

What Would a Fair Immigration Policy Look Like?

Written by Jake Brown

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JAKE BROWN, DEC 3 2014

Anti-immigration sentiments, if the Western media are to be believed, seem to be ever-increasing. Be it due to economic fears, national prejudices or otherwise, the voices of political movements advocating tougher immigration restrictions ring loudly across Europe. In the United Kingdom, *The Independent* found in a 2014 survey that “UKIP tops Independent on Sunday poll as the nation’s favourite party” [Merrick, 2014]. The UK Independence Party (UKIP) are a right-wing organisation calling for severe reductions on migration into the UK. Across the channel, *Le Monde* reported in February of 2014 that “34 % des Français « adhèrent aux idées du Front National »” (34% of French people ‘subscribe to the ideas of the Front National’) [Mestre, 2014]. The Front National, like UKIP, are a party fiercely opposed to immigration. So too, in the United States, disputes arise; the Human Rights Watch group has warned the US government to “urgently reform its unfair immigration system to uphold the basic rights of non-citizens and provide a path to legal status for the country’s unauthorized immigrants”.

But whilst these immigration debates rage, a nagging question arises of what a *fair* immigration policy would and should look like in the modern world. This essay argues in contrast to the migrant-phobic rhetoric of populist parties in Europe. Rather, it is reasoned that the more relaxed the immigration policy, the fairer it is. Drawing on the theories of Rawls and other Liberal idealists along with the more radical perspective of cosmopolitanism my conclusion is strong; we are all citizens of the world and should be fairly accepted as such. I shall first describe and refute the ideas of more conservative thinkers such as Walzer who oppose these measures, before moving on to an analysis of the liberal view and finally that of cosmopolitanism. As empirical examples I will discuss the Schengen Agreement employed in Europe and the Trans-Tasman Agreement in Australasia.

Michael Walzer’s work, *Spheres of Justice: A Defence of Plurality and Equality*, published in the mid-1980s proposes largely communitarian theories in response to a variety of contemporary world issues, including immigration and distributive justice. Walzer argues in the second chapter, *Membership*, that nation-states as self-determined and sovereign entities have a right to exclude. This right to exclude ensures the retention of national heritage and lowers the risk of a reduction in nation-state identity. As Walzer writes,

Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically ongoing associations of men and women with some special commitment to one another and some special sense of their common life. [Walzer, 1984, p. 62].

For Walzer then, the solidarity of citizens of individual states and their national communal bond takes precedence over the free movement of persons globally. He states earlier in the same section that

Only if the state makes a selection among would-be members and guarantees the loyalty, security, and welfare of the individual it selects, can local communities take shape [Walzer, 1984, p. 39].

This argument is largely based on an assumption that immigration poses a threat to the “...loyalty, security, and welfare...” of citizens in countries, a claim which is never truly re-enforced.

Christopher Wellman in *Debating the ethics of immigration: is there a right to exclude?* echoes Walzer’s sentiments

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on the importance of state self-determination with regards to immigration control. Wellman writes that as

legitimate political states are entitled to political self-determination, there appears to be every reason to conclude that this privileged position of sovereignty includes a weighty presumptive right to freedom of association, a right which entitles these states to include or exclude foreigners as they wish [Wellman and Cole, 2011, p. 41].

It is important to note here that Wellman is not entirely negative in his attitude expressed towards immigration; he remarks on the rights of states to include *and* exclude non-nationals, as they see fit. Wellman does however, like Walzer, comment on the effect of immigration on nation-state identity, and worries that states may become so cosmopolitan that they see all character reduced to insignificance. However, as mentioned, this right to exclude results in the triumph of nation-state rights over the rights of the individual, for it is impossible to profess the right of a state to restrict its intake of immigrations "... without thereby denying that outsiders have rights to freedom of movement that entitle them to move from one country to another" [Wellman and Cole, 2011, p. 1].

Walzer sees nations as little more than private organisations, much the same as an exclusive golfing or gentlemen's club; "Hence, we might imagine states as perfect clubs, with sovereign power over their own selection processes" [Walzer, 1984, p. 41]. Like clubs, Walzer views nation-states as communities sharing common goals and interests, and as such must do all within their power to uphold this level of intimacy. Just as clubs do, Walzer argues that countries have "admissions committees" [Walzer, 1984, p. 40], and reserve the right to be selective about who may apply for membership. This analogy fails, however, when one considers the fact that clubs are organisations generally for the pursuit of a hobby or passion, or at least some common ideal. Citizenship, conversely, is neither game nor hobby, it is a fundamental principle of human existence. Comparing the nationality of a person – little more than an accident of birth over which they have no influence – to the membership of a club is nonsensical.

Contrary to the perspectives of Walzer and Wellman, the liberal argument claims that the borders of nations should remain generally open. One of the leading thinkers in this regard is John Rawls, most notably in his 1999 work, *A Theory of Justice*. Rawls's arguments begin first by acknowledging that not all states have equal economic and social attributes, and as such some are more or less desirable than others to live in. For instance, in the Balkan states, migration to Slovenia from less developed neighbouring countries like Bosnia and Serbia is high, due to the greater opportunities offered in Slovenia. Rawls then comes to the thought experiment known as the "original position". In this experiment, Rawls poses the argument that

For example, if a man knew that he was wealthy, he might find it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he was poor, he would most likely propose the contrary principle [Rawls, 1971, p. 17].

This can easily be applied to the concept of immigration, if we were unaware of its positive and negative aspects. If a person knows that their country is a desirable one to inhabit, they are likely to offer an anti-immigration stance so as to keep the privilege for themselves. If, conversely, a person inhabiting a poorer country knows that the opportunity for a better quality of life is available to them in another country, they are likely to be pro-immigration, so as to make such an opportunity available to them. If citizens were unaware of the relative strengths and weaknesses of their home state, they are still likely to be in favour of relaxed immigration policies, just as a person hypothetically unaware of their financial status is going to be in favour taxes for welfare measures, as in Rawls's example [1971, p. 17].

For those living in wealthier nations, as Nigel Warburton writes in *Cosmopolitans*, "Life is bearable in part because we can so easily resist imagining the extent of suffering across the globe" [Warburton, 2013]. As stated, it is easy for those citizens to oppose the free movement of persons due to the advantages they enjoy compared to others. Immigration controls are therefore an unjust benefit of those in developed countries over those in un-developed ones. Phillip Cole writes that "It is horribly unjust that a person's life prospects should be so profoundly affected by something utterly beyond her control – the country in which she is born" [Wellman and Cole, 2011, p. 2]. This claim is hard to refute, and sums up succinctly the liberal argument insisting on the surrender of immigration restriction. Teresa Hayter in *Open borders: the case against immigration controls* again affirms the injustice of controlling the free movement of people;

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The issue is how much more suffering will be imposed on innocent people before immigration controls are finally abandoned—as unworkable, too expensive in suffering and money, too incompatible with the ideals of freedom and justice [Hayter, 2004, p. 545].

As such, we are beginning to see that a fair immigration policy must be of more generally open borders, and that the rights of the individual freedom of movement must prevail over the rights of state self-determination. Critics of this liberal perspective argue that due to the unequal nature of the world, a system of completely free movement would result in a chaotic disparate mess, which eventually could be the enemy of itself; free movement could in turn restrict free movement. This claim can be countered with Rawls's concept of the *difference principle*, as outlined in *Justice as Fairness: Political not Metaphysical*. This principle would effectively prevent this predicted chaos by reducing the global inequality of resources. J.E.J. Altham writes that "The difference principle states that the long-run expectations of the least advantaged social group should be maximized" [Altham, 1973, p. 75]. Altham goes on to state that, "if the greater expectations of a representative man in one social group work out to the advantage of the least advantaged, then those greater expectations are consistent with justice" [Altham, 1973, p. 75]. Effectively, if resource equality is made more level – which according to Rawls' principles of justice should happen – the potential chaos of free movement would not occur, as there would be no flocking or waves of movement to high resource areas.

As we have seen in the previous section, Rawls's theories, coupled with those of the contemporary thinkers Teresa Hayter and Phillip Cole, create a strong case for a fair or 'just' immigration policy being one which allows the free movement of persons. It is therefore possible to argue then, that a policy which allows *absolute* free movement would be the most fair; the more open the immigration policy is, the fairer it is. This leads us to the idea of an entirely open immigration policy: that of *cosmopolitanism*. The Greek cynical thinker, Diogenes, famously quipped when questioned over his national origins, "I am a citizen of the world" [Hicks, 1972]. This epitomises the cosmopolitan movement; people across the world are not citizens of individual nations but instead all citizens of the one common factor uniting us all; we are citizens of the planet Earth. Essentially, cosmopolitan advocates strive for a world without borders, allowing a completely relaxed immigration policy or, rather, no immigration policy at all. In the Stanford Encyclopaedia of Philosophy, though it is accepted that cosmopolitan is a broad school of thought, Kleingeld and Brown write that "In most versions of cosmopolitanism, the universal community of world citizens functions as a positive ideal to be cultivated" [Kleingeld and Brown, 2013]. Gillian Brock in *Contemporary Cosmopolitanism: Some Current Issues* goes into more detail, and defines the cosmopolitan method of thought as believing that

every person has global stature as the ultimate unit of moral concern and is therefore entitled to equal respect and consideration no matter what her citizenship status or other affiliations happen to be [Brock, 2013, 689].

Clearly, the cosmopolitan idea of absolute freedom of movement is intimately linked to the concept of absolute equality between persons. This seems a natural connection. If we are to take all humans as free and equal citizens of the world, it would follow that they are free to travel and settle as they so desire, without being subjected to the constraints of national borders and citizenship restrictions with stiff immigration controls. So too are these cosmopolitan ideals in strict accordance with democratic principles, indeed, as a Arash Abizadeh writes, for truly legitimate democracy,

"any regime of border control must either be jointly controlled by citizens and foreigners or, if it is to be under unilateral citizen control, its control must be delegated, through cosmopolitan democratic institutions giving articulation to a 'global demos,' to differentiated polities on the basis of arguments addressed to all" [Abizadeh, 2008, p. 54].

But, as of 2014, this arguably fair immigration policy of cosmopolitanism remains largely unfulfilled. Perhaps the most relevant example in the modern world is the Schengen Agreement between European Union member states. The Communication department of the European Commission describe this system on Europa.eu; "The Schengen area represents a territory where the free movement of persons is guaranteed. The signatory states to the agreement have abolished all internal borders in lieu of a single external border." [Europa, 2009].

This agreement means that, between the twenty-six participating countries, there is a complete "removal of checks

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on persons at the internal borders” and persons travelling between these countries need not produce passports or similar documents akin to traditional immigration checks [Europa, 2014]. Essentially, “The Schengen Agreement abolished internal borders, enabling passport-free movement between a large number of European countries.” It began as an attempt to give practical meaning to the European Union’s longstanding goal of ensuring “free movement of persons” [BBC, 2013]. An additional part of the Schengen Agreement, the Schengen Information System (SIS) allows the exchange of information between police and intelligence forces in response to stolen goods, missing persons, and a multitude of other criminal and social proceedings. The “enormous SIS database” allows “police forces across Europe to share data on law enforcement”, therefore increasing safety amongst citizens [BBC, 2013]. Like all political systems, the European Union’s Schengen Agreement is not without issue, but no chaotic damage has been caused, nor has this free-movement become the enemy of itself; citizens in member-states are living and working in much the same way as before, they have simply lost some of the chains preventing their emigration.

In a similar vein, the Trans-Tasman agreement between Australia and New Zealand allows their citizens to work and live freely in each respective country. This system is similarly effective, and has not impacted negatively on either country. As such, even in this limited contemporary example, it is clear to see that the policy of open immigration, which as I have argued is the most ‘fair’, can indeed function as intended.

To conclude, though the notion of fairness is of course subjective, the arguments made in this case-study all point towards a common theme; a fair immigration policy is one which employs open borders and relaxed restrictions. Indeed, it can be argued that the more open the borders of a nation, the fairer its immigration policy. If we are to realise this theory to its full extent then, the fairest system is one of cosmopolitanism, in which all borders are open. Imagine not a world state, rather a world consisting of individual states much like the towns and cities of countries traditionally, each with a unique culture and way of life, but with the allowance of travel between them. Walzer’s argument that nation-states have a right to self-determination, and therefore may determine their membership, rests entirely on the presumption that the rights of a state override those of the individual. I do not agree with this premise, for as soon as you deny the right to enter, so too do you deny the right to leave, and as such that fundamental right – the freedom of movement – is removed. It seems illogical to *not* believe that we are, as Diogenes said, citizens of the world, and by following this logic too can conclude that it is unfair to operate a system of closed immigration.

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