

Against the right to control immigration

PH338: Philosophy & Politics

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“Immigration is a privilege, not a right.”

Recap: In support of the right to exclude

- At the heart of the ethics of migration is citizens' supposed right to exclude non-citizens from the territory and citizenship of their state.
- In week 5, we considered arguments in support of the right to exclude:
 - Collective self-determination
 - Freedom of association
 - Associative ownership of social goods
 - National identity

This week: Against the right to exclude

- Defending the right to exclude is a minority position in English-speaking political philosophy (which does not say that it is mistaken!).
- This week:
 - Arguments against the right to exclude.
 - Determining the burden of proof: Are open borders, or the right to exclude, the default position on which we fall back if we have no decisive arguments?

The right to exclude and the right to cross borders

- Different texts will either talk about supporting or refuting the right of citizens to exclude, or the right of would-be migrants to cross borders.
- Both rights are two sides of the same coin:
 - The right to exclude is a *liberty right* or a *privilege*: Citizens are morally permitted to exclude non-citizens, i.e. they do not have a duty not to exclude non-citizens.
 - The right to cross borders is a *claim right*: Others have a duty not to hinder the right-bearer from crossing borders.
- So if there is a right to exclude, then there is no right to cross borders, and vice versa.

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- 2 The argument from the right to exit one's country
- 3 The argument from global equality
- 4 Consequentialist arguments
- 5 A Rawlsian argument
- 6 The argument from coercion and democracy
- 7 The argument from property rights of citizens
- 8 The burden of proof

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The argument from freedom of movement

- People have a right to freedom of movement: e.g. they may not simply be constrained or incarcerated.
- There is no relevant difference between movement between and within countries that would constrain this freedom.
- Hence people have a right to move between countries.

Territory and citizenship

- The argument from freedom of movement only establishes access to territory, not access to political participation.
- The argument then requires further argument that being long-term present on a country's territory entitles one to political participation: no second-rate citizens.

Freedom of movement as a basic right

- As a *basic* right, freedom of movement is merely about moving one's body: a matter of bodily integrity and self-determination.
- But people can adequately move their bodies without crossing borders.
- So a basic right to freedom of movement is not infringed upon by restrictive immigration policies (except when fleeing from persecution).

Freedom of movement as a derivative right

- As a right to move geographical distances, the right to free movement is *derivative*. It follows from the rights to access to health care, freedom of association, access to resources and work.
- But these more fundamental rights can often be fulfilled without crossing borders.
 - When these other rights can be so fulfilled, they do not entail a right to cross borders.
 - When they cannot be so fulfilled, the affected person may have a right to cross borders. But it is then these more fundamental rights that ground the right to cross borders, and we need not refer to a right to freedom of movement.
- Where the more fundamental rights cannot be fulfilled in a person's country of origin, they create a right to move into a better country, but not into some *specific* country of the person's choosing: the person is basically a refugee (see week 9).

Freedom of movement and crossing borders

- The above objection to the argument from freedom of movement is a *disjunctive* argument.
- *Either* the right to freedom of movement is here understood as a basic right, or it is understood as a derivative right.
- Either way, it at most establishes a right to cross borders under very specific dire circumstances.
- So a right to freedom of movement, however understood, does not support a general right to cross borders.

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The argument from right to exit

- Citizens of any country have a right to exit the country.
- Since the world's inhabitable landmass is exhaustively covered with countries, the right to exit one country necessitates a right to enter another country.
- Hence everyone has a right to freely cross borders.

Exiting and entering

- A right to exit does not necessitate a right to go to a *specific* destination country.
- The argument from the right to exit then does not establish completely free movement across borders.

Exit as leaving from unacceptable conditions

- The right to exit can be understood to be grounded on the right to escape unacceptable conditions.
 - The right is then very weighty.
 - The right is then part of rights of refugees, and the argument is then limited only to refugees' rights of movement.

Exit as leaving unwanted association

- Alternatively, the right to exit can be understood to be grounded the right to freedom of association, including the right not to be associated with a given country.
- This right may in turn depend on other rights, most broadly individual self-determination.
- The right then applies to everyone, not just people in dire situations.
- But an opponent can argue that the right to exit is then like other rights to free association: A state may not hinder someone from leaving if another country will admit them, but other countries may have no duty to admit them. Cf.: the right to marry.

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The argument from equality

- Every human being is entitled to equal resources and opportunities.
- Resources and opportunities are vastly unequally distributed.
- The only way for disadvantaged people to access resources and opportunities equal to those most endowed with them is to immigrate to their countries.
- Hence people have a right to migrate.

Limitations of the argument from equality

- The argument depends on a theoretical commitment to global egalitarianism.
- Establishes a *derivative* right to migrate: rides on the right to equal resources and opportunities.
- The right is contingent on inequality, and can be nullified by creating global equality in some other way: So it is a right to migrate unless one is given one's fair share.
- The right does not extend to those who already have very good opportunities, or more than their fair share.

Problems for the argument from equality

- Open borders first of all lead to migration of high-skilled workers to richer countries.
- Such migration might *increase* overall inequality and violate the rights of remaining less skilled people to equal resources and opportunities.
- The defender of the argument from global egalitarianism then must establish that
 - a person's right to equal resources supports her migration to a more wealthy country. Problem: She might then have more than her equal and fair share.
 - the rights of those left behind do not place a claim on the would-be migrant to not migrate.

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A consequentialist argument for the right to cross borders

A consequentialist argument for the right to cross borders

- Would-be immigrants stand to gain from immigrating.
- They stand to gain more than citizens of the would-be host country stand to lose from them immigrating (if they even lose at all).
- Hence as long as the above considerations hold, it is impermissible to stop people from migrating.

Key to the consequentialist argument

- The key to the consequentialist argument is to consider everyone's welfare equally.
- So *even if* immigration makes existing citizens of a country less well off, they may still not be permitted to close their country's borders.
- We need to consider the *overall* and *global* effect of unhindered migration.

How to know what is globally optimal?

- The consequentialist argument relies on claims about what global immigration regime is optimal.
- Classical and neo-classical economics: Free trade and free movement of labour are optimal in terms of aggregate welfare.
 - Workers will move to wherever they stand most to gain from working, and this is precisely where their work is used most productively.
- The consequentialist argument then hinges on a commitment to this economic outlook.

What is globally optimal and what is optimal right now

- The above consequentialist argument fails to consider the welfare of those left behind by migration, e.g. if their region is affected by brain drain.
- What is optimal globally, in an ideal world of free trade and movement of labour, may not be optimal for a given country to do in the world as it is, e.g. by unilaterally opening its borders.
- See also brain drain and *transitional justice* next week.

Different forms of consequentialism

- The consequentialist argument works more smoothly if it relies on a collective form of consequentialism, e.g. Rule consequentialism, as opposed to Act Consequentialism.
 - It can then directly apply a global economic theory about free trade.
- But the argument then incurs all the problems of collective consequentialism, e.g. the objection that it is recklessly idealistic.
- If the argument takes real-world imperfections into account, it becomes more realistic, but also more messy.
- Even if we accept neoclassical theories of trade, consequentialist considerations may then still fail to give us the conclusion that open borders are required.

Discussion task

- Which economic considerations speak in favour of the claim that opening borders (of one country / of all countries) increases global welfare?
- Which economic considerations speak against such a claim?
- Which do you consider to be more weighty?

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A Rawlsian argument for open borders

- A just global order is a global order that would be agreed upon in a fair decision situation, in which self-interested agents deliberate behind a “veil of ignorance”, i.e. without knowing where in the global society they end up.
- Behind the veil of ignorance, agents adopt the perspective of the member of society who is least advantaged under any given proposal. In immigration policy, this is the hindered would-be migrant.
- From the perspective of the worst-off, the freedom to migrate is an important basic good that is instrumental to a wide range of life-plans, and not substitutable with higher material wealth.
- So behind the veil of ignorance, we would agree on open borders, and hence a just global order features open borders.

Rawlsian restrictions to open borders

- The Rawlsian argument does not demand to allow immigration that would threaten public order.
- Such immigration would threaten other liberties that are equally important basic goods.
- Agents would then allow for limitations of the freedom of cross-border movement for the sake of preserving other liberties.
- But current immigration restrictions go way beyond those needed for safeguarding public order and the corresponding liberties.

Limitations of the Rawlsian argument

- The Rawlsian argument can be attacked on two grounds:
 - The Rawlsian approach to justice.
 - The way the approach is applied to immigration.

Concerns about the Rawlsian approach

- A general discussion is beyond the scope of the lecture.
- One relevant key concern is the “maximin” decision strategy: Take the position of the worst off, and make it as good as possible. But: Real-world people might be willing to take a gamble and risk adverse outcomes for the sake of a chance of ending up as particularly well-off better-off people.

Concerns about the application of the Rawlsian approach

- The worst-off might be those left behind by migrants.
- Possible response: Treat global justice as a package, not issue-by-issue. The just global order will not feature countries with extreme poverty.
- But *if* we are not acting justly with regard to global income distribution and extreme poverty, *then* we may have reasons to control immigration in order to avoid creating even worse harms. See brain drain next week.

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The argument from coercion and democracy

The argument from coercion and democracy (Arash Abizadeh)

- Being coerced by a state invades a person's autonomy.
- Coercive policies are legitimate only if they are justified democratically by letting all those coerced participate in policy-making.
- Restrictive immigration policies of a country coerce non-citizens.
- Such policies are not legitimate at present, as non-citizens are coerced by them but have no say in them.
- So restrictive immigration policies are at present not justified, and citizens have no right to exclude.

The ambition of the argument from coercion

- Establish that people *now* have a right to access other countries' territory.
- This right could be removed were there to be global democratic institutions who legitimately settle issues of border control, and who decide on restrictive immigration policies.
- So the right to migrate is robust across a large range of possible scenarios, but not unconditional.
- The territory-citizenship link comes especially easy here: The coercion concern requires that long-term residents of a territory participate in the making of coercive laws.

Background of the argument from coercion and democracy

The democratic boundary problem

- Making collective decisions democratically presupposes that we know who is to have a say in the decision.
- Determining the boundaries of that group of political participants cannot itself be decided democratically.

The unbounded demos thesis

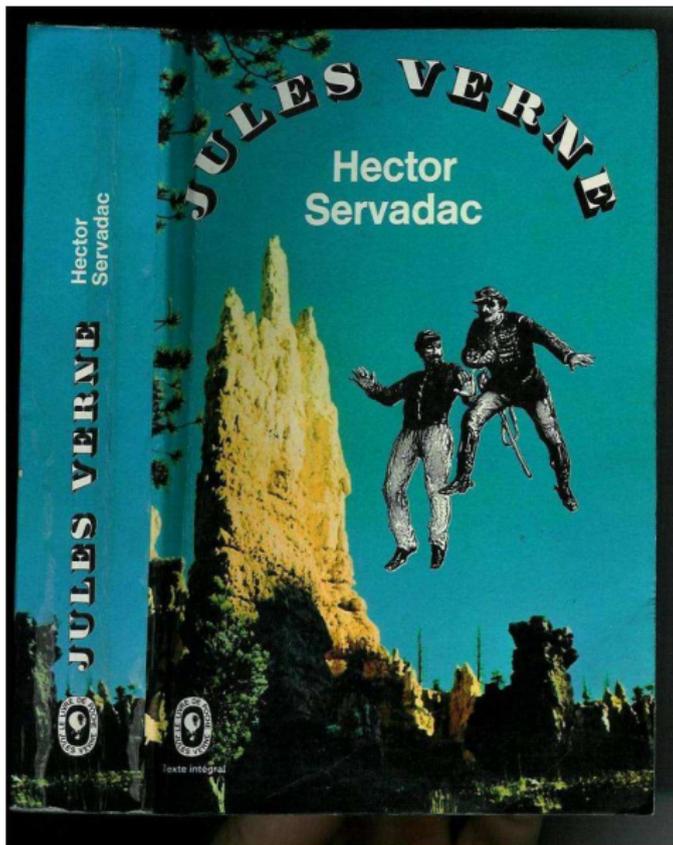
- Democracy presupposes an answer to who the demos is, and cannot generate it.
- Any restrictions on who belongs to the demos is democratically unjustified.
- Hence we need to view the demos as *in principle* unbounded: In carving up the world into countries and their demoi, *everyone* must be allowed to participate.

Is border control coercion?

- Does barring a person entry to a country constitute coercion and infringe upon their autonomy?
- Miller: Removing one option from a person's option-set does not constitute coercion, only prevention (see also Abizadeh's response).
- General argumentative point: The argument from coercion and democracy uses general normative premises about coercion and the need for justification. These general premises can be tested by applying them to other cases.

What about physical obstacles?

- Miller: The argument from coercion does not apply to purely physical, non-coercive physical obstacles to entering a territory.
- Question: If this point is granted, is the resulting limitation of the argument relevant in the real world? Consider how such physical obstacles would work, and the difference (if any) between an obstacle and coercion.





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Exclusion and the rights of citizens

Carens' argument from rights of citizens

- Individual property rights entitle citizens to invite whoever they wish onto their land, and to trade with whoever they wish, and to employ whoever they wish.
- Individual freedom of association includes freely associating with non-citizens.
- Exclusive immigration policy then disrespects the rights *of citizens*.

Ambition of the argument from rights of citizens

- Only establishes that we ought to open borders for people that some citizens *want* to have in the country.
- Only establishes that *the state's* right of exclusion may be limited by the rights of citizens.
- Does not impinge on the rights of citizens to exclude whoever *they all* do not want to have in the country.

Freedom of association of different citizens

- The argument from rights of citizens against the right of exclusion is compatible with the argument for the right of exclusion on grounds of freedom of association.
- But freedom of association of the inviting individual may come in conflict with freedom of association of the rejecting individuals.
- The rights of the inviting individuals are likely to win out in a one-on-one comparison: Closer association is at stake than for random rejecting citizens.

Implications of the argument from rights of citizens

- Supports the *right to settle* for those *invited* on grounds of work and family.
- Supports *access to citizenship* for those invited for purposes for which shared citizenship is relevant:
 - People working in politics or the armed forces: But: their association with random other citizens is much stronger, as is the latter's claim to freedom of association with regard to them.
 - Family: Relating to one's spouse as a full equal may require equal citizenship (or lack thereof) in the country of residence.
 - Partner who is a citizen: makes the laws & is subject to them.
 - Merely residing partner: is subject to the laws partly made by their partner.

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The burden of proof question

- Do proponents of the right to exclude need to show that the right exists, or only refute arguments that hold that it does not exist?
- Conversely, do opponents have to provide an argument against the right, or just refute arguments in favour of the right to exclude?

The burden of proof and the default position

- The burden of proof question is a question about the default position: In the absence of a decisive argument for or against the right to exclude, or before even considering such arguments, what position should we take?
- The burden of proof can be subtly shifted through rhetoric, and is susceptible to status quo bias.
 - That is, it seems natural to hold that the way we act is morally justified, and that what the majority of people believes is true.
 - But giving in to this bias is very dangerous: take examples of past injustices that were not obvious to people at the time.

How to determine the burden of proof then?

- A consideration for shifting the burden of proof to the proponent of the right to exclude: “Borders have guards, and guards have guns.”
- Opening borders is not a particular act that needs justification, but controlling borders is.
- It is an at least potentially and implicitly violent act.
- In other contexts, the use of force requires justification, so it seems that it does so here as well.

Conclusion: The right to exclude

- If citizens do not have a right to exclude, then current restrictive immigration policies are seriously unjust.
- In consequence, illegal immigration is then morally perfectly permissible.
 - No valid complaint that illegal immigrants “don’t play by the rules” or “jump the queue”, as the rules and queue ought not to be there to begin with.
- While other injustices obtain, it may still be more just overall to have some restrictive immigration policies: See brain drain next week.
- Even if there is a right to exclude, there are important restrictions to it: Refugees. See weeks 9 and 10.

Seminar question

What is the strongest objection to Abizadeh's argument for open borders, and can the argument overcome this objection?