



## Free movement and the asymmetry between exit and entry<sup>1</sup>

By/Par

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Freedom of emigration is a universal human right.<sup>2</sup> But there is no corresponding right of entry and settlement in other countries. Only the citizens of a state have an unconditional right to be admitted. For all other groups, their opportunities of legal immigration depend on international agreements (such as the EU Treaties that provide for free movement between member states), on obligations towards people with special needs to be admitted (refugee migration and family reunification), or on perceived mutual interests of migrants and the country concerned (skilled migrants and the return of national diasporas).

Surely there must be some inconsistency in claiming that every individual has a right to leave any country, but countries may select those whom they allow to enter according to these criteria. Imagine you live in a room that has several double doors leading to adjacent rooms. In each room of this building there is a guard who is in charge of maintaining it in proper conditions. If you want to leave, the guard has been instructed to give you the key that unlocks all doors leaving your room. Yet you will still be imprisoned if the entrance doors to all the other rooms are locked and your key does not fit any of them. So it seems obvious that universal freedom of emigration must entail real opportunities for immigration somewhere else, i.e. at least one other open room.

This conclusion is resisted by those who regard freedom of exit as a purely negative liberty. In their view, the duty of the guard does not extend beyond giving you his key. This is a very formalistic interpretation that does not take into account the material reasons why liberals regard the right of exit as a fundamental freedom.

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<sup>1</sup> Thanks to an anonymous reviewer for very useful questions.

<sup>2</sup> See Universal Declaration of Human Rights Art. 13, International Covenant on Civil and Political Rights Art. 12.

Some of these reasons assume that freedom of movement is intrinsically valuable. The most extreme version was put forward by Thomas Hobbes who defined liberty as “the absence of external Impediments” (Hobbes 1973: 66). Charles Taylor has ironically pointed out that on this conception of freedom the absence of traffic lights in Enver Hodsha’s Albania would have made it a comparatively free society (Taylor 1985: 218). Yet traffic lights enable people to coordinate their movements on the road, while Hodsha’s ban on emigration was an arbitrary restriction of free movement by an illegitimate political authority. What liberals value about free movement is the opportunity to realize individual choices unconstrained by arbitrary power, which can manifest itself in restrictions of exit as well as of entry.

A second set of ideas regards free movement as instrumentally valuable for achieving not merely individual goals, but also collective ones within a politically organized society. An influential version of this argument is Albert Hirschman’s (1970) theory that exit and voice are alternative feedback mechanisms that make organizations more responsive to individual preferences. Exit from a country by emigration is more costly than exit of dissatisfied consumers who buy from an alternative provider. Voice (which entails free speech as well as voting rights) is therefore the dominant mechanism for making political systems responsive to their citizens. However, responsiveness within democratic regimes is clearly enhanced through free emigration, too (Moses 2006: 78-104). Moreover, as the democratic transition in East Germany shows, authoritarian regimes that effectively suppress voice may be toppled as a result of mass exit (Hirschman 1992).

Both the intrinsic and the instrumental benefits of freedom of exit depend on real opportunities rather than on a mere negative liberty. The difficult question is to define both the extent of entry opportunities that is required to make exit free and the allocation of corresponding duties to admit immigrants into particular states.

The guard in your room will let you open any exit door. However, in order to get into another room you need to knock at one of its entrance doors. If you are lucky, the guard of the adjacent room may let you in. But you are not free to enter in the same way that you are free to leave. So the guard may ask you a simple question and your answer will determine whether he lets you in: “Why did you choose this particular door rather than any of the others that you could have chosen to leave your room?”

There are many answers that you might give. Consider the following ones: (1) “Because the guard in my room is a notorious criminal. I just managed to steal his key after he fell asleep. If you don’t open this door, he may kill me.” (2) “Because life is miserable in my room and I am desperate to get out. I have already knocked at all the other doors. You are my last chance to leave.” (3) “Because my spouse lives in your room and I want to join her.” (4) “Because I have skills and I am willing to help you improve your room.” (5) “Because I have been told that your room is much nicer than mine and so I would like to move in.”

I have arranged these potential answers in descending order of moral force. The first reply offers the strongest reason. If and as long as there is no universal right of immigration, states have moral duties to provide real exit opportunities to those who suffer from state

persecution. In the above story it is also fairly clear that the obligation to open the door falls on a particular guard. In the real world, it is not always so obvious which state is responsible for admitting an individual refugee, but a combination of factors that include geographic proximity, active involvement of the destination state in the refugee producing crisis, economic wealth, and cultural or family ties of the refugee to the destination society can often answer this question.

Duties to assist those whose states fail to protect them from dire poverty are morally no less compelling since people do not deserve to live in misery merely because they had the bad luck to be born as citizens of a particular state. Yet while refugees need another state to protect them, the world's poorest populations need economic resources and responsible governments in the country where they live.<sup>3</sup> The guard's answer to the second response could thus be: "I accept that I owe you support. But I cannot admit all who are in a similar condition as you. Let me talk to the other guards whether we can do something that would make life in your room bearable." Such promises are, however, not enough for those whose lives are at risk because they have decided to escape from dire poverty and to cross a desert or a sea. Even if they may be eventually sent back, they must be admitted first. Destination states share a responsibility for the human lives that are lost in attempts to reach their shores and borders and – in contrast with duties of economic assistance – it is generally not difficult to identify the state on which this duty to rescue falls.

The third answer is in this respect also a very good one. Family reunification may represent a less urgent claim than escape from violence and poverty, but it is still based on one of the most basic human needs and it is clearly directed towards a particular state, since it entails not merely the right of outsiders to admission, but also the right of residents to live with their close family. The guard might, however, respond: "As you know very well, your spouse is free to go while you are not free to enter. So why don't you reunite your family in your room instead?" Your reply could be: "You admitted my spouse as an immigrant years ago. Your room is her new home. Forcing her to choose between her home and her husband is cruel and also unnecessary, since I am willing to leave my home, whereas she isn't. So it is you who creates a dilemma that won't arise if you let me in." The underlying principle to which you appeal here is that freedom to move implies a right to stay where one is at home.

Answer (4) refers to a mutual interest between the receiving state and the potential immigrant. So it is more likely to be accepted than other reasons. But it does not involve a strong moral claim. Denying entry to migrants, in whose talents many other countries are interested, hardly amounts to curtailing their freedom of exit. If they are admitted, there are still moral side-constraints that need to be respected. The guard may say: "I will let you in, but after you have been paid for your work you must leave." Suppose you agree, but at the end of each work period you are offered a new contract. If after several years the guard reminds you of your promise to leave, your response will refer to the same principle as in the

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<sup>3</sup> There are two major arguments for open borders: one refers to individual liberty, the other to global justice (Carens 1987). In this short essay I cannot address the second argument. These perspectives are hard to reconcile since the latter defends free movement as a means to flatten inequalities between countries, whereas the former considers reduced inequalities as a condition for free movement.

family reunification case: “I agreed to leave after the initial work period. But it was you who asked me to stay then. Now your country is my home and the initial agreement has become invalid.”

Finally, answer (5) offers the weakest reason. Yet it is not without any moral force whatsoever. The intrinsic value of free movement implies that there is always a burden on states to justify restrictions of immigration. Moreover, real freedom of emigration requires also mental mobility. Opportunities to leave are severely constrained for people who have no information about, or experience of, an outside world. This argument supports what Kant called a cosmopolitan right to hospitality for temporary sojourners but not for permanent settlers (Kant 1991). One implication is that, whenever possible, states should abandon visa requirements that restrict free travel for the citizens of particular countries. In a world with huge and unequally distributed poverty, the real difficulty is to distinguish the fifth from the second argument, and to enforce the departure of those who entered as tourists but seek immigrant status.

These five answers serve thus as guides to ethical principles for admission policies. They emerge from taking seriously the universal freedom of exit in a world where immigration is restricted. But why should we accept the premise of moral asymmetry between emigration and immigration in the first place? Phillip Cole argues in this issue of *Ethics and Economics* that both immigration and emigration can have negative consequences for the respective states and may therefore be restricted for the sake of public interests, but should only be curtailed in proportion to “the seriousness of grounds which justify the state in limiting either right.” Constraints on free movement should thus be regarded as exceptional measures similar to a state of emergency.

I believe that this argument points to the right kind of goal – a world in which borders are generally open for exit as well as entry – but moves too quickly by ignoring two reasons why emigration and immigration are not morally symmetric. The first reason is related to a liberal conception of states as associations of their citizens. The analogy between states and clubs has been widely explored by philosophers and economists (see e.g. Walzer 1983, Frey and Eichberger 1999, Straubhaar 2003). It is obviously limited since all states have rules for birthright membership and only states can provide effective protection of basic rights. This explains why voluntary associations do not have the same obligation as states to admit refugees from other associations that treat their members unjustly. Yet, within the confines of the ethical constraints discussed above, we may still think of liberal states as voluntary associations in their relations to those who want to leave or join. From this perspective, an association that prevents its members from leaving is inherently illiberal, while an association that selectively admits new members is not.

The second reason has to do with a democratic conception of the polity whose citizens collectively shape their own future. It is true that both massive emigration and immigration may severely undermine democratic decision-making. Legislators may, for example, decide not to invest into a higher education system if they expect that all graduates will leave to pursue their careers abroad. And, conversely, a country may find that it cannot maintain a

system of tuition-free higher education, which it has introduced in order to increase the rate of academic qualifications in its population, if foreign students have free access.

Yet emigration and immigration are still deeply asymmetric in their consequences for democratic self-government. Consider an extreme case of two liberal democracies. Over a short period of time more than half of the population of country A emigrate and settle in country B where they also make up more than half of the total population at the end of the period. A's economy and welfare system may be badly affected by this massive loss of population just as B's institutions may be under severe strain for opposite reasons. If those who left A and those who stayed there have different political preferences, then emigration may also lead to a change of government in A. But it won't affect the basic capacity of A's population to make political choices about its own future. It is only in B that such massive immigration would undermine the right to self-government. B must either deny the newcomers citizenship status or must accept that these will from now on dominate B's political system and public culture at the expense of the native population. From a liberal perspective, this choice between apartheid, i.e. a regime where a minority rules over a disenfranchised majority, and colonization, i.e. subjecting the natives to the newcomers' rule is one between two equally appalling evils. This dilemma can be avoided by restricting immigration.

As Michael Dummett (2001, chap. 4) argues, this danger of cultural and political swamping justifies restricting immigration only where there is clear evidence that the inflow is so large and occurs over such a short time that it would overwhelm existing institutions and would turn native populations into a minority. The upshot of Dummett's argument is that the swamping argument must not be politically abused for justifying restrictions in order to preserve the cultural or ethnic purity of a nation. A liberal state is not a tribe and has to accept that a gradual transformation of its citizenry through ongoing immigration does not change its continuity and identity as a self-governing political community in a way that a sudden influx of a large and potentially dominant population would.

The two reasons for moral asymmetry between emigration and immigration are, therefore, not sufficient to justify immigration control under all circumstances. A world in which both immigration and emigration were matters of individual choice rather than of coercion and constraints would certainly be freer than ours. Freedom of movement across political borders is also not a fancy utopia. Before World War I, European and North American states exercised little effective control over migration (Moses 2006). And democratic federations such as the U.S. or Canada, as well as the European Union have opened large territories for free internal movement without abolishing the autonomy of their constituent states.

Internal freedom of movement is also not an absolute right. Immigration may be restricted in specific territories, such as nature reserves or lands inhabited by indigenous peoples. Both exit and entry rights may also be temporarily suspended in case of emergencies, such as the outbreak of a highly infectious disease. But the intrinsic and instrumental value of free emigration is clearly strengthened where there is a corresponding right of entry and so the liberal utopia must be global freedom of movement of the kind that exists today only between member states of the European Union.

Between democratic polities such symmetry of emigration and immigration can and should be achieved if emigration push factors are substantially reduced and immigration pull factors are spread across a large number of destinations. In a world of extreme inequalities of wealth and political stability between countries, however, states cannot avoid treating emigration and immigration asymmetrically. And from a liberal perspective, in this non-ideal world, the asymmetry must be skewed towards free emigration and restricted immigration rather than the other way round.

This is, however, not a moral excuse for zero immigration policies or for selecting only economically desirable migrants. A commitment to promoting liberty generates three moral constraints on admission policies: a duty to admit refugees and family members of immigrants who have nowhere else to go, a readiness to open borders for temporary visitors, and a willingness to expand zones of free movement across independent states. Living up to these commitments would not lead to fully open borders but to “fairly open” ones (Bader 1996).

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