The Ethics of Immigration

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OXFORD
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Published in the United States of America by
Oxford University Press
198 Madison Avenue, New York, NY 10016

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Library of Congress Cataloging-in-Publication Data
Joseph H. Carens
The ethics of immigration / Joseph H. Carens.
pages cm
Includes bibliographical references and index.
ISBN 978-0-19-993383-9 (hardback : alk. paper) 1. United States—Emigration and immigration—
Government policy. 2. Illegal aliens—United States—Government policy. 3. Emigration and
immigration—Moral and ethical aspects. I. Title.
JV6477.C37 2013
172'.2—dc23
2013011943

MILSTEIN
JV
6477
.C37
2013

For Jenny, Michael, and Daniel

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The Case for Open Borders

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

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

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

In the first part of this book, I examined questions about immigration, citizenship, and democracy within the framework of the conventional view that states are morally entitled to control admissions. In the past two chapters I have been

exploring ways in which that right to control admissions is constrained by moral considerations that democratic states often acknowledge, at least in principle. Now, however, I want to pose a more fundamental challenge. I intend to call into question the assumption that states are morally entitled to restrict immigration. Let me begin by sketching the contours of this challenge.

The Basic Challenge of Open Borders

In many ways, citizenship in Western democracies is the modern equivalent of feudal class privilege—an inherited status that greatly enhances one's life chances.[1] To be born a citizen of a rich state in Europe or North America is like being born into the nobility (even though many of us belong to the lesser nobility). To be born a citizen of a poor country in Asia or Africa is like being born into the peasantry in the Middle Ages (even if there are a few rich peasants and some peasants manage to gain entry to the nobility). Like feudal birthright privileges, contemporary social arrangements not only grant great advantages on the basis of birth but also entrench these advantages by legally restricting mobility, making it extremely difficult for those born into a socially disadvantaged position to overcome that disadvantage, no matter how talented they are or how hard they work. Like feudal practices, these contemporary social arrangements are hard to justify when one thinks about them closely.

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

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

views. They undergird the claim to moral legitimacy of every contemporary democratic regime.

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

Given these three assumptions there is at least a prima facie case that borders should be open, for three interrelated reasons. First, state control over immigration limits freedom of movement. The right to go where you want is an important human freedom in itself. It is precisely this freedom, and all that this freedom makes possible, that is taken away by imprisonment. Freedom of movement is also a prerequisite to many other freedoms. If people are to be free to live their lives as they choose, so long as this does not interfere with the legitimate claims of others, they have to be free to move where they want. Thus freedom of movement contributes to individual autonomy both directly and indirectly. Open borders would enhance this freedom.

Of course, freedom of movement cannot be unconstrained, but restrictions on freedom of movement require some sort of moral justification, that is, some argument as to why the restriction on freedom is in the interest of, and fair to, all those who are subject to it. Since state control over immigration restricts human freedom of movement, it requires a justification. This justification must take into account the interests of those excluded as well as the interests of those already inside. It must make the case that the restrictions on immigration are fair to all human beings. There are restrictions that meet this standard of justification, as we shall see, but granting states a right to exercise discretionary control over immigration does not.

The second reason why borders should normally be open is that freedom of movement is essential for equality of opportunity. Within democratic states we all recognize, at least in principle, that access to social positions should be determined by an individual's actual talents and effort and not limited on the basis of birth-related characteristics such as class,. race, or gender that are not relevant to the capacity to perform well in the position. This ideal of equal opportunity

is intimately linked to the view that all human beings are of equal moral worth, that there are no natural hierarchies of birth that entitle people to advantageous social positions. But you have to be able to move to where the opportunities are in order to take advantage of them. So, freedom of movement is an essential prerequisite for equality of opportunity.

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

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

This preliminary case for open borders will generate a host of questions and objections. In the rest of this chapter and in the next one, I will try to identify the questions and objections that I find most challenging and illuminating, using my responses to clarify, qualify, and deepen my defense of free movement.[2]

The Nature of the Inquiry

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

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

Why make an argument that we should open our borders when there is no chance that we will? Because it is important to gain a critical perspective on the ways in which collective choices are constrained, even if we cannot do much to alter those constraints. Social institutions and practices may be deeply unjust and yet so firmly established that, for all practical purposes, they must be taken as background givens in deciding how to act in the world at a particular moment in time. The feudal system, whose injustice I have presupposed above, was once deeply entrenched. So was the institution of slavery in the seventeenth and eighteenth centuries. For a long time, there was no real hope of transcending those arrangements. Yet criticism was still appropriate. Even if we must take deeply rooted social arrangements as givens for purposes of immediate action in a particular context, we should never forget about our assessment of their fundamental character. Otherwise we wind up legitimating what should only be endured.

To be sure, most people in democratic states think that their institutions and policies have nothing in common with feudalism and slavery from a normative perspective. Democratic states, they suppose, are basically just. Some will acknowledge that democratic states should do more to protect basic human rights elsewhere and to bring those in desperate poverty up to some minimal level of well-being. But most people do not see discretionary control over immigration by democratic states as a restriction on freedom, or at least not a freedom

to which noncitizens are morally entitled. Most people in North America and Europe also think that they are morally entitled collectively to what they have (in any given democratic state) and entitled to protect it by keeping others out. It is precisely that complacency that the open borders argument is intended to undermine. The control that democratic states exercise over immigration plays a crucial role in maintaining unjust global inequalities and in limiting human freedom unjustly.

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

In this chapter and the next, I will ask only what justice requires in principle. For the purposes of that discussion, I will set aside worries about what to do if some people or some states are unwilling to do what they should. So, I will not spend time discussing the question of whether one state should open its borders if others refuse to do so because the most important question of principle is whether democratic states should generally be open, not how some who seek to act justly should respond to the moral failures of others. In practice, as I have already acknowledged, no affluent democratic state in the contemporary world will open its borders. So, we are unlikely to gain much insight into practical matters of policymaking by working through a hypothetical question about how one imaginary democratic state should behave if its leaders (and population) were persuaded by my arguments about what justice requires with respect to open borders. I do not mean to suggest that my discussion of principles has no implications for action, however. I will explore these implications in chapter 13.

No inquiry can proceed without some presuppositions. Even though I am proposing to challenge some deep conventional assumptions, I do so only by presupposing others. In this chapter, as is the case throughout the book, I presuppose the normative validity of democratic principles, while offering a particular interpretation and analysis of them. This is still political theory from the ground up, even though it may seem strange to use that label for a line of argument that is so at odds with existing practices. The point is that I do not start with a general theory of human freedom or equality and try to deduce the case for open borders from that. I do not even start with a general theory of mobility and try to show why it is so important to human beings to be able to move freely across borders. I use no specialized language or technical arguments. Rather I begin as before with ordinary democratic principles and practices, examining

each in light of the other. The only difference is that in this chapter that dialectic gives rise to a much deeper criticism of the way we do things now than it did in the earlier ones. Nevertheless, as should already be apparent, the case I am making for open borders is one that ordinary readers should be able to understand (whether they agree with it or not). It appeals to familiar, widely shared democratic principles and tries to show that these principles have unsettling implications.

An argument for open borders also presupposes that there are borders. Having borders that are open is not the same as having no borders. More specifically, I will assume that we are living in a world divided into separate, sovereign states in the way that the current world is. Each state governs a discrete territory, claims a legitimate monopoly on the exercise of violence within its territory, and has the legal right to control entry to its territory. This presupposition is not intended to preclude the more complicated relations of authority that we actually find in the world (e.g., federalism within states or institutional arrangements between states such as the European Union).[3] The presupposition also does not exclude questions about possible moral constraints on the ways in which states may exercise their sovereign powers, especially the power to control admissions. That, after all, is the main question I want to address in the chapter. I say more about the relationship between sovereignty and open borders in the next chapter.

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

Open Borders and Common Sense

Let me start with the objection that requiring states to open their borders cannot be right because it is so at odds with our basic moral intuitions and our practices. As one critic puts it, the idea of open borders "defies common sense."[4] Another critic points out that an open borders policy conflicts with the practices of all democratic states, even those that seem to approximate most closely democratic ideals.[5] In international law one can find support for the claims of permanent residents and migrant workers (even irregular migrants) and refugees, but all

international law, even human rights legislation, treats the basic right of states to control immigration as beyond question.

I take these objections seriously. I have myself argued elsewhere that our practices may contain moral insights that our theories miss and that we have reason to be wary of moral theories that conflict with our normal moral intuitions.[6] On the other hand, as I noted in the same places, it sometimes takes the critical perspective of theory to bring to light what is wrong with our practices.

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

If we accept the possibility that conventional morality may be wrong, it affects the kinds of arguments we can use. Criticisms of the argument for open borders should not appeal to conventional moral intuitions about the state, since the claim is precisely that these intuitions are faulty. This may seem self-evident, but the conventional understanding of the state holds such sway over our normative imaginations that we are often not even aware that we are deploying it. Many of the objections to open borders simply smuggle back in (usually unconsciously) the very assumptions that are supposed to be the subject of the inquiry. I will try to point out examples as I discuss the objections.

Of course, we cannot escape moral intuitions and moral assumptions altogether, especially in an approach like mine that works from the ground up. As I noted above, I am myself assuming the moral validity of democratic principles and my use of the analogy with feudalism implicitly assumes that contemporary readers would find feudal arrangements to be unjust.[7] In other words, I am using some parts of our moral traditions to argue against others, and I am claiming that

our deepest principles have implications that those who first developed those principles did not foresee. This should be a familiar form of moral argument, analogous to ones deployed by critics of discrimination on the basis of race, gender, and sexual orientation. The broad claim is that the idea of open borders fits better with our most basic values—liberty and equality—and with our most deeply rooted intuitions about justice than the idea that the state should be able to restrict immigration at will. The values, principles, and intuitions that support the latter are ultimately far less compelling.

The Global Justice Challenge

My general argument for open borders has two components, one linking it to freedom and the other to equality. In this section I want to pursue the link between open borders and equality. One important objection to my argument for open borders is that it greatly overstates the moral importance of being able to move freely across state borders from an egalitarian perspective, at least in most circumstances.[8] Leaving aside special cases like family reunification or refugees, the critics say, the real problems to which my argument points are the vast inequalities between rich states and poor states, and especially the fact that so many people live in desperate poverty. These are the underlying conditions that make people want to move, and they cannot be addressed effectively by opening borders. Even if borders were open, the critics say, it would do little to help most of the poor because most of them could not and would not move. Indeed, one might object that there is something morally perverse in suggesting that the solution to the problems of the global poor and disadvantaged is to make it possible for them to come to rich states, especially if one sees the problems they face as due in no small part to the actions of rich states and the institutions they have created, as some critics insist is the case. Our most important moral priority, from this perspective, should be to transform the underlying conditions and, especially, to help the least well off emerge from extreme poverty. It is a matter of achieving global distributive justice. What global justice requires is a massive transfer of resources from rich states to poor states and a transformation of the international economic order, not open borders.

In many ways, I agree with this line of argument. I agree, for example, that reducing international inequalities and, especially, eliminating extreme poverty, are more urgent and more fundamental moral tasks than opening borders.[9] Of course, not everyone shares this view of global justice. In the next chapter, I will also consider arguments to the effect that the obligations that any political community has to outsiders are much more limited than this account of global justice or my own argument for open borders maintains. For the moment, however,

let's proceed on the assumption that this egalitarian view of global justice has merit (as I think is indeed the case).

As I have explained above, I am concerned in this chapter, primarily with questions of fundamental principle rather than questions about strategies for action. At the level of principle, there is no conflict between open borders and a view of global distributive justice that requires great reductions in the inequalities between states. On the contrary, these ideals fit well together. Significant reductions in the inequalities between states would transform open borders from a critical but perhaps unrealizable ideal into a feasible arrangement, precisely because reducing inequality would reduce the pressure to move and eliminate fears of open borders creating vast dislocations.[10] For reasons that will become clearer as we proceed, open borders between states would be an important institutional feature of a just world. In principle, free movement is not in conflict with global justice but rather is part of what global justice requires.

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

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

One obstacle to getting agreement on the moral duty of rich states to address global poverty and to reduce international inequalities is that people disagree about the causes of these problems and about the viability of alternative ways of addressing them. How can we be sure that money spent on development will be well spent rather than wasted, that it will help poor people rather than line the pockets of corrupt elites, that it will improve conditions rather than make things worse? And to what extent are we really responsible, either causally or morally, for the difficulties people elsewhere face? Questions of this sort are sometimes self-serving rationalizations for avoiding constructive action, but not always. There are serious critics of almost every approach to development and genuine disagreement about the causes of, and moral responsibility for, inequalities.[11]

In the context of this dispute over the causes of and cures for global inequality, arguing for open borders draws attention to the fact that at least some of the people who are poor remain poor because we will not let them in. We use coercion every day to prevent people from achieving a better life. We cannot evade our responsibility for that.[12] We know how to admit immigrants. Despite occasional political rhetoric that the boat is full, no democratic state in Europe or North America can pretend that it could not take in many, many more immigrants than it does now without collapsing or even suffering serious damage. Opening borders might not be the best way to address these problems, but the open borders argument takes away any justification for complacency and inaction.[13]

What about the possibility that opening borders will actually increase international inequality rather than reduce it? That is an important question that usually focuses on the claim that letting talented and well-educated people move from poor states to rich ones harms the efforts of poor states to develop themselves (the so-called "brain drain" argument). I have already discussed this argument in chapter 8. Let me just say here that it would not be plausible to suggest that rich states are keeping their borders closed in order to help poor states or that closure is the best form of assistance.

Second, even if free movement did little or nothing to reduce overall inequality (though I think that is implausible), it would still be an important moral goal. To return to my initial analogy, defenders of feudalism could plausibly have argued (and indeed some did) that opening careers to talents would do nothing to benefit most peasants. Vast social inequalities persisted after the end of feudalism, but that did not make the abolition of feudal birthright privileges morally unimportant. This change made positions in social hierarchies less dependent on the social circumstances of an individual's birth and more dependent on the individual's personal capacities and efforts.[14] Ending the formal barriers to equality of opportunity created by restrictions on immigration would not be a cure-all either, but it would clearly contribute to global equality of opportunity and so would be a significant moral advance over current arrangements.

Some people would challenge this claim on the grounds that equality of opportunity is an incoherent idea when applied at a global level. They say that the concept of equal opportunity presupposes that we know what sorts of opportunities matter and how to weigh them against one another. In a global context, cultural differences are too great to make that feasible. If we do not know what equal opportunity really means, how can we know whether open borders would really contribute to this goal?[15]

In my view, these concerns are greatly exaggerated. Equality of opportunity is a complex and contested idea, of course, but the conceptual difficulties of interpreting it and applying it at the global level are not radically different from the difficulties of interpreting it and applying it at the domestic level.[16] In any event,

when it comes to the question of whether open borders would contribute to enhancing equal opportunity, the argument about cultural variability collapses because the migrants who are seeking to move to rich democratic states clearly want the sorts of opportunities those states provide. They think those opportunities are better than the ones at home or they would not move. So, we cannot deny *them* admission and access on the grounds that we don't know what they really want or value. Restrictions on entry are a clear obstacle to equal opportunity for those who want to migrate.

Open Borders and Human Freedom

In this section I want to deepen my defense of the claim that open borders would contribute to human freedom. In some respects, I find it puzzling that it is necessary to make the case that it is an important restriction on human freedom to require people to get permission to enter a territory and reside there, especially when political authorities are almost entirely free to deny that permission. I am inclined to think that it should be intuitively obvious to those who value freedom that this is a serious constraint on freedom, even if they judge the constraint to be justifiable. I know from many conversations, however, that people often do not see it that way, even political philosophers professionally committed to elaborating liberal ideas. One common response I have heard goes something like this: "I can see why preventing people from poor states from moving to rich ones is a serious constraint on their freedom because they have such strong reasons to want to move. But why should I have a right to move from Canada to Sweden or from the U.S. to Norway? It is not a serious limitation of my freedom not to be able to do that."

What is interesting about this response is the way it reverses the normal presuppositions of democratic thinking. My interlocutors do not ask why Sweden or Norway should be able to refuse to admit an immigrant from Canada or the United States who wants to enter their territory. They ask why someone from Canada or the United States should be free to immigrate to Norway or Sweden. From a democratic perspective it should be restrictions on freedom that require justification, not the exercise of freedom.[17] When it comes to freedom of movement across state borders, however, that expectation tends to be reversed.

In the movie *The Shawshank Redemption*, the character played by Morgan Freeman is released on parole after forty years in prison and goes to work in a grocery store. In one scene, he asks the store manager for permission to go to the bathroom. The manager assures him that he does not need to ask permission to take a bathroom break. Later, reflecting on this incident, Freeman's character realizes that he has so internalized the constraints of prison life that

he no longer understands what it is to think as a free person (though this motivates him to seek a fuller freedom than he has on parole). I think that something similar occurs in our approach to immigration. Discretionary state control over immigration is such a well established and pervasive practice that it seems unquestionable to many people. Because assumptions about the state's right to control entry and settlement pervade our consciousness, we reverse the normal assumptions about the justifications of freedom and constraint. I intend to challenge that way of thinking.

In this chapter, I want to focus exclusively on the reasons we have for thinking that the ability to move freely across borders might be the sort of vital interest that could deserve protection as a human right. This is only one side of the argument, of course. For a fair assessment, we have to consider not only the reasons why freedom of movement across borders is an important freedom but also the reasons why states might want the right to limit that freedom. That is the focus of the next chapter. As we shall see in that chapter, there are plausible reasons for restricting immigration under some circumstances, though these reasons are far more limited than people normally assume. I will argue in that chapter that the morally acceptable reasons for restrictions on immigration do not justify discretionary state control over immigration and do not prevent us from viewing the freedom to move across borders as a human right. For the moment, however, I want to focus only on the positive side—the case for seeing the freedom to move and reside wherever one wants as a vital human interest.

In developing my argument, I will proceed through reflective engagement with existing practices of mobility and freedom. This section proceeds in three steps. In the first, I argue that treating the freedom to move across state borders as a human right is a logical extension of the well-established democratic practice of treating freedom of movement within state borders as a human right. In the second, I explain why seeing the freedom to move across borders as a human right makes sense given our normal democratic understanding of human freedom and its importance. In the third I explain why treating the freedom to move across borders as a human right is compatible with the concern for reducing inequality discussed in the previous section.

The Cantilever Argument: Extending the Right to Freedom of Movement

At the moment no state or international body recognizes a general human right to enter a state and settle there without the state's permission. Citizens have a right to enter their own state, and, as we have seen in the last chapter, those seeking asylum from persecution have some rights to enter a state and stay there so

long as they are at risk. But there is no generally recognized human right to go where one wants and live where one chooses. Should there be? How might one go about answering such a question?

One way to make a normative argument in favor of recognizing a new human right is to show that the proposed right is closely analogous to something that we already recognize as a human right. David Miller has called this the cantilever strategy.[18] The basic idea is that we start with some existing human right that everyone who accepts democratic principles recognizes as a human right. We can normally assume, for example, that those committed to democratic principles will accept the standard list of human rights articulated in major human right documents. We don't have to develop arguments for these rights. Rather we can use them as the starting point of an argument.[19]

This way of arguing for a moral view is common in philosophy and in ordinary life (even if most people would not think to apply the word "cantilever" to it). One takes certain commitments for granted and tries to show that these commitments have implications for another, more contested issue. For example, when someone claims that discrimination on the basis of sexual orientation is morally objectionable because it is similar to discrimination on the basis of race, she is not usually challenged (these days) to defend the view that discrimination on the basis of race is itself morally objectionable. That is taken as a settled issue. She may be challenged, however, to defend the claim that there is a relevant similarity between race and sexual orientation. As this example suggests, cantilever arguments have played a major role in debates about extending rights to marginalized or excluded groups. They have been often been used to challenge the exclusion of immigrants from citizenship and from other rights.

There is a powerful cantilever argument in favor of seeing the right to move freely across borders as a human right, namely that this is a logical extension of the right of free movement within states. Freedom of movement within a state is widely recognized as a human right. It is listed as a human right in prominent international documents. Here, for example, is the first part of Article 13 of the 1948 Universal Declaration of Human Rights:

> (1) Everyone has the right to freedom of movement and residence within the borders of each state.

Article 12 of the 1966 International Covenant on Civil and Political Rights says something quite similar. Every democratic state in Europe and North America has endorsed these international documents, and many of them have constitutional provisions of their own guaranteeing internal rights of free movement. So, internal free movement is firmly established as a human right, at least at the level of principle.

That opens the door to the cantilever argument. If it is so important for people to have the right to move freely within a state, isn't it 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 human right while granting states discretionary control over freedom of movement across state borders makes no moral sense. We should extend the existing human right of free movement. We should recognize the freedom to migrate, to travel, and to reside wherever one chooses, as a human right.

Notice that in this cantilever argument for treating freedom of movement across state borders as a human right I take the moral importance of free movement within the state as a given. I assume that the fact that internal free movement is actually recognized as a human right by important international documents which have been endorsed by democratic states is sufficient to establish it as a firm foundation upon which I can build the extension that is the right of free movement across borders. I deliberately do not attempt to articulate the rationale for treating free movement within the state as a human right. Instead, I just claim that whatever that rationale is, the same rationale will apply to movement across borders because the reasons why people want to move from one place to another will apply in both cases. Indeed I mention specific reasons why people might want to move only as hypothetical examples to support my claim that the reasons for moving within and between states are quite similar. I do not suggest that these reasons for moving actually constitute the vital interests that make internal free movement important enough to be recognized as a human right. There might be a variety of ways to defend the idea that freedom of movement within the state should be a human right. I leave that open. Instead, my goal in this argument is to shift the task of explaining why freedom of movement within the state deserves to be a human right to those who want to resist the idea of treating freedom of movement across borders as a human right. Given the plausibility of my analogy between the two kinds of movement, the opponents have to offer a rationale for the human right they do accept (i.e., the right of free movement within the state) and then explain why that rationale does not apply to movement across borders.

There are two ways of resisting a cantilever argument, and both are relevant here. The first is to challenge the analogy itself. The second is to argue that the proposed new right has harmful consequences that the original right does not entail or violates entitlements that the original right respects. In this chapter,

I will consider only the first sort of objection: the claim that some of the key positive reasons for establishing freedom of internal movement as a human right do not apply to the proposed new right of freedom of movement across borders. In the next chapter, I will consider the second sort of objection: arguments that treating free movement across borders as a human right would have negative consequences that internal free movement does not have or violate entitlements that are respected by internal free movement.

I have encountered five ways of trying to draw distinctions between freedom of movement within states and freedom of movement across borders in order to challenge the analogy I have drawn. I will argue that none of them succeeds.

The first objection is that free movement within the state serves a nation-building function that has no analogue in free movement across borders. Freedom of movement for citizens within the state's territory helps to promote a sense of common national identity. That is why states embrace it.

The problem with this objection is that it provides no normative justification for establishing freedom of movement within the state as a human right. It may be true that internal freedom of movement has a nation-building effect, and that freedom of movement across borders does not. It may also be true that the nation-building effect is the reason why political elites in some states established internal free movement as a legal right.[20] But we are talking about why internal freedom of movement should be regarded as a human right. The fact that freedom of movement within states may contribute to a sense of common national identity is simply not a relevant reason for making it a human right. The same point applies if one wants to argue that freedom of internal movement is economically advantageous. There is no need to make a prudent policy into a human right. Human rights require a different sort of rationale.

Any plausible justification for making something a human right has to link it to the fundamental interests of human beings, not to the contingent benefits of a particular policy. Indeed, internal freedom of movement may not always be advantageous from the perspective of political elites. There can be good policy reasons for restricting mobility rights in some circumstances. A state may want to avoid an excessive pace of urbanization or to promote local or regional responsibility for social programs. For example, China has created the *hukou* system to restrict movement from rural to urban areas. The fact that this policy has been criticized as a violation of human rights illustrates my point.[21] If internal freedom of movement were merely a policy with certain advantages, there would be no reason for states to make it a human right, thus limiting their discretion. It would make more sense simply to leave the legal right to internal freedom of movement as a policy tool that states might (or might not) want to deploy, depending on the circumstances. Nevertheless, internal freedom of movement has been established as a basic human right that all states must respect, even when it is against

their interests to do so. In sum, the nation-building effect of free movement provides no justification for treating internal free movement as a human right. It follows that the fact that freedom of movement across borders does not have a nation-building effect provides no reason for resisting the extension proposed in my cantilever argument.[22]

A second challenge to the analogy between internal free movement and free movement across borders seeks to show that internal free movement is linked to citizenship while free movement across borders is not. Some say that a right of internal free movement is a right that is owed to individuals because of their political relationship to the state.[23] If this line of argument does not intend to challenge the status of internal free movement as a human right, and that is what I am assuming here, the claim must be that free movement within the state is a membership-specific human right, to use my earlier terminology. Clearly, a general right to move across borders does not rest on any link to an already established membership. So if it were possible to show that the right of internal free movement rests upon membership claims, then it would be possible to challenge the analogy between internal movement and movement across borders and to defeat the cantilever argument.

The problem with this line of argument is that it is not easy to explain why the right of internal movement should be seen as a membership-specific human right rather than a general human right. Recall that general human rights like the right to personal security, the right to free speech, and the right to freedom of religion are rights that are owed to all human beings who are within the jurisdiction of a state, regardless of their legal status. As we saw in chapters 5 and 7, they are rights owed even to visitors and irregular migrants. At first glance (and, I will argue, upon closer scrutiny as well), freedom of movement within the state looks like this sort of general human right. That certainly corresponds to the practice of democratic states. Democratic states routinely claim a right to determine whether noncitizens may enter and reside in the state, but they do not normally claim a right to tell them where they may and may not go once they have been admitted or where they must reside once they have been given permission to stay.[24]

The major human rights documents do not limit the right of free internal movement to citizens (or even citizens and residents). As I noted above, Article 13 of the 1948 Declaration announces that "*Everyone* has the right to freedom of movement and residence within the borders of each state" (emphasis added).[25] There is nothing membership-specific about that. Article 12 of the 1966 Covenant is a bit more circumspect, establishing freedom of movement and residence within the state as a human right of all those "lawfully within the territory of a state."[26] The phrase "lawfully within" does not limit the right to members, however. It implies that even people who are only in a state on a

temporary basis as visitors or tourists should enjoy freedom of movement and residence within the state while they are present, even if the conditions of their admission limit their activities in other ways. The "lawfully within" caveat seems intended to avoid providing irregular migrants with a legal foothold for moving within a state once they have gained entry.

Is there a case for seeing internal free movement as a membership-specific human right? Recall that a membership-specific human right is one that the state is morally obliged to grant to citizens and perhaps to residents as well, but not to others within its jurisdiction. In my original discussion of this distinction, I mentioned the right to enter one's own country as an example of a membership-specific human right for citizens. That right appears in both the 1948 Declaration and in the 1966 Convention. Of course, that specification simply presupposes that the state is normally entitled to restrict entry for those who are not citizens, and the whole point of the open borders argument is to challenge that limitation. But I am not claiming that every membership-specific human right is morally flawed in the way that this one is. For example, the right to vote is legitimately restricted to people with ongoing ties to the society whose laws they help to shape. We don't think that visitors and tourists ought to be able to vote, and that is not because we have failed to understand the implications of democratic principles. (By contrast, democratic principles do require that permanent members of a society have the right to vote, as we saw in chapter 3.) So, if we think of the right to participate in democratic elections as a human right, it is a membership-specific human right, one that is owed only to people who live in the society (or who have some comparable claim) and not to everyone who happens to be in the country during an election.

Can the right of internal free movement be linked to membership in this way? I don't see how. From the individual's perspective, freedom of internal movement is important for many reasons unrelated to membership or political participation. It contributes to personal, civil, economic, and social dimensions of freedom as well as to the ability to participate in politics. Of course, freedom of internal movement can be vital to political participation or can prove essential to protect other fundamental political rights, but that does not show that we should transform it from a general human right (as it is now) into a membership-specific right.[27] So, we can't use this as a basis for challenging the cantilever argument.

A third challenge to the cantilever argument is to say that the real goal of the human right to internal free movement is to prevent discrimination against groups within a state.[28] Discrimination against people seeking to cross borders does not raise the same concerns, according to these critics, and so the analogy between internal movement and movement across borders breaks down.

If this assertion about the purpose of the right to internal free movement is advanced as a historical claim about why it was originally established as a human

right, there does not seem to be much evidence to support that interpretation in the sources I have read.[29] Supporters of this right in the 1948 Declaration were certainly conscious of and reacting to forced relocations of people by the Nazis, and some of the opponents of the right like South Africa were trying to preserve discriminatory practices, but the secondary sources suggest that the primary motivation for making freedom of movement within the state a human right was that it was seen as an important human freedom in itself, not merely that it would provide a bulwark against discrimination.

It is true, of course, that a right to freedom of internal movement can provide valuable protection against certain sorts of discrimination, but it is far too broad a right for that to be its primary purpose. There can be good public policy reasons for regulating movement in ways that are prohibited once freedom of movement is established as a human right. Indeed, that concern was reflected in the original debates on the issue. So, if the goal of free movement were only to prevent discrimination, it would make sense to tailor the right much more narrowly, for example, by prohibiting discriminatory restrictions on freedom of movement.

Finally, even if the goal of a right of free movement were to prevent discrimination on objectionable grounds, there would be just as much reason to adopt a right of free movement across borders as there would be to adopt a right of free internal movement. Racial and religious discrimination have played a major role in restrictions on immigration in the past. Think of the White Australia policy and the similar policies in the United States and Canada. Ironically, this is the one area where states have generally imposed some limits on their own discretion with regard to immigration. As I argued in chapter 9, despite the general claim to a right to discretionary control over admissions, no democratic state today treats it as morally acceptable to discriminate (openly) on the basis of race or religion in admissions.

In sum, the idea that the purpose of the right of free movement is to prevent discrimination is implausible as an account of the basic rationale of the right and would provide no basis for resisting an extension of the right even if the account were true.

A fourth way of challenging the cantilever argument is to say that what is really important is whether people have an adequate range of freedoms and opportunities, including freedom of movement, within their own state. So long as they have passed this threshold of adequacy within their own state, they normally have no vital interest in being able to cross state borders.[30]

The problem with this threshold argument is that it provides no normative basis for the human right of free movement within the state, which I am taking as the starting point in my cantilever argument. If the standard for vital interests is only that people have an adequate range of opportunities, and if adequate range

is defined modestly, it is not clear why this range of opportunities could not be provided within subunits of large states. For example, many states within the United States and several provinces in Canada have a larger population and a wider range of internal economic and social opportunities than many independent states. American states and Canadian provinces have relatively strong jurisdictional powers and responsibilities. So there could be good policy reasons for restricting entry of people from other states and provinces, such as preventing people from other jurisdictions from taking advantage of more generous social programs. In fact, these policy reasons look a lot like the reasons that are sometimes offered for restricting immigration. On the threshold argument, it would appear that the vital interests of people could be met within these subunits. So, the threshold argument provides no reason to have a human right of internal free movement beyond the relevant subunit. Yet the existing human right guarantees a right of free movement across the entire territory of the country. The cantilever argument demands a rationale for the radical disjuncture between the importance accorded internal free movement and the importance accorded free movement across borders. Since the threshold argument cannot provide a rationale for internal free movement, it fails to meet that demand.

The final challenge to the cantilever argument is the claim that there is a fundamental difference between the interest a person has in moving within her own state and the interest she has in moving across borders. The former, some say, is a vital interest and so worthy of protection as a human right, while the latter is merely a minor interest, a matter of a preference. Note again that this argument does not challenge the original right of free movement within the state but seeks rather to distinguish the interests protected by internal free movement from the ones protected by movement across borders.

At first glance, this argument may look plausible, in part for the reasons discussed in my theory of social membership. Most people develop connections and relationships in the society where they live. They speak the language, they understand the informal norms, they know how things work, and they identify with the community. That's where they belong. So, it might seem plausible to say that it is more important for most people to be able to move around in the territory of the state where they live than to be able to move to some other state.[31]

As soon as one thinks about the differences between states, however, the argument looks much less persuasive. Consider the vast differences between states and the consequences of these differences for the lives of human beings. Fiji is a small, poor island state in the South Pacific with a population of less than a million people. The United States is a huge, rich state with a population of three hundred and thirty million people. From what perspective would it make sense to say that every American has a vital interest in being able to move freely within the entire territory of the United States, but that every Fijian only has a

vital interest in being able to move freely within the territory of Fiji? On what grounds could one claim that the Fijian has no vital interest in having access to the much wider array of geographic, economic, social, and political options that access to the United States would provide? Why wouldn't the vast differences between states matter when it comes to the question of the extent and limits of our interests in freedom of movement?

Someone might object that this takes us back to the argument about open borders and global justice. It does, but in a somewhat different way and that difference matters. Now we are concerned not so much with the overall pattern of distribution or of opportunity and how that might be affected by open borders but with the moral claims of individual human beings to human rights that protect their vital interests. Remember that the challenge posed by the cantilever argument simply presupposes that freedom of movement within the state is a human right. That is not in question. The objection we are considering is one that seeks to distinguish between freedom of internal movement and freedom of movement across borders on the grounds that the former protects vital interests and there are no vital interests at stake in the latter. In the world as it is organized today, that is wildly implausible.

In sum, none of the five attempts to challenge the analogy between internal freedom of movement and freedom of movement across borders can withstand scrutiny. The cantilever argument stands. So long as we regard freedom of movement within the state as a human right, we should also regard freedom of movement across borders as a human right.

Why Freedom of Internal Movement Should Be a Human Right

Like an architectural cantilever, a cantilever argument is only as strong as the foundation on which it rests. When I began articulating the open borders argument, I was confident that no one committed to democratic principles would challenge the moral status of basic human rights articulated in major human rights documents. I was wrong. I have found that, façed with the choice between extending the right of free movement across borders and challenging the moral status of internal free movement as a human right, some people are willing to throw internal freedom of movement under the bus. They say (sometimes only implicitly and more often in conversation than in print) that perhaps freedom of movement within the state is not so important after all, not really something worthy of designation as a human right.

This takes us back to fundamentals. Why does freedom of movement, either within the state or across state borders, matter morally? To make the case that open borders would contribute significantly to human freedom, I will first show that freedom of movement within the state is an important freedom. Then I will

show that if states were to control internal movement in the ways that they control movement across borders, this would constitute a significant restriction of this important freedom. This will enable us to see that treating movement across borders as we currently treat internal movement within democratic states would enhance human freedom, other things being equal. Remember that we are deferring consideration of any negative consequences of open borders until the next chapter.

As usual, I want to stick close to the ground, presenting a discussion of freedom of movement that fits with ordinary understandings of that idea, though also one that will have a place in any plausible theoretical account. So, I begin by giving an example of an ordinary experience of exercising the right of free movement within a democratic state.

Imagine the following scenario. Everything in the world is as it is today, except that you live in New York and want to go from New York to Los Angeles, perhaps for a visit, perhaps to move there permanently. Let's say you decide to drive. You have to rent or buy a car, and you have to get gas for the car. As you drive along, you may face tolls on some roads, and you will need food and lodging. When you get to Los Angeles, you will have to find a place to stay, whether temporarily or permanently.

Let me draw your attention to two features of the situation that in some sense limit your capacity to do whatever you want with respect to moving from New York to Los Angeles. First, you need certain resources to make the move: a car, gas, food, lodging, etc. Second, you have to obey two sets of laws in the course of the move: laws protecting private property (which prevent you from just taking whatever resources you need) and laws regulating traffic. For the moment, I won't say anything about whether these limits on your capacity to do whatever you want should be regarded as constraints on your freedom to move or perhaps as the background structures that make freedom possible or as something else. Roughly speaking, however, these are the only obstacles to your moving from New York to Los Angeles if you choose to do so.

Now think about the *absence* of other sorts of limits on your capacity to move. One obvious respect in which you are free to move is that you are moving because you have decided to do so. No public official has ordered you to move. Of almost equal importance is the fact that, with certain minor qualifications (such as a possible obligation not to leave the city because of your involvement in court proceedings), no official is entitled to prevent you from moving from New York to Los Angeles. You don't have to get the government's permission to make the move or to get on the highway or to buy gas or to set up residence in Los Angeles. Furthermore, you don't have to explain to any official why you have decided to move. You may (or may not) discuss your reasons for moving with your friends and relatives, and they may (or may not) think your reasons are

good ones, but no official is entitled to a say in the matter. Indeed, you don't even have to notify any government official about your trip, though if you do decide to stay in Los Angeles you will eventually have to inform various government offices about that (e.g., in the course of filing taxes, getting a local driver's license, etc.). Finally, all of these facts about the ways in which the government may not hinder or even involve itself in your move from New York to Los Angeles are not just contingent features of the current situation which the government is free to change by passing new laws or changing its policies. The freedoms that I have identified are deeply integrated into the legal structure of the United States at the most fundamental constitutional level. They constrain public officials (at least in principle). The bottom line is that apart from requiring you to obey generally applicable property and traffic laws, the political authorities are not entitled to limit your ability to move from New York to Los Angeles in any way.

This freedom that you have to move from New York to Los Angeles is one commonplace example of what the human right to internal free movement entails in practice. Intuitively, this seems to me to be an important freedom. Let's consider some of the reasons people have offered for thinking that it is not.

First, some critics argue that internal freedom of movement is not a very important freedom because we restrict movement within countries for many different reasons: respect for private property, imprisonment and parole for criminal offenses, medical quarantines, prohibitions on settling on indigenous lands, traffic regulations, and so on. Some of these reasons, like traffic regulations, they say, do not involve any fundamental values. They are merely matters of efficiency or public convenience. If we can restrict free movement within countries for trivial reasons like traffic control, the critics ask, how could it be an important freedom, much less a basic human right?

The claim that freedom of movement cannot be important because it is subject to these sorts of constraints implicitly relies upon a conception of freedom that no friend of freedom would endorse. Even if we were to grant that laws regulating traffic and protecting private property can appropriately be described as constraints on freedom of movement, similar constraints apply to most important freedoms. The critics are invoking an implausible standard, one that could be used to discredit any claim to a freedom right.

Take the example of freedom of speech. That is widely acknowledged to be both an important freedom and a human right. A right to freedom of speech does not mean that you can say anything to anyone whenever and wherever you want. As everyone knows, free speech is subject to many different restrictions, regulations, and constraints even in democracies where it is acknowledged as a fundamental right. You cannot yell "fire" in a crowded theatre. You cannot normally enter someone else's house to express your ideas or set up a loudspeaker outside their house, even if the audience you are trying to reach with your

speech is inside. All democracies have laws about libel and slander, and some have laws regulating hate speech. Often we make people take turns in expressing their ideas. We regulate speech through formal rules like Robert's Rules of Order and informal norms like expecting people to raise their hand to ask a question. Some ways of restricting free speech are contested (e.g., hate speech laws), but (almost) no one actually imagines that it makes sense to have no limits at all on speech. None of this means that freedom of speech is a meaningless concept or a trivial concern.

Likewise, the fact that freedom of movement is subject to various restrictions and qualifications does not mean that it cannot be an important freedom or a basic human right. In fact, it makes sense to see some restrictions on freedom of movement, like traffic regulations, as designed to increase overall freedom of movement, just as rules about taking turns should be seen as a contribution to, rather than a restriction of, free speech. It's a familiar point that the freedom of one individual must be compatible with a like freedom for others. Restrictions that serve the purpose of making everyone's freedom compatible with everyone else's freedom are freedom-enhancing. Traffic regulations are like that.

Other restrictions, like denying people the right to enter the property of others, do limit freedom of movement in the name of promoting other values, but freedom of movement is not alone in being restricted for the sake of these values. As we have just seen, freedom of speech is also constrained by the right to private property. And the right to private property, which is itself intimately linked to freedom, is constrained in its turn by rights to freedom of movement and freedom of expression.[32] Different freedoms can conflict and then they have to be balanced against one another. So, the existence of restrictions on freedom of movement for the sake of other forms of freedom or to enhance overall freedom does not prove that freedom of movement is unimportant or that it cannot be a human right.

A second objection to the idea that freedom of movement is important focuses on the idea of vital interests. Human rights, these critics say, are supposed to protect vital interests. So, if the freedom to move is to be regarded as a human right, it must be necessary to move to protect some vital interest. But it is rare that someone really needs to move to meet a vital interest, especially if the person is living in a democratic country where people's vital interests are usually not under threat. Furthermore, some versions of the objection insist, vital interests cannot be idiosyncratic. A vital interest must be a generic human interest like the need for subsistence rather than the need for a particular kind of food. This makes it even more unlikely that it will be necessary to move to satisfy a vital interest.[33]

In the context of my example above, this sort of objection would take the form of asking "What is so important about moving from New York to Los

Angeles? New York is a big city. You can meet your generic vital interests as well in New York as in Los Angeles (leaving aside the possibility that you need constant sunshine and warm weather). Moreover, the state of New York is bigger than many countries in both size and population. If you have to leave New York City, you can always go to Albany or Buffalo. Why can't you meet your vital interests within the boundaries of New York State?"

I think this objection misses the mark, and not just because of the limitations of Albany and Buffalo as alternatives to Los Angeles. The vital interest that is at stake here is not the specific move to Los Angeles but freedom itself. You have a vital interest in being free, and being free to move where you want is an important aspect of being free. It's not everything, of course. But it matters greatly. You have a vital interest in being able to go where you want to go and do what you want to do, so long as you do not violate anyone else's rights. Having your will matter is one important aspect of modern freedom. One of the classic ways of conceiving of freedom is in terms of not being subject to the will of another. From this perspective, it matters a lot that no political authority gets to decide whether or not it is important for you to go to Los Angeles. That is up to you. In my example, I deliberately did not say why you were going from New York to Los Angeles, because all that mattered was that you had decided to go. Perhaps it will be a difficult journey and when you get there you will find that the people have strange customs to which you will have to adapt. Perhaps you will regret the move. But it is your choice whether to go or not. It is not up to the government to decide what options are valuable and why. If that freedom were taken away or severely restricted, it would be an important loss.

A third objection to seeing freedom of movement within the state as an important freedom is that most people don't want to move. How important can a freedom be, the critics ask, if most people do not make use of it?

"Very important" is the correct answer. Once again the objection approaches freedom in the wrong way. We cannot assess the importance of having the freedom to move from New York to Los Angeles just by considering how many people actually make the move. Rights are not designed only with majorities in view. Indeed, one of the fundamental goals of rights is to protect the vital interests of minorities and individuals. So, the first question is not merely what proportion of a population wants to exercise their freedom to move but whether some individuals want to do so. The claim that a particular freedom is unimportant if most people don't take advantage of it is unpersuasive once one looks at individuals rather than numbers. To those who do want to move, the freedom is vital.

There is a second, deeper point. As with many rights and freedoms, freedom of movement can be an important right, even if one never actually exercises it. Simply knowing that you have the right to move contributes to your freedom. It matters greatly that every citizen is free to run for public office, rather

than having that option legally restricted to a predetermined elite, even though most people never run for office or aspire to do so. Having a right to a fair trial is important, even though you will never make use of this right unless you are accused of a crime. Having a right to freedom of religion can be important, even if you live in a community in which your religion is shared by the vast majority so that your own religious practices are never actually under threat. Having a right of free speech is important, even if you never say anything controversial. So, too, having the right to move freely can be important, even if you always live in the same place.

There is a fourth objection to which I am more sympathetic, though this is not usually advanced in conjunction with the others. This is the objection that a formal freedom like the right to move is not very significant if one does not have the resources to make use of that freedom. As I noted in my story, you cannot drive from New York to Los Angeles unless you have access to a car and can pay for gas, food, and lodging. The same issue arises even more forcefully in the context of international migration. Even if people had a right to move across borders, many would not have the economic resources needed to do so. But the need for economic resources to make formal freedoms effective does not mean that formal freedoms do not matter. It simply means that formal freedoms are not sufficient. Indeed, that fits perfectly well with my argument in the earlier global justice section about the need for more economic equality between states, and it is one of the arguments for redistribution within democratic states. But redistribution within and between states raises other issues, and no book can discuss everything. The crucial point for my purposes is that having a right to move is an important aspect of freedom in and of itself. Without that right, you are not free to move even if you have the economic resources to do so. And we should not underestimate the ability of people to find the resources to move even under difficult circumstances.

So far, I have used a story about an ordinary decision to move from New York to Los Angeles to render vivid the importance of the freedom to move. Now I want to imagine the transformation in three stages of an individual's control over the decision to move from New York to Los Angeles so that in the end it looks like the kind of opportunity (or lack of opportunity) to move that faces most migrants. I do this for two reasons. First, this offers a way of making the absence of freedom in the immigration context more visible. As I have said at various points, we tend to take the state's control over immigration for granted and that distorts our thinking about freedom. Second, I want to bring home the point that freedom admits of degrees. While I am arguing that we should establish a human right to move freely across state borders, we are not limited to a choice between this and the status quo. As I will try to show, there are other ways

of structuring the immigration process that would represent a great advance in human freedom even while falling well short of open borders.

So, let's return to our original example and modify it a bit. You want to move from New York to Los Angeles. Let's suppose first that instead of just being free to go whenever you want, you have to get permission to move to Los Angeles, but that the permission will be routinely granted if you request it. This is clearly a constraint on your freedom in some ways. For example, it can affect the timing of your move. You have to plan further in advance, wait for official approval, etc. Still, I'm assuming here that you have an entitlement to move once you have filed the proper papers. There is no official discretion. So, it is still appropriate to say that you enjoy a right to freedom of movement under this second scenario.

Now let's modify the example more significantly. In this third scenario, you don't enjoy a right to move even upon notification of your intent. You have to notify the authorities of your desire to move, but they are entitled to balance your desire to move from New York to California against various other considerations which might make it seem better from a public policy perspective if you are not allowed to make the move. These considerations might be concerned with your personal abilities and job prospects or with circumstances in the state to which you are seeking to move (e.g., its current unemployment level) or with the overall number of requests to enter. The details don't matter (on the assumption that they comply with the sorts of normative principles that I identified in chapter 9).

So, a big change has taken place. You are no longer simply free to move. You have to get the approval of the authorities and that approval may not be forthcoming.

Now let's restore the balance a bit. Let's also assume that the officials must show that denying you permission to move is necessary for the public policy goals that they are pursuing, that there is no other way to pursue the goal effectively that intrudes less on your freedom, and that the benefits gained by your exclusion outweigh the harm done to you by refusing you entry. Suppose further that the authorities have to establish these claims in an independent forum in which you are entitled to present evidence and arguments challenging their claims and that you have a right to appeal if the decision goes against you.[34]

Under this scenario, you are not simply free to move but you are not simply a passive subject, either. You are still treated as an agent whose will matters, you have a range of rights and your desire to move is a weighty consideration that must be taken into account in the final decision. In that respect your freedom still counts for a good deal, although clearly not for as much as it did under the first two scenarios. Obviously, it would be possible to adjust the rules and procedures to give your freedom to move more or less weight in this sort of process.

I introduced this latest scenario to bring home the point that there are degrees of freedom and that there are institutional arrangements well short of open borders that treat people as free agents whose will deserves respect even when it is constrained. There are familiar institutional practices that democratic states adopt when they restrict freedoms that they recognize as prima facie worthy of respect. These are the sorts of practices that I was trying to evoke above. They limit the arbitrary exercise of power and preserve some important elements of freedom.

Finally, let us modify the example one more time. In this final scenario, you have to notify the authorities that you want to move, but political officials in California (whom you have had no say in electing) are free to decide whether or not to let you in.[35] They may make the decision based on announced policies but they are not required to do so. They do not have to take your interests into account in their policy and they generally don't. They don't have to justify the policy to any independent forum or prove that it meets any criteria. They apply their policy to your case in whatever way they see fit, and you have no recourse or basis of appeal if you think that the policy has been misapplied. In this last scenario, you may still be permitted to move but your rights have almost completely disappeared. Your freedom to move is entirely at the discretion of the authorities.

Compared with the all of the other scenarios, the individual seeking to move from New York to California enjoys a lot less freedom in this last scenario. Of course, this last scenario roughly corresponds to the position of most immigrants seeking admission to democratic states (excluding various special arrangements such as the internal mobility provisions within the European Union). Under a regime of discretionary state control over borders, therefore, people have a lot less freedom to move compared with the freedom they would have under a regime of open borders or even than they would have under a regime modeled on the scenario that required authorities to justify exclusion to individuals on objective grounds in an independent forum and which gave the individual's desire to move significant weight. The freedom that people lack under the current discretionary regime is an important freedom for reasons that should be apparent from this everyday example of being able to move from New York to California.

Human Rights and Moral Priorities

As I have noted, my argument for open borders contains two components. The first is that open borders will contribute to the reduction of international economic inequality by removing the barriers that prevent people in poor states from coming to rich states to improve their lot. The second is that free movement

should be regarded as a basic human right because of its intrinsic importance as a human liberty.

Some critics argue that these two components are fundamentally at odds with one another. They say that the concern for inequality implies giving priority to the poor in admissions to rich states, but treating free movement as a human right precludes this because it is owed equally to all.[36] Some who are sympathetic to the ideal of open borders suggest that I should focus on the goal of reducing international inequality, abandoning the idea that free movement should be seen as a human right.[37]

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

I confess that I am puzzled by the objection that there is some tension between seeing free movement as a human right and giving priority to the poor in situations where all cannot be admitted.[38] There are many basic rights that can be fully respected only if most people are not seeking to exercise them at the same time. We all have the right to free speech, but we cannot all speak at once (and expect to communicate). Every citizen has the right to run for public office, but think of the chaos if everyone born in the United States and 35 years old decided to launch his or her own campaign for the presidency. We may all have a right to walk freely on the public sidewalks, but it is not possible for all of the inhabitants of a city to exercise that right at the same time on the same stretch of sidewalk. If more people want to use the same public street at the same time than are able to do so, we would presumably have to develop priority principles for the exercise of that right, and it would be plausible to do so by considering the relative urgency of the reasons why people want to exercise this right. (Think of the challenge of developing rules for mass demonstrations, parades, and so on.)

Most of the time we do not have to pay attention to the implicit constraints on the right to free speech or the right to run for public office or the right to use public streets or other basic rights because people spontaneously and for reasons of their own avoid exercising their rights in ways that lead to conflicts. Sometimes, however, conflicts emerge. Consider the example of emergency health care which I have described in previous chapters as a human right. Even under conditions in which all can be treated, emergency rooms routinely treat the most urgent cases first, making others wait. In conditions of extreme scarcity, such as one encounters in wars and catastrophes, medical officials go further and create a triage system that gives priority to those with urgent needs and a reasonable chance of survival, denying medical care not only to those with less urgent needs but also to those whom medical treatment is unlikely to save

(even though some of these would be saved if treated). It seems to me that this question of how to allocate emergency health care to which all are entitled in principle provides a close analogy to the moral challenge we would face if we accepted freedom of movement as a human right but thought that there were compelling moral reasons for limiting entry to some extent. So long as one does not adopt an unreasonably narrow idea of human rights, there is no contradiction in principle between the idea of seeing freedom of movement as a human right and the idea that the poor should be given priority of entry, if not all can be immediately admitted.[39] In a just world, however, as I will argue in the next chapter, the demands of equality and freedom would be largely complementary rather than in conflict.

Conclusion

In this chapter I have presented the initial case for open borders. In the first half of the chapter, I argued that there are aspects of the contemporary international order that bear an uncomfortable similarity to feudalism. In a world with a few rich states and many poor ones, the state's right to exercise discretionary control over immigration plays a crucial role in maintaining the privileges of those who live in the rich states. Those of us who live in rich democratic states are complicit in a system of inequality which we are able to maintain only because of the ways in which we limit the freedom of others to enter our territories. In the second half of the chapter, I tried to show that the restrictions that we place on the freedom to move across borders are incompatible with our deepest democratic values. Freedom of movement within the state is rightly seen as a fundamental freedom, I argued, and the freedom to move across borders should be seen as a fundamental freedom as well. I turn next to challenges to this view.

on which I have drawn, see Carens 1994, Hathaway and Neve 1997, Schuck 1997, Gibney 2007, and Miller 2007.

37. See the discussion in Gibney 2007.
38. For an excellent discussion of some of the factors that affect a state's capacity to take in refugees, see Gibney 2004.
39. For an illuminating discussion of these issues, see Gibney 2007.
40. I should leave open the possibility that Sweden would be an exception.
41. In developing this line of argument I draw upon ideas from Hathaway and Neve 1997 and Schuck 1997.
42. This migratory logic applies to the flow of asylum seekers to Europe and North America, as I have discussed in the text, but it also contributes to the increasing movement of people from poor states to those in the middle.
43. It is striking that the Convention's almost absolute prohibition on the exclusion of refugees seeking asylum is echoed by Michael Walzer one of the foremost advocates of the state's right to exercise discretionary control over immigration. Walzer discusses the case of the forcible return of over a million displaced people to the Soviet Union in the wake of World War II. These people asked to be allowed to remain in the West, but their pleas were ignored, largely for political reasons having to do with the relationship between the Western allies and the Soviet Union. Most of them were either executed immediately upon their return or sent to gulags where they perished. Walzer argues that the Western allies knew or should have known what fate lay in store for these refugees and that they should have permitted them to stay, despite the high political and economic costs this would have entailed in a context where relations with the Soviet Union were of vital importance and European states faced enormous economic difficulties in the wake of the war. When it comes to requests for asylum then, Walzer rejects the idea that the obligation to take in refugees is legitimately constrained by the receiving state's interests. Like the Geneva Convention, Walzer treats the claim of asylum as virtually absolute, even in the face of very high costs. He says that there may be some limit to the duty to admit refugees seeking asylum but also that he does not know how to specify what that limit would be. See Walzer 1983: 51.
44. Miller 2007: 227.
45. Miller suggests that we think in terms of a hierarchy of a state's duties with the "negative duty to refrain from infringing basic rights" by its own actions at the top, followed by the "positive duty to secure the basic rights" of it own citizens and residents. Below these two duties come the "positive duty to prevent rights violations by other parties" and finally "the positive duty to secure the basic rights of people when others have failed in their responsibility" (Miller 2007: 47). I have implicitly accepted a version of this hierarchy in the text, but the question remains why an acknowledged duty to secure the basic rights of people whom others have failed should ever be overridden by the state's duty or perhaps mere goal of advancing interests of its members that are not comparably fundamental.
46. Miller 2007: 227.
47. Ironically, it is a state's failure to protect the basic rights of its own citizens rather than those of noncitizens within its jurisdiction that triggers this new responsibility for refugees. Noncitizens who are forced to flee are entitled to return to their home state and so no other state normally has any special responsibility for them.
48. I qualify self-interest by the phrase "as conventionally understood," because it is always possible to define self-interest in terms of what morality requires or permits. Given such a definition, there could never be a conflict between self-interest and morality. This is a philosophical move with a pedigree that stretches back to Plato, and it has a good deal to be said for it, but it would simply define away the issues that I want to explore, so I set it aside here.

Chapter 11

1. Some people may wonder how I can reconcile this claim with my defense of birthright citizenship in chapter 2, but I think the two positions are perfectly compatible for reasons I will explain in chapter 13.

2. I first defended the idea of open borders in Carens 1987a and 1992a. My critique of the conventional view was anticipated by Nett 1971, Ackerman 1980, and Lichtenberg 1981. There is now a very substantial literature on this topic. Among the many important contributions to this debate, in addition to works cited subsequently in this chapter and the next, are Bauböck 2006, Blake 2005 and 2012a, Chang 1997 and 2008b, Cole 2000, Dummett 2001, Fine 2010 and forthcoming, Miller 2005, Pevnick 2011,Wellman 2008, Wellman and Cole 2011, Whelan 1988. Unfortunately, I cannot address all of the nuances and complexities of this debate. I focus on the challenges to my position that I think it is most important for me to address. In some cases, for reasons of space, I do not discuss issues that I think have been adequately addressed by others with whom I agree. For example, I do not address the freedom of association debate where I do not think I have anything to add to Fine 2010 and I do not address the debate about asymmetry between entry and exit where I do not think I have anything to add to Bauböck 2006.
3. Bauböck (2007) raises interesting questions about whether the actual arrangements of the contemporary world correspond, as an empirical matter, to this picture of independent states with control over immigration.
4. Isbister 2000: 632.
5. Woodward 1992.
6. See Carens 2000a and 2004b.
7. In assuming that feudalism is unjust, I have left aside the complex problem of historical anachronism and the questions about when it is appropriate to make critical judgments about the past and when not. Feudal arrangements certainly look unjust from the perspective of a liberalism which grew out of a rejection of feudalism.
8. Variants of this argument can be found in Kymlicka 2001b, Pogge 1997, Seglow 2005, and Oberman 2011.
9. This point is emphasized in Oberman 2011.
10. See Bauböck 2010 for an elaboration of one version this argument.
11. Thomas Pogge is the leading advocate of the view that rich states are causally and morally responsible for global poverty and inequality and that there are feasible ways of addressing these problems. See, for example, Pogge 2008. I am in general agreement with Pogge, although I disagree with some of his formulations about the links between individual moral responsibilities and these injustices. But Pogge (like all of us) has many critics, and a number of scholars have challenged his claims about our responsibilities and about the possibilities for transforming the conditions of the global poor. I see my argument as complementary to Pogge's and, in some respects at least, harder to challenge.
12. For a similar argument, see Kukathas 2005.
13. See Abizadeh 2006. For other arguments that support the idea that opening the borders of rich states at least somewhat to immigrants from poor states ought to be one element in an overall global justice strategy, see Bader 1997a, Sangiovanni 2007, Bauböck 2009a. For a more skeptical view, focusing on the negative consequences for those left behind, see Ypi 2008.
14. There are also many reasons for criticizing equality of opportunity, especially in a version that is limited to an elimination of formal barriers, but I will not pursue that issue here. For a classic discussion of this issue, see Rawls 1971.
15. For advocates of this view, see Miller 2007, Rawls 1999. For defenders of the view that there is a link between global justice and equality of opportunity, see Caney 2005 and 2008, Moellendorf 2002.
16. See Jacobs 2004 and Mason 2006 for good overall discussions of the ideal of equal opportunity. Some say that states can deal with the issue of equal opportunity because citizens within a single state share enough common views about what matters to resolve questions about the importance of various goods and the appropriateness of trade-offs among them (Miller 2007: 66). In fact, however, most contemporary democratic states contain internally the same range of cultural values and differences that we find in the world at large, even if not in the same proportions. As we saw in chapter 4, democratic states have to leave considerable room for people to make differing judgments about what is important in life. Moreover, it is easy to exaggerate the extent of cultural differences with respect to the desirability of

some of the goods that rich democratic states produce at such high levels: physical security, health care, education, material prosperity, longer life expectancy. These are things most contemporary human beings want for themselves and for their families, whatever country they come from.

17. See Bauböck 2010, Kukathas 2005 and 2010.
18. Miller 2013. I draw heavily on Miller's helpful account of cantilever arguments in my elaboration of the idea. I especially like this label because I once suggested that we should think of political theory as analogous to architecture (Carens 2000: 23).
19. Someone might object that there is no point in deploying cantilever arguments because we will ultimately be driven back to the foundation itself, that is, to the reasons that support the original right. There is something to that concern, but I think it underestimates the power of cantilever arguments. It is not always necessary to appeal to foundational reasons to establish an analogy. Sometimes the analogy itself seems intuitively obvious, even if one might not be able to articulate the reasons for the original right. In effect one can then say to the critic, "You claim to accept this original right, but not the extension. Given the power of the analogy, it is now up to you to explain what you think justifies the original right and why that justification does not apply to the extension. I will show you either that your alleged justification of the original right is not really a justification of the right at all or, if it is, that it also applies to the proposed extension." In other words, the task of excavating the foundation of the original right shifts to the person who wants to resist the extension. That is important because there are likely to be many different ways of justifying the original right, all of which may be vulnerable to some criticism or other. It is often easier to defend the extension than it is to defend the original right itself. In other words, if one can establish a plausible analogy between the original right and the proposed extension, the burden of proof shifts to critics of the proposed extension to show why the analogy does not hold or why the proposed right will have harmful consequences or violate entitlements that the original one did not.
20. See, for example, Maas 2007.
21. See Zhu 2003.
22. As an empirical matter, the contribution of internal free movement to nation-building may help to explain why states would be less inclined to resist the idea of making freedom of movement within the state into a human right than they are to resist the idea of making freedom of movement across borders into a human right. However, that does not affect the argument about the irrelevance of nation-building as a rationale for making internal freedom of movement into a human right.
23. See Blake 2006. In another article Blake makes a related claim. He says that citizens (and residents) are morally entitled to freedom of movement within the state precisely because they are subject to the pervasive coercive authority of the state while those seeking to enter the state are not subject to its pervasive coercive authority and so not entitled to this freedom. See Blake 2001. I find this line of argument perplexing (though I know that others find it persuasive). Why should the fact that I am not generally subject to a state's authority make it legitimate for that state to restrict my freedom to enter, especially when, by entering, I would render myself subject to its authority? I think the argument seems persuasive only if one presupposes what the argument is supposed to prove, namely that the state is entitled to use its coercive power to restrict entry. I discuss questions about justifications of the state's right to restrict entry more fully in the next chapter.
24. Programs that admit agricultural workers on a temporary basis and limit their occupational and geographic mobility provide an important exception to the generalization in the text that democratic states do not tell noncitizens where they may go or reside after admission, but that is why I used the qualifier "normally." I have discussed (and criticized) such programs in Carens 2008a. See also the discussion and the references in chapter 6 of this book.
25. Brownlie 1992: 23.
26. Brownlie, 1992: 129.
27. For a contrary view, see Miller 2013. Oberman (2012) points out that freedom of movement across borders can also be crucial for forms of political participation that we regard as important.
28. Miller 2013. I have heard others advance the same view in conversation.

29. See, for example, Glendon 2001, Grahl-Madsen 1992, Jagerskiold 1981, McAdam 2011, Morsink 1999. It is worth noting that establishing internal free movement as a human right was a controversial issue. The USSR defended the idea that states should be able to regulate internal movement on grounds of sovereignty. Its proposal on this issue was defeated in committee, and this was one of the reasons why the USSR refused to ratify the Declaration. See McAdam 2011: 48–49.
30. See, for example, Kymlicka 2001b, Miller 2007 and 2008a, Rawls 1999.
31. Since I developed the theory of social membership to explain why immigrants belong, I would not be happy to see it used to justify exclusion, but that does not prove that the argument is incorrect. For more on the relationship between social membership and freedom of movement, see chapter 13.
32. Even a strong advocate of private property rights like Robert Nozick acknowledges that property rights must be constrained in some respects by a right to freedom of movement. See Nozick 1974.
33. See Miller 2013.
34. For a discussion of how these sorts of practices might be incorporated into contemporary legal regimes regulating immigration and an argument about why such procedures are required by the rule or law, see Schotel 2012.
35. For an argument about the importance of the right of those excluded to participate in decisions about exclusion, see Abizadeh 2008.
36. See Woodward 1992: 61. Woodward's critique focuses on the immediate policy implications of the open borders argument. For reasons explained previously in the text, I think that is not appropriate at least for this current version of my argument. In fairness to Woodward, he was responding to an earlier version where my focus was less clear.
37. For this position, see Bader 2005, Seglow 2005. Bauböck (2010) takes the opposite position..
38. I am assuming in the text that the reasons why it is impossible to admit all who want to enter are themselves morally acceptable (for the sorts of reasons I discuss below). If the reasons for closure were themselves morally problematic the objection would collapse of its own weight.
39. Some readers who have thought about the triage analogy in medical care will undoubtedly want to ask whether we should have a comparable triage among immigrants applying for admission, giving priority to the needy but perhaps not taking the most desperate on the grounds that they won't be able to make it in the society they are trying to join (for reasons of lack of education, ill health, and so on). This is the sort of policy application of the open borders argument that I want to resist in this book, for reasons laid out earlier in this chapter. My use of triage in the text is intended only to point out that it is possible to attribute human rights to people even under conditions of scarcity and that scarcity can make it necessary to establish priority rules in satisfying those rights. Whether triage is a morally appropriate approach in this or other cases is a question I leave open here. I do not mean to deny that this can actually emerge as a real question in various ways for those dealing with immigration issues. For example, there is a debate over whether it is morally appropriate in selecting among refugees seeking resettlement from camps abroad to use criteria that measure their likelihood of successful integration into the society where they are to be resettled.

Chapter 12

1. David Miller's position is typical of those defending the state discretion view, and he recognizes various moral limits. See Miller 2007: 222.
2. Versions of the bounded justice argument can be found in Blake 2001, Macedo 2004, Miller 2007, Nagel 2005, Rawls 1999. For criticisms, see Abizadeh 2007, Caney 2008, Cohen and Sabel 2006, Julius 2006.
3. For an argument that ordinary state control over admissions does not normally involve coercion, see Miller 2010. For a critique of that argument, see Abizadeh 2010. I agree with Abizadeh, but I am skeptical that anything important can hinge on a definitional dispute. In any event, my own critique of Miller later in this chapter does not depend on questions about what counts as coercion.