

State, Morality and Cross-Border Migration

The closing years of the twentieth century have, no doubt, been dominated by issues involving borders. Every state claims the right to determine who shall be permitted to enter its territory and almost all exercise the right to set up restrictions on entry.

Especially after the introduction of Passport and Visa systems in the post WWI period there has been a continuing debate whether borders should be closed or open. The situation, however, has not always been the same. In the medieval Europe, the primacy of natural law was taken for granted, and no authority was entitled to obedience, which was not assumed to derive its power therefrom. However, it might be difficult for many at the beginning of the 21st century to imagine such a system - where relations between societies used to be guided by the law of the nature, which Edmund Burke once called 'law which governs all laws', for historicism and relativism have created world pictures on very different models. In the mid nineteenth century it would not have been necessary to discuss *right of entry* as entry to almost every state was free. There was a general presumption that *aliens* might travel freely unless there was a special reason for restricting them. Today, the presumption is just the opposite: no alien may enter unless there is a special reason for admission. Today every state has an immigration control system which deals with all comers and nobody is any longer free to move at will.

Many of the arguments that speak for preserving or perhaps increasing barriers to movement are believed to have been influenced by *communitarian* view. According to a prominent proponent of this school, Michael Walzer, *different peoples are morally entitled to lead their own different lives in their own different ways, without undue influence from other people in other communities organised on different premises*.¹ His main theme is *distributive justice* and he believes this kind of justice depends on entry restrictions. He believes 'the distinctiveness of culture and groups depends upon closure'. But this assumption is clearly contradicted by

facts. We are not sure what he actually meant by 'culture', but if we take the meaning in its simplest form, one can confidently argue that the distinctiveness of culture does not depend upon closure. One can give the instance of the United States, which is often quoted as a melting pot of a remarkable mixture of people, whose culture has flourished on the principle of openness. One can also draw attention to the Islamic culture that has nothing to do with the territorial closure. Modern political philosophy habitually keeps its discussion of justice, rights and obligations within the bounds of a particular state. Such theories take for granted that they are dealing with a model of a particular society as a *closed unit*. The practical problem of such assumptions is there may be and are people who do not belong to any of these closed unit societies. They are stateless persons. They are cut-off from the communal provision of security and welfare, for although theorists accept a doctrine of universal human rights they tend to use it within such a closed system and thus universal rights become expressed as citizens' rights. The supposition that a political society is a closed system has obvious limitations in the contemporary world. In every country there are residents who are not *citizens* of that particular country and hence are excluded from the same rights as the citizens of that country with whom they are living. Although the state constitution extends some rights to the resident aliens, these inevitably are less than citizen's rights. Migrants everywhere live a tenuous existence - rarely gaining the same rights as non-migrants. The presumption is that only nationals could be citizens and only people of the same national origin could enjoy the full protection of legal institutions, person of different nationality needed some law of exception until or unless they are completely assimilated and divorced from their origin.² Scholars have perceived contradiction between this assumption and the belief in universal human rights. Although it is acknowledged that freedom of movement is a human right, international Declarations and Agreements confine it within political boundaries. Article 13(1) of the Universal Declaration of Human Rights asserts that 'Everyone has the right to freedom of movement and residence within the border of each state'. For our purpose we need to analyse Article 13 (2) of the Declaration. It says 'Everyone has the right to leave any country including his own'. But whatever the particulars of

these rules, whether or not a state is prepared to permit the movement of people depends upon the direction in which they are proposing the move. States rarely decide issues governing emigration and immigration according to the same criteria. Logically, therefore, it is an absurdity to assert a right of emigration without a complimentary right of immigration unless there exists in fact a number of states that permit free entry.

It may be mentioned here that Walzer does not argue that societies *must* be closed; he argues that they must have the right to impose closure when such imposition is *morally defensible*. He believes in the principle that a state has the right to refuse entry in some circumstances. That may sound logical to some. However, the basic weakness in Walzer's argument lies with the claims upon which he wants to close the society. We have already shown the instances of the United States and Islamic culture. In fact, today, social scientists have no doubt in mind that human migration has changed societies for the better. The rationale - that further immigration will strain resources already under pressure and lead the social and environmental decay - is becoming a global phenomenon today. However, the social scientists believe that this false logic once again provides a convenient alternative to facing the real causes of resource strain - over consumption and corporate activity. On the other hand, Walzer's argument for national security can be refuted by saying that they can very well be threatened by a state's own citizens, who cannot, however, be refused entry.

On the question of free entry one may find Joseph Carens' view more acceptable. While Walzer argues a case for 'distributive justice', with the emphasis on distribution within a state's borders, Carens wants an international form of distributive justice. He believes³ that borders should in general be open. He argues on the basis of Universal Human Rights. He, however, concedes that in the last resort, if migrants were to arrive in such enormous numbers that they threatened public order or national security, a state's duty to preserve public order could then justify some restriction. Carens' view can be justified in terms of natural law principles. It supposes that everyone has the human right of freedom of movement across borders. But this right can be exercised so long as it does not damage the rights of others.

Perhaps it is worth mentioning that there is a model of interstate free movement already functioning in Europe. In the European community, the national of any member state has freedom of movement in all member states, and these member states have bound themselves not to refuse a Community National except on the grounds of public order, public health or national security. Carens legitimately wonders '*Would it not, then, be possible for the same thing to happen on a world scale?*' But, at the same time he has drawn our attention to the fact that while movement of large numbers *within* the European community has not been an issue, it is very much restrictive towards accepting non-members from outside. However, he also mentions there might be some practical reasons for that. Then he suggests, 'If we are considering a general human right to move, on the part of all human beings to go anywhere, we have to consider what the practical consequences of its exercise might be and how they could be tackled so as to respect human rights in general'.

That the closure of state boundary to the aliens is immoral can also be justified from the point of international financial transaction. It is true that while the rich countries are eager to accept foreign direct investment without any hesitation they are dubious in terms of extending free entrance to the human migrants. Also, if arguments for international distributive justice are valid the rich countries are morally bound to either extend more and generous financial assistance to the poor countries or let people from those countries to enter their territory to get the benefit of wealth. According to Robert Goodin⁴, *if it is not possible to move enough money to where the needy people are the second best mechanism of global redistribution, moving as many the needy people possible to where the money is.*

Even the most highly skilled industries are dependent on migrant labour. A study of high-tech industries in San Diego in the US, and Hamamatsu in Japan, found that employment of unskilled cheap migrant workers meant that manufacturing stayed in those countries rather than going elsewhere. Wayne Cornelius, political scientist at the University of California at San Diego, says: 'You have to ask yourself, would the US as a country be better off if these jobs

were being performed in the Caribbean or in Indonesia, where there was no multiplier effect in terms of consumer spending, taxes being and so forth?'⁵

If individuals trace their ancestry back far enough, it is clear that we are all migrants, with a mix of bloods running in our veins. Human relationships are not defined by lines on a map. This personal realisation snaps the brittle links between people and national or racial superiority. It breaks the idea of a rigid homogenous nation completely, leaving space to mould new forms of society where migrants are accepted as 'us' not 'them'.

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Notes & References:

¹ See, among others, Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983) Chap. 2.

² Hannah Arendt, *The Origins of Totalitarianism*, new ed. (New York: Harcourt Brace Jovanovich, 1973), pp.269-90

³ 'Aliens and citizens: the case for open borders', Review of Politics, vol. 49, no.2 (Spring 1987);

⁴ *If People Were Money...* in Free Movement, Braay Goodin (ed).

⁵ *CISNEWS* (Center for Immigration Studies, 1998).