



Liberal Egalitarian Arguments for Closed Borders: Some Preliminary Critical Reflections

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“Citizenship in Western liberal democracies,” Joseph Carens once argued, “is the modern equivalent of feudal privilege—an inherited status that greatly enhances one’s life chances.”¹ With this evocative blast of rhetoric, Carens sought to puncture the tightly guarded civic and territorial borders of liberal democratic states. Carens’s challenge was forceful because carried out in the name of the core values that liberal democratic states’ borders claim to contain and serve: freedom and equality. To say, as liberal egalitarians do, that all human beings are free and equal is implicitly to question all politically constituted boundaries that restrict freedom and entrench inequality via coercion. Liberal egalitarians have said this loudly when it has come to feudal boundaries, gender boundaries, racial boundaries, and even religious boundaries. So it is no surprise that they should say it about the boundaries of state and citizenship: if all humans are free and equal, then the use of coercion to deny the freedoms and privileges of citizenship to some but not others appears to be an egregious violation of liberal egalitarian principle.²

To say this, of course, is merely to point to the tension between the widely accepted practices of self-styled liberal states and the open borders that liberal egalitarian moral commitments

¹ Joseph H. Carens, “Aliens and Citizens: The Case for Open Borders,” in *Theorizing Citizenship*, ed. Ronald Beiner (New York: State University of New York Press, 1995 [1987]), 229-253, p. 230.

² For liberal egalitarian critiques of closed borders, see also Joseph H. Carens, “Migration and Morality: A Liberal Egalitarian Perspective,” in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992), 25-47; Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000); Howard F. Chang, “Immigration Policy, Liberal Principles, and the Republican Tradition,” *Georgetown Law Journal* 85.7 (1997): 2105-2119; and Peter Schuck, “The Transformation of Immigration Law,” *Columbia Law Review* 84.1 (1984): 1-90.

appear to require.³ My purpose here is to provide some preliminary reflections on one important set of responses to the liberal egalitarian critique of closed borders. These responses take the philosophical commitment to the equal moral worth of all for granted and, so, accept that under ideal circumstances liberal egalitarianism would mandate open borders. They claim, however, that as a matter of policy under today's non-ideal circumstances, liberal egalitarian principles themselves permit or require the differential treatment of citizens and foreigners. More particularly, they claim that the long-term survival of liberal egalitarian institutions instrumentally requires curtailing open borders – at least provisionally. Even excluded foreigners, on this view, could not reasonably reject closed borders.

I wish to suggest that, even under non-ideal circumstances, these arguments do not succeed in justifying a policy of closed borders. My purpose here is thus limited: I do not make a positive case for open borders. Rather, the thesis for which I would like to sketch a preliminary defence is that, even under today's non-ideal circumstances, liberal egalitarianism mandates porous borders considerably more open than the current practice of self-styled liberal states.

There are at least five arguments for why, in the actual world, border restrictions are justifiable as a means for serving liberal egalitarian values. First, as Carens points out, given the current levels of global economic inequality, if industrialized liberal democratic regimes were to open their borders, the sheer volume of the consequent levels of immigration could “overwhelm the capacity of the society to cope, leading to chaos and a breakdown of public order.”⁴ Second, given current global inequalities, rich industrialized countries with open borders could witness such a great number of poor immigrants that their economies would collapse.⁵ Third, open borders might precipitate letting in large numbers of immigrants who, regardless of their political values, are so culturally different from current citizens that their presence in large numbers would threaten liberal states' capacity democratically to effect socio-political integration.⁶ Fourth, open borders might let in large numbers of immigrants who harboured subversive political intentions or who were fundamentally anti-liberal in outlook, and whose presence would threaten the survival of domestic liberal democratic institutions.⁷ Fifth, even if countries' liberal democratic institutions and industrial economies survived, their capacity to sustain a welfare state of any sort might either collapse

³ See Cole, *Philosophies of Exclusion*.

⁴ “Migration and Morality,” p. 30; cf. “Aliens and Citizens,” p. 238, where Carens discusses this proviso in the context of ideal theory.

⁵ John Isbister, “A Liberal Argument for Border Controls: Reply to Carens,” *International Migration Review* 34.2 (2000): 629-635, p. 630.

⁶ This is Will Kymlicka's argument, in “Territorial Boundaries: A Liberal Egalitarian Perspective,” *Boundaries and Justice: Diverse Ethical Perspectives*, eds. David Miller and Sohail H. Hashmi (Princeton, NJ: Princeton University Press, 2001) 249-275.

⁷ Carens, “Migration and Morality,” p. 28.

completely,⁸ or at least compromise the state's capacity to fulfill putative special responsibilities to its own current citizens (or residents).

Each of these arguments consists in an empirical premise – that open borders would lead to some outcome – plus a normative premise according to which, to the extent that the empirical premise is correct, border restrictions on entry are justified. I take it that, in the first four cases, a plausible justification for the normative premise could be provided to foreigners. A foreigner could not reasonably reject the normative premise of the public order argument since, as Carens argues, a “threat to public order” could justify curtailing free mobility 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.⁹

Similarly, the interest in free mobility does not seem so urgent as to outweigh the net global welfare losses entailed by the destruction of industrialized economies. The normative premise in the third case – which proceeds from the spectre of social disintegration – could be justified on the simple grounds that the long-term viability of liberal democracies internationally depends on relaxing, in the short-term, liberal egalitarian requirements about open borders. In the fourth case – where opening borders would destroy existing domestic liberal democratic institutions due to the intentions or character of immigrants – the normative premise could be justified as a temporary means for ensuring the survival of liberal democratic regimes.

The real arena of controversy in the first four cases lies in the validity of each argument's empirical premise, and the amount of openness that would bring about the undesired outcome. With respect to the first argument, for example, Carens argues (rightly, I believe) that the restrictions on entry required to maintain public order are much less than the restrictions currently in place. Similarly, I take it that all industrialized economies have the capacity to absorb, without collapse, a vastly greater number of immigrants than they currently allow.¹⁰

In support of the third argument, one might argue, as Will Kymlicka does,¹¹ that to be viable, liberal democracy requires cultural-nationalist policies of socio-political integration that ensure a minimum level of domestic cultural homogeneity, and that such homogeneity could only be secured via closed borders. There are two retorts to this. First, liberal democracy and social integration are not dependent on the existence of a single national public culture in any thick sense.¹² Second, even if liberal democracy were dependent on some minimal level of cultural homogeneity, and even if this thinner level of homogeneity required state-sponsored

⁸ Robert E. Goodin, “If People Were Money...,” in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992), 6-22, p. 11.

⁹ Carens, “Migration and Morality,” p. 30.

¹⁰ See Howard F. Chang, “Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy,” *University of Pennsylvania Law Review* 145. 5 (1997): 1147-1244.

¹¹ “Territorial Boundaries.”

¹² See Arash Abizadeh, “Does Liberal Democracy Presuppose a Cultural Nation? Four Arguments,” *American Political Science Review* 96.3 (2002): 495-509.

policies of integration, such policies are not dependent on closed borders, as demonstrated by open borders within regionally diverse federal states or within a union of states. Furthermore, if the high levels of immigration that would result from more open borders were a threat to integration, then one might expect the country, among industrialized liberal democracies, with the highest rates of per capita immigration – Canada – to fare worst in measures of integration. Ironically, in a different work Kymlicka himself provides a survey of the literature demonstrating that on all relevant indicators Canada fares extremely well and, indeed, better than other comparable countries in this regard.¹³

With respect to immigrants with subversive political intentions, clearly the fourth argument's empirical premise is not wholly false: there are those who would enter liberal democratic societies for the purpose of destroying them. But a regime of border control that could be justified to foreigners could not possibly lump all foreigners into a single undifferentiated category: the argument could justify restrictions only on the entry of those individuals who are actually (or reasonably suspected of) seeking to destroy the domestic institutions and would be able to do so unless denied entry. With respect to illiberal immigrants, the fear is that large numbers of them would overwhelm the capacity of the domestic liberal democratic culture to absorb the new entrants, and that the consequent destruction of a liberal democratic political culture would jeopardize liberal democratic political institutions as well. This is an old song and dance, and it obviously advances an empirical sociological claim beyond the scope of this review; I suspect that, like the cultural nationalist fears, these fears are also vastly exaggerated, and that insofar as they are grounded in sociological realities, they would once again only warrant restrictions much less than current levels.¹⁴

The fifth argument holds that rich countries have a moral right (if not duty) to restrict entry because opening up their borders would have devastating effects for the provision of welfare to the domestically worst off.¹⁵ The argument comes in a welfare collapse and a welfare strain version. The welfare collapse version rests on the strong (and controversial¹⁶) empirical premise that industrialized liberal democratic countries' domestic welfare regimes would collapse completely if they opened up their borders. Thus if freedom of movement is viewed (in Rawlsian terms) as "a socio-economic good of a sort that falls within the scope of the difference principle,"¹⁷ rather than as a basic liberty, and if open borders would destroy the very capacity to provide any welfare regime, then the harm from destroying a domestic welfare regime might outweigh the gains from freedom of mobility, since freedom would leave no welfare regime for anyone. More robustly, if opening borders would destroy

¹³ Will Kymlicka, *Finding our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998), chapter 1.

¹⁴ The relevant empirical literature for the Canadian case, which because it has the highest per capita rates of immigration amongst industrialized liberal democratic states represents the most difficult test-case for my position, is once again gathered in Kymlicka, *Finding our Way*, chapter 1.

¹⁵ James Woodward, "Commentary: Liberalism and Migration," *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992) 59-84, pp. 69-74; Isbister, "Liberal Argument for Border Controls," p. 633.

¹⁶ See Chang, "Liberalized Immigration as Free Trade."

¹⁷ Woodward, "Commentary," 62.

existing welfare regimes, then closing borders could be justified to foreigners on the grounds that the long-term prospects for global justice depend on the consolidation (not destruction) and gradual expansion of existing liberal democratic welfarist institutions (and, so, without any appeal to any special responsibilities to citizens per se).

Saying that the just provision of welfare to all humanity in the long run depends on the consolidation and expansion of domestic welfare regimes whose survival may, in the short run, depend on restricting the scope of potential beneficiaries makes clear what this argument requires: the consolidation and global expansion of welfare regimes and their scope of beneficiaries. This is, at best, a conditional defence of closed borders: it is not only temporary, it is also conditional on being accompanied by policies that compensate for closure by contributing to the expansion of global welfare in the here and now. And once the extremely strong empirical premise is called into question – once it is acknowledged that current borders could be much more open without fear of welfare collapse – then the argument at most establishes a presumption in favour of porous and not closed borders – borders considerably more open than current levels.

The welfare strain version of the argument rests on the more plausible empirical premise: that after a certain point, to the degree that borders are opened up further, the capacity of the state to provide welfare to its own citizens comes under strain. But to justify closing borders, this weaker empirical premise requires a stronger normative premise: it assumes that citizens have a special responsibility for the welfare of their own current fellow citizens (or residents), particularly the domestic poor, a responsibility that overrides any general responsibilities they might have for the welfare of all, including the global poor.

This normative premise turns precisely on the objection that some liberals egalitarians have themselves raised against open borders. These critics argue that the requirement of giving equal consideration to the interests of all human beings – independent of relations of common citizenship or residence – fails adequately to account for the integrity of moral agents' character and the significance of their relationships. They argue that there are special responsibilities we have to people that arise from the very fact of our relation to them. Such special responsibilities may be either associative duties that require us to give special consideration to the interests of our near and dear, or associative liberties that permit us to do so.¹⁸ This appeal to special responsibilities would challenge the critique of closed borders only if (a) there exist certain kinds of relationship that indeed do ground special responsibilities, (b) the relationships between the citizens (or residents) of a state are of this kind, and (c) the putative special responsibilities to fellow citizens (or residents) could only be fulfilled by closing borders.

¹⁸ I follow Scheffler in designating *associative duties* as a class of special duties. Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford: Oxford University Press, 2001), p. 49. By *associative liberty* I mean the moral permission to give partial consideration to the interests of persons to whom we stand in a certain kind of relation. I use the term *special responsibilities* to refer to special duties and associative liberties together.

(a) For the sake of argument, I shall assume that some relationships ground special responsibilities. One might, following Robert Goodin, think that special duties are “devices whereby the moral community’s general duties get assigned to particular agents,”¹⁹ because such an assignment of special responsibility is the most efficient way to discharge general duties globally.²⁰ Alternatively, one might, following Samuel Scheffler, think that some relationships have non-instrumental value, and that what it means for a relation to be valued non-instrumentally is for an agent to see the relation as an independent source of reasons for action, and hence of special responsibilities.²¹ Special responsibilities would then be compatible with the impartialist commitment to the equal moral worth of all if participating in relationships that are valued non-instrumentally is a necessary constituent of human well-being (or even of moral agency as such).²²

(b) The question is whether the assignment of special responsibilities amongst citizens (or residents) of the same state could be justified instrumentally as the most efficient way to discharge general duties globally (Goodin) or, alternatively, justified from the non-instrumental value of those relationships (Scheffler).

In the context of non-ideal theory, the first, instrumentalist option is manifestly not viable, as Goodin himself notes. Since we are dealing here with the actual world, characterized by deep global inequalities, we cannot – as we might in ideal theory – say that the citizens and government of an industrialized country have a special responsibility to their own domestic poor: on the instrumentalist view, a special responsibility to care for the domestic poor is justified only if the general duty to provide care to all humans is most efficaciously fulfilled by assigning special responsibility over subsets of humanity to particular political jurisdictions. But under present conditions of deep global inequality, general duties to care for the basic welfare of all human beings are obviously not best discharged by assigning special responsibilities for the care of citizens of impoverished countries to their own fellow citizens and polity, who are equally impoverished.

The second, non-instrumentalist option requires showing (1) that relations between citizens (or residents) do indeed have non-instrumental value and (2) that (insofar as liberal morality is committed to the equal moral worth of all) this value is not compromised by the relationships’ impact on outsiders. For example, if special responsibilities are justified insofar as some non-instrumentally valued relationships are vital constituents of a life with moral agency, then the question is whether relations of citizenship are necessary for moral

¹⁹ Robert E. Goodin, “What Is So Special about Our Fellow Countrymen?,” *Ethics* 98.4 (1988): 663-686, p. 678.

²⁰ This is what Goodin calls an “assigned responsibility model.”

²¹ Scheffler, *Boundaries and Allegiances*, chapters 6-7.

²² I extrapolate this point from Bernard Williams’ argument that an ongoing commitment to certain “ground projects” is necessary for moral agency as such. (Though Williams himself saw his argument as a *critique* of impartialist views of morality.) What needs to be added is the assumption that the ground projects necessary for agency must necessarily include non-instrumentally valued relationships with others. See Bernard Williams, *Moral Luck: Philosophical Papers 1973-1980* (Cambridge: Cambridge University Press, 1981), chapter 1; and John Cottingham, “Partiality, Favouritism and Morality,” *The Philosophical Quarterly* 36 (1986): 357-373.

agency in this way. (I take it that it is obvious that they are not.) Alternatively, if special responsibilities are further justified insofar as the non-instrumentally valued relations of which they are constitutive are themselves constituents of human well-being, the question is whether such relations of citizenship (or residency in the same state) are indeed vital constituents of human well-being. I do not propose a definite answer to this question. Instead, I wish to make two related observations.

If one of the primary functions of the institution of citizenship and border control is to enforce oppressive relations of inequality in the world between members of rich and poor countries, then to that extent its putative non-instrumental value is non-existent – just as the “value” of family relationships whose purpose is to entrench oppressive and unequal gender is illusory.

Similarly, even if current citizens (or residents) had prima facie special responsibilities to each other, the fact that liberal egalitarianism requires that they be justified with an eye to the impartialist standard of the equal moral worth of all means that any putative special responsibility is always open to what Scheffler calls the “distributive objection.”²³ The distributive objection asserts that special responsibilities to favour the interests of insiders are unfair if they serve “to reinforce inequalities in the distribution of resources of other kinds.”²⁴ Given contemporary levels of global inequality, this is clearly the case for relations of citizenship (or residence) as they are today. Scheffler does suggest one way in which the distributive objection could be overcome, but his suggestion does little to ground closed borders in the special responsibilities of citizenship: Scheffler suggests that putative special responsibilities “will remain open to challenge on distributive grounds unless those who are not members of the putatively duty-generating groups and relationships are given the opportunity to join and voluntarily decline to do so.”²⁵ Special responsibilities could hold force only if borders were open.

(c) Obviously, even if current citizens (or residents) had special responsibilities to each other, and were thus either required or permitted to favour the interests of their fellow citizens (or residents) via the institutions of the state, it would not follow that those interests either ought to be or rightly can be served by keeping outsiders out. An associative duty or liberty to close borders would exist only if (1) the fulfilment of genuine special responsibilities somehow requires closed borders and (2) the requirement to fulfill those special responsibilities through closed borders is not overridden by closure’s impact on general responsibilities to outsiders. The first condition obviously raises an empirical question whose answer depends on precisely what the putative special responsibilities of citizenship are. The second condition is the basis for the distributive objection. The objection arises because the control of borders constitutes an exercise of state coercion over outsiders and the exercise of coercion requires a justification consistent with the freedom and equality

²³ As Scheffler notes, “the distributive objection implicitly appeals to” the impartialist premise “that all persons have equal moral worth.” *Boundaries and Allegiances*, p. 75.

²⁴ Scheffler, *Boundaries and Allegiances*, p. 74. Framed in this way, the distributive objection is not an objection to special responsibilities as such, but to some class of special responsibilities.

²⁵ Scheffler, *Boundaries and Allegiances*, p. 74.

of all, including those persons whose options (movement) are coercively restricted. The use of state coercion against outsiders in order to fulfill special responsibilities to insiders must be justified on grounds that could not be reasonably rejected by outsiders qua free and equal persons.

I take it that, given current levels of inequality, such a justification of borders, grounded in special responsibilities and capable of overcoming the distributive objection, is not forthcoming. And once we assume away current levels of inequality, then the entire motivation behind the special responsibilities argument is blocked at the outset. For if we assume an idealized world of liberal democratic polities and global justice, where the gross inequalities of the present order do not obtain, then the empirical premise that closing borders is necessary to discharge special responsibilities to the domestically worst off becomes wildly implausible. Even the welfare strain version of the argument is motivated by the spectre of the Earth's desperately poor swamping industrialized states, a spectre that evaporates under idealized conditions. More to the point: if under idealized circumstances the state's domestic poor would be better off given global labour mobility, then any special responsibilities that the state would owe them would actually best be discharged via a global open borders regime. Under actual non-ideal circumstances it is difficult to argue that special responsibilities to the domestic poor obtain; under idealized circumstances it is difficult to see how such special responsibilities, if they did obtain, would warrant closing borders.

At most, the five arguments considered here justify porous borders that are considerably more open than the borders of today's self-styled liberal states.