

Is it Justifiable to Exclude Immigrants?

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1 Introduction

The aim of this paper is to examine whether it is justifiable or not for a state to prohibit or restrict immigration. I will present and examine several arguments for and against such restraints on immigration.

My conclusion is that restrictions on immigration are justifiable only under exceptional circumstances and therefore the immigration policies of most states today are too restrictive. In this respect Japan is no exception – nay, a typical example to be criticized.

One caveat, however. The justifiability of closed borders for immigrants is not a simple black-and-white problem, but rather, a matter of degree. Some supporters of restrictions on immigration think that closed borders are morally required; some others argue for them as a matter of expediency; and some others merely accept them as a right of sovereign states. Thus, one can claim coherently that it would be better for a particular state to open its borders to immigrants, but that it has a justified power to exclude them (e.g. Wellman in Wellman and Cole 2011). The same thing can be said of critics of closed borders, too. In this paper, however, I will not dwell on those nuances because it is often very difficult, even where possible, to determine whether some normative consideration (e.g., the right of free movement) implies mere acceptance of open borders or relative support for them or strong demand for them. In any event, I believe there is a strong case for open borders as a matter of political justice, not only as a matter of policy.

Another caveat. I will not address the problem of refugees. Since my argument supports open borders for immigration in general, it is *a fortiori* applicable to refugees, whatever the possibly controversial concept of “refugee” may mean.

2 Emigration and Immigration

Migration has two aspects: emigration and immigration. A migrant is both an emigrant from his or her native country and an immigrant to a host country. Here I focus on the aspect of immigration because, while freedom of emigration is widely acknowledged, with the exception of some people such as criminals, in most liberal countries, it is not the case with freedom of immigration. Indeed, most countries impose strict restrictions on foreign visitors' rights to stay, and some require visas even for casual tourists. Thus, it is much harder to enter foreign countries than to leave one's native country.

It was only after the end of the nineteenth century that this situation became common. In 1927, Austrian economist Ludwig von Mises wrote about freedom of movement as follows:

The liberal demands that every person have the right to live wherever he wants. This is not a “negative” demand. It belongs to the very essence of a society based on private ownership of the means of production that every man may work and dispose of his earnings where he thinks best. This principle takes on a negative character only if it encounters forces aiming at a restriction of freedom of movement. In this negative aspect, the right of freedom of movement has, in the course of time, undergone a complete change. When liberalism arose in the eighteenth and nineteenth centuries, it had to struggle for freedom of emigration. Today, the struggle is over freedom of immigration. At that time, it had to oppose laws which hinder the inhabitants of a country from moving to the city and which held out the prospect of severe punishment for anyone who wanted to leave his native land in order to better himself in a foreign land. Immigration, however, was at that time generally free and unhampered.

Today, as is well known, things are quite different. The trend began some decades ago with laws against the immigration of Chinese coolies. Today in every country in the world that could appear inviting to immigration, there are more or less stringent laws either prohibiting it entirely or at least restricting it severely.

(Mises 1996 (1927): 137)

What explains this asymmetry? Some considerations come to mind. First, from a communitarian viewpoint that values the social and cultural integrity of a country highly, a foreigner’s immigration is much more likely to weaken this integrity than a citizen’s emigration since the former would bring foreign elements, whereas the latter would not.

Second, it may be said that emigration seldom harms its native land, whereas immigration, especially by poor people, tends to be harmful. But this is not necessarily true. The emigration of the talented and the rich can also be disadvantageous to a country. Thus, the system of exit tax exists in some jurisdictions today.

Third, freedom of emigration is concerned with citizens, whereas freedom of immigration relates to foreigners, and laws usually provide stronger protection of citizens’ rights than those of foreigners. As a result, emigration by citizens appears more difficult to restrict than immigration by foreigners.

And lastly and most importantly, the rise of welfare states in the modern world also accounts for the asymmetry. In a welfare state, a citizen is regarded as a recipient of social security rather than a producer contributing to national wealth. Unlike the former three considerations, which also applied prior to the twentieth century, this explanation tallies with the fact that immigration only recently became more problematic than emigration.

3 Liberty Rights

(1) Freedom of Movement

Perhaps the clearest and simplest case for open borders is the human right of free movement, which is widely acknowledged in many international covenants and constitutional codes. It is often thought, however, that freedom of movement only includes movement within national borders and emigration from one's own country, not immigration to other countries. Thus, the International Covenant on Civil and Political Rights (1979) protects the freedom of such movement (article 12), but does not refer to the right to enter foreign countries. Why can immigration be so restricted compared to other kinds of movement?

Those authors who argue for closed borders usually contend that human rights themselves are not absolute, but rather, limited, when there are overriding considerations. Such considerations against freedom of immigration include the integrity of national culture and tradition, social order and the feasibility of welfare state. I will examine those factors below. But one thing can be said of this kind of case against open borders: if those considerations can generally (i.e. not on a case-by-case basis) restrict immigration, then freedom of international movement proves not to be a basic right. I do not accept this debasement of freedom of movement.

These defenders of closed borders usually understand freedom of movement merely as a means of achieving some more substantial aims and interests, and believe that if these aims and interests can be satisfied there are no problems in restricting freedom of movement. Thus, liberal nationalist political philosopher David Miller writes:

[I]f I cannot move about over a fairly wide area, it may be impossible for me to find a job, to practice my religion, or to find a suitable marriage partner. Since these all qualify as vital interests, it is fairly clear that freedom of movement qualifies as a basic human right.
(Miller 2014: p. 365)

In fact, Miller uses this argument to limit the right of international movement, not strengthen it. He continues:

[L]iberal societies in general offer their members *sufficient* freedom of movement to protect the interests that the human right to free movement is intended to protect, even though the extent of free movement is very far from absolute. [...] In a world of decent states – states that were able to secure their citizens' basic rights to security, food, work, medical care, and so forth – the right to move across borders could not be justified in this way.
(Ibid. Emphasis original.)

And Miller's understanding of sufficient freedom seems to me very narrow. He claims:

What a person can legitimately demand access to is an *adequate* range of options to choose between – a reasonable choice of occupation, religion, cultural activities, marriage partners, and so forth. Adequacy here defined in terms of generic human interests rather than in terms of the interests of any one person in particular.

(Ibid: p. 366. Emphasis original.)

It seems that participating in foreign cultures, finding a vocation available only abroad, practicing a religion in a country where it is better accepted than in one's own, and living with a foreign partner in his or her country do not count as "vital interests" in Miller's view! Cosmopolitans could not live in Miller's ideal world.

John Rawls is also very restrictive towards immigration. He claims that "[t]he problem of immigration...is eliminated as a serious problem in a realistic utopia" because there remain no reasons for immigration such as famine, religious and ethnic persecution, political oppression, and gender inequality there. He admits freedom of immigration as a right only in exceptional cases (Rawls 1999: p. 9. For a convincing argument that Rawl's theory of justice is in principle incompatible with the right to exit, see Palmer 2009: ch. 5).

It is not plausible to construe freedom of movement so narrowly. Real individual persons have widely different aims, values, and interests, some of which are only satisfied outside one's native country. Not everyone wants to live a cosmopolitan life, but not everyone hopes to spend one's whole life at home, either. It is wrong to honor a communal way of life alone, denying "rootless" lifestyles. There is another reason freedom of international movement should be recognized: just as freedom of speech benefits society as well as the speaker himself, freedom of international movement is beneficial not only to immigrants, but also to national and global societies (see below section 6).

Another objection can be raised to arguments against open borders based on the allegedly harmful effects of immigration. Many of those lamentable situations are caused not only by immigrants, but also by native citizens to the same degree. Habitual criminals, gangsters, and hooligans are certainly harmful to their home country. But no one insists that they should be expelled abroad if some foreign country accepts them, perhaps because they are also citizens and are thought to have a right to live in their own country even if they were dangerous criminals. I find this privilege of citizens to be morally unjustifiable. This charge of inequality between native citizens and prospective immigrants is more generally applicable to the arguments that claim even human rights have appropriate limits: many arguments for excluding immigrants also apply to citizens within closed borders.

(2) Economic Freedom

Arguments for open borders based on economic freedom and private property are also strong. According to them, restricting immigration not only infringes upon the freedom to enter into a

contract of service between a citizen and a prospective immigrant, but also restricts the native citizens' right to welcome and accommodate foreigners. It is true that few prospective immigrants enter into contracts with citizens before immigration, but it cannot be denied that the restriction of immigration violates freedom of contract between citizens and prospective immigrants. This kind of argument for open borders is especially familiar to libertarians.

It could be argued that economic freedom and private property are not absolute rights, and can be restricted for the public good. This objection is similar to that concerning freedom of movement, but it may be more popular because some authors do not include economic freedom and private property among basic rights at all. Indeed, it seems that prospective immigrants for economic reasons are much less respected than those who want to emigrate for political or religious reasons. But that objection cannot be substantiated until opponents show what kinds of evil immigration would bring about.

(3) Freedom of Association

Freedom of association is also used to support open borders, often in combination with economic freedom. In many cases, international cooperation and enterprise would not be possible without immigration. Such cooperation and enterprise include employment as well. This argument, like that of economic freedom and private property, appeals not only to the freedom of immigrants, but also that of citizens of the host states. One may object that freedom of association can be restricted in the same way as that of movement as long as a sufficient range of options is available. But the reply to Miller's case against the right to freedom of international movement above also applies here.

Thus, freedom of association is a strong weapon for open borders. But some authors use this very concept to support closed borders. This argument takes two different forms. One is that since freedom of association in itself includes freedom not to associate with those whom one does not wish to do so, open borders infringe freedom of association of those citizens who prefer not to associate with immigrants. The other argument is that every country has the right of freedom of association and therefore is entitled to exclude those foreigners whom it does not wish to accept. (For the former, see Hoppe 2002; for the latter, see Wellman and Cole 2011: ch. 1)

It is true that freedom of association includes a right not to associate in the same way as freedom of religion includes a right not to practice religions one does not believe in. But these two objections to open borders based on freedom of association are not successful.

Against the former argument, it can be said that the citizens of a host country are not forced to associate with immigrants. They can prefer not to associate with them in the same way as they can avoid association with those fellow citizens whom they do not particularly care for. Merely living in the same country does not amount to association. The latter argument is also unsuccessful, not only because accommodation does not mean association, but also because only individual persons have basic rights, including freedom of association. (I am no friend of group human rights.) Since states are neither human beings nor voluntary associations thereof, they do not have the right of

freedom of association in the same way that natural persons do. True, states have rights to have or not to have international relations with other states, but these rights are different from those to accept or exclude foreigners. (Wellman and Cole 2011: ch.13)

4 Democracy

(1) Collective Self-Governance

Democracy has several different meanings, which have different implications for the issue of restriction of immigration.

First, some argue for closed borders from the idea that democracy is understood as the realization of collective self-government of political community. It is similar to the argument of the freedom of association of states just discussed above. For example, social democrat communitarian Michael Walzer claims that since membership determines each community the state has a basic right to distribute its membership. He writes:

At stake here is the shape of the community that each acts in the world, exercises sovereignty, and so on. Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be *communities of character*, historically stable, ongoing associations of men and women with some special sense of their common life.

(Walzer 1983: pp. 61f. Emphasis original.)

On this view, it is probable that basic political rights means rights to participate in the politics of one's own native community and that a state should accept as immigrants only those foreigners who are already committed to that community. But Walzer's communitarian understanding of a state imposing strong mutual commitment on its citizens is problematic, to say the least. I certainly do not share it. The power of a state to impose duties and responsibilities on its citizens should be severely limited since it is an involuntary institution to which its members (i.e. citizens) belong from their birth and from which it is difficult for them to leave. And though it must be admitted that a state has sovereignty over its own territory, it does not entitle the state to ignore basic rights, including freedom of movement, whether their holders be citizens or foreigners. (My position can be termed "global libertarianism". See Walzer 1983: p. 34.) Maybe some communitarians deny the very idea of universal human rights; even basic human rights are to be determined by the community's self-understanding. I have no sympathy with this view.

(2) The Will of People

According to a more popular conception, democracy means a political institution of majoritarian decision process. This conception implies that if the majority support open borders for immigrants,

then the government should accept them, and exclude them if the majority supports closed borders. But even majoritarian democratic decision cannot overrule human rights. If freedom of movement is, as I claimed, one of them, restricting immigration is not justifiable.

Some cosmopolitan supporters for open borders even claim that since the situation of prospective immigrants to a host country is greatly affected by the decision of that country, they ought to have a political voice in that decision process (Benhabib 2004; Wellman and Cole 2011: ch. 12). But I part company with them because it is doubtful that prospective immigrants' preferences should matter as much as those of the citizens of the country. Everyone's situation is affected by the decisions of neighboring countries, particularly in diplomacy, but that does not imply that every citizen is entitled to participate in the politics of such countries.

(3) Voting by Foot

The other idea about democracy is that it is desirable that people's political opinions be fulfilled as much as possible. This idea differs from the former conceptions of democracy in that it values fulfillment of individual political opinions rather than collective decision-making; it is more individualistic. From this perspective, "voting by foot", i.e. moving to jurisdictions one prefers, is superior to ordinary ballot box voting (Somin 2016: ch. 5). Whereas the chance of one vote determining the result is almost negligible in ballot box voting, one can satisfy one's political preference, albeit imperfectly, by moving. This consideration supports freedom of immigration.

This argument is an application of the "Tiebout model" in economics to democratic theory. It does not necessarily presuppose that an immigrant has a right to vote, though it does not oppose it either. What matters here is not political participation as a citizen, but the ability to live in a country where one's political preference is satisfied to a greater degree. It is similar to the manner in which customers can satisfy their preferences in a free market economy even though they have no right to participate in the production processes of manufacturers.

Political theorists with a strong republican bent may, however, be critical of this argument. They may think that freedom of movement is, on the contrary, harmful since it prevents citizens from actively participating in the political process and reduces them to being mere passive customers of a political market. But I do not share such democratic theories that regard political participation as ends in themselves.

5 Social Integrity

Many supporters of closed borders claim that the flow of immigrants would destroy social integrity and cultural traditions. Although some of them merely embellish their visceral xenophobia with this kind of argument, many others appear to be sincere in their desire to sustain their social and cultural integrity without any prejudice against immigrants.

In particular, many authors believe that a welfare state needs a sense of cultural solidarity and

thus requires restrictions on immigration. These people can be called welfare state nationalists. Phillip Cole objects to them. In his opinion, it is not the case that a welfare state is supported by its citizens because they share the same culture; rather, citizens have a sense of solidarity owing to the system of welfare state. National identity is not a given condition, but one to be created by the state. Cole believes the necessity of social trust essential to welfare states implies not the expulsion of immigrants, but rather, their integration within the host country.

I do not find this argument of Cole entirely persuasive, however, since we cannot expect a strong sense of solidarity in a country where basically different ethnic groups exist. Nevertheless, some writers claim that immigrants do not threaten, but rather, enrich their host countries since they tend to have entrepreneurial spirit rather than be parasitic on welfare benefits (Llosa 2013: 204ff.). But in any event, I do not believe welfare states are indispensable or even advantageous to general human prosperity, though I have no room to elaborate my criticism here. If the welfare state is indeed incompatible with open borders, it is so much worse for the welfare state, not for the case for free immigration (See also Kukathas 2014: 387f.).

Other supporters are afraid that immigrants will work for lower salaries than most native workers, creating a serious social gap in that country due to different kinds of work. But it is only natural that jobs be closely related to the backgrounds of workers, just as ideology, religion, and education are.

Generally speaking, it is wrong from the start to require thick social solidarity or cultural identity among citizens of a country. The function of a state should be limited to securing a common ground for people with different goals, values, and interests to live their own lives. The state must leave more substantial functions to civil society, including a free market, where everyone is free to exercise his or her own power and to cooperate with each other. In addition, no culture or tradition is fixed forever. What does it matter if immigration changes the culture of the host country? Here, I hasten to add that this view of mine does not imply a policy of multiculturalism at all. I do not insist that a host country should protect the distinct culture of immigrants. Instead I support the policy of cultural neutrality. If cultural integration of immigrants to the host country occurs spontaneously, it is nobody's business to intervene with it by force. No culture or tradition has a right to live; people alone have it (cf. Scheffler 2010).

Some other writers for closed borders appeal not to any and every culture, but rather to a particular (possibly modern liberal) minimal culture: the sense of universal values necessary for any civilized society, such as individual freedom, equal humanity, and decency. Those immigrants who do not have this minimal thin culture should not be admitted.

This argument is more convincing than the one just examined. But it remains unclear whether and how immigrants in general have less of this thin culture than the citizens of the host country. The concern of minimal civilized culture justifies restricting the movement of criminals and terrorists alone; it does not allow expulsion of foreigners whose religion or lifestyle are different from that of most citizens of the host country, but who share the minimal culture.

6 Economic Prosperity

Economic prosperity, in my sense, means standard of living in both material terms and health. Freedom of migration will no doubt increase economic prosperity at international level because it makes an efficient allocation of labor and capital possible. First of all, it will increase the immigrants' standard of living. Since the majority of immigrants were forced to live in poor conditions, free immigration may be required not only for economic efficiency, but also for humanitarian reasons. But some writers doubt that immigration benefits the other people.

Some of them argue for closed borders on the ground that immigration leads to a decrease in income and employment of low-skilled workers of the host country and an increase in the social welfare budget. But the majority of immigrants to developed countries move searching for opportunities of employment, not for social security benefits. They do not deprive the host country of its wealth, but rather, contribute to it by their labor, especially in fields where the labor force is lacking. They also create new opportunities for various industries, pay taxes according to their income in the same way as other citizens, and bring with them new human talents.

I do not deny the fact that some citizens of the host country suffer disadvantage due to the influx of foreign workers. They typically include those people who compete unfavorably with immigrants. But nobody has a right to a vested interest in one's job simply by being a native citizen. Everyone must accept the results of a free market as long as the decent minimal standard of living is secured (see, Huemer 2010).

True, unlike workers and people at present too young to work, some immigrants will be unable to work and thus dependent on welfare benefits. They cannot be said to make the host country richer. But the same is true of many native citizens, too. Immigration will, on the whole, be beneficial to economic prosperity (for economists' generally favorable views on immigration, see, Powell (ed.) 2015).

Still, some argue emigration will be harmful to immigrants' home countries, if not to their host countries. Let's examine their argument next.

7 Distributive Justice, Especially Equality

Many contemporary writers in theory of justice almost exclusively focus on distributive justice, especially equality, whether they be luck egalitarians (e.g. Ronald Dworkin and G. A. Cohen) or relational egalitarians (e.g. Elizabeth Anderson). Thus, the bulk of literature is on the question of "equality of what?". Those egalitarians can also be distinguished between nationalists and globalists. The former require equality on a national basis; the latter, on a global basis. Luck egalitarians tend to be egalitarian in global terms (e.g., Carens 1995) and relational egalitarians seem to focus more on inequality within national borders (e.g., Walzer 1983), though this is only a rough characterization.

Some national egalitarians are afraid that immigration will widen inequalities within national borders. Thus, Miller writes:

[T]his policy [of open borders] will do little to help the very poor, who are unlikely to have the resources to move to a richer country. Indeed, a policy of open migration may make such people worse off still, if it allows doctors, engineers, and other professionals to move from economically underdeveloped to economically developed societies in search of higher income, thereby depriving their countries of origin of vital skills. Equalizing opportunities for the few may diminish opportunities for the many.

(Miller 2014: p. 368)

But it is also probable that many immigrants who acquire higher skills and knowledge will return to their homelands or send much of their earnings to their relatives back home. Or the possibility of emigration will encourage higher education and productivity especially among younger people. It is unclear what effects free migration have on the inequality and riches in immigrants' native countries.

Some supporters of closed borders, including Miller, suggest that instead of opening borders rich countries should help poorer ones by other means, for example, by financial aid and humanitarian intervention (Wellman and Cole 2011: ch.2). I am not convinced by this suggestion. First, do rich countries have such a positive duty to help less developed ones if they themselves are not responsible for the latter countries' underdevelopment? Maybe they have some for humanitarian, if not egalitarian, reasons, but this positive duty is less stringent than the negative duty of not infringing freedom of movement. Second, even if rich countries have a positive duty to help, it does not follow that they may justifiably exclude immigrants. Open borders will at least help prospective immigrants.

Again, some writers claim that a country has a right to limit immigration because the causes of poverty of underdeveloped nations are their own institutions and cultures, and not the rich countries' doing (e.g., Rawls 1999: pp. 39 and 108). I am not sure of their diagnosis of the poverty of nations. But even if it is right, it does not mean one has no right of migration. Most immigrants are not themselves responsible for the poverty of their native countries.

Lastly, I examine Mathias Risse's interesting case for open borders based on the idea of the collective ownership of the Earth (Risse 2012: ch. 6). Risse derives from this idea the claim that each country should accommodate population in proportion to the natural resources it controls. A country in which only disproportionately few people live has, in this sense, a duty to accept immigrants from overpopulated parts of the world.

I find several problems with Risse's claim. First, I find unconvincing the premise of the collective ownership of the Earth. I do not feel at all entitled to the same proportion of value of all the resources in the world as every other person at present only by reason that I am a member of

the human race. And practically no resources have value for humankind until they are found or created and made available for human use by someone. Then I have contributed nothing to the existence or the creation of most of the resources, though I feel exclusively entitled to the earnings from my work. But if Risse includes wealth made by human work in the relevant resources, his case for collective ownership of the earth would be much less convincing because it would implausibly imply that everyone has an equal claim to other people's work. Second, according to Risse's argument, underdeveloped countries with rich natural resources should accept immigrants while developed ones with little resources which prosper because of technology, commerce, and human industriousness and inventiveness have a right to prohibit immigration. This conclusion is not convincing. Third, Risse's argument may allow even underpopulated countries to exclude immigrants if they liberally aid overpopulated countries by financial means. So it is not an argument for freedom of international movement *per se*.

8 Ecology

Some ecologists argue for closed borders on the ground that they are deeply concerned about possible ecological destruction. They claim that unlimited immigration would not only increase the population of wealthier countries (which often waste global resources), but also weaken the emigrating countries' motivation to restrict population explosion. For example, eminent biologist Jared Diamond complains that the population movement from the Third World to the developed countries is worsening the global environment and criticizes Australia for having changed its immigration policy towards open borders (Diamond 2005: ch. 13. See also Tanton in Tanton, McCormick and Smith (eds.) 1996; Wellman and Cole 2011: pp. 109-111).

According to them, developed countries should not only restrict immigration, but also try to decrease their own population in order to make development sustainable. But I am not convinced by them because a smaller population means a decrease in the labor force and talents and restricting freedom of movement would hinder innovation that makes population increase more sustainable.

9 Paternalism

I sometimes find, in newspapers and other popular media rather than in academic literature, paternalistic arguments for closed borders, such as that immigrant workers will be exploited by evil employers and agents or that immigration will make racial discrimination in this country more visible or that it is still premature to open national borders because the government and the national sentiment are not ready for welcoming so many immigrants. I do not know whether these apparently paternalistic cases for closed borders are expressions of genuine benevolence for immigrants or double-faced pretexts for sabotaging the liberation of immigration, but in any event, I

find them to be blatantly patronizing toward prospective immigrants.

Immigrants do not expect an earthly paradise in a foreign land; most of them know they will have to overcome many serious difficulties there. People do not travel abroad merely because they would prefer a slightly higher income. It is only because they have pressing reasons, such as dire living conditions at home or an ambition to develop their own special talents in suitable circumstances. It seems hypocritical to tell them to go home, saying immigration is against their own good.

10 Conclusion

Classical liberals supported freedom of immigration. I have already quoted Mises in section 2. I quote him again to conclude my paper. After mentioning two motives for closed borders – the maintenance of vested interests of native workers and the anxiety of social and political change caused by large-scale immigration – he warns against a belief in big strong government.

It is clear that no solution of the problem of immigration is possible if one adheres to the ideal of the interventionist state, which meddles in every field of human activity, or to that of the socialist state. Only the adoption of the liberal program could make the problem of immigration, which today seems insoluble, completely disappear. In an Australia governed according to liberal principles, what difficulties could arise from the fact that in some parts of the continent Japanese and in other parts Englishmen were in the majority?

(Mises 1927: p. 142)

I agree with Mises' liberal solution. Although I have attempted to show that the case for open borders is stronger than that for close borders, the point I would like to advocate is that immigration should not be regarded as a "problem" at all. It ought to be as normal as movement within a country.

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