

Migration and morality: A liberal egalitarian perspective

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What must we do to treat all human beings as free and equal moral persons? That is the question that liberal egalitarianism demands we ask of all institutions and social practices, including those affecting citizenship, borders and migration.

Like any tradition of moral discourse, liberal egalitarianism is filled with conflicting arguments. The issue of movement across borders has only recently received any sustained attention, but already one can find major splits among liberal egalitarians. Some claim there should be no restrictions on freedom of movement, or almost none; others say that states are morally entitled to admit or exclude whomever they want with only a few qualifications; still others adopt some position in between.¹ In this chapter, therefore, I will not claim to represent the consensus of the tradition. Instead I will offer my current view of what anyone committed to liberal egalitarianism ought to think about migration, noting along the way the major points of disagreement within the tradition and indicating the places where I feel least certain about my own argument.

Overall, my position is this. Liberal egalitarianism entails a deep commitment to freedom of movement as both an important liberty in itself and a prerequisite for other freedoms. Thus the presumption is for free migration and anyone who would defend restrictions faces a heavy burden of proof. Nevertheless, restrictions may sometimes be justified because they will promote liberty and equality in the long run or because they are necessary to preserve a distinct culture or way of life.

I

Like all those in the liberal tradition, liberal egalitarians care about human freedoms.² People should be free to pursue their own projects and to make their own choices about how they live their lives so long as this does not interfere with the legitimate claims of other individuals to do likewise. In addition, liberal egalitarians are committed to equal opportunity. Access to social positions should be determined by an individual's actual talents and capacities, not limited on the basis of arbitrary native characteristics (such as class, race, or sex). Finally, liberal egalitarians want to keep actual economic, social and political inequalities as small as possible, partly as a means of realizing equal freedom and equal opportunity and partly as a desirable end in itself.³

Freedom of movement is closely connected to each of these three concerns. First, the right to go where you want to go is itself an important freedom. It is precisely this freedom, and all that this freedom makes possible, that is taken away by imprisonment. Second, freedom of movement is essential for equality of opportunity. You have to be able to move to where the opportunities are in order to take advantage of them. Third, freedom of movement would contribute to a reduction of political, social and economic inequalities. There are millions of people in the Third World today who long for the freedom and economic opportunity they could find in affluent First World countries. Many of them take great risks to come: Haitians setting off in leaky boats, Salvadorians being smuggled across the border in hot, airless trucks, Tamils paying to be set adrift off the coast of Newfoundland. 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.

Consider the case for freedom of movement in light of the liberal critique of feudal practices that determined a person's life chances on the basis of his or her birth. Citizenship in the modern world is a lot like feudal status in the medieval world. It is assigned at birth; for the most part it is not subject to change by the individual's will and efforts; and it has a major impact upon that person's life chances. To be born a citizen of an affluent country like Canada is like being born into the nobility (even though many belong to the lesser nobility). To be born a citizen of a poor country like Bangladesh is (for most) like being born into the peasantry in the Middle Ages. In this context, limiting entry to countries like Canada is a way of protecting a birthright privilege. Liberals 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. But modern practices of

citizenship and state control over borders tie people to the land of their birth almost as effectively. If the feudal practices were wrong, what justifies the modern ones?

Some would respond to this challenge by drawing a distinction between freedom of exit and freedom of entry and arguing that the two are asymmetrical.⁴ The former, the right to leave one's own state ought to be virtually absolute, precisely because restrictions resemble the objectionable feudal practices. But that does not imply a right to enter any particular place. From a liberal egalitarian perspective this answer is clearly unsatisfactory if entry is so restricted in most states that most people who want to leave have no place to go. That is certainly the case in the modern world. The liberal egalitarian branch of liberalism is sympathetic to the charge that liberal freedoms can be empty formalities under some circumstances. Liberal egalitarians want to pay attention to the conditions (material and other) that make formal freedoms meaningful and effective. So, a right of exit that does not carry with it some reasonable guarantee of entry will not seem adequate.

The initial allocation of citizenship on the basis of birthplace, parentage, or some combination thereof is not objectionable from a liberal egalitarian perspective. Indeed it is morally required because children are born into a community with ties to others that should be acknowledged. In principle, however, individuals should be free to change their membership at will.

Finally, compare freedom of movement *within* the state to freedom of movement across state borders. Like every freedom involving human action, freedom of movement is not unlimited, but because it is an important liberty limitations have to be justified in a way that gives equal weight to the claims of all. Some restrictions on movement are easy to justify, e.g. traffic regulations or a right to exclude others from one's home (assuming everyone has a home or a reasonable opportunity to obtain one). But imagine an attempt by officials in one city or county to keep out people from another. That sort of restriction is seen as fundamentally incompatible with a commitment to free and equal citizenship. Cities and provinces have borders but not ones that can be used to keep people in or out against their will. Indeed freedom of movement *within* the nation-state is widely acknowledged as a basic human right, and states are criticized for restricting internal movement even by those who accept the conventional view of state sovereignty. People *are* generally free to change their membership in sub-national political communities at will.

If it is so important for people to have the right to move freely within a state, is it not equally important for them to have the right to move across state borders? Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a

religion that has few adherents in one's native state and many in another; one might wish to pursue cultural opportunities that are only available in another land. The radical disjuncture that treats freedom of movement within the state as a moral imperative and freedom of movement across state borders as merely a matter of political discretion makes no sense from a perspective that takes seriously the freedom and equality of all individuals.

II

The arguments in the preceding section create at least a presumption for freedom of movement from a liberal egalitarian perspective. Can this presumption ever be overridden? One possible approach is to argue that restrictions on free movement are necessary in order to promote freedom and equality in the long run. On this view, free movement is an aspect of the liberal egalitarian ideal which we should ultimately try to achieve but to adopt the practice of open borders now would jeopardize those liberal egalitarian institutions and practices that currently exist and slow their development elsewhere.⁵

This argument takes several related forms, most of them focusing on the need to protect existing liberal egalitarian cultures and institutions (however imperfectly realized). First, there is the question of national security. Presumably an invading army is not entitled to unopposed entry on the grounds of free movement. But that does not entail any real modification because the principle of free movement does not entitle citizens to organize their own armies to challenge the authority of the state either. What about subversives? Again, if it is against the law for citizens to try to overthrow the state, that kind of activity would presumably justify refusal of entry to outsiders. So, people who pose a serious threat to national security can legitimately be excluded.

A related argument concerns the danger to a liberal egalitarian regime posed by a large influx of people who come from non-liberal societies, even if they do not come with any subversive intent. To put it another way, are people committed to treating all individuals as free and equal moral persons obliged to admit people who are not so committed? This is close to the familiar question of the toleration of the intolerant in liberal regimes. One conventional answer (which I accept) is that liberal regimes are obliged to tolerate the intolerant and respect their liberties so long as they do not pose an actual threat to the maintenance of liberal institutions. When they do pose a threat, however, their liberties may be curtailed in order to preserve the regime.⁶ Here that answer would imply that restrictions on non-liberal entrants would be justified only if one had good

reason to believe that they would threaten the liberal character of the regime if admitted. This entails the conclusion that it could be legitimate to exclude people for holding beliefs and values that are also held by people who are already members but only because of the presumed cumulative effect of their presence.

Would it be justifiable to expel non-liberal members because of their beliefs and values if their numbers grew large enough to constitute a threat? No. I argued above that the radical disjuncture between freedom of entry and freedom of exit in conventional morality is not justified. Nevertheless, there is something to the claim of asymmetry. Under many circumstances, the right to leave is much more important than the right to enter any particular place. It is only in the limiting case where there is nowhere to go that the two become equivalent, although as I noted above that limiting case is closely approximated in the real world for many people. Similarly, under many, perhaps most circumstances the right to remain in a country where one is already a member is much more fundamental than the right to get in. All of the ties that one creates in the course of living in a place mean that one normally (though not always) has a much more vital interest in being able to stay where one is than in being able to get in somewhere new. This is not a denigration of the importance of the freedom to move, but rather a claim that the freedom to remain is even more important. Thus, expulsions of members are almost never justified from a liberal egalitarian perspective.

Although it is a distraction from the threat to liberalism argument, it is worth pausing here to explore the implications of this point about expulsions for the issue of migrant workers and their families.⁷ In the preceding paragraph, I deliberately used the term 'members' rather than 'citizens' because being a member of a society and having the moral claims of a member is not dependent upon having the formal status of a citizen. Indeed, one of the ways states may act unjustly is by denying citizenship to people who are members. When a state admits people to live and work in the territory it governs, it admits them to membership so long as they stay any significant period of time. It cannot do otherwise and still treat them as free and equal moral persons. Thus it is obliged to admit their immediate families as well and to open the doors to citizenship to them and their families. Even if they do not become citizens, they have a right to stay for all of the reasons discussed in the preceding paragraph. So, the state cannot rightly expel them even if circumstances have changed and it is no longer advantageous to have them. And again in parallel with the preceding paragraph, it is much worse to deport people who have already come and settled than to refuse entry to new workers.

These claims about membership and the right to remain are not altered even if the migrant workers were admitted under terms that explicitly

provided for their return should circumstances change. Liberal egalitarianism places limits on freedom of contract, rendering void any agreements that are incompatible with equal respect for persons. And unlike most of the claims I make in this chapter about what liberal egalitarianism requires with respect to migration, these claims about migrant workers are generally reflected in the practices of contemporary liberal democratic societies.

To return to the threat to liberalism argument, another variant focuses not on beliefs and values but on sheer numbers. Given the size of the potential demand, if a rich country like Canada or the United States were to open its borders, the number of those coming might overwhelm the capacity of the society to cope, leading to chaos and a breakdown of public order.⁸ The risk would be especially great if only one or two of the rich countries were to open their borders. One cannot assume that the potential immigrants would see the danger and refrain from coming because of the time lag between cause and effect, because of collective action problems, and so on. Call this the public order problem. Note that the 'public order' is not equivalent to the welfare state or whatever public policies are currently in place. It is a minimalist standard, referring only to the maintenance of law and order. A threat to public order could be used to justify restrictions on immigration on grounds that are compatible with respecting every individual as a free and equal moral person, because the breakdown of public order makes everyone worse off in terms of both liberty and welfare. In some ways, this is reminiscent of Garrett Hardin's famous lifeboat ethics argument.⁹ It does no one any good to take so many people into the boat that it is swamped and everyone drowns.

Even if one accepts all of the arguments above as sources of possible constraint on entry, the basic commitment to free movement as the fundamental goal and underlying principle remains intact. Just as those in a lifeboat are positively obliged to take in as many as they can without jeopardizing the safety of the boat as a whole (a point that those fond of this analogy often neglect), the state is obliged to admit as many of those seeking entry as it can without jeopardizing national security, public order and the maintenance of liberal institutions.

One obvious danger, however, is that an expansive interpretation of the criteria in the preceding arguments will open the door to a flood of restrictions. For example, the United States has used the national security justification to deny entry (even for temporary visits) to people identified as homosexuals, as well as to all sorts of people whose views do not conform to the reigning American ideology. And if national security is linked to the state's economic performance (as it often is), any economic costs connected with immigration can be seen as threatening national security. Exclusionists in the nineteenth century in the United States cited the dangers of immigration from non-liberal societies as grounds for

keeping out Catholics and Jews from Europe and all Asians and Africans. Canada and Australia had comparable restrictions on similar grounds. (Today Islamic fundamentalism seems to be the main target of those worried about non-liberal values.) And, of course, some people see a threat to public order in any new demand placed on a social system. They want a safety margin of fifty empty places in a lifeboat built for sixty.

Despite these sad examples, one should not exclude proper concerns, at least at the level of theory, because they are subject to exaggeration and abuse in practice. The task is to distinguish between reasonable and unreasonable uses of these sorts of arguments. As Rawls puts it in acknowledging that liberties may sometimes be restricted for the sake of public order and security, the hypothetical possibility of a threat is not enough. Rather there must be a 'reasonable expectation' that damage will occur in the absence of restrictions and the expectation has to be based on 'evidence and ways of reasoning acceptable to all'.¹⁰ The same strictures apply to all attempts to justify restrictions on immigration along the lines sketched above, and none of the examples cited is really justified as a reasonable use of restrictive criteria.

A variation of the preceding arguments that is based on real concerns but is much more problematic from a liberal egalitarian perspective is what might be called the backlash argument.¹¹ On this view, the commitment to liberal egalitarian principles is not very secure even in liberal societies. Current citizens might object to the ethnic and cultural characteristics of new immigrants, fear them as competitors in the workplace, and perceive them as economic burdens placing excessive demands upon the social welfare system. At the least, this reaction might erode the sense of mutuality and community identification that makes egalitarian and redistributive programmes politically possible. At the worse, it might threaten the basic liberal democratic framework. A glance at current European politics makes it clear that this threat is all too real. In several countries, extreme right-wing parties, using veiled and not so veiled racist and neo-fascist appeals, have gained ground, primarily, it seems, by making opposition to current immigrants and future immigration a key element in their platforms. In this context, to open the borders more now might well provoke a political reaction that would quickly slam the doors shut and damage other liberal egalitarian institutions and policies as well.

Would this justify restrictions on immigration from a liberal egalitarian perspective? The answer must be 'no' at the level of principle and 'perhaps' at the level of practice. I am assuming here that the claims to exclude do not rest on some as yet unspecified valid argument. By hypothesis then we are dealing with a case in which restrictions on immigration would not be justified if one took a perspective in which all were regarded as free and equal moral persons. Those advocating exclusion are either putting

forward claims that are intrinsically unjust (e.g. racist claims) or ones that are legitimate concerns (e.g. their economic interests) but outweighed by the claims of the potential immigrants (both in terms of their right to free movement and in terms of their own economic interests). The 'justification' for restrictions is simply that if no concessions are made to the exclusionists they may make things even worse. Put that way it is clearly no justification at all at the level of principle though one cannot say that such concessions are never prudent in practice.

Compare this issue to such questions as whether slaveowners should have been compensated for the loss of their property when slavery was abolished, whether holders of feudal privilege should have been compensated when those privileges were abolished and whether segregation should have been ended gradually (with 'all deliberate speed') rather than all at once. All of these questions were live issues once in political contexts where defenders of the old ways still had sufficient political power to resist change and perhaps even reverse it if pressed too hard. In none of these cases, it seems to me, were concessions required as a matter of principle, but in any of them they may have been defensible in practice as the best that could be achieved under the circumstances. The latter seems an appropriate moral guide to political action assuming a definition of the good that takes into account independent ethical constraints upon action. And so the backlash argument, too, may provide grounds of this limited sort for restrictions in some cases.

Finally, there are arguments for restriction that focus not on the protection of liberal egalitarian institutions and practices in states that currently have them but on their development elsewhere and on the reduction of global inequalities.¹² According to the 'brain drain' hypothesis, the movement of people from the Third World to the First World actually increases global inequalities because the best educated and most talented are among the most likely to move in order to take advantage of the greater professional and economic opportunities in affluent societies. Even among the poor, it is the most energetic and ambitious who move, and usually people from the lower middle classes rather than the worst off because the latter do not have the resources needed for migration. Thus migration actually involves a transfer of human resources from poor countries to rich ones. This often involves the loss of actual economic investments in the form of scarce and costly expenditures on education and training, but the greatest cost is the loss of people with the capacity to contribute to the transformation of their country's condition. Freer movement would only make the situation worse, making development in the Third World and a reduction of global inequalities even more unlikely than it is now.

A variant of this argument stresses politics rather than economics, drawing attention to the way in which easy exit may act as a safety valve

for a repressive regime. It may be easier to silence domestic opposition by sending it abroad than by suppressing it internally. And if exit is an easy option, those living under a repressive regime may devote their energies to getting out rather than to transforming the system under which they live.

On the whole, I think these are the sorts of arguments that have given utilitarianism a bad name in some quarters, although, as is often the case, I do not think a clear thinking utilitarian would support them. What is particularly objectionable is the way they propose to extract benefits for some people by, in effect, imprisoning others. As is so often the case in discussing migration, it is helpful to compare internal migration with migration across state borders. Many states suffer from severe regional inequalities and it is often suggested that these inequalities are made worse by the movement of the brightest, best-trained people from poor regions to rich ones – an internal brain drain. But what would we think if Canada tried to cope with its regional disparities by prohibiting people from moving from Newfoundland to Ontario, or if Italy limited migration from Naples to Milan? The regional differences are a serious problem that states have a duty to address, but they would be wrong to try to solve this problem by limiting the basic freedoms of their citizens.

So, too, with the international brain drain. International inequality is a serious moral problem, but restricting movement is not a morally permissible tactic for dealing with it. And that assumes that it would be a useful tactic. In fact, the benefits themselves are extremely problematic. Emigrants contribute in various ways to their communities of origin (often through direct financial remittances), and it is far from clear that making them stay home would lead to the desired economic and political transformation. On the other hand, the cost to those denied permission to leave is clear and direct. Limitations of important freedoms should never be undertaken lightly. In the face of great uncertainty about their effects they should not be undertaken at all.

What about financial compensation for the costs of education and training? Here it is important to distinguish between basic education and advanced education or training. For the former no compensation is due. Everyone is entitled to basic education, and children cannot enter into binding contracts. Whatever investments a society makes in its young, it cannot rightly require direct repayment. Advanced training is somewhat different both because it is provided only to a few and because those receiving it are normally old enough to assume responsibility for their choices. If it is subsidized by the state, especially a state with comparatively few resources, it may be reasonable to expect the recipients to commit themselves to a few years of service in the country or to repay the costs of the training. But these sorts of expectations must be limited and reasonable. Liberal egalitarianism is incompatible with any form of indentured servitude.

In arguing that the state may not normally limit migration as a way of enforcing a claim to the services of its citizens, I am not saying that people have no obligations to their communities of origin. It is a familiar feature of most liberal theories that the state should not enforce many sorts of moral duties or obligations not just on the prudential grounds that enforcement will be costly or ineffective but on the principle that individuals must have considerable scope to define their own lives and identities, including the moral worlds that they inhabit. This does not mean that all moral commitments are a matter of choice. From the individual's perspective, the moral ties may be experienced as given, a product of unchosen relationships with members of one's family, ethnic group, religious faith, or even political community. Take a black doctor in the United States. He or she might or might not feel a special obligation to work in the black community. If he or she does, he or she might or might not think that other black doctors have a comparable obligation. Liberal egalitarianism has nothing to say about these matters. It does not try to fill the whole moral world. It does not deny the existence of such obligations or imply that they are purely subjective and not subject to rational discussion. The only limit that liberal egalitarianism places on such moral views and moral commitments is that they must not conflict with the rights and duties that liberal egalitarianism itself prescribes.

People from poor countries may feel a special obligation to use their talents at home, and they may think that their compatriots have the same obligation. Liberal egalitarianism does not deny or affirm this view. It only denies the moral propriety of enforcing it through restrictions on movement.

My arguments about the brain drain have focused on the countries of origin. What about the countries of destination? It would be both paternalistic and hypocritical for rich countries to say that they were closing their borders to help the poor ones out. Moreover, given my arguments above about the relationship between the right of exit and the right of entry, it would be wrong to do so with the goal of denying potential emigrants any place to go.

III

One objection to the line of argument I have been developing so far is that the whole problem of freedom of movement is essentially epiphenomenal. Other things being equal, one could expect that most people would not want to leave the land where they were born and raised, a place whose language, customs and ways of life are familiar. But other things are not equal. There are vast economic inequalities among states, and some states

deny basic liberties to their own citizens. These are the circumstances that create such a vast potential for movement across borders and that make the issue of migration seem like an urgent moral problem. But from a liberal egalitarian perspective, these circumstances are at least as morally objectionable as restrictions on freedom of movement.¹³ States have an obligation to respect their citizens' basic liberties, and rich states have an obligation to transfer resources and adopt other measures to reduce drastically the prevailing international economic inequalities. If they fulfilled these obligations, migration would no longer be a serious moral problem, because relatively few people would want to move and those who did could and would be accommodated somewhere.

If one replies that states will not meet these obligations, the response is that we gain nothing by focusing on another obligation which they are equally unlikely to fulfil. Most of the same practical and self-interested considerations that will prevent rich states from transferring significant resources to poor states, will keep them from opening their borders wide to poor immigrants. In struggling against injustice, it is a bad strategy to make the admission of new immigrants to rich countries a priority, because restrictions are a symptom, not a cause, of the real problems, because immigration can never be a solution for more than a relatively small number, no matter how open the borders, and because this focus on people who want to move from the Third World to the First World may perpetuate neo-colonial assumptions about the superiority of the First World.

I think there is something to be said for this objection. International inequalities and political oppression are certainly more important moral and political problems than restrictions on migration. The sense that the latter is an urgent problem derives in large part from the size of the potential demand and that in turn derives from international inequalities and other forms of injustice that free movement will do little to cure. Nevertheless, we cannot entirely ignore the question of immigration. In the long run, the transformation of the international politico-economic order might reduce the demand for international migration and the resistance to it, but, as Keynes said, in the long run we are all dead. We have to consider the moral claims of those whom we confront here and now (as well as the claims of future generations). For example, refugees who have no reasonable prospect of a return to their homes in the near term need a place to settle if they are to have any chance of a decent life. Moreover, we lack knowledge as well as will when it comes to radically reducing international inequalities, as is illustrated by the failures of most attempts to eliminate regional inequalities *within* states. In terms of politics, it is not clear that increasing aid and increasing immigration are really incompatible. In general, the same political actors support or oppose both.

But the objection that the demand for free movement is essentially epiphenomenal poses a theoretical challenge as well as a practical one. To what extent does my earlier claim about the liberal egalitarian commitment to free movement rest upon the current realities of international inequalities and political oppression? Would people have the right to move freely in a world without the deep injustices of the one we live in, or might there be legitimate grounds for restricting free movement, say, for the sake of a certain kind of community? In other words, is free movement epiphenomenal at the theoretical level, not derived directly from fundamental principles but rather from the application of those principles to the circumstances in which we find ourselves?

To explore this question, I propose to focus in the next two sections on the question of movement across borders when the states in question enjoy comparable levels of affluence and comparable liberal democratic political institutions.

IV

The epiphenomenon argument raises questions about the consequences of focusing on possible changes in migration policies in abstraction from other issues, but it does not directly challenge the principle that free movement is good from a liberal egalitarian perspective. Are there any elements in the liberal egalitarian tradition that would give pause to this general embrace of openness?

One possible source is the liberal egalitarian commitment to pluralism, and the consequent respect for difference and diversity. Consider first the case of Japan. Should Japan's immigration policy be the same as that of the United States or Canada? A commitment to free movement seems to require a positive response to this question, except that the public order constraint might kick in sooner because of the high population density in Japan. But to answer that question positively seems counter-intuitive, and not just because we assume that all states have the right to control their borders. Rather a positive response seems to imply that all states have a moral obligation to become like us – multicultural countries with large numbers of immigrants (or at least to open themselves to that possibility). (This sounds like a form of North American moral imperialism; our way is the only right way.)

Now that does not prove that the claim is wrong. Appeals to diversity and pluralism carry no weight when it comes to the violation of basic human rights. From a liberal egalitarian perspective all states are obliged to respect such rights regardless of their history, culture or traditions. As we have seen, it is possible to claim that freedom of movement is a basic

human right from a liberal egalitarian perspective. But perhaps that claim does not pay sufficient attention to the costs that freedom of movement can impose.

To return to the Japanese case, Japan is a country with a highly homogeneous population. It is not completely homogeneous. There are religious differences and ethnic minorities in Japan as there are in every country. But most people in Japan share a common culture, tradition and history to a much greater extent than people do in countries like Canada and the United States. It seems reasonable to suppose that many Japanese cherish their distinctive way of life, that they want to preserve it and pass it on to their children because they find that it gives meaning and depth to their lives. They cannot pass it on unchanged, to be sure, because no way of life remains entirely unchanged, but they can hope to do so in a form that retains both its vitality and its continuity with the past. In these ways many Japanese may have a vital interest in the preservation of a distinctive Japanese culture; they may regard it as crucial to their life projects. From a liberal egalitarian perspective this concern for preserving Japanese culture counts as a legitimate interest, assuming (as I do) that this culture is compatible with respect for all human beings as free and equal moral persons.¹⁴

It also seems reasonable to suppose that this distinctive culture and way of life would be profoundly transformed if a significant number of immigrants came to live in Japan. A multicultural Japan would be a very different place. So, limits on new entrants would be necessary to preserve the culture if any significant number of people wanted to immigrate.

Would the limits be justified? That depends, I think, on why the people wanted to come. We have to weigh the claims of those trying to get in equally with the claims of those who are already inside, but to do that we have to know something about the nature of those claims. For example, suppose some non-Japanese person had married a Japanese citizen. It would clearly be wrong to exclude the non-Japanese spouse, even if mixed marriages were seen as subversive of Japanese culture. Here the fundamental right of individuals to marry whom they want and to live together, along with the fundamental right of the Japanese citizen not to be expelled from his or her home, should trump any communal concerns for the preservation of culture. (And, as far as I know, Japan does indeed admit spouses.)

Suppose, however, that people wanted to come to live and work in Japan as a way of pursuing economic opportunity. Should that trump the concern of the Japanese to preserve their culture? The answer might depend in part on the nature of the alternatives the potential immigrants face if Japan is closed. Recall that we have temporarily put to one side, by hypothesis, the problems of deep international inequalities and refugee-generating forms of oppression. Presumably, then, the potential immigrants have reasonable economic opportunities elsewhere, even if ones

that are not quite as good. I do not see why an interest in marginally better economic opportunities should count more than an interest in preserving a culture.

One obvious rejoinder is that restricting immigration limits individual freedom, while cultural changes that develop as a by-product of uncoordinated individual actions do not violate any legitimate claims of individuals. The problem with this sort of response (which clearly does fit with some strains in the liberal tradition and even with some forms of liberal egalitarianism) is that it uses too narrow a definition of freedom. It excludes by fiat any concern for the cumulative, if unintended, consequences of individual actions. A richer concept of freedom will pay attention to the context of choice, to the extent to which background conditions make it possible for people to realize their most important goals and pursue their most important life projects. That is precisely the sort of approach that permits us to see the ways in which particular cultures can provide valuable resources for people and the costs associated with the loss of a culture, while still permitting a critical assessment of the consequences of the culture both for those who participate in it and for those who do not.

But if we say that exclusion may be justified to preserve Japanese culture, does that not open the door to any other state that wants to exclude others, or certain kinds of others, to preserve its culture and its way of life? Doesn't it legitimate racist immigration policies? What about the White Australia policy, for example? That was defended as an attempt to preserve a particular culture and way of life, as were similar racial and ethnic policies in Canada and the United States.¹⁵

From some viewpoints every form of exclusion that draws distinctions based on race, ethnicity, or cultural heritage is morally objectionable. I think, however, that one cannot make such a blanket judgement. Difference does not always entail domination. One has to consider what a particular case of exclusion means, taking the historical, social and political context into account.¹⁶ For example, the White Australia policy cannot be separated from British imperialism and European racism. That is why it was never a defensible form of exclusion.

Japan's exclusionary policy seems quite different. First it is universal, i.e. it applies to all non-Japanese. It is not aimed at some particular racial or ethnic group that is presumed to be inferior, and it is not tied to a history of domination of the excluded. Japan has a centuries-old tradition of exclusion based partly on fears of the consequences of European penetration. Of course, there is also the Japanese imperialism of the twentieth century, but that developed only after the West had forced Japan to end its isolation. Moreover, it was only during its period of imperialist expansion that Japan adopted a non-exclusionary policy, declaring all the subjects of the Japanese Empire to be Japanese citizens and bringing thousands of

Koreans into Japan as workers. Both before and after this period, Japan strictly limited new entrants. Unlike much of Western Europe, for example, Japan rejected proposals for guest worker programmes to solve labour shortages in the 1960s and 1970s. I trust that it is clear that I am in no way defending or excusing Japanese imperialism. On the contrary, my point is that the Japanese policy of exclusion was not a product of, and was in important ways antagonistic to, Japanese imperialism. In that respect, at least, exclusion was not linked to domination.

But does not a policy of exclusion always imply that the culture and the people being protected through exclusion are superior to the ones being excluded? Not necessarily. It may simply reflect an attachment to what is one's own. Presumably it does entail the view that this way of life is worth preserving, that it is better than whatever would replace it under conditions of openness. But that is not necessarily objectionable in itself. Besides, having relatively open borders may also generate a sense of cultural superiority, as the American case reveals.

I do not pretend to have established the legitimacy of Japanese exclusion. That would require a much more detailed and careful examination than I can provide here. What I do hope to have established is that such an examination would be worthwhile, that exclusion for the sake of preserving Japanese culture is not self-evidently wrong, at least in a context where we have temporarily assumed away the most urgent concerns (desperate poverty and fear of oppression) that motivate so many of those who actually want to move and that make their claims so powerful.

What if we let those concerns back in and at the same time assumed that the positive case for the preservation of a distinctive Japanese culture could be sustained? One possibility is that we would conclude that not all of the rich states should have precisely the same responsibilities regarding admission of new members and assistance to poor states. Perhaps it would be appropriate for Japan to meet most of its responsibilities through aid rather than through admissions. (I express these thoughts tentatively because I feel unsure about them.)

Even if one did follow this line of thought, however, Japan would face certain responsibilities regarding the admission and integration of 'outsiders'. For example, Japan should admit some reasonable number of refugees on a permanent basis. Their needs cannot be met by aid and Japan cannot rightly expect others to assume all the burdens of resettlement. Perhaps it would be acceptable to select among the refugees on the basis of their adaptability to or compatibility with Japanese culture.

Even more important, Japan has a responsibility to treat its Korean minority differently. Most of the Koreans in Japan are people who were brought over to work in Japan during World War II or their descendants. They have lived in Japan for many years. Most of the children have never

lived anywhere else, and many do not even speak any other language than Japanese. Japan has an obligation to treat these people as full members of society, to grant them citizenship easily if they wish it and to make their position as permanent residents more secure and more equitable if they prefer to retain their Korean citizenship.¹⁷ In short, Japan's desire to protect its cultural cohesiveness is outweighed in some cases by the legitimate claims of others to entry and integration.

The discussion of Japan makes a preliminary case for exclusion for the sake of preserving a cultural tradition and a way of life. In Japan this cultural tradition and way of life are closely associated with the political boundaries of a sovereign state. But this does not establish anything about the moral status of the state as such nor does it rule out the possibility that there may be other communities with cultures and ways of life worth preserving that do not exist as states. Take, for example, the case of native communities in North America who are trying to preserve a traditional way of life within some defined land area. Most of what has been said about the Japanese case could also be said about them: they are trying to maintain a distinctive culture and way of life that gives meaning to those who inhabit it and which they regard as highly preferable to the way of life that would be entailed if they mixed with others, they cannot maintain this culture if any significant number of outsiders come to settle on their land and the reasons the outsiders have for coming (e.g. to use the land for recreational purposes) generally seem far less compelling than the reasons the natives have for keeping them out.¹⁸

I accept these general claims. Indeed the control that native peoples exercise over their land provides a striking exception to the general right of free mobility within the modern state, and one that is entirely justified from a liberal egalitarian perspective in my view. So, it is not the state as such that gives rise to a claim to exclude, but rather the existence of a community with a distinctive and valuable way of life that would be threatened by immigration.¹⁹

V

Can a parallel argument be developed on behalf of the state as such, perhaps on the grounds that each (legitimate) state has a distinct political culture worthy of preservation and protection? By 'political culture' I mean the collective self-understanding, the way citizens think of themselves and of their relationship with one another as this is reflected in their political institutions, policies and practices. One reason people have for wanting to restrict entry is their desire to protect the democratic autonomy of the community in which they live. This view presupposes that there is

some significant space between what is morally required of all and morally prohibited to all so that different communities can legitimately make different choices about goals, institutions and policies, or, more broadly, about the ways they lead their collective lives. Call this the zone of the morally permissible. One need not think of this as a realm of mere preferences, however. The moral arguments that belong here (and are most apt to be used in real political debates) are ones about the history and character of the community rather than about universal rights and duties. Most forms of liberal egalitarianism do not pretend to settle all moral questions. So, different communities will make different decisions, adopt different policies and develop different characters. But these differences may be threatened by open borders.²⁰

Let me offer a concrete example from a comparison between Canada and the United States.²¹ (I write as someone born and raised in the United States who has lived in Canada for the past four years.) Canada has a national health insurance plan that pays for the medical care of all citizens and permanent residents. The United States does not. According to some estimates, 30 per cent of the American population has no health insurance, and many more are underinsured. Should Americans with serious health problems be able to move to Canada to take advantage of its health care system? Take those with AIDS as an example. This is an illness that requires a lot of expensive medical care over a long period, care that may simply be unavailable in the United States if one has no insurance. People with AIDS and without insurance might well choose to move to Canada if they could do so. But Canada's population as a whole is only 10 per cent of that of the United States. If even a small proportion of the Americans with AIDS moved, it would put a severe strain on the Canadian health care system. At present, Canadian immigration requirements keep out potential immigrants with medical problems that seem likely to put an unusually high financial burden on the health care system. Is that an unjust restriction on potential American immigrants?

Canada's health care system is only one example of a pervasive difference between Canada and the United States in social welfare policy. In one area after another Canada provides greater benefits to those in need, and, of course, Canadians pay much higher taxes than Americans to fund these programmes. If the borders were open and if many of the needy moved across, both the capacity and the willingness to support the programmes would be in jeopardy. The capacity would be threatened by the relative size of the Canadian and American populations, the willingness by the sense that Americans were taking advantage of Canadians (not so much the needy Americans, who would probably arouse both sympathy and resentment, as the greedy ones who refused to bear the costs of caring for their own and tried to shift these costs onto others). Restrictions on

immigration from the United States therefore may help to make it possible for Canadians to take a different and more generous path from Americans when it comes to social policy. Does liberal egalitarianism require them to open the borders anyway?

If the questions in the last two paragraphs sound rhetorical, it is only because the presumption that states have the right to control entry is so deeply rooted in our thinking. One has only to shift the focus to intra-state movement to see why the questions are real and important. In the United States as in many federal systems, sub-units bear much of the responsibility for social policy and they differ greatly in the ways they carry out these responsibilities. For example, Wisconsin's welfare policies are much more generous (or much less stingy) than those of the neighbouring state of Illinois. Some Wisconsin officials claim that people are moving from Illinois to Wisconsin for the sake of these benefits. These officials propose to discourage the influx by reducing benefits for new residents during a temporary waiting period – a strategy that may or may not pass legislative and judicial scrutiny. But not even the most ardent advocates of exclusion think that they can prohibit people from moving to Wisconsin from Illinois or keep them from gaining access to all of the state's social programmes after a waiting period. This is not just a quirk of the US constitutional system. As we have seen, freedom of movement within the nation-state is widely regarded as a basic human right, and if this freedom is to be more than a mere formality, it necessarily entails that new arrivals have access to the rights and privileges that current residents enjoy, at least after the satisfaction of a modest residency requirement and, in some cases, immediately. But this freedom of movement has the same effect of eroding or at least limiting the democratic autonomy of Wisconsin as it would that of Canada.

Is that bad? Should Wisconsin have the right to keep out people from Illinois after all? Or should Canada be obliged to admit people from the United States? If the two cases are different, how and why are they different? I find these questions genuinely puzzling, but in the end I cannot see that sovereignty makes that much difference from a liberal egalitarian perspective. Despite my attachment to Canada's social welfare policies, I do not think they justify restrictions on movement. On the other hand, I do think that this commitment to free movement is compatible with short-term residency requirements so that one must live somewhere for a few months before becoming eligible for social programmes, and that such requirements would do a great deal to protect against the erosion of social programmes. Living in Canada, one cannot help but be aware of the importance some people (especially in Quebec) attach to maintaining the distinct culture and way of life of their province. It turns out to be possible to do so even within a context of free migration within the state and

considerable immigration from outside. Despite its occasional effects on social policies, it is easy to exaggerate the impact of free movement within the state and also to ignore its importance to those who do take advantage of it. The same is true of movement across borders. Perhaps even the Japanese ought in principle to begin with a policy of open doors, closing them only if a substantial demand actually appears. Given the difficulties of fitting into Japanese society as an outsider, how many would actually want to settle there if they had reasonable opportunities elsewhere?

So, I return to the theme with which I began. Liberal egalitarianism entails a deep and powerful commitment to freedom of movement which can be overridden at the level of principle only with great difficulty.

VI

Let me turn briefly now to the question of how the responsibilities of one state with regard to migration are affected by what other states do. In principle, the failures of one state should increase the obligations of the others since there are people out there with legitimate needs and moral claims that are not being met. And it actually seems to work this way with regard to refugees at first. Thus the very existence of refugees reflects a failure of the state from which they have fled, and other states generally acknowledge that this imposes new obligations on them to care for people who were not previously their responsibility. But then by any reasonable specification of what a fair share of responsibility for refugees would require of each state, most states fail to live up to their responsibilities. (Except for the states that are next door to the refugees. They sometimes act admirably and in any event can rarely avoid bearing a disproportionate share of the burden.) Should we say that this second round of failures generates a new set of obligations for the few states that have acted responsibly? That seems an unpromising line, ratcheting up the level of responsibility until one is almost bound to fail. On the other hand, the needs of the refugees remain unmet. In practice, states, like people, tend to judge their own behaviour by what others do, so that states feel proud if they do more for refugees than most (and especially than the ones with whom they compare themselves.)

VII

I will conclude with a few remarks on criteria of inclusion and exclusion. Assuming that there will be some restrictions on entry, either for legitimate reasons like the public order constraint or for illegitimate ones like a desire

to protect economic privilege, are there some criteria of inclusion and exclusion that are more (or less) objectionable than others from a liberal egalitarian perspective? Certainly need should be one important criterion for admission, and refugees seeking permanent resettlement rank very high on this score since they literally need a place to live. The claims of immediate family members (spouse, minor children) rank very highly as well. No one should be denied the right to live with his or her family. Other relatives also have some claim but not as strong a one.

To return to the criterion of need, if one accepts the brain drain hypothesis, it would seem appropriate to give priority to the least skilled and most needy among potential immigrants as this would have the least negative impact on the countries of origin. On the other hand, if one admits people with skills and education, it may reduce the backlash problem (which appears to be a real or potential problem in every country that accepts immigrants, especially refugees).

Are criteria that serve the interests of the receiving country always morally problematic in this way, defensible only on prudential grounds? Not necessarily. Taking linguistic and cultural compatibility into account does not seem objectionable if it is not a disguised form of racial or ethnic prejudice and if the cumulative effects of such policies by different countries do not leave out some groups altogether.

Criteria of selection that discriminate against potential immigrants on the basis of race, ethnicity, religion, sex, or sexual orientation are particularly objectionable from a liberal egalitarian perspective. Can these criteria ever be used legitimately to give priority to some? Again, one crucial question is whether they constitute *de facto* forms of discrimination. Consider four recent or current policies with these sorts of factors (I oversimplify a bit, but I think I describe the main lines accurately):

1. Britain removed citizenship from holders of overseas passports and citizens of commonwealth countries, except for those whose grandfather was born in Great Britain.
2. Ireland grants an automatic right to citizenship to anyone with a grandparent born in Ireland, provided that the person comes to Ireland to live.
3. Germany grants citizenship (upon application in Germany) to anyone of ethnic German descent, no matter how long since the person's ancestors lived in Germany.
4. Israel grants automatic citizenship to any Jew who comes to live in Israel.

Of these, the British law is the most objectionable from a liberal egalitarian perspective and the Irish law the least, despite their formal similarity. The British law is a thinly disguised form of racism. It was

designed to preserve the citizenship rights of as many descendants of white settlers as possible while depriving as many Asians and Africans as possible of theirs. The Irish grandfather clause, by contrast, has no hidden exclusionary goal. It is merely an attempt to lure back the descendants of some of those who left. The German law is troubling for two related reasons. First, the explicit link between ethnicity and citizenship raises questions about whether those German citizens who are not ethnic Germans are really regarded as equal citizens. Second, the easy grant of citizenship to people who have never lived in Germany before and some of whom do not even speak the language contrasts sharply with the reluctance to grant citizenship automatically to the children of Turkish 'guest workers' even when the children were born and brought up in Germany (and sometimes speak no other language). Finally, the Israeli 'Law of Return' raises questions about whether the Arab citizens of Israel whose friends and relatives do not have comparably easy access to citizenship are really regarded as equal citizens. On the other hand, the Israeli law is tied both to national security concerns and to the historic purpose of Israel as a homeland for Jews.

VIII

Liberal egalitarians are committed to an idea of free movement, with only modest qualifications. That idea is not politically feasible today and so it mainly serves to provide a critical standard by which to assess existing restrictive practices and policies. While almost all forms of restriction on movement are wrong from a liberal egalitarian perspective, some practices and policies are worse than others. Expulsion is worse than a refusal to admit. Racism and other forms of discriminatory exclusion are worse than policies that exclude but do not distinguish in objectionable ways among those excluded. Ideals do not always translate directly into prescriptions for practice because of the second-best problems familiar from economic theory which have their analogue in moral theory. In theory this might seem to make it difficult to identify the policy implications of liberal egalitarianism with regard to free movement. One can doubtless imagine cases where the sudden opening of the borders of one country (with all the other circumstances of the modern world remaining unchanged) would do more harm than good from a liberal egalitarian perspective. In practice, however, we can usually ignore this concern because, in every polity, domestic political considerations will confine feasible policy options to a relatively narrow range, excluding alternatives that would entail major costs to current citizens. Given these political realities, liberal egalitarians should almost always press for more openness towards immigrants and refugees.

Notes

1. For a defence of few or no restrictions, see Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics*, 49 (Spring 1987), 251–73; Bruce Ackerman, *Social Justice in the Liberal State* (New Haven, Conn.: Yale University Press, 1980), pp. 89–95; Judith Lichtenberg, "National Boundaries and Moral Boundaries: A Cosmopolitan View," *Boundaries: National Autonomy and Its Limits*, ed. Peter Brown and Henry Shue (Totowa, N.J.: Rowman & Littlefield, 1981), pp. 79–100; and Roger Nett, "The Civil Right We Are Not Yet Ready For: The Right of Free Movement of People on the Face of the Earth," *Ethics*, 81 (1971) 212–27. For the state's right to control entry, see Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), pp. 31–63. For the middle position, see Frederick Whelan, "Citizenship and Freedom of Movement: An Open Admission Policy?" *Open Borders? Closed Societies?: The Ethical and Political Issues*, ed. Mark Gibney (Westport, Conn.: Greenwood Press, 1988), pp. 3–39.
2. The arguments in this section draw upon Carens, "Aliens and Citizens" and Whelan, "Citizenship and Freedom of Movement."
3. This brief sketch necessarily covers over deep disagreements among liberal egalitarians with regard to many issues such as how much inequality is compatible with or required by the commitment to freedom, whether affirmative action for groups historically subject to discrimination is a violation of, or a means of realizing, liberal egalitarian principles, what are the foundations (if any) of liberal egalitarian commitments, and so on.
4. See Walzer, *Spheres of Justice*. For a detailed discussion of the right of exit see Frederick Whelan, "Citizenship and the Right to Leave," *American Political Science Review*, 75 (1981), 636–53.
5. I have discussed these sorts of arguments previously in "Aliens and Citizens." For other treatments see Ackerman, *Social Justice*; Whelan, "Citizenship and Freedom of Movement," and an unpublished paper by Whelan entitled "Freedom of International Movement: Some Reservations."
6. Here I follow John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 216–21.
7. I develop the claims in the next two paragraphs at greater length in "Membership and Morality: Admission to Citizenship in Liberal Democratic States," *Immigration and the Politics of Citizenship in Europe and North America*, ed. William Rogers Brubaker (Lanham, Md.: German Marshall Fund Of America and University Press of America, 1989), pp. 31–49.
8. For one discussion of the potential demand, see Michael Teitelbaum, "Right versus Right: Immigration and Refugee Policy in the United States," *Foreign Affairs*, 59 (1980), 21–59.
9. Garrett Hardin, "Living on a Lifeboat," *Bioscience* (October 1974).
10. Rawls, *A Theory of Justice*, p. 213.
11. For an explicit use of this argument, see Teitelbaum, "Right versus Right."
12. Whelan offers a clear presentation of these arguments in "Freedom of International Movement."

13. See, e.g., Charles Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979); Brian Barry, "Humanity and Justice in Global Perspective," *Ethics, Economics, and the Law: Nomos XXIV*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1982), pp. 219–52; and David A. J. Richards, "International Distributive Justice," in Pennock and Chapman, pp. 275–99.
14. For discussions of the ways in which liberal individualism is compatible with the view that people may have an interest in maintaining and passing on a culture, see Brian Barry, "Self-Government Revisited", *The Nature of Political Theory*, ed. David Miller and Larry Siedentop (Oxford: Clarendon Press, 1983) and Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989).
15. For a fuller discussion of the White Australia policy, see Joseph H. Carens, "Nationalism and the Exclusion of Immigrants: Lessons from Australian Immigration Policy", *Open Borders? Closed Societies: The Ethical and Political Issues*, ed. Mark Gibney (Westport, Ct: Greenwood Press, 1988), pp. 41–60.
16. For a fuller defence of this approach see Joseph H. Carens, "Difference and Domination: Reflections on the Relation between Pluralism and Equality," *Majorities and Minorities: NOMOS XXXII*, ed. John Chapman and Alan Wertheimer (New York: New York University Press, 1990), pp. 226–50.
17. The claims made here for Koreans in Japan parallel those made above for migrant workers.
18. I have explored these issues more fully in an unpublished paper entitled "Migration, Morality, and the Nation-State."
19. For a valuable discussion of minority rights, especially the rights of native people in liberal societies, see Kymlicka, *Liberalism, Community and Culture*.
20. This concern for the capacity of communities to define their own character lies at the heart of Walzer's defence of their right to closure. See note 1.
21. I explore the relevance of differences in social welfare policy between Canada and the United States in a similar way in "Immigration and the Welfare State," *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1988), pp. 207–30.