Do we have a strong case for open borders?

Joseph Carens [1987] challenges the popular view that admission of immigrants by states is only a matter of generosity and not of obligation. He claims that the Nozickean, the Rawlsian and the utilitarian theories lead to the conclusion that there is little justification for restricting immigration. Carens concedes that possibly some other approach, that like the three mentioned theories accepts the equality of every human being, might come to other conclusions. But he argues that the arguments of Michael Walzer for defending that admission of immigrants is a matter of self-determination of communities are not adequate.

In this paper I will first discuss to what extent open borders are supported by the Nozickean, the Rawlsian and the utilitarian theories. Then I will evaluate the arguments of Walzer for the state’s right to exclude immigrants. Finally, I will reflect on my own position on this controversial subject.

How liberals approach borders

Nozick and open borders
Let me first summarize Carens’s argument. According to Nozick’s libertarian theory all individuals have the same natural rights. The state should be a ‘minimal state’, whose function is only to protect against force, theft, fraud and so on. Although Nozick never directly said that the minimal state is not justified to restrict immigration, Carens finds this most likely to be the case, because:

1. The state needs to protect everybody’s rights equally within its territory.
2. Individuals have the right to enter into voluntary exchanges with each other.

Individuals, however, have the rights to exclude aliens for reasons that they could also use for excluding citizens. Even small communities may be formed that have the right to restrict entry to their territory. But Nozick explicitly says that the land of a state is not the collective property of its citizens, from which follows that the state itself does not have the right to restrict immigration.

So far for Carens’s argument. At first glance it sounds convincing, but it says only something about how a minimal state should act, and not how our current states, which are definitely not minimal states, should act. Nozick is strongly opposed to welfare states and it is quite conceivable that Nozick would also be opposed to open borders in states that provide accommodation, food, medical support, etc. The support provided by the state would namely be at the expense of its citizens and therefore be a violation of one’s property rights. A strict immigration policy for current western states definitely seems compatible with another libertarian theory, the mutual advantage theory. A proponent of this theory, which does not have a moral ground, is likely to simply deny immigration in current western
states if no advantage of admission (and no harm of non-admission) for him is to be expected.

**Rawls and open borders**

I again start with Carens’s argument. In *A Theory of Justice* Rawls explicitly assumes a closed system in which immigration is nonexistent. But Carens argues that the construction of the original position is also useful in thinking about justice across nations. With a global view of the original position it is not to be expected that other principles of justice would be chosen. In ideal theory there would be a world of just states with an international difference principle. It would include the right to migrate as a basic liberty, unless unrestricted immigration would lead to chaos and breakdown of public order. The latter is an essential constraint, because according to Rawls, liberty may be restricted for the sake of liberty. In the non-ideal, real world, with big economic inequalities between states and states not respecting basic liberties of their own citizens, there might be an overwhelming number of people who would like to immigrate. In that case some restriction might be required, but again not more than essential to maintain public order. In such case priority should be given to people deprived of basic rights over economic immigrants. Carens sees in the nonideal theory only very limited grounds for restricting immigration: restrictions would hardly ever be in the interest of the worst-offs. Also conventional arguments, like that it would reduce the economic well being of current citizens, are refutable on the basis of principles that would be chosen in the original position.

I would like to make the following comments. Carens wrote his paper in 1987, but in 1993 Rawls wrote the paper *The laws of peoples* in which he also considers a global original position like Carens. In this paper Rawls [1993, p. 57] explicitly mentions the right to emigrate as a human right, but he does not mention any obligation for a country to accept immigrants.

A weak point, not of Carens’s arguments, but of Rawls’s theory, is that it is far from clear that in the original position one would choose for the difference principle. It might perhaps be more rational to choose for a utilitarian strategy or some other risky option. This could also have consequences for attitudes towards immigration. If Kymlicka [2002, p. 69] is right that the intuitive argument of Rawls concerning justice is the primary argument, it might be worth the effort to analyze if his intuitive argument leads to the same conclusions as the global original position argument of Carens.

**Utilitarians and open borders**

Carens gives the following arguments why utilitarians would support open borders. The fundamental principle for the utilitarians is to maximize utility in combination with a commitment to moral equality that everyone should count for exactly one. In a calculation not only economic consequences are relevant. All kind of preferences might be taken into consideration. The important point here is that because everybody counts, the concerns of the aliens must be counted too.
According to Carens it is hard to believe that a calculus which would take the situation of poor and oppressed aliens seriously, would justify greater limits than the Rawlsian approach.

I don’t find this argument of Carens very strong. Carens does not consider the possibility that a utilitarian calculus might show that if money and energy spent in refugee programs would be used for local support in poor countries, this could give a higher utility. I think it is correct to say that from a philosophical point of view utilitarians have no principal objections to open borders, but neither to closed borders. Depending on calculations taking all kind of contingencies in the world as it is into account they might either support open borders or not, and they might change their view in the future. Such calculations will be very difficult to make, not in the least because it will be hard to get consensus about how to weigh different preferences. As George Sher says [Kymlicka, 2002, p. 48]: “The winds of utilitarian argumentation blow in too many directions.”

A communitarian approach of borders

Michael Walzer claims that states are simply free to take in strangers or not. Here I will briefly present Walzer’s defense for this claim, then Carens’s objections and finally my own comments.

Walzer states that if you meet a necessitous stranger, you are morally obliged to help. This is not only an obligation for individuals, but also for groups of people. But he emphasizes that there are strong limits to the risk and costs of obligatory assistance of individuals and of communities. To get a better understanding of the obligations of a country with respect to immigration, Walzer compares countries with neighborhoods, clubs and families. Neighborhoods have no formal borders, but ‘if states ever become large neighborhoods, it is likely that neighborhoods will become little states’ and ‘neighborhoods can only be open if countries are at least potentially closed’ [Walzer, 1883, p. 38]. Countries resemble clubs in having admission policies, but they resemble families in having members that they have not chosen. If a country has superfluous land (like Australia), it should either give up land for necessitous strangers or share it with them. Likewise a country should share superfluous wealth with necessitous strangers inside or outside their country. Countries may have the same obligations towards some refugees as to their own citizens, e.g. to those ‘whom we have helped turn into refugees’ or if they are persecuted because they are like their own citizens in ethnical or ideological sense.

Carens criticizes Walzer’s claim that distinctiveness of cultures and groups depends on the possibility of formal closure. Carens thinks it would be better to compare countries not with neighborhoods, but with cities, provinces, and states in the American sense. These entities are formal organizations with boundaries and open borders, but nevertheless they often have distinctive cultures and ways
of life. So preservation of distinctiveness is not a strong argument for restricting freedom of movement across countries.

With regard to the comparison of countries with clubs, Carens points to a difference between public and private which Walzer ignores: in the public sphere freedom of association prevails, but in the public domain equal treatment. Therefore the admission rights of clubs say nothing about admission rights of countries. Respect for the diversity of communities is an important aspect of Walzer’s theory, but according to Carens, this ‘does not require us to abandon all claims of what other states ought to do’. We regard our moral views as universal principles, and so does Walzer.

I agree with the critique of Carens. In addition to this I would like to comment on the following statement that Walzer makes [1983, p. 39]: “actually to take in large numbers of refugees is often morally necessary; but the right to restrain the flow remains a feature of communal self-determination.” In my view if something is morally necessary, it is obligatory. The only valid reason for not doing a morally necessary thing is either that it is impossible or that there is a conflicting moral necessity with a higher priority. Walzer apparently finds it justified to regard the preservation of the character of communities and their (not too excessive) wealth as more important than the rights of refugees in dire need. I do not want to dispute the value of communities, but I miss a moral motivation for communal self-determination in this respect.

Where do I stand in this controversy?

I fully agree with Carens that you should take a global view in ethical theories. However, in two respects I don’t find his case for open borders convincing. In the first place I don’t think that the three liberal positions discussed so positively lead to a far more open immigration policy. Further as recognized by Carens himself, there might still be other defensible positions that plead for more restrictions on immigration. That Walzer does not seem to have an adequate counterargument, is not yet a proof of the contrary. I sympathize with Carens’s statement that the current restrictions on the openness of our borders protect unjust privileges, but I don’t think this is enough to conclude that we should actually now open our borders more fully. Let me explain my point of view in some more detail.

I want to base my argument on two principles:

1. Everybody has a right to a worthy life.
2. People’s moral claims should not depend on brute luck.

I do not have an exact definition of ‘a worthy life’, but millions of people in the world will definitely not satisfy whatever definition you would like to take (you might take e.g. the Universal Declaration of Human Rights). The second principle I took from a statement Kymlicka [2002, p. 58] made in his discussion of Rawls’s
intuitive equality of opportunity argument. The relevant forms of brute luck are undeserved social circumstances and natural talents.

In many respects rich countries, communities and individuals have the ability and the resources to increase the chances of refugees significantly to get a worthy life. No profound analysis is needed to see that many of them have a lot of their richness by ‘brute luck’. Therefore they have a non-disputable moral obligation to provide help and dramatically more than they do now! This obligatory support can be given to necessitous people in their own countries or to refugees who seek help in rich countries. Utilitarian criteria might be useful in assigning funds. But these might not be the only criteria: if we are directly confronted with the dire needs of someone, and it is relatively easy for us to help, then we always have the obligation to do so. But I don’t know if this should mean that right now our borders should be far more open than they are now. Perhaps even a temporarily more restricted immigration policy might be a more effective strategy in a global approach of the refugee problem. This last point I do not regard as an ethical issue, but merely as a practical one.

A danger of a closed borders policy is that it might be easier for rich countries to shut their eyes for the needs of refugees. As I said, there is a clear obligation for so much more help. But what is the value of such an obligation if it is neglected? How could this obligation be enforced? I think that people in need and those really concerned by their wellbeing should lend a helping hand to rich countries to make them fulfill their obligations. This could be done by actions, boycotts, and to a certain extent by taking away undeserved properties. If someone deprived of basic needs would take something from me that I did not deserve to have, would that be a moral offence? I don’t think so. I like to defend that a fight for conditions necessary for a worthy life is morally justified and that it could create a better world.

References


