quebec gives to francophone immigrants as part of Quebec's overall effort to protect and promote the French language in Quebec. I think their arguments are flawed for a number of reasons.

Let's start with the Quebec case. It is ironic that Quebec is often cited in arguments for the legitimacy of restricting immigration, because, as most people know, Quebec is not a state, but rather a province of Canada.<sup>32</sup> Why does that matter? It matters because despite its deep commitment to the preservation of Quebec's national culture and, above all, to keeping French as the language of public life, Quebec actually has an open borders policy – not with the whole world, to be sure, but with other communities, most of whose members do not speak French. That is, it has an open borders policy with the other provinces of Canada, which have among them a non-francophone population that is more than four times as large as the francophone population of Quebec. Canadians outside Quebec are free to move there, to set up residence, and to become citizens of Quebec. The Quebec government has no legal authority to prevent this. Despite this fact, Quebec nationalists are not up in arms, demanding that the Quebec government be granted this crucial power to protect Quebec culture. On the contrary, even those who advocate independent statehood for Quebec have been at pains to insist that, after independence, the new state would maintain open borders with the rest of Canada (and permit dual citizenship).

Why are Quebec nationalists so willing to tolerate open borders with the rest of Canada? Because there is no danger of Quebec being swamped by immigrants from this source. You don't need to close your borders to protect your culture if there is no danger that enough immigrants will want to come to pose a threat.

The most important lesson to draw from the Quebec case (for this chapter) is that, in most circumstances, restricting immigration to protect culture will seem necessary only if the receiving society has some very significant advantages over the potential immigrants' societies of origin. English-speaking Canadians do not move to Quebec in large numbers, even though they could do so and would (usually) be legally entitled to send their children to Anglophone public schools.<sup>33</sup> They do not move to Quebec (in large numbers) because most Anglophones prefer to live in an environment in which English is the language of public life. And this is a typical pattern with respect to migration across deep cultural divides. Small numbers of people may be flexible or whimsical enough that they are willing to move for trivial reasons to a country whose national culture is very different from their own, especially one in which the language of public life is not their own native tongue. Most people, however, need a fairly serious reason to undertake such a challenge – either intimate personal ties or significant economic or professional opportunities that they cannot find at home. If the migrants are few in number (relative to the established population), they can normally be easily absorbed and in any event will pose no serious threat to the existing culture. It is only if those seeking admission are numerous (relative to the settled population), that the newcomers could pose a serious cultural challenge, and that will happen only when there are very substantial differences between the material conditions in the migrants' country of origin and the one they are seeking to enter. So, the idea that immigration poses a cultural threat is almost always connected to the fact that

closure is protecting non-cultural advantages. Without those advantages, there would be no threat.

Some will say, “So what? We are entitled to the advantages we have.” But using closure to protect economic or other advantages is different from using it to protect culture. Whether protecting such non-cultural advantages is legitimate is part of the overall question that we are exploring in this chapter.

Catalonia might offer a more illuminating case than Quebec for the purposes of considering the legitimacy of restricting immigration to protect culture. Like Quebec, Catalonia has open borders with the rest of Spain, but unlike Quebec, Catalonia has received large numbers of “internal” migrants from other parts of Spain, in large part because of Catalonia’s relative economic success compared with the rest of Spain. These migrants are much more resistant than the ones from outside Spain to the idea that Catalan should be the language of public life and public schools. They would prefer that Spanish be the language of public life in Catalonia, which is, after all, a part of Spain. As Spanish citizens, they have voting rights in Catalonia once they settle there. So, the threat to Catalan culture from these internal migrants is much greater than the threat from foreign migrants, although, as a practical matter, the inflow has lessened in the last few years because of changes in economic conditions.

Liberal nationalists like Kymlicka and Miller accept the legitimacy of sub-state nationalism and the use of political authority to protect and promote that sort of nationalism as well. They do not treat the state as *sui generis* when it comes to the protection and promotion of national culture. That is precisely why both of them feel comfortable citing the Quebec case. But if they had considered the case of Catalonia, they would have faced a more difficult challenge. Would they think that Catalonia would be morally entitled to restrict migration from the rest of Spain to protect Catalan culture? Or would the right of Spanish citizens to move freely within the country outweigh that concern? As far as I know, Catalonian nationalists have never seriously attempted to limit movement from the rest of Spain into Catalonia, though that might be only a tactical concession to conventional views about free movement within the state. If Kymlicka or Miller were to argue that Catalonia is entitled to restrict internal migration from the rest of Spain in order to protect Catalan as the language of public life, it would put them more at odds with the practices of liberal democratic states than is usual for either of them. But if they argued against restricting such migration, it would significantly weaken the claims they have made about the importance of national cultures, including sub-state national cultures. My own position, of course, gives great moral weight to freedom of movement and so would set a very high threshold before a threat to culture would justify restrictions.

I deliberately describe this as a very high threshold rather than an absolute bar, and I do regard the Catalan case as a difficult one (especially given the history of repression of Catalonia under Franco which included a deliberate policy of encouraging Spanish citizens from other regions to settle in Catalonia in order to undermine Catalonian national culture and identity). As I have said from the outset, I am not an absolutist about free movement. I regard the desire that current members of a society usually have to preserve their native

tongue as the language of public life as a legitimate and important interest that can be weighed against the claims of potential migrants (from other parts of the state as well as from outside it, where the society in question is a sub-state nation). In any event, the challenge of this chapter is to explore in a principled way the relationship between the claims of community, including a community's claim to preserve its culture, and the claims of potential migrants, not to say what is to be done in particular cases like Quebec and Catalonia. The cases are of interest here only because thinking about them draws our attention to relevant general considerations that we might otherwise miss.

What we have seen so far in this section teaches us two things. First, it reminds us that there are significant limits to the ways in which a liberal democratic state may define and defend its public culture and so significant limits to the ways in which cultural preservation can be deployed as a justification for restricting immigration. Second, it shows us that there is no intrinsic incompatibility between open borders and cultural preservation, both because open borders do not necessarily lead to large scale movement and because it is possible to preserve a culture not only by keeping immigrants out but also by integrating them into the culture after they have arrived. This kind of integration is commonplace when it comes to the most obviously defensible form of cultural preservation – the preservation of the native language of most of the current community as the language of public life – and the state has tools, most notably compulsory education in the language of public life, by which to ensure that it happens.

I do not mean to deny the possibility of a conflict between open borders and the preservation of a national culture, only its inevitability. As free movement within Canada and, for that matter, within the EU shows, it is perfectly possible to have open borders between different national communities without any of them facing serious threats to the preservation of its national culture.

It is also possible, of course, to have circumstances under which more people want to migrate into a state than can reasonably be integrated into its language(s) and institutions, even though the problems generated might not reach the public order threshold (which justifies closure, as I argued earlier in the chapter). That may be the situation that some states in Europe and North America face today with respect to potential movement from the rest of the world. Does their desire to preserve their national cultures justify those states in limiting immigration?

Let me recall again that in this chapter I am not concerned with questions about how to act in the world as it is or what policies we ought to pursue in a particular state. I am concerned rather with questions about the fundamental justification of underlying arrangements and about the right policies and practices if all states were acting justly. Within that framework of inquiry, we cannot address the question of whether or not preserving national cultures justifies restrictions on immigration without considering the background circumstances under which a conflict between free movement and legitimate cultural preservation emerges. If the background conditions generating migration pressures are unjust, then the fact that the goal of cultural preservation is morally defensible taken by itself is not decisive. Under these conditions, cultural preservation cannot provide a

justification for closure at any deep level of reflection. So long as the migration pressure is a symptom of a deeper injustice, closure cannot be justified from a perspective that treats all human beings as free and equal. The danger is that appeal to cultural preservation will obscure the injustice of the background conditions that give rise to the migration pressure.<sup>34</sup>

Will Kymlicka tries to confront this problem by imagining people trying to decide what rules to adopt regarding control over borders in a variant of Rawls' original position where people are behind a veil of ignorance and don't know anything about their social positions.<sup>35</sup> He assumes a world divided into separate political units with no gross economic inequalities between them.<sup>36</sup> So, in effect, Kymlicka is trying to establish a context of just background conditions within which we can think about the moral claims of culture and identity. Kymlicka recognizes that open borders would enhance the opportunities to live and work wherever individuals want but he thinks that people in the original position would worry that "open borders would also make it more likely that their own national community would be overrun by settlers from other cultures, and that they would be unable to ensure their survival as a distinct national culture."<sup>37</sup> Kymlicka argues that people in the original position would be willing to trade the expanded domain offered by open borders for the security of knowing that they could "live and work and participate politically in their own language and culture" and so would choose states with the right to control immigration rather than open borders.<sup>38</sup>

I think that Kymlicka's way of framing the issue is illuminating but that he goes much too far in the conclusions he draws. Kymlicka makes it clear elsewhere in his article and in his writings generally that he is adopting the thin, open account of national culture – focussed mainly on language – that I have defended above, so this is not a point of disagreement between us. The disagreement is this. I think that Kymlicka implicitly imports into his analysis a picture of current international conditions and a picture of what states are and are not morally entitled to do, even though these pictures do not belong in the original position, and I think that these pictures distort the conclusions he reaches, giving much more weight to cultural protections than they need.

If Kymlicka is right to think that people normally want to "live and work and participate politically in their own language and culture" – and I think he is right about this – why does he imagine that so many of them will be interested in migrating elsewhere, even though there are no gross economic differences between states? Migration poses problems for the maintenance of a culture only when there is a rapid and large intake relative to the size of the existing community. Otherwise the migrants can be integrated into the language and culture of the existing national community. Why would so many people leave their home states if they already enjoy reasonable opportunities there? The EU provides a nice empirical example of Kymlicka's assumed background condition of only limited economic differences between states, and, as I have pointed out, it has relatively little internal mobility despite internal open borders. Kymlicka's fear makes sense only if he is unconsciously importing a picture of the sorts of migration pressures generated by inequalities between states in the world today.

This reading seems all the more plausible when one notices that Kymlicka says a bit later in the article that the parties in the original position might actually prefer to be members of multinational states with territorial self-government for national groups because this “combines the benefits of increased mobility with protection of national identities.”<sup>39</sup> Notice that the reference to increased mobility simply assumes that there will be free movement within the state, one part of the picture of the state that Kymlicka is importing. He offers no reason to explain why members of nations within a state should not worry about migration from their fellow citizens from other nations (see Catalonia) but should worry about migration from other states.

If the optimal arrangement from perspective of the original position is to provide people with as much mobility as is consistent with their having secure protections for their national language and culture – and that is the implication of Kymlicka’s comment on the advantages of multinational states – why not adopt that more nuanced principle to govern the relationship between states and migrants? As Kymlicka constructs the alternatives, we must choose between unconstrained open borders (come what may) and discretionary state control over migration where the state has no obligation to admit migrants unless it judges admission to be in the interest of current citizens. Again, that seems plausible only if one is working with an implicit picture of what states may and may not do based on our current assumptions about what states are entitled to do. Why not adopt instead something like the following: “People normally have the right to migrate and settle wherever they want, and to acquire the full rights of citizenship after some limited waiting period. States have the right to restrict migration only if they can show, on the basis of evidence in an impartial (but internal) forum, that further migration would endanger the survival of the national language and culture, and they may exercise this right of restriction only so long as and to the extent that the danger persists.” This principle leaves the power with the state but not the discretionary moral authority to exercise that power for any reason that seems good to the state.

The position I have just outlined might be described as free movement with a cultural caveat in contrast with Kymlicka’s defense of cultural closure so long as there is internal mobility. In fact, the cultural caveat is not so different from the public order provision or other sorts of caveats that limit every liberal freedom. As I argued above, whether it is freedom of speech or freedom of religious practice or freedom of (internal) movement, every freedom that involves human action in the world is constrained by caveats for emergencies and crises where normal freedoms may be suspended. Of course, some people argue that this means that those freedoms have no real meaning.<sup>40</sup> As I have noted previously, I do not accept that view (nor would Kymlicka, given his other positions).

My position takes culture seriously and gives it enough moral weight that it can justify limiting freedom of movement under some circumstances. It is possible to imagine cases where due to special circumstances, some groups (whether a small state or, more likely, some small sub-state group) needed to implement policies of closure (or partial closure) with respect to immigrants in order to protect a fragile, collective culture (and not some privileged economic position). Such cases are likely to be rare because we have to

imagine both that enough people want to move into a particular community to threaten the viability of its culture, despite the presumed distinctiveness of its culture and language and their current use in public life, despite the absence of any strong economic advantages to living in the community, and despite the many alternatives available to the potential migrants. It is possible to imagine such a scenario, but it seems likely that it would be uncommon under the sorts of background conditions that Kymlicka was imagining for his analysis.

In sum, the preservation of a national culture is an important and legitimate moral interest. Under just background conditions, it is unlikely to provide a justification for restricting immigration, though under some highly specific circumstances it might. Under existing conditions, appeals to cultural preservation as a justification for restrictions in immigration serve mainly to disguise the ways in which such restrictions protect non-cultural, and arguably illegitimate, interests.

### **Community Self-Determination and Collective Responsibility**

The final challenge I want to consider is the claim that the capacity of a political community to shape its own future depends crucially on its having the right to exercise discretionary control over immigration. As Michael Walzer puts it,

Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination.

From this perspective, the moral importance of being able to move freely to live wherever you want is outweighed (at least in normal cases) by the moral importance of living in a political community with which one identifies and whose destiny one helps to determine through participation in politics. It is not possible to have both. As Walzer famously argued, without closure there can be no “*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.”<sup>41</sup> In the modern world, Walzer says, that closure should take place “at the level of the nation-state.” If we insist that states be open, Walzer contends, the result will be that neighborhoods will become closed -- “a thousand petty fortresses” in another famous phrase -- and if they are required to be open, we will have “a world of deracinated men and women.” Effective self-determination requires citizens who identify with the community, understand its past and care about its future.<sup>42</sup> That requires restrictions on immigration.

Walzer’s claims about “communities of character” and the dangers of “a thousand petty fortresses” or “a world of deracinated men and women” have been widely cited with approval, but I think that has more to do with the way in which his claims capture and reinforce conventional assumptions about the moral importance of states and control over immigration than with their plausibility. It is not unreasonable to say that communities of character require relatively stable, intergenerational inhabitants who identify with the community, understand its past and care about its future. It does not follow that this requires that the community have a moral and institutional right to

exercise discretionary control over entry or that it is appropriate to identify communities of character with the modern state.

Walzer's rhetoric distracts us from relevant features of the modern state. For example, it obscures the historical and political realities that lie behind modern state formation. Wars, conquest, forced movement of populations, imperialism, colonialism – these are not the sorts of background realities that the phrase “communities of character” evokes.

The phrase obscures more than it reveals in other ways as well. For example, it blinds us to the vast differences between states in size and degrees of internal homogeneity. Two states, China and India, have over a billion people each and over one-third of the world's population between them. At the other end of the scale, over forty states have populations of less than a million. Why does size matter? Because Walzer's argument rests upon a claim about the need for “closure at the level of the nation state”? The word “level” implies something about the scale of human community. Hence the contrast with neighborhoods. But in what sense does the category ‘state’ represent a “level” at all, with this sort of variation?

Perhaps the phrase “communities of character” is intended to evoke the idea that the members of every state, no matter how large or how small, share something in common. Well, of course, they share membership in the state, but that cannot be what is meant because that makes the argument circular. What does the phrase imply about internal variation within states? Is India with its thousands of different ethnic groups and hundreds of languages a “community of character” in the same sense as Iceland with its relatively homogeneous population of just under 320,000?<sup>43</sup> Of course, one could say that this variation is precisely what gives India its character as a community (and the same with stories of war, conquest, etc.) but then the phrase no longer does any work in distinguishing “communities of character” from anything else. It simply applies to whatever human collectives exist within formal state boundaries. It becomes another term for “state” but one that conceals more than it reveals.

I do not mean to say that there is no sense in which India is a community of character. Living together within the boundaries of a state does create objective and subjective ties among the members. What I do mean to deny, however, is Walzer's claim that “communities of character,” in any meaningful sense of that phrase, depend upon the kind of power that the state has to control immigration. India is a community of character in some useful senses of the term, but so are many other collectives within India, including many of its 28 states (which are quite distinct from one another in terms of politics, culture, history, language, and so on) and many collectives within those states, some of which are politically organized and exercise jurisdictional authority over specific territories. And the distinctiveness of all these communities within India, their existence as communities of character, does not depend on the fact that they have discretionary control to prevent the entry of any of the other billion plus Indians (because they do not have that power), nor does it depend on the fact that India itself has the formal power as a sovereign state to keep non-Indians out. India's neighborhoods are not open because

India's borders are closed, and the men and women of India would not become "deracinated" if India did not close its borders to immigrants.<sup>44</sup>

Communities of character come into being in many different ways and their character develops or erodes for many different reasons. Migration is only one factor among many others and it is an important factor only in some cases. This is just as true for the state as a community of character as it is for other forms of community, political and non-political. Walzer's argument has resonated so widely because it is aimed primarily at audiences in Europe and North America who fear that massive immigration from other parts of the world will transform their social worlds in profound ways and contrary to their desires. I am not claiming that this anxiety has no basis in real world conditions. I am saying, however, that Walzer's attempt to legitimate state control over immigration in the name of preserving "communities of character" fails because it does not confront the underlying issue: international inequality.

Walzer's claim about the importance of communal self-determination is open to the same objection that I posed against the claims that closure is necessary to protect culture and the welfare state, namely that what really matters is not whether borders are open but how many people actually want to move (relative to the settled population). How many seek to move will in turn be a function of the differences between states. If few people seek entry to a given society (i.e., few relative to the society's size), their arrival will normally not affect the community's capacity for self-determination or its character. Walzer himself says that large numbers of people will want to migrate only if there are such big differences that leaving home and settling elsewhere seems attractive to a lot of people. [FIND CITE] So then why does he imagine that open borders will lead to "a world of deracinated men and women"? The real challenge for advocates of closure, as I have suggested at several points, is to explain why it is morally acceptable to assign people from birth to different states with no right to move to a new one of their choice, when the differences between states are so great and the consequences for one's life chances so significant. To talk about the moral importance of communities of character without addressing this issue is to neglect the most fundamental question.

Some defenders of discretionary control over immigration respond to this challenge by arguing that significant inequalities between states are an inevitable and legitimate outcome of communal self-determination because different political communities will make different choices in accordance with their different collective values and judgments as these are filtered through their political processes. Political communities should be responsible for the consequences of their choices, and discretionary control over immigration is necessary to ensure that they are. If people were free to leave poorer states for richer ones, it would create incentives for states to act irresponsibly and would penalize unfairly the ones that had made wise choices.<sup>45</sup> Let's call this line of argument the state responsibility thesis.<sup>46</sup>

David Miller develops the state responsibility thesis by inviting us to imagine two contrasting pairs of societies.<sup>47</sup> In the first example, Affluenza and Ecologia, start out from an equal resource base, but Affluenza uses up its resources in immediate

consumption while Ecologia devotes its resources to sustainable development. In the second example, Procreatia and Condominium also start from an equal resource base, but Procreatia encourages large families and has substantial population growth while Condominium has a “strictly enforced family planning policy [that] achieves a stable population size.”<sup>48</sup> Over time, as a result of their different policies, Ecologia has higher per capita resource levels than Affluenza and Condominium higher ones than Procreatia. Nevertheless, Miller argues, it would be wrong to redistribute resources from Ecologia to Affluenza and from Condominium to Procreatia to bring these societies (and hence their members) back to a position of resource equality. First, he says, redistribution would create perverse incentives, rewarding profligacy (Affluenza and Procreatia) rather than responsibility (Ecologia and Procreatia). Second, he contends, redistribution would be unfair because the citizens of Ecologia and Condominium had made sacrifices for the sake of the long term. Their later advantages, and the disadvantages of Affluenza and Procreatia, were a direct product of the choices made by each society. So, the inequalities must be left in place. Having established that self-determination will give rise to legitimate resource differences, Miller says that giving people the right to move from poorer societies to better endowed ones “would also undermine self-determination, in any world that we can realistically envisage.”<sup>49</sup>

Does the state responsibility thesis hold up to scrutiny? I think not. The argument has four problems. First, it exaggerates the connection between self-determination and inequality. Second, it rests on a distorted picture of the effects of redistribution on incentives. Third, it neglects the ways in which the argument for self-determination and responsibility depends on the existence of an equal starting point for communities. The requirement of an equal starting point stands in tension with the role of responsibility in making inequalities legitimate and requires a compromise between the two considerations. Fourth, it subsumes the moral claims of human beings under the claims of the community into which they are born and gives participation in a self-determining community a moral weight that it cannot bear.

Consider first the question of how much inequality between states would be justified by the state responsibility thesis if that thesis were correct. Miller’s story assumes that all of the differences between states are due to choices that the states have made. What if existing inequalities owe more to the power relations between states than to their independent choices? If we accept the state responsibility thesis, shouldn’t we try to eliminate inequalities that are a product of power rather than self-determination so that self-determination can have its proper impact. (I do not need to worry about how to do that because, like Miller with his hypothetical examples, I am only attempting to clarify principles here.) How much of the inequality between states in the world today is due to power and how much to state self-determination? That is an empirical and historical question to which I do not pretend to have an answer.<sup>50</sup> To the extent that it is power rather than self-determination that explains actual inequalities, however, the inequalities are not morally justified by the state responsibility argument, and so restrictions on migration designed to preserve such inequalities are not justified either.

Power and self-determination are not the only options in explaining international inequality. Consider the role of luck which appears to play no role in Miller's story. Imagine Ecologia I and Ecologia II with the same collective values and goals and equal starting places. Because of external circumstances over which they have no control and could not reasonably have foreseen, Ecologia I winds up much better off than Ecologia II. These differences in outcome do not derive directly from differences in collective self-determination as the earlier differences between Ecologia and Affluenza did. Are they morally justifiable? Should we try to eliminate such differences? That will depend in large part on one's judgment about the proper role of luck in human affairs and about the possibilities of constraining the effects of luck without interfering with other important moral considerations.<sup>51</sup> I will not try to say anything more for the moment about how to answer that question. What is clear, however, is that such differences too are not justified by the state responsibility argument. So, whether the inequalities due to luck are justifiable on other grounds or not, the fact that they are not the product of self-determination means that these inequalities do not provide any positive reason to restrict migration for the sake of self-determination.

In sum, the state responsibility thesis cannot justify all of the existing inequalities between states and offers no reason to restrict migration to protect inequalities that are not the product of self-determination.

Consider now the claim that states would have no incentive to behave responsibly if there were redistributive mechanisms in place to compensate them for their failures. This claim rests implicitly on two implausible presuppositions: first, that any redistribution will have a drastic effect upon economic incentives; second, that states are rational actors motivated only by the pursuit of their own economic advantage. It is true that a radically egalitarian pattern of redistribution that eliminated all inequalities between states would also eliminate economic incentives for responsible behaviour. It does not follow that a more limited effort at redistribution would have dramatic effects on economic incentives for responsible behaviour. If a mechanism for redistribution between states had only modest effects on economic incentives for states to act responsibly, that might be a price worth paying if one thought the goal of redistribution worth pursuing for other reasons.

If one looks at the real world, the implausibility of this absolutist claim about the relation between incentives and responsibility becomes apparent. Within federal systems like the United States, Canada, and even the European Union, there are frequently mechanisms of internal redistribution from better off units to poorer ones. Few people think that the political leaders in the poorer units no longer have any incentives to act responsibly as a result.<sup>52</sup> Indeed on the list of incentives for irresponsible political behaviour by public officials, this would rank rather low. Even in ordinary capitalist systems, the effect of redistributive taxation upon individual incentives depends upon a range of factors. There is no reason to think this would not also be true about redistribution between states.

This leads to the second point. It is a mistake to assume that states are inevitably motivated only by their economic advantage, narrowly conceived. One of the ironies of Miller's account (like that of Rawls) is that they evoke differential concern for the environment as a reason for different outcomes among states. But a great many environmental problems can be solved only if states can be persuaded not to adopt the narrow, strategic orientation that this state responsibility thesis rests upon. The challenge is to persuade states to behave responsibly in a context where immediate economic advantage discourages that. Making states responsible for the (domestic) consequences of their choices creates perverse incentives as well as positive ones. We have to be concerned therefore not only with the internal political culture of states but also with the political culture governing relations between states.<sup>53</sup> That requires cultivating broader norms of mutual responsibility. Redistribution from better off states to ones that are worse off is one of those norms of mutual responsibility that can help to correct for the negative effects of the conventional forms of state responsibility.

The third problem with the state responsibility thesis is that it drastically reduces the connection between human agency and responsibility for outcomes for all generations except the first. Consider a concrete example. Argentina and Canada faced very similar economic circumstances in the early 19th century (population, natural resources, infrastructure, etc.). Now Canada is much richer than Argentina. Assume, for the sake of this argument, that the current difference between the two states is entirely due to the good collective self-governance choices of Canadians and the bad collective self-governance choices of Argentinians. According to the state responsibility thesis, it would not be fair to redistribute resources from the richer state (Canada) to the poorer one (Argentina). But that makes sense only if one thinks exclusively of the state as a single agent persisting through time. Argentina is responsible for its choices. But what does that presuppose about the relationship between the political community and the people who compose it? The human beings who were responsible for Argentina's policies in the nineteenth century are no longer alive. The current generation of Argentinians is not responsible for the choices that their ancestors made. Why is it fair to treat them as if they were?<sup>54</sup>

If we redistribute from Canada to Argentina, don't we undermine the incentives for states to act responsibly? As I argued in the previous section, this is a matter of degrees. Communities will still have incentives to use their resources effectively and to make wise public policy decisions if they reap only some of the benefits of good decisions and suffer only some of the harms of bad ones.

In thinking about state responsibility, we may find it helpful to reflect on the way liberal democratic principles bear on the question of individual responsibility. One common view is that it is reasonable to expect individuals to be responsible for the consequences of their choices, given a starting point of (relatively) equal circumstances.<sup>55</sup> This is basically the intuition that underlies the state responsibility thesis as well, but applied to communities rather than individuals.

Notice the way generations complicate the moral theory of responsibility for individuals. Because every individual is supposed to have a relatively equal starting point, society has an obligation to see to it that children are not (unduly) penalized by the bad choices of their parents. There is an obvious tension here because if we mitigate the bad consequences for children of poor life choices by their parents, we weaken the link between choice and responsibility, i.e., between the self-determination of individuals and their responsibility for the consequences of their choices, because some of the consequences that people care most about are the consequences for their children. If we don't mitigate these bad consequences, however, then it is only in the first generation that the link really holds between choice and responsibility. In all subsequent generations, the fate of individuals is highly shaped, for good or ill, by the choices of their ancestors. I don't mean to suggest that there is a simple solution to all this. The underlying idea of responsibility for choices made from an equal starting point generates internal tensions and requires tradeoffs. That is why we speak in the end only of relatively equal starting points.

If we think now about the problem of responsibility with respect to a self-determining political community, we face a problem that is similar in some respects but different in others. If we regard each community as a single agent, then it seems appropriate to say that each community should be responsible for the consequences of its choices, at least assuming some reasonably equal starting point. That is the basic logic of the state responsibility thesis. From this perspective, however, the problem of generations does not really arise, because each community exists (in principle) in perpetuity.

If we consider the human beings who make up each political community this neglect of the generational question is much less satisfactory. Over time, the entire human composition of the community changes. Why does this matter? Because the choices that we describe the political community as making are choices made by a particular set of human beings -- the citizens alive at the time and their representatives. On a theory of community self-determination, it makes sense to hold those citizens responsible for their decisions and to expect them to live with the consequences of those decisions. But over time, those people die. The people who come after them are *not* responsible for the decisions that their predecessors made. So, it does not seem fair (from a perspective that emphasizes the responsibility of citizens as human agents) to make them live with the consequences (good or bad) of those prior decisions. They have their own claim to a relatively equal starting point, not only as individuals but also as members of a self-determining community.

You may object (as Miller does) that the members of a political community do not come along in discreet generations. As Hume famously observed, human beings are not like butterflies, one generation entering and another leaving all at once. Every political community is an intergenerational community, with new members entering through birth and others leaving through death.<sup>56</sup> (Leave aside migration for the moment.) It is simply not possible to limit the consequences of a decision made in the name of a political community to the members of the community who participated in that decision.

There is considerable truth in this, but it is not the whole story. Recall that when it comes to individuals we think that we need to make some effort to limit the effects of previous generations on subsequent ones and to create relatively equal starting points for everyone who comes along so as to maintain the link between choice and responsibility, even though this weakens the link between choice and responsibility at the same time by freeing parents of (full) responsibility for the effects their choices would otherwise have on the life chances of their children. We can see that the weakening of the link between choice and responsibility in the case of individuals is objectionable on grounds of incentives and fairness, but we think that is a price worth paying to avoid the more fundamental unfairness of allowing grossly unequal starting points to emerge over time. (I write here of principle, not practice, since we know that in actual liberal democratic states we do permit grossly unequal starting points.) At the same time, in the case of individuals, we recognize that we can never make the starting points perfectly equal and that trying to do so would itself interfere with the choice-responsibility nexus by limiting the consequences of our choices for those we care about (as well as conflicting with other values and principles). So, we face tradeoffs, but we do not abandon the effort to create equal starting points altogether just because it cannot be perfect.

The same principles should apply to self-determining political communities. The choices that a self-determining community makes must have consequences for those who live in the community or the community would no longer be self-determining, and that includes consequences for later generations. But that does not mean that later generations have to bear the entire burden (or ought to reap the entire benefit) of the decisions made by earlier generations. It is true, of course, that there is no neat distinction between generations, but that does not preclude the existence of redistributive mechanisms and structures that could keep inequalities from growing too large so that we would not have to abandon altogether the idea of equal starting places for communities over time. The state responsibility thesis contends that redistribution would undermine self-determination. But the absence of redistribution neglects the preconditions that made the state responsibility thesis plausible in the first point, i.e., that communities should be responsible for the consequences of choices made *from an equal starting point*.

When Miller takes up the problem of later generations, he acknowledges that they do not enjoy an equal starting point but says first that that is due to the choices of their predecessors and then that they have no complaint of justice against them either because no one is entitled to any particular level of resources so long as it is sufficient “to sustain the institutions that make a decent life possible.”<sup>57</sup> So, in Miller’s analysis the concern with equal starting points entirely disappears after the first generation, despite the fact that those equal starting points played a crucial role in his account of the state responsibility principle. Miller asks rhetorically what charge of unfairness the second generation might level against the first. But the charge of unfairness that the second generation can raise is not directed against the first, as Miller assumes, but against the structure of community relationships. In the real world, the Argentinians have a complaint not just about the behaviour of their ancestors but about the structure of the international state system that places the current generation in Argentina at such a disadvantage compared with the current generation in Canada. What is unfair is a

structure that gives all the weight to a principle of community responsibility and none to the principle of equal starting points for those who come later, even though it was the principle of equal starting points that made that the principle of community responsibility seem plausible in the first place.

The final problem with the state responsibility thesis is that, on this account, the moral claims of individuals become almost entirely mediated through their membership in the communities to which they have been assigned at birth. This dynamic is particularly evident in Rawls' account. He speaks of political communities as "peoples" rather than "states." Having advanced the state responsibility thesis (using his language of "peoples" in place of "states"), Rawls makes this observation about immigration: "People must recognize that they cannot make up for failing to regulate their numbers or to care for their land ... by migrating into another people's territory without their consent."<sup>58</sup> In this formulation, which is repeated almost verbatim later, individual human beings who are seeking to migrate from one society to another to pursue better lives for themselves and their families are seen, in effect, only as agents of the society they are trying to leave. The sentence suggests that the collective that has failed to care for its territory adequately is trying to offload its problems by sending migrants into the territory of other collectives. The migrants themselves are not seen as autonomous human beings, pursuing aspirations and trying to build better lives for themselves and for their children. The use of coercion to prevent them from doing so is not even identified as a regrettable constraint on human freedom.

Rawls goes on to say that in the theoretical context of his inquiry, i.e., in "a realistic utopia," many of the causes of mass migration in the modern world would disappear: religious and ethnic persecution, political oppression, starvation, and the subordination of women (which leads, he says, to population pressure). So, he concludes, "The problem of immigration is not, then, simply left aside, but is eliminated as a serious problem in a realistic utopia."<sup>59</sup>

Now this might sound like the argument that I have been advancing, namely that in a reasonably just world the differences between societies would be so small that relatively few people would want to move and so there would be no need or justification for restrictions on migration, since those who wanted to move could easily be accommodated. But Rawls is not in favour of open borders. As he makes clear elsewhere in his book, even in his realistic utopia, there would be considerable economic and other differences between societies as a result of their policy choices, and indeed some political communities would even be decent hierarchies rather than liberal democracies. In his only brief discussion of immigration later in the book, Rawls repeats his responsibility argument and says in a footnote that this entails "a least a qualified right to limit immigration" without saying what those qualifications are. He also adds, "Another reason for limiting immigration is to protect a people's culture and its constitutional principles" and endorses Walzer's discussion of this issue.<sup>60</sup> So, when Rawls says that immigration is "not a serious problem in a realistic utopia," he is saying in effect that using coercion to restrict migration raises no serious moral issues so long as those seeking to migrate are living in conditions above some minimum threshold in their original society.

This is puzzling. What if I don't like the "people" into whom I am born? Perhaps I reject all of their fundamental values (and accept those of some other "people"). If we recognize the moral equality of all human beings, we should presumably have to explain why assigning someone to a "people" at birth (with a right to leave but no right of admittance elsewhere) adequately respects this moral equality, given the vast consequences of such an assignment for one's life chances and one's life projects. Why can't one have the right to change "peoples"? Of course, one can if another "people" is willing to let one in, but why should it be entirely up to them? I think that the reason that Rawls does not see any of these issues as a serious problem, at least in the sense of something that requires discussion, is that he is implicitly seeing individuals as having moral claims only as members, not as human beings.

Others are more careful in their language but wind up at the same point. For example, David Miller claims that people have no fundamental moral right to migrate so long as they live in a society that provides them with "an adequate range of options...defined in terms of generic human needs rather than in terms of the interests of any one person in particular." (207) He acknowledges that exclusion involves coercion and so they have some moral claim: "They are owed an explanation for their exclusion." (222) But the explanation he requires is simply that their exclusion must serve the perceived interests of the society that they are trying to enter: "An adequate explanation will be one that links immigration policy to the general goals of the society in question." (222) So, the moral claim that potential immigrants have turns out to be very weak. Coercion requires a justification but not much of one.

As in Rawls' case, I find Miller's position puzzling. Why are the moral claims of ordinary migrants so weak? Unlike Rawls he sees the coercion involved in exclusion. He sees the need to justify that coercion to the person subject to it. But then the justification that he requires turns out to be minimal. Even if he has rejected the ideal that free movement should be regarded as a human right, why doesn't he think that the interests of the potential migrant in getting in should be weighed against the costs to the state of admitting her? Why is any legitimate public policy goal sufficient justification? Miller appeals to the idea of priority for compatriots here, but, as I argued above, granting some priority to compatriots is not the same as making their interests a trump. Miller does not even explore the question of whether this sort of priority is morally appropriate given that it entails coercion. He also appeals to the value of self-determination, but self-determination admits of degrees. Why is any hindrance to the state's plans, no matter how small, sufficient to justify coercive exclusion?<sup>61</sup> Indeed, pushing in the other direction, we might say that the fact that exclusion entails coercion requires us to shift the burden of proof to the state. Perhaps the state should be obliged to show that it cannot achieve its policy goals in any other way than through restricting immigration, given that there are often many ways to pursue any given goal.<sup>62</sup>

In the end, the state responsibility thesis makes collectives morally fundamental and ties the fate of individuals not to the choices they make but to the circumstances of their birth. Even if we think states should be held responsible intergenerationally, we

have no reason to hold later generations of individuals responsible. As I acknowledged, we cannot entirely avoid some bad consequences for descendants, but having a migration option mitigates those consequences to some degree. It does not eliminate all the bad consequences because migration normally has significant costs for the migrants, and having a right to migrate for the sake of opportunity is not the same as having the opportunities one wants in the community into which one was born. Nevertheless, it reflects a reasonable balance of these competing moral considerations.

Whether they would characterize it this way or not, theorists like Miller and Rawls are offering principles for organizing the world, i.e., principles that justify a particular way of assigning rights and responsibilities both to political communities and to the people who live in those communities. Giving political communities a moral license to restrict immigration for the sake of self-determination goes too far in subordinating individuals to the communities to which they initially belong. It solves the problem of collective responsibility for collective choices only by denying individuals the opportunity to make important choices for which they can be personally responsible. It also limits the freedom of human beings much more than is necessary to prevent them from taking advantage of others' sacrifices. This way of organizing the normative structure of political life does not do justice to the moral claims that every human being has to be treated as a free and equal moral person.

## References

- Abizadeh, Arash (2006) "Liberal Egalitarian Arguments for Closed Borders: Some Preliminary Critical Reflections," *Éthique et économique/Ethics and Economics*, Vol. 4, No. 1: 1-8. <http://ethique-economique.org/>
- Agamben, Giorgio (2005) *State of Exception* translated by Kevin Attell (Chicago: University of Chicago Press).
- Barry, Brian (2001) *Culture and Equality* (Cambridge: Harvard University Press).
- Baubock, Rainer (2004) "Territorial or Cultural Autonomy for National Minorities?" in A. Dieckhoff, ed., *The Politics of Belonging, Nationalism, Liberalism and Pluralism* (Lanham, Md: Lexington Books).
- Baubock, Rainer (2007) "Political Boundaries in a Multilevel Democracy," in Seyla Benhabib and Ian Shapiro, eds., *Identities, Affiliations and Allegiances* (Cambridge: Cambridge University Press):
- Blake, Michael (2001) "Distributive Justice, State Coercion, and Autonomy," *Philosophy and Public Affairs*, Vol. 30, No. 3 (Summer): 257-296.
- Blake, Michael (2002) "Discretionary Immigration," *Philosophical Topics*, Vol. 30, No. 2 (Fall): 273-290.
- Buenker, John and Burckel, Nicholas (1977) *Immigration and Ethnicity: A Guide to Information Sources* (Detroit: Gale Research Company).
- Carens, Joseph (1987) "Aliens and Citizens: The Case for Open Borders," *Review of Politics* Vol. 49, No. 2 (Spring): 251-273.
- Carens, Joseph (1988) "Nationalism and the Exclusion of Immigrants: Lessons from Australian Immigration Policy" in Mark Gibney, ed., *Open Borders? Closed Societies?* (Westport, Ct.: Greenwood Press): 41-60.
- Carens, Joseph (1995) *Is Quebec Nationalism Just? Perspectives from Anglophone Canada* (editor) (Montreal: McGill-Queen's University Press).
- Carens, Joseph (1999) "Reconsidering Open Borders," *International Migration Review* Vol. 33, No. 4 (Winter): 1082-1097.
- Carens, Joseph (2000) *Culture, Citizenship and Community* (Oxford: Oxford University Press).

Chang, Howard F. (1997) "Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy," *University of Pennsylvania Law Review* Vol. 145, No. 5: 1147-1244.

Divine, Robert (1957) *American Immigration Policy* (New Haven: Yale University Press).

Gainer, Bernard (1972) *The Alien Invasion: The Origins of the Aliens Act of 1905* (London: Heinemann Educational Books).

Gans, Chaim (2008) *A Just Zionism* (Oxford: Oxford University Press)

Garrard, John T. (1967) "Parallels of Protest: English Reactions to Jewish and Commonwealth Immigration," *Race* 9 (1): .

Gibney, Matthew (2004) *The Ethics and Politics of Asylum* (Cambridge: Cambridge University Press).

Hardin, Garrett (1974) "Living on a Lifeboat," *Bioscience* (October):

Higham, John (1963) *Strangers in the Land: Patterns of American Nativism* (New York: Atheneum).

Higham, John (1975) *Send These to Me: Jews and Other Immigrants in Urban America* (New York: Atheneum).

Isbister, John (2000) "A Liberal Argument for Border Controls: Reply to Carens," *International Migration Review* Vol. 34, No. 2: 629-635

Kymlicka, Will (2001) "Territorial Boundaries: A Liberal Egalitarian Perspective," in David Miller and Sohail H. Hashmi, eds., *Boundaries and Justice* (Princeton: Princeton University Press): 249-275.

Macedo, Stephen (2004) "What Self-Governing Peoples Owe to One Another: Universalism, Diversity and *The Law of Peoples*," *Fordham Law Review* Vol. LXXII, No. 5 (April): 1721-1738.

Miller, David (2007) *National Responsibility and Global Justice* (Oxford: Oxford University Press).

Nagel, Thomas (2005) "The Problem of Global Justice," *Philosophy & Public Affairs* Vol. 33, no. 2 (Spring): 113-147.

Norman, Wayne (2006) *Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State* (Oxford: Oxford University Press).

Pogge, Thomas (2002) *World Poverty and Human Rights* (Cambridge: Polity Press).

- Rawls, John (1971) *A Theory of Justice* (Cambridge: Harvard University Press).
- Rawls, John (1999) *The Law of Peoples* (Cambridge: Harvard University Press).
- Sadiq, Kamal (2009) *Paper Citizens* (Oxford: Oxford University Press).
- Scheffler, Samuel (2001) *Boundaries and Allegiances* (Oxford: Oxford University Press).
- Shachar, Ayelet (2009) *The Birthright Lottery* (Cambridge: Harvard University Press).
- Steiner, Hillel (1992) "Libertarianism and the transnational migration of people," in Brian Barry and Robert E. Goodin, eds., *Free Movement* (University Park, Pa.: Penn State University Press): 87-94.
- Tamir, Yael (1993) *Liberal Nationalism* (Princeton: Princeton University Press).
- Torpey, John (2000) *The Invention of the Passport* (Cambridge: Cambridge University Press).
- Van Parijs, Philippe (1992) "Commentary: Citizenship exploitation, unequal exchange and the breakdown of popular sovereignty," in Brian Barry and Robert E. Goodin, eds., *Free Movement* (University Park, Pa.: Penn State University Press): 155-165.
- Walzer, Michael (1983) *Spheres of Justice* (New York, Basic Books).
- Woodward, James (1992) "Commentary: Liberalism and migration," in Brian Barry and Robert E. Goodin, eds., *Free Movement* (University Park, Pa.: Penn State University Press): 59-84

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<sup>1</sup> Miller, 2007, p. 222.

<sup>2</sup> Versions of this argument can be found in Rawls 1999, Blake 2001, Macedo 2004, Nagel 2005, and Miller 2007.

<sup>3</sup>Of course, the theorists I mention often have other arguments for an egalitarian version of global distributive justice in mind and not my argument for open borders, but some of them are explicitly challenging my position and their arguments offer relevant challenges to mine, whatever their intended target.

<sup>4</sup>David Miller is an important exception to this generalization, especially in his recent work on global justice and on immigration. Many of the arguments in this chapter respond to challenges he has posed.

<sup>5</sup> For a recent work developing this point, see Shachar 2009.

<sup>6</sup>I am not assuming that there is a universal, ahistorical perspective from which we can judge all social arrangements. In fact, of course, the critical perspective of liberalism on feudalism emerges from within feudalism itself, just as my critique of contemporary arrangements emerges from liberalism. I find the question of how we can engage appropriately in critical assessments of the past puzzling, though I think such criticism is also unavoidable. For a brief comment, see Carens 2000, p. 218, n. 22.

<sup>7</sup> Miller 2007, pp. 215-16.

<sup>8</sup>See Baubock in Penn volume p. 3

<sup>9</sup>See Torpey 2000.

<sup>10</sup> For more on this point see Baubock 2004 and 2007; Norman 2006; Carens 2000, chapter 7.

<sup>11</sup>Some people suggest that we should think of the territory over which a state exercises jurisdiction as property owned by the state. They assume that it will follow that the state is morally entitled to exclude potential immigrants from its territory just as any property owner may exclude unwanted individuals from land that she owns. This conception drastically oversimplifies the concept of property and neglects the complications that follow from thinking of a state's territory as property. For example, thinking of the state as collective property seems to authorize the state to engage in whatever redistribution it chooses, something that advocates of the property conception rarely embrace. On the other hand, if one wants to defend a private property approach, it is far from clear why the state should be entitled to interfere with individual owners' choices about whom to hire or otherwise engage with on their property. For more on this point see the discussion of Nozick in Carens 1987; Steiner 1992; Kukathas in Penn volume. As I suggest in the text, property is always a bundle of rights which can be

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constructed and constrained in many different ways, both morally and legally. In the real world, private property owners are not always entitled to exclude those who want to enter their property, especially if they are using it for commercial purposes. Moreover, property owned by a political unit is public property, not private property. While this does not necessarily guarantee that every citizen may enter that property – think of military bases – it is the case that the state’s ability to restrict access to public property, if it is held for the use of the public, is often constrained in many ways even in relation to people who are neither citizens nor residents. Cite Baubock 2009 for critique of property model in immigration. Also Shachar 2009.

<sup>12</sup> For original sources see Wilkins 1892 and the thirty entries in Buenker and Burckel 1977: 208-210. For scholarly discussion see Divine 1957; Garrard 1967; Gainer 1972; Higham 1963, 1975

<sup>13</sup> Garrett Hardin, "Living on a Lifeboat," Bioscience (October 1974)

<sup>14</sup> Rawls 1971: 213.

<sup>15</sup> Ibid.

<sup>16</sup> For the claim that free movement is incompatible with priority for compatriots see Tamir 1993 and Gibney 2004 as well as Macedo and Miller 2007.

<sup>17</sup> This extreme form of cosmopolitanism is rare – I do not say nonexistent – even among those who identify themselves as cosmopolitans.

<sup>18</sup> In criticizing open borders as insufficiently attuned to the claims of our fellow members in a political community, people often cite the work of Samuel Scheffler, the philosopher who has done the best work on the moral relevance of particular attachments. (See Scheffler 2001) But Scheffler himself explicitly recognizes that the moral claims of our particularistic attachments are always open to what he calls “the distributive objection.” In other words, particularistic claims may be constrained by considerations of distributive justice. So, this just takes us back to the question of what distributive justice requires. Ironically, Scheffler himself suggests that one way to meet the distributive objection is to show “those who are not members of the putatively duty-generating groups and relationships are given the opportunity to join and voluntarily decline to do so.” (p. 74) If we apply this logic to the international order, we might say that, from Scheffler’s perspective, significant economic differences between states would be justifiable only if borders were open. See the illuminating discussion in Azibadeh 2006. I do not know whether Scheffler himself would accept this extension and application of his analysis.

<sup>19</sup> See the discussion of Scheffler in the previous note for a related point.

<sup>20</sup> FIND SOURCE OF INITIAL QUOTE IN THIS SENTENCE. BLAKE?

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MACEDO?

<sup>21</sup> Michael Blake argues in a widely cited article that we are entitled to freedom of movement within the state as compensation for our common subjection to political coercion but then dismisses the significance of the political coercion that prevents people from entering the state to voluntarily submit to this common subjection. See Blake 2001.

<sup>22</sup> Chang 1997

<sup>23</sup> This is why I do not pursue the empirical debate about the relationship between diversity and social trust that has received so much attention in the recent political science literature.

<sup>24</sup> For versions of this universalistic argument, see Van Parijs 1992, Woodward, 1992, and Isbister 2000.

<sup>25</sup> In that respect the argument for closure is rather like Rawls' argument that restrictions on liberty may be justified if they enhance liberty in the long run. See Rawls 1971 .

<sup>26</sup> Abizadeh 2006.

<sup>27</sup> In thinking about the universalistic version of the welfare state argument, I am always reminded of the claim made by leaders of the former Soviet Union that it was necessary to build socialism in one country first (i.e., in the Soviet Union) and that doing so would make it possible to expand socialism elsewhere later. That approach did not work out so well in the long run for the countries who were supposedly its intended beneficiaries. The comparison is doubtless too harsh in a number of ways.

<sup>28</sup> See, for example, Barry (2001) and others who take a strong view of the state's obligation to be neutral with respect to questions of culture. In an earlier version of the open borders argument (Carens 1987), I argued that Rawls' *Theory of Justice* offered no basis for using protection of culture as a reason to restrict immigration because it offered no basis for protection of culture to play any role in public policy. Whether that reading of Rawls is right or not, it is not my own view of the issue now. I now think that versions of liberalism that rule out any concern of culture are too restrictive. See Carens 1999 and 2000.

<sup>29</sup> See, for example, Miller 2007 and Blake 2002. Michael Walzer (1983) offers a hypothetical and qualified defence of the White Australia policy, though not of American racially exclusionary policies. For a critique, see Carens 1988.

<sup>30</sup> As I noted in a previous chapter, the idea that Israel can be both a Jewish state and a liberal democratic one at the same time faces a number of deep tensions that have been explored most fully by Israeli scholars themselves, not all of whom affirm its possibility. If it is to be defended, however, it has to be on the grounds that special historical circumstances make the identity of Israel as a Jewish state legitimate and that

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this does not entail the subordination of non-Jewish citizens of Israel. For a recent effort at such a defense see Gans 2008.

<sup>31</sup> See Miller 2007 and Kymlicka 2001.

<sup>32</sup> My use of Quebec in this context should not be taken as a general critique of Quebec nationalism. On the contrary, I am generally sympathetic to Quebec nationalism and have argued elsewhere that most of the policies it has adopted to preserve its distinct culture and society are quite compatible with liberal principles, contrary to the charges leveled by some liberals inside and outside Canada who refuse to recognize the ways in which public policies in the rest of Canada favour the English language or the ways in which Quebec is simply pursuing policies that these same liberals accept as morally legitimate when pursued in other political jurisdictions. (See Carens 1995 and 2000.) But from the critical perspective advanced in this chapter, Quebec is no different from other rich states or political units, for whom limits on entry are a necessary technique in the protection of privilege.

<sup>33</sup>The Canadian Constitution guarantees that children whose parents were educated in English or in French in Canada can have access to a public school education in that same language, so long as the numbers in the local area are sufficient to sustain this.

<sup>34</sup> Doesn't it matter who is responsible for these unjust background conditions? I will respond to this question below in the section on democratic self-governance and national responsibility.

<sup>35</sup> Kymlicka 2001.

<sup>36</sup> In assuming a background of rough economic equality between states, Kymlicka is adopting a much more egalitarian view of global justice than Rawls himself because Rawls explicitly allows for significant economic differences between states in his ideal theory of international justice. See Rawls 1999.

<sup>37</sup> Kymlicka 2001: 267. Kymlicka's language here 'overrun by settlers' and 'unable to ensure their survival as a distinct national culture' may evoke for others, as it does for me, the experience of indigenous peoples. Kymlicka has written elsewhere in defense of aboriginal cultures and I share his views on this. So, let me say explicitly that I do not think that the argument for open borders that I am defending in these chapters provides any justification for the historical and ongoing treatment of indigenous peoples, including the takeover of their lands, nor do I think that this argument for open borders implies that indigenous people are not entitled to restrict settlement by non-indigenous people on the limited lands now under their control. I cannot elaborate that argument here, but I have noted throughout that one cannot move directly from this argument about principles to conclusions about current policies and the text that follows this footnote would clearly have implications for the position of indigenous people.

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<sup>38</sup> Ibid. Kymlicka does not actually try to work through the reasoning of the parties but offers this more as an intuitive account. For my own use of Rawls' original position to reflect on this question, see Carens 1987. I should add that I think Rawls rules out the sort of cultural considerations that Kymlicka wants to include but that Kymlicka is right to want to count them in. I show in the text why including them does not lead to the conclusions he thinks.

<sup>39</sup> Ibid

<sup>40</sup> See, for example, Agamben 2005.

<sup>41</sup> Walzer 1983: 38. Italics in original.

<sup>42</sup> One might reasonably object that this characterization romanticizes actual democratic publics who are all too often selfish and present-minded for reasons having little to do with immigration, but I leave that concern aside because I am concerned in this section with questions of principle.

<sup>43</sup> It was once popular to cite Iceland as the rare example of an ethnically homogeneous state, but in a recent census 13.5 % of the population had been born outside of Iceland and 6% held foreign citizenship. Some of those in these categories were the children of Icelandic parents, but not all by any means.

<sup>44</sup> In fact, India does not even keep its external borders closed effectively. See the interesting discussion in Sadiq 2009.

<sup>45</sup> David Miller (2007) is the one who has developed this line of argument most fully, but similar themes can be found in Rawls (1999) and Macedo (2004).

<sup>46</sup> Miller prefers the language of national responsibility and draws a distinction between state and nation, while Rawls and Macedo prefer to speak of peoples and distinguish between states and peoples. These distinctions are relevant to some issues but not the ones I am pursuing here. All of these authors defend both the state's discretionary control over immigration and economic inequality between states and to do so in the name of collective responsibility and the self-determination of the political community. For my purposes in this chapter, therefore, it is simpler to speak of state responsibility.

<sup>47</sup> Miller's discussion of these two contrasting pairs mirrors that of Rawls (1999: 117-18), but Miller's is a bit more fully developed.

<sup>48</sup> Miller 2007: 69.

<sup>49</sup> Ibid.

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<sup>50</sup> Rawls and Miller seem to think that most current inequalities between states are due to the responsibility factor. Miller rejects Thomas Pogge's claim that the position of poor states today is largely due to historical injustice on the grounds that some former colonies like Malaysia have managed to succeed economically. (p. 251) Rawls uses similar examples. This rebuttal is unpersuasive. The occasional success of African Americans in the United States in the first half of the twentieth century does not show that racism and discrimination had no ill effects on African Americans as a group. Similarly, the fact that a few former colonies have succeeded does not prove that colonialism had no ill effects overall. Of course, this does not prove the opposite either, but given the role played by equal starting points in the state responsibility thesis (which I elaborate in the next section), the burden of proof should rest upon those defending inequality to establish that departures from equality are properly attributed to self-determination rather than to other factors. That would require empirical and historical evidence that neither Rawls nor Miller supplies. I argue later in the text that my defense of open borders does not rely on any contestable claims about the impact of history.

<sup>51</sup> There is a vast literature on luck egalitarianism, but that is not the only place where discussions of luck can be found. See Pitkin, Williams, Nussbaum, lottery in public policy

<sup>52</sup> Pogge (2002) argues that the opposite is true, that redistribution may provide states with the capacity to make investments that will enable them to succeed.

<sup>53</sup> Rawls explicitly acknowledges the need for states to internalize norms with respect to international interactions in *The Law of Peoples* (1999) but is not willing to accept any norm with respect to redistribution beyond the level required to enable every society to meet the basic needs of its people and to enable decent institutions to function.

<sup>54</sup> Elsewhere in his book Miller argues that it makes sense to think of later generations as inheriting responsibilities from earlier ones, but his argument there depends on the claim that the later generations have (legitimately) inherited considerable benefits in terms of territory and capital and so inherit as well responsibilities for past wrongdoing for which reparations or apologies might be due, and so the heirs have to take the bad with the good.

<sup>55</sup> There is, of course, a lot of debate about the adequacy of such an approach for a theory of individual responsibility, including questions about what would count as a starting point of (relatively) equal circumstances, but I leave such complexities aside here.

<sup>56</sup> It is worth noting that generational transformation in the context of collective continuity is not a unique feature of political communities but is a characteristic of every social institution (e.g., corporations, universities, public bureaucracies) that endures through time, though membership in other social institutions does not usually change primarily as a direct result of births and deaths.

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<sup>57</sup> Miller 2007: 72.

<sup>58</sup> Rawls 1999: 8.

<sup>59</sup> Ibid., 9.

<sup>60</sup> Ibid., 39.

<sup>61</sup> I am focusing on the question of principle here but one should not assume that it would be practically impossible to balance the interests of the potential immigrant in getting in against the interests of the state in keeping her out. Laws and policies often require such balancing judgments even in current immigration regimes.

<sup>62</sup> Cite distinction in American jurisprudence between “rational purpose” test and “strict scrutiny.” Formal concerns the same – whether legislature has good reason for what it is doing – and in theory one could pass or fail either test. But in fact, because of how the categories are interpreted, almost every law meets rational purpose test; almost none survives strict scrutiny. With respect to restrictions on immigration, Miller is arguing for rational purpose test and I’m arguing for strict scrutiny.