

## Chapter 10

### The Case for Open Borders

In the first part of this book, I examined questions about immigration, citizenship and democracy within the framework of the conventional moral view that states are morally entitled to control admissions. In the past two chapters I have been exploring ways in which that right to control admissions was constrained by moral considerations that liberal democratic states often acknowledge, at least in principle. Now, however, I want to pose a more fundamental challenge. I want to call into question the fundamental assumption that states are morally entitled to restrict immigration. Let me begin by sketching the contours of this challenge.

Borders have guards and the guards have guns. This is an obvious fact of political life but one that is easily hidden from view – at least from the view of those of us who are citizens of affluent democracies. If we see the guards at all, we find them reassuring because we think of them as there to protect us rather than to keep us out. To Africans in small, leaky vessels seeking to avoid patrol boats while they cross the Mediterranean to southern Europe or to Mexicans willing to risk death from heat and exposure in the Arizona desert to evade the fences and border patrols, it is quite different. To these people, the borders, guards, and guns are all too apparent, their goal of exclusion all too real. What justifies the use of force against such people? Perhaps borders and guards can be justified as a way of keeping out terrorists, armed invaders, or criminals. But most of those trying to get in are not like that. They are ordinary, peaceful people, seeking only the opportunity to build decent, secure lives for themselves and their families. On what moral grounds can we deny entry to these sorts of people? What gives anyone the right to point guns at *them*?

To many people the answer to this question will seem obvious. The power to admit or exclude non-citizens is inherent in sovereignty and essential for any political community that seeks to exercise self-determination. Every state has the legal and moral right to exercise control over admissions in pursuit of its own national interest and of the common good of the members of its community, even if that means denying entry to peaceful, needy foreigners. States may choose to be generous in admitting immigrants, but, in most cases at least, they are under no moral obligation to do so.

I want to challenge that view. In this chapter and the next, I will argue that, in principle, borders should generally be open and people should normally be free to leave their country of origin and settle in another. This critique of exclusion has particular force with respect to restrictions on movement from developing states to Europe and North America, but it applies more generally.

#### The Basic Challenge of Open Borders

In the context of the modern state system, birthright citizenship in Western democracies is the moral equivalent of feudal class privilege – an inherited status that

greatly enhances one's life chances. To be born a citizen of a rich state in Europe or North America is like being born into the nobility (even though many of us belong to the lesser nobility). To be born a citizen of a poor country in Asia or Africa is like being born into the peasantry in the Middle Ages (even if there are a few rich peasants and some peasants manage to gain entry to the nobility). Like feudal birthright privileges, contemporary social arrangements not only grant great advantages on the basis of birth but also legally restrict mobility, making it extremely difficult for those born into a socially disadvantaged position to overcome that disadvantage, no matter how talented they are or how hard they work. Like feudal practices, these contemporary social arrangements are hard to justify when one thinks about them closely.

Reformers in the late Middle Ages objected to the way feudalism restricted freedom, including the freedom of individuals to move from one place to another in search of a better life – a constraint that was crucial to the maintenance of the feudal system. Modern practices of citizenship and state control over borders tie people to the land of their birth almost as effectively. Limiting entry to rich democratic states is a crucial mechanism for protecting a birthright privilege. If the feudal practices protecting birthright privileges were wrong, what justifies the modern ones?

The analogy I have just drawn with feudalism is designed to give readers pause about the conventional view that restrictions on immigration by democratic states are normally justified. Now let me outline the positive case for open borders. I start from three basic interrelated assumptions. First, there is no natural social order. The institutions and practices that govern human beings are ones that human beings have created and can change, at least in principle. Second, in evaluating the moral status of alternative forms of political and social organization, we must start from the premise that all human beings are of equal moral worth. Third, restrictions on the freedom of human beings require a moral justification. These three assumptions are not just my views. They undergird the claim to moral legitimacy of every contemporary democratic regime.

The assumption that all human beings are of equal moral worth does not mean that no legal distinctions can be drawn among different groups of people, nor does the requirement that restrictions on freedom be justified mean that coercion is never defensible. But these two assumptions, together with the assumption that the social order is not naturally given, mean that we have to give reasons for our institutions and practices, reasons that take a certain form. It is never enough to justify a set of social arrangements governing human beings to say that these arrangements are good for us, without regard for others, whoever the "us" may be. We have to appeal to principles and arguments that take everyone's interests into account or that explain why the social arrangements are reasonable and fair to everyone who is subject to them.

Given these three assumptions there is at least a *prima facie* case that borders should be open, for three interrelated reasons. First, the right to go where you want is itself an important human freedom. It is precisely this freedom, and all that this freedom makes possible, that is taken away by imprisonment. Freedom of movement is also a prerequisite to many other freedoms. If people are to be free to live their lives as they

choose, so long as this does not interfere with the legitimate claims of others, they have to be free to move where they want. Of course, there are many restrictions on freedom of movement besides restrictions on immigration. Traffic controls, requirements to respect the property of others, imprisonment for criminal offenses and many other practices set limits on human mobility. But all of these restrictions on freedom of movement require some sort of moral justification, i.e., some argument as to why the restriction on freedom is in the interest of, and fair to, all those who are subject to it. So, from this perspective, we should not simply assume that states are entitled to control immigration more or less at will, (as the conventional moral view does). We should insist on a justification for this power, a justification that takes into account the interests of those excluded as well as the interests of those already inside and that makes the case that restricting immigration is fair to all. There are some sorts of restrictions on immigration that meet this standard, but the ones that do are much fewer and weaker than generally thought.

The second reason why borders should normally be open is that freedom of movement is essential for equality of opportunity. Within liberal democratic states we all recognize, at least in principle, that access to social positions should be determined by an individual's actual talents and effort and not limited on the basis of birth-related characteristics such as class, race, or gender that are not relevant to the capacity to perform well in the position. This ideal of equal opportunity is intimately linked to the view that all human beings are of equal moral worth, that there are no natural hierarchies of birth that entitle people to advantageous social positions. But you have to be able to move to where the opportunities are in order to take advantage of them. So, freedom of movement is an essential prerequisite for equality of opportunity.

It is in the linkages between freedom of movement and equality of opportunity that the analogy with feudalism cuts most deeply. Under feudalism, there was no commitment to equal opportunity. The circumstances of one's birth largely determined one's opportunities, and restrictions on freedom of movement were an essential element in maintaining the limitations on the opportunities of those with talent and motivation but the wrong class background. (Of course, gender was another pervasive constraint.) In the modern world, we have created a social order in which there is a commitment to equality of opportunity for people *within* democratic states (at least to some extent), but no pretense of, or even aspiration to, equality of opportunity for people *across* states. The opportunities for people in one state are simply closed to those from another (for the most part). Since the range of opportunities varies so greatly among states, this means that in our world, as in feudalism, the social circumstances of one's birth largely determine one's opportunities. It also means that restrictions on freedom of movement are an essential element in maintaining this arrangement, i.e., in limiting the opportunities of people with talents and motivations but the wrong social circumstances of birth. Again, the challenge for those who would defend restrictions on immigration is to justify the ways in which these restrictions contribute to inequality of opportunity. As I will argue, that is hard to do.

A third, closely related point is that a commitment to equal moral worth entails some commitment to keeping economic, social, and political inequalities as low as

possible, partly as a means of realizing equal freedom and equal opportunity and partly as a desirable end in itself. Freedom of movement would contribute to a reduction of existing political, social, and economic inequalities. There are millions of people in poor states today who long for the freedom and economic opportunity they could find in Europe or North America. Many of them take great risks to come. If the borders were open, millions more would move. The exclusion of so many poor and desperate people seems hard to justify from a perspective that takes seriously the claims of all individuals as free and equal moral persons.

This preliminary case for open borders will generate a host of questions and objections. In the rest of this chapter and in the next one, I will try to identify the questions and objections that I find most challenging and illuminating, using my responses to clarify, qualify, and deepen my defence of free movement. In my discussion I will treat the terms open borders and free movement as equivalent.

### **The Nature of the Inquiry**

I want to start by clarifying the nature of my discussion in this chapter. When I argue for open borders, I am not making a policy proposal that I think might be adopted (in the immediate future) by presidents or prime ministers or public officials charged with making immigration policy. I have noted at various points throughout this book that there can be a important differences between what one thinks is right as a matter of principle (which has been the primary focus of the book) and what one thinks is the best policy in a particular context, given existing political dynamics, the range of feasible options, the effects on other policies, and so on. As we saw in the last chapter, the gap between principle and policy is particularly wide when we focus on refugees. When it comes to the question of open borders, that gap becomes a chasm.

From a political perspective, the idea of open borders is a non-starter. Most citizens of states in Europe and North America are already worried about current levels of immigration and about their states' capacities to exclude unwanted entrants. They feel that their states are morally entitled to control immigration (for the most part) and they would see open borders, if anyone actually proposed it, as deeply contrary to their interests. Any political actor advocating such a view would quickly be marginalized (and so none will).

Why make an argument that we should open our borders when there is no chance that we will? Because it is important to gain a critical perspective on the ways in which collective choices are constrained, even if we cannot do much to alter those constraints. Social institutions and practices may be deeply unjust and yet so firmly established that, for all practical purposes, they must be taken as background givens in deciding how to act in the world at a particular moment in time. The feudal system, whose injustice I have presupposed above, was once deeply entrenched. So was the institution of slavery in the seventeenth and eighteenth centuries. For a long time, there was no real hope of transcending those arrangements. Yet criticism was still appropriate. Even if we must take deeply rooted social arrangements as givens for purposes of immediate action in a

particular context, we should never forget about our assessment of their fundamental character. Otherwise we wind up legitimating what should only be endured.

To be sure, most people in democratic states think that their institutions and policies have nothing in common with feudalism and slavery from a normative perspective. Democratic states, they suppose, are just — or nearly so. Some will acknowledge that democratic states should do more to protect basic human rights elsewhere and to bring those in desperate poverty up to some minimal level of well-being. But most people in North America and Europe think that we are entitled collectively to what we have (in any given democratic state) and entitled to protect it by keeping others out. The fact that so many people in other states have so much less is simply not our responsibility. It is precisely that complacency that the open borders argument is intended to undermine: democratic states are clearly responsible for their decisions about admissions and these decisions play a crucial role in maintaining global inequalities.

The goal of this discussion then is to explore the implications of democratic principles for migration when we treat the idea that states are entitled to control entry as an open question rather than a presupposition. Any complex set of moral principles will contain tensions and tradeoffs and will require a balancing of competing moral considerations, but even when these complexities are taken into account, the restrictions on immigration that we normally assume to be justifiable are in fact deeply at odds with our most fundamental moral principles.

In this chapter and the next, I will conduct the analysis at the level of ideal theory, asking only what justice requires in principle. For the purposes of that discussion, I will set aside worries about the second order question or what to do if some people or some states are unwilling to do what justice requires, focussing instead on the first order question of what justice does require. At the same time, I will not define the parameters of the inquiry so narrowly as to eliminate the basic questions that animate the debate over closure. So, for example, I will discuss the role that national security can play in justifying restrictions on immigration (rather than assume that there would be no national security problems in a world in which everyone acts justly) because national security is widely seen as one of the most important reasons why states may legitimately restrict entry. On the other hand, I will not spend time discussing the question of whether one state should open its borders if others refuse to do so because the most important question of principle is whether democratic states should generally be open, not how some who seek to act justly should respond to the moral failures of others.

In practice, as I have already acknowledged, no affluent democratic state in the contemporary world will open its borders. So, we are unlikely to gain much insight into practical matters of policymaking by working through a hypothetical question about how one imaginary democratic state should behave if its leaders (and population) were persuaded by my arguments about what justice requires with respect to open borders.<sup>1</sup> I do not mean to suggest that my discussion of principles has no implications for action, however. I will explore these implications in the final chapter.

No inquiry can proceed without some presuppositions. Even though I am proposing to challenge some deep conventional assumptions, I do so only by presupposing others. In this chapter, as is the case throughout the book, I presuppose the normative validity of democratic principles, while offering a particular interpretation and analysis of them.

An argument for open borders also presupposes that there are borders. Open borders is not the same as no borders. More specifically, I will assume that we are living in a world divided into separate, sovereign states in the way that the real world is. Each state governs a discrete territory, claims a legitimate monopoly on the exercise of violence within its territory, and has the legal right to control entry to its territory. This presupposition is not intended to preclude the more complicated relations of authority that we find in our actual world (e.g., federalism within states or institutional arrangements between states such as the European Union).<sup>2</sup> The presupposition also does not exclude questions about possible moral constraints on the ways in which states may exercise their sovereign powers, especially the power to control entry. That, after all, is the main question I want to address in the chapter. I say more about the relationship between sovereignty and open borders in the next chapter.

Some will wonder whether I concede too much in assuming a world of sovereign states. Of course, one could explore the question of whether a world government or perhaps some more authoritative system of international law would be preferable to current arrangements. That is an important question for global justice, but one that is beyond the scope of this book. I want to explore the question of how our fundamental moral principles say that states should behave, leaving open the question of what the best way is to try to ensure that states actually follow these principles and whether that requires some new institutional arrangement.

### **Open Borders and Common Sense**

Let me start with the objection that requiring states to open borders cannot be right because it is so at odds with our basic moral intuitions and our practices. As one critic puts it, the idea of open borders “defies common sense.”<sup>3</sup> Another critic points out that an open borders policy conflicts with the practices of all democratic states, even those that seem to approximate most closely democratic ideals.<sup>4</sup> In international law one can find support for the claims of permanent residents and migrant workers (even irregular migrants) and refugees, but all international law, even human rights legislation, treats the basic right of states to control immigration as beyond question.

I take these objections seriously. I have myself argued elsewhere that our practices may contain moral insights that our abstract theories miss and that we have reason to wary of abstract moral theories that conflict with our normal moral intuitions.<sup>5</sup> On the other hand, I noted in the same places that it sometimes takes the critical perspective of theory to bring to light what is wrong with our practices.

In making the argument for open borders, I am claiming that this is one of those cases in which theory is right and conventional practices and intuitions are wrong. Unless readers are willing to accept the idea that what most people believe to be morally right can actually be wrong, there is no point in reading further. So, why should readers accept that possibility? Because we know from experience that we can come to view deeply embedded practices and institutions as unjust, even though these practices and institutions were seen as morally acceptable by people in previous generations. Institutionalised racism and sexism, in the form of segregation and the legal subordination of women to men, are only the most obvious examples. No one today thinks these practices are compatible with democratic principles, although most people accepted them as such in the past. I am not claiming that the case against restrictions on immigration is as clear cut as the case against racism and sexism, but I do think the basic analogy holds. It is a deep injustice that does not seem unjust to most people today. It may be fair to say that the burden of proof lies upon a person (like me) who wants to make a claim about justice that departs radically from our ordinary moral understandings, but it would be wrong to dismiss this possibility out of hand.

One important implication of a willingness to consider the possibility that conventional morality is wrong about a state's moral right to control entry is that one cannot appeal to conventional moral intuitions about the state to rebut arguments for open borders, since the claim is precisely that these intuitions are faulty. This may seem self-evident, but the conventional understanding of the state holds such sway over our normative imaginations that we are often not even aware that we are deploying it. Many of the objections to open borders simply smuggle back in (usually unconsciously) the very assumptions that are supposed to be the subject of the inquiry. I will try to point out examples as I discuss the objections.

Of course, we cannot escape moral intuitions and moral assumptions altogether. As I noted above, I am myself assuming the moral validity of democratic principles and my use of the analogy with feudalism assumes that contemporary readers would find those arrangements to be unjust.<sup>6</sup> In other words, I am using some parts of our moral traditions to argue against others, and I am arguing that our deepest principles have implications that those who first developed those principles did not foresee. This should be a familiar form of moral argument, analogous to ones deployed by critics of discrimination on the basis of race, gender and sexual orientation. The broad claim is that the idea of open borders fits better with our most basic values – liberty and equality – and with our most deeply rooted intuitions about justice than the idea that the state should be able to restrict immigration. The values, principles and intuitions that support the latter are ultimately less compelling.

## Why Mobility Matters

In my preliminary discussion above, I sketched an argument for the freedom to move across borders as an important freedom in itself and as a necessary means to achieve equality of opportunity and to reduce economic inequalities. In this section I want to deepen my defense of the first claim, i.e., that the right to move freely across borders is an important human freedom. For the moment, I want to focus exclusively on the reasons we have for thinking that mobility matters and that the ability to move freely across borders might be the sort of vital interest that could deserve protection as a basic human right. This is only one side of the argument, of course. For a fair assessment, we have to consider not only what is at stake for people who want to move but also what is at stake for those who want to restrict their movement. As we shall see subsequently, there are plausible reasons for restricting human mobility under some circumstances, though I will argue that none of these justifiable restrictions prevents us from viewing free movement as a basic human right. The next chapter will discuss the moral considerations (such as duties to compatriots or rights to protect a political community's culture or its capacity for self-determination) that many think make it justifiable for states to restrict immigration despite its impact on human freedom. For the moment, however, I want to focus only on the positive side – the case for seeing free movement as a vital human interest.

Let me begin with a clarification. One objection to the idea of free movement is that there are many good reasons to restrict human mobility: respect for private property, traffic regulations, imprisonment for criminal offenses, quarantines in medical emergencies involving highly contagious diseases, prohibitions on settling on indigenous land, and so on.<sup>7</sup> I think that I can address this general objection fairly easily, because it rests on a misunderstanding of the purpose of my argument for a right to free movement. My goal is not to generate an inquiry into free mobility in general but to challenge the view that it is morally acceptable for democratic states to keep their borders closed to most non-citizens and to prevent peaceful people from entering and establishing residence. It is an argument about why democratic states should normally have open borders, not an argument about the movement of bodies in physical space.

All rights (or almost all rights), even fundamental human rights, are subject to restrictions and qualifications, as we can see from the language of human rights documents as well as from actual interpretations and practices. In chapter five, in asking what legal rights residents should have, I suggested that we take as given the legal rights of citizens – even though these rights vary from one democratic state to another in a number of significant ways – and simply ask whether residents should enjoy the same rights as citizens. If we pursue a similar strategy here, we should be able to set aside most of the concerns raised in this initial objection, at least for the purposes of this book. Instead of sorting out the various ways of restricting mobility and asking whether each of these is justified, let us simply take the mobility rights of citizens as given (again with the recognition that the precise content of mobility rights of citizens will vary somewhat from one state to another) and ask whether non-citizens not yet present should (normally) enjoy whatever mobility rights citizens enjoy both within a given democratic state and also with respect to entry and exit. So, when I refer to a right of free movement in the rest of this

chapter, it should always be taken to include the sorts of restrictions and qualifications that we find on the free movement of citizens in existing democratic states. Note that the mobility rights that citizens enjoy both in terms of freedom of internal mobility and in terms of entry and exit are characterized as human rights in international documents and often guaranteed as fundamental rights in domestic constitutions. So, recognizing this sort of qualification does not undercut the claim that free movement should be regarded as a basic human right.

Many of the internal restrictions on mobility rights are unproblematic. Everyone recognizes the need for traffic regulations and for some restrictions on entry to private property. On the other hand, some of the specific ways in which mobility rights are restricted within states are contested (or contestable). For example, zoning laws often serve the function of making it difficult for poorer citizens (and permanent residents) to move into certain communities, thus maintaining various forms of class privilege, and reproducing within the domestic sphere some of the inequalities generated by borders in the international arena. Gated communities also restrict freedom of movement in ways that deserve challenge. In this book, however, I am trying to keep the focus on immigration, so I am generally setting these other questions about justice to one side. In doing that, I am not defending all of the restrictions on the mobility of citizens. I am just trying to keep the focus on the question of whether there are good reasons to grant mobility rights to citizens (and residents) that non-resident non-citizens do not enjoy.

In a way, it is puzzling that it seems necessary to establish the importance of free movement. From a democratic perspective it should be restrictions on freedom that require justification, not the exercise of freedom.<sup>8</sup> When it comes to freedom of movement across state borders, however, that expectation tends to be reversed because of the way in which assumptions about the state's right to control entry and settlement pervade our consciousness. The idea that free movement across state borders should be seen as a basic human right seems deeply counterintuitive. For that reason this issue requires a fuller elaboration.

Why might people have an important interest in being able to move across borders? We could try to construct a list of reasons for moving, e.g., economic and educational opportunities, religious and cultural associations, friendships and family connections. Or we might try to probe more deeply still, constructing a general theory of human freedom and showing why any account of human freedom that takes account of human embodiedness must recognize that moving through space is an important element of human freedom in itself and a prerequisite for other important freedoms.<sup>9</sup> As I have said previously, however, I am trying to construct an account of the ethics of immigration that is not tied to a particular theoretical account of justice or freedom. I want to draw on principles and commitments common to all (or, at least, most) contemporary democratic theories and accepted by most people who think of themselves as democrats. For that reason, rather than construct my own theory of the moral importance of mobility, I want to focus on a comparison of the reasons why people might want to move across borders with the reasons why people might want to move within the boundaries of the state. My general contention is that every reason why someone might want to move within a state could also

be a reason for moving across state borders. If that argument is correct, then moving across state borders will be just as important or unimportant to individuals as moving within state borders. If people see the ability to move freely within a state's borders as an important freedom, then they should also see the ability to move across state borders as an important freedom. That will not settle the question of whether borders should be open, because the reasons for restricting entry may be more powerful than the reasons for restricting internal movement. But establishing the importance of internal mobility as a form of human freedom is an important first step in making a principled case for open borders.

How important are the reasons for moving within a state? We cannot answer this question just by considering how many people move and trying to assess the weight of their reasons for doing so. As with many rights and freedoms, freedom of movement can be an important right, even if one never exercises it personally. It matters greatly that every citizen is free to run for public office, rather than having that option legally restricted to a predetermined elite, even though most people never run for office or aspire to do so. Having a right to a fair trial is important, even though you will never make use of this right unless you are accused of a crime. Having a right to freedom of religion can be important, even if you live in a community in which your religion is shared by the vast majority so that your own religious practices are never actually under threat. So, too, having the right to move freely can be important, even if you always live in the same place.

Instead of trying to identify and assess the specific reasons why people move within states, I want to point to the practices of democratic states with respect to internal mobility and the ways in which those practices are justified. We can infer the importance of internal mobility as a human freedom from these practices. We generally treat free movement by citizens within their own states as a basic human right. Many human rights documents and state constitutions give it this status.<sup>10</sup> Why? These practices make sense only if we think of freedom of movement (for citizens, within their own states) as a vital human interest. Otherwise we would not elevate it to the status of a basic right in all these important documents. In other words, freedom of movement within states is not important because it is in our human rights documents and domestic constitutions. Rather it is in our human rights documents and domestic constitutions because we think it is important.

Someone might object that this way of thinking misses the essential link between rights and citizenship. Free movement within the state is only important because it is a component of equal citizenship, they may say. It is not a right belonging to all human beings as human beings, but rather a right of membership. This response begs the question that I am trying to explore here. Why have we chosen to make free movement within the state a component of equal citizenship? We don't just arbitrarily establish unimportant things as components of equal citizenship. Remember that I am setting aside (for the moment) claims about the importance of citizenship (or membership) itself, and the possibility that this might justify restrictions on free movement across borders. Here I am addressing only the question of the relative importance of freedom of movement. The fact that we make it a central component of citizenship rights testifies to its importance.

Someone might argue that providing freedom of movement to citizens within a given territory helps to promote a sense of common national identity and that is why states promote it.<sup>11</sup> That explanation may be plausible as an historical account of why political elites established free movement in this or that state, but it does not explain why it has been established as a basic right in all democratic states and in international human rights documents. There are good policy reasons for promoting rights of internal mobility in some circumstances, but there can also be good policy reasons for restricting mobility rights in other circumstances, as, for example, if a state wants to avoid an excessive pace of urbanisation. When internal mobility becomes a basic right of citizenship, states give up a set of policy options that would otherwise be advantageous and might be very important. Again, we have to think about why they would be willing to do this.

Saying that freedom of movement within the state is a right of citizenship rather than a human right is misleading in another way. From the individual's perspective, freedom of movement is not primarily important because of the way it contributes to citizenship. Freedom of internal movement is normally more important as a personal, civil, economic, and social freedom than as a political freedom. It is not directly linked to political participation like the right to vote or to join political parties or even the right to free speech. Of course, one could imagine circumstances in which freedom of movement would be vital to political participation, but it seems a considerable stretch to suggest that this is the reason why it is treated as a basic right. In fact, as I argued in chapter five, it is normally treated as a right of membership – something enjoyed by residents as well as citizens -- rather than as a right tied to citizenship. The leading human rights document, is even stronger on this point. It establishes freedom of movement within the state as a human right of all those “lawfully within the territory of a state.”<sup>12</sup> This seems to imply that even people who are only in a state on a temporary basis, indeed people who may only be visiting, should enjoy freedom of movement within the state while they are present, even if the conditions of their admission limit their activities in other ways. Given this analysis, it is hard to see why the link to citizenship would make freedom of movement an important right within states but not across borders. In sum, the conventional view, as reflected in our practices, seems to be that freedom of movement within the state is something of great importance, a vital human interest for reasons that would apply just as much to freedom of movement across state borders.

Of course, anyone is free to challenge this conventional view about the importance of free movement within the state (just as I am challenging conventional views about the legitimacy of limiting movement across state borders). One could argue that freedom of movement within states often involves no vital human interests and that states are morally free to restrict movement by their own citizens within their own territories in ways comparable to the ways in which states restrict movements across borders. For example, someone could argue that states are morally free to give cities or provinces the power to restrict entry by citizens from other cities or provinces, perhaps for the sorts of reasons that states often offer for restricting entry, namely that they are political units with jurisdictional responsibilities for taxing and spending and their capacity to promote the interests of those within their jurisdictions will be undermined if others are free to enter and settle. But, so far as I know, almost no democrat actually pursues this line of argument.<sup>13</sup> Some states,

notably China, actually restrict free movement within their borders for policy reasons, but they are usually criticized for this and those who defend such practices usually argue that they are temporary, transitional measures, necessary to cope with some urgent social problem.<sup>14</sup> Almost no one contends that internal free movement is simply unimportant and so not worthy of being treated as a basic right.

Instead of arguing that internal free movement is unimportant, critics of the argument for open borders sometimes suggest that the right to move freely within the boundaries of the state is indeed a vital human interest, but that the right to move freely across state boundaries is a relatively minor human interest. One thing that is perplexing about such a claim is the way it ignores the vast differences between states and the consequences of these differences for the lives of human beings. Fiji is a small, poor island state in the South Pacific with a population of less than a million people. The United States is a huge, rich state with a population of three hundred million people. From what perspective can it make sense to say that every American has a vital human interest in being able to move freely within the territory of the United States, but that every Fijian only has a vital interest in being able to move freely within the territory of Fiji and no vital interest in having access to a wider array of geographic, economic, social and political options? Why don't the vast differences between states matter morally when it comes to the question of the extent and limits of our interests in freedom of movement?

If this distinction between the interests at stake in moving within states and the interests at stake in moving between states is treated as self-evident, it simply presupposes the very issues that I am trying to interrogate. Many authors have explored the reasons states have to restrict entry, and I consider those arguments in the next chapter. But that is quite different from exploring the reasons people have to want to move within state borders and across state borders. I cannot think of a single case where an author has tried to spell out differences between the human interests at stake in these freedoms (as distinct from arguments about why it is more important for states to be able to limit entry than to restrict internal movement). The usual move is just to suggest the intuitive implausibility of claiming that a German or a Canadian could have a fundamental human interest in moving to the United States.<sup>15</sup> The problem with this sort of intuitive appeal is that it draws implicitly upon the very moral views about the state and exclusion that the open borders argument is trying to challenge. The examples work only if readers assume that states have unfettered moral discretion to exclude immigrants who have no special claims (like family members or refugees). The authors ask why the individual should have a right to cross the border and settle, assuming that the exercise of freedom requires further substantial justification. They fail to ask why the US is entitled to keep out a German or a Canadian, assuming implicitly that a state requires no substantive justification for the exercise of this form of coercion. They also fail to ask why a Bostonian could have a fundamental interest in moving to Buffalo, assuming implicitly that citizens should be free to move internally.<sup>16</sup> It should go without saying that an argument that aims to challenge conventional moral views will not fit well with conventional moral intuitions about that issue. So, claims about our immediate intuitions regarding movement across borders cannot help to assess such an argument.

Remember that, at this point, we are only looking at one dimension of the issue – the reasons people have to want the freedom to move. We are leaving aside for the moment the question of whether there might be more compelling reasons for restricting human movement between states than for restricting movement within them.

Those who want to deny that the ability to move across state borders is (normally) a vital human interest sometimes say that what really matters is neither moving within states nor crossing their borders but rather whether or not people have passed a threshold of minimum standards with respect to rights and opportunities.<sup>17</sup> A decent society, the critics argue, will provide those who live within it with an adequate range of freedoms and opportunities. Different authors set this threshold at different levels, but the general line of argument is that so long as people have an adequate range of opportunities within the boundaries of their own state, they can (normally) have no vital interest in being able to cross state borders.<sup>18</sup>

This threshold argument cannot account for the powerful norm regarding free movement within the state. If the standard for vital interests is only that people have an adequate range of opportunities, and if adequate range is defined modestly, it is not clear why this range of opportunities could not be provided within sub-units of large states. For example, many states within the United States and several provinces in Canada have a larger population and a wider range of internal economic and social opportunities than many independent states. On the threshold argument, it would appear that the vital interests of people could be met within these sub-units. China has over a billion and a half people and a huge territory. The people whose freedom of movement within China is restricted are still free to move within territories and populations that are larger than those of most sovereign states. So, the threshold argument provides no reason why we should regard movement across sub-unit boundaries as something of vital importance to citizens. Yet, we do. We treat free movement within the state as a basic human right, something that states are not morally free to restrict even when they have good policy reasons for doing so.<sup>19</sup> That makes sense only if we see free movement within the state as something of vital importance. If critics of free movement want to challenge that view, then the burden of proof shifts to them because freedom of movement within states is such a deeply entrenched practice and norm in democratic states and, indeed, internationally.

If we do not want to challenge the view that internal freedom of movement is a vital interest, then we should accept the claim that movement across state borders is also a vital human interest. We can then move on to the question of whether there are, nevertheless, good reasons for restricting movement across state borders that do not apply in the same ways within the state.

If the preliminary arguments I have offered for open borders are accepted, we should start with a presumption for free migration. Nevertheless, this is only a presumption. Freedom of movement is just one important human interest, and it may conflict with others. We do not have to assume that all important human freedoms are fully compatible with one another or with other basic human interests. Every human freedom involving action in the world is subject to limitations of some kind. Restrictions on particular freedoms may

sometimes be justified because they will promote liberty overall or because they will promote other important human concerns. Restrictions on migration, like any use of force, must be justified, but some uses of force are morally defensible. So, perhaps there are good reasons for restricting immigration. Before turning to meet that challenge, however, I want to consider the links between freedom of movement and international inequality.

### **The Global Justice Challenge**

My general argument for open borders has two components, one linking it to freedom and the other to equality. The previous section elaborated the freedom argument. Here I want to pursue the link between free movement and equality. One important objection to my argument for open borders is that it greatly overstates the moral importance of being able to move freely across state borders from an egalitarian perspective, at least in most circumstances.<sup>20</sup> Leaving aside special cases like family reunification or refugees, the critics say, the real problems to which my argument points are the vast inequalities between rich states and poor states, and especially the fact that so many people live in desperate poverty. These are the underlying conditions that make people want to move, and they cannot be addressed effectively by opening borders. Even if borders were open, the critics say, it would do little to help most of the poor because most of them could not and would not move. Indeed, one might object that there is something morally perverse in suggesting that the solution to the problems of the global poor and disadvantaged is to make it possible for them to come to rich states, especially if one sees the problems they face as due in no small part to our own actions and institutions, as some of the critics insist is the case. Our most important moral priority, from this perspective, should be to transform the underlying conditions and, especially, to help the least well off emerge from extreme poverty. It is a matter of achieving global distributive justice. What global justice requires is a massive transfer of resources from rich states to poor states and a transformation of the international economic order, not open borders.

In many ways, I agree with this line of argument. I agree, for example, that reducing international inequalities and, especially, eliminating extreme poverty, are more urgent and more fundamental moral tasks than opening borders. Of course, not everyone shares this view of global justice. In the next chapter, I will also consider the argument that the obligations that any political community has to outsiders are much more limited than this account of global justice or my own argument for open borders maintains. For the moment, however, let's proceed on the assumption that this egalitarian view of global justice has merit (as I think is indeed the case).

As I have explained above, I am concerned in this chapter, primarily with questions of fundamental principle rather than questions about strategies for action. At the level of principle, there is no conflict between open borders and a view of global distributive justice that requires great reductions in the inequalities between states. On the contrary, these ideals fit well together. Significant reductions in the inequalities between states would transform open borders from a critical but unrealisable ideal into a feasible arrangement, precisely because reducing inequality would reduce the pressure to move and eliminate fears of open borders creating vast dislocations.<sup>21</sup> Free movement ought therefore to be

seen as part of global distributive justice. It would be an important institutional feature of a just world. In the last chapter, I will argue that, even as a practical matter, trying to open borders as much as possible, within certain normative constraints, will generally contribute to, rather than impede, efforts to promote global justice in the contemporary world. For the moment, however, let's stick to questions of principle.

Those who would dismiss the importance of open borders because of its secondary importance for the task of reducing international inequalities miss two important points at the level of principle. First, the argument for open borders makes a crucial contribution to the critique of international inequality because it makes it harder for rich states to claim that they bear no responsibility for the persistence of inequality and the plight of the poor. Second, in a context of international inequality, freedom of movement is an important moral goal because of its contribution to equality of opportunity, quite apart from its effects on the overall level of inequality.

Consider first what one might call the heuristic function of the open borders argument, i.e., the way it brings home to us our own complicity in the maintenance of global inequality and poverty. The current division between rich and poor states can persist in its current form only because the rich states feel entitled to restrict the entry of people from poor states. Restrictions on migration are a linchpin of the modern state system. They enable it to function despite these vast inequalities.

People disagree about the causes of global poverty and inequality and about the viability of alternative ways of addressing these problems. How can we be sure that money spent on development will be well spent rather than wasted, that it will help poor people rather than line the pockets of corrupt elites, that it will improve conditions rather than make things worse? And to what extent are we really responsible, either causally or morally, for the difficulties people elsewhere face? Questions of this sort are sometimes self-serving rationalizations for avoiding constructive action, but not always. There are serious critics of almost every approach to development and genuine disagreement about the causes of, and moral responsibility for, inequalities.<sup>22</sup>

In the context of this dispute over the causes of and cures for global inequality, arguing for open borders draws attention to the fact that at least some of the people who are poor remain poor because we will not let them in. We use coercion every day to prevent people from achieving a better life. We cannot evade our responsibility for that.<sup>23</sup> We know how to admit immigrants. Despite occasional political rhetoric that the boat is full, no democratic state in Europe or North America can pretend that it could not take in many, many more immigrants than it does now without collapsing or even suffering serious damage.<sup>24</sup> Opening borders might not be the best way to address these problems, but the open borders argument takes away any justification for complacency and inaction.

What about the possibility that free movement will increase international inequality rather than reduce it? That is an important question that usually focuses on the claim that letting talented, and especially well educated, people move from poor states to rich ones harms the efforts of poor states to develop themselves (the so-called 'brain drain'

argument). I have already touched on this argument in chapter eight and will return to it again in the final chapter. Let me just say here that it would not be plausible to suggest that rich states are keeping their borders closed to help poor states or that closure is the best form of assistance.

Second, even if free movement did little or nothing to reduce overall inequality (though I think that is implausible), it would still be an important moral goal. To return to my initial analogy, defenders of feudalism could plausibly have argued (and indeed some did) that opening careers to talents would do nothing to benefit most peasants. Vast social inequalities persisted after the end of feudalism, but that did not make the abolition of feudal birthright privileges morally unimportant. This change made positions in social hierarchies less dependent on the social circumstances of a person's birth and more dependent on the individual's personal capacities and efforts.<sup>25</sup> Ending the formal barriers to equality of opportunity created by restrictions on immigration would not a cure-all either, but it would clearly contribute to global equality of opportunity and so would be a significant moral advance over an arrangement like the current one that generates such barriers.

Some people would challenge this claim on the grounds that equality of opportunity is an incoherent idea when applied at a global level. They say that the concept of equal opportunity presupposes that we know what sorts of opportunities matter and how to weigh them against one another. In a global context, cultural differences are too great to make that feasible. If we do not know what equal opportunity really means, how can we know whether open borders would really contribute to this goal?<sup>26</sup>

In my view, these concerns are greatly exaggerated. Equality of opportunity is a complex and contested idea, of course, but the conceptual difficulties of interpreting it and applying it at the global level are not radically different from the difficulties of interpreting it and applying it at the domestic level.<sup>27</sup> Some say that states can deal with the issue of equal opportunity because citizens within a single state share enough common views about what matters to resolve questions about the importance of various goods and the appropriateness of tradeoffs among them.<sup>28</sup> In fact, however, most contemporary democratic states contain internally the same range of cultural values and differences that we find in the world at large, even if not in the same proportions. As we saw in chapter four, democratic states have to leave considerable room for people to make differing judgments about what is important in life. Moreover, it is easy to exaggerate the extent of cultural differences with respect to the desirability of the economic goods that rich democratic states produce at such high levels: physical security, health care, education, material prosperity, longer life expectancy. These are things most contemporary human beings want for themselves and for their families, whatever country they come from.<sup>29</sup>

Whatever the general relevance of this argument about cultural variability with respect to global equality of opportunity, when it comes to the question of whether open borders would contribute to enhancing equal opportunity, the argument about cultural variability collapses. The migrants who are seeking to move to rich democratic states clearly want the sorts of opportunities those states provide. They think those opportunities

are better than the ones at home or they would not move. So, we cannot deny *them* admission and access on the grounds that we don't know what they really want or value. Whatever the perplexities of measuring the value of different opportunities to different people, the current state system with its discretionary control over immigration excludes the vast majority of human beings from specific, geographically situated sets of opportunities that many of them clearly want. Restrictions on entry are clearly an obstacle to equal opportunity.

### **Human Rights and Moral Priorities**

As I have noted, my argument for open borders contains two components. The first is that free movement should be regarded as a basic human right because of its intrinsic importance as a human liberty. The second is that open borders will contribute to the reduction of international economic inequality by removing the barriers that prevent people in poor states from coming to rich states to improve their lot.

Some critics argue that these two components are fundamentally at odds with one another. They say that the concern for inequality implies giving priority to the poor in admissions to rich states, but treating free movement as a basic human right precludes this because it is owed equally to all.<sup>30</sup> Some who are sympathetic to the ideal of open borders suggest that I should focus on the goal of reducing international inequality, abandoning the idea that free movement should be seen as a basic human right.<sup>31</sup>

I reject this view. While I think that challenging international inequalities is one important function of my open borders argument, I also think that there are important independent reasons for seeing freedom of movement as a basic human right. In my view, these elements of my argument are mutually reinforcing and complementary. I want to continue to defend both.

I confess that I am puzzled by the objection that there is some tension between seeing free movement as a basic human right and giving priority to the poor in situations where all cannot be admitted.<sup>32</sup> There are many basic human rights that can be fully respected only if most people are not seeking to exercise them at the same time. We all have the right to free speech, but we cannot all speak at once (and expect to communicate). Every citizen has the right to run for public office, but think of the chaos if everyone born in the United States and thirty-five years old decided to launch his or her own campaign for the presidency. We may all have a right to walk freely on the public sidewalks, but it is not possible for all of the inhabitants of a city to exercise that right at the same time on the same stretch of sidewalk. If more people want to use the same public street at the same time than are able to do so, we would presumably have to develop priority principles for the exercise of that right, and it would be plausible to do so by considering the relative urgency of the reasons why people want to exercise this right. (Think of the challenge of developing rules for mass demonstrations, parades, and so on.)

Most of the time we do not have to pay attention to the implicit constraints on the right to free speech or the right to run for public office or the right to use public streets or

other basic rights because people spontaneously and for reasons of their own avoid exercising their rights in ways that lead to conflicts. Sometimes, however, conflicts emerge. Consider the example of emergency health care which I have described in previous chapters as a basic human right. Even under conditions in which all can be treated, emergency rooms routinely treat the most urgent cases first, making others wait. In conditions of extreme scarcity, such as one encounters in wars and catastrophes, medical officials go further and create a triage system that gives priority to those with urgent needs and a reasonable chance of survival, denying medical care not only to those with less urgent needs but also to those whom medical treatment is unlikely to save (even though some of these would be saved if treated). It seems to me that this question of how to allocate emergency health care to which all are entitled in principle provides a close analogy to the moral challenge we would face if we accepted freedom of movement as a basic human right but thought that there were compelling moral reasons for limiting entry to some extent. So long as one does not adopt an unreasonably narrow idea of human rights, there is no contradiction in principle between the idea of seeing freedom of movement as a basic right and the idea that the poor should be given priority of entry, if not all can be immediately admitted.<sup>33</sup> In a just world, as I will argue in the next chapter, the demands of equality and freedom would be largely complementary rather than in conflict.

## Notes to Chapter Ten

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<sup>1</sup> It is an interesting philosophical challenge to address the question of how our moral obligations, individually and collectively, are affected by the behavior of others. As I observed in the last chapter, our responsibilities for refugees derive from the failure of others, but it seems implausible to suppose that the wrongdoings of others can infinitely ratchet up the responsibilities of those who seek to act rightly. In any event, this is not a challenge that I can pursue here.

<sup>2</sup> Baubock raises interesting questions about whether or not the actual arrangements of the contemporary world correspond, as an empirical matter, to this picture of independent states with control over immigration. See: (Baubock, 2007)

<sup>3</sup> See: (Isbister, 2000)

<sup>4</sup> See: (Woodward, 1992)

<sup>5</sup> See: (Carens, 2000, 2004)

<sup>6</sup> In assuming that feudalism is unjust, I have left aside the complex problem of historical anachronism and the questions about when it is appropriate to make critical judgments about the past and when not. Feudal arrangements certainly look unjust from the perspective of a liberalism which grew out of a rejection of feudalism.

<sup>7</sup> See for example: (David Miller, 2004, 2007; Woodward, 1992)

<sup>8</sup> See: (Baubock, 2010; Kukathas, 2005, 2008)

<sup>9</sup> In *Frontiers of Justice*, Nussbaum lists the capacity to move through space as one important corollary of bodily integrity in her capabilities approach: (Nussbaum, 2007)

<sup>10</sup> See: (Government of Canada, 1982.; United Nations, 1948; “Transcript of the Constitution of the United States - Official,” n.d.)

<sup>11</sup> See: (Maas, 2007)

<sup>12</sup> See Article 12 of the International Covenant on Civil and Political Rights. (Brownlie, 1992)

<sup>13</sup> Brian Barry gestures in this direction, saying that blacks in the US would have been better off if there had not been the tremendous migration from South to North that took place in the 20th century but, of course, he does not suggest that it would have been morally acceptable to institutionalize legal restrictions on African Americans to prevent them from moving. See: (Barry, 1992, p. 284)

<sup>14</sup> See: (Bell, 2006)

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<sup>15</sup> Cite examples from Kymlicka and Blake.

<sup>16</sup> Some say that citizens (and residents) are morally entitled to freedom of movement within the state precisely because they are subject to the pervasive coercive authority of the state while those seeking to enter the state are not subject to its pervasive coercive authority and so not entitled to this freedom. See: (Blake, 2001) I find this line of argument perplexing (though I know that others find it persuasive). Why should the fact that I am not generally subject to a state's authority make it legitimate for that state to restrict my freedom to enter (when, by entering, I would render myself subject to its authority)? Once again, I think the argument seems persuasive only if one presupposes what the argument is supposed to prove, namely that the state is entitled to use its coercive power to restrict entry. In any event, the claim that the state is morally obliged to permit citizens and residents' freedom of movement within its territory presupposes that freedom of movement within the state is important, and that is the point I am emphasizing in the text. I discuss questions about justifications of the state's right to restrict entry more fully in the next chapter.

<sup>17</sup> See: (Miller, 2008)

<sup>18</sup> See: (Kymlicka, 2001; David Miller, 2004, 2007; Rawls, 1999)

<sup>19</sup> American states and Canadian provinces have relatively strong jurisdictional powers and responsibilities and so can often have good policy reasons for restricting entry of people from other states and provinces, such as preventing people from other jurisdictions from taking advantage of more generous social programs.

<sup>20</sup> Variants of this argument can be found in: (Kymlicka 2001, Pogge 1997, Seglow 2005)

<sup>21</sup> See (Baubock 2010) for an elaboration of one version this argument.

<sup>22</sup> Thomas Pogge is the leading advocate of the view that rich states are causally (and so morally) responsible for global poverty and inequality and that there are feasible ways of addressing these problems. I am in general agreement with Pogge, although I disagree with some of his formulations about the links between individual moral responsibilities and these injustices. But Pogge (like all of us) has many critics, and a number of scholars have challenged his claims about our responsibilities and about the possibilities for transforming the conditions of the global poor. I see my argument as complementary to Pogge's and, in some respects at least, harder to challenge.

<sup>23</sup> Compare the argument in: (Kukathas, 2005)

<sup>24</sup> See: (Abizadeh, 2006)

<sup>25</sup> There are also many reasons for criticizing equality of opportunity, especially in a

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version that is limited to an elimination of formal barriers, but I will not pursue that issue here. For a classic discussion of this issue see: (Rawls, 1971)

<sup>26</sup> For advocates of this view see: (Miller, 2007; Rawls, 1999) For defenders of the view that there is a link between global justice and equality of opportunity see: (Caney, 2006; Moellendorf, 2002).

<sup>27</sup> See Jacobs 2004 and Mason 2006 for good overall discussions of the ideal of equal opportunity.

<sup>28</sup> See: (David Miller, 2007, p. 66)

<sup>29</sup> Miller seems to concede this point in acknowledging the relevance of something like the Human Development Index, but then insists that we still do not have a way to specify the precise meaning of equality because we live in a culturally plural world where “different societies will construct goods in different ways and also rank them in different ways.” (Miller, 2007, p. 67) Here cultural variability is being used to justify inequality – not extreme deprivation, which Miller clearly criticizes, but substantial economic differences between states which he defends. Miller seems to be saying that people in rich states are entitled to deny the claims of people in poor states to a more equal share of the world’s economic resources *on the grounds that we do not know what they really want*. (Miller, 2007, p. 66-67) There is something deeply troubling about this use of the idea of respect for cultural differences as a justification for inequality in a context in which we know that most people want, as I said in the text, the physical security, health care, education, material prosperity, and longer life expectancy that rich states produce. In fact, contrary to Miller’s supposition, the same cultural argument is often used to justify domestic inequalities – the poor do not want the same goods as those who are better off or their culture keeps them from doing what is necessary to obtain these goods. For a critique of use of this sort of argument in the domestic sphere, see: (Carens, 2000, chap. 4)

<sup>30</sup> See: (Woodward, 1992, p. 61) Woodward’s critique focuses on the immediate policy implications of the open borders argument. For reasons explained previously in the text, I think that is not appropriate at least for this current version of my argument. In fairness to Woodward, he was responding to an earlier version where my own focus was less clear.

<sup>31</sup> For this position see: (Bader, 2005; Seglow, 2005) In a recent essay Baubock takes the opposite position, see: (Baubock, 2010)

<sup>32</sup> I am assuming in the text that the reasons why it is impossible to admit all who want to enter are themselves morally acceptable (for the sorts of reasons I discuss below). If the reasons for closure were themselves morally problematic the objection would collapse of its own weight.

<sup>33</sup> Some readers who have thought about the triage analogy in medial care will

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undoubtedly want to ask whether we should have a comparable triage among immigrants applying for admission, giving priority to the needy but perhaps not taking the most desperate on the grounds that they won't be able to make it in the society they are trying to join (perhaps for reasons of lack of education, ill health, etc.) This is the sort of policy application of the open borders argument that I want to resist in this book, for reasons laid out in the text previously. My use of triage in the text is intended only to point out that it is possible to attribute basic human rights to people even under conditions of scarcity and the need to establish priority rules in satisfying those rights. Whether triage is a morally appropriate approach in this or other cases is a question I leave open here. I do not mean to deny that it is a question that can actually emerge as a real question in various ways for those dealing with immigration issues. See, for example, the debate over criteria of selection among refugees seeking resettlement from camps abroad.