

A Democratic Defense of Open Borders

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In 2019, a Honduran asylum seeker found himself in a cell at the McAllen detention facility, alongside 66 other detainees. For ten days, he sat immobile, the cell teeming with scorpions, ants, ticks, and fleas. Requests for necessities like toilet paper and water were met with indifference, and the presence of vermin was dismissed as a result of the detainees' own filth from being there for 45 days (Pilkington, 2021).

Incidents like this occur every day on the United States's southern border with Mexico, where border patrol agents are authorized to use force to stop undocumented migrants from entering the country. Some of these instances escalate further into horrifying abuse. To most of us who live in affluent Western democracies, the existence of heavily secured borders is nothing less than natural. After all, what right do others have to enter our countries illegally, and why is it wrong to stop them with violent force? Our politicians certainly find it easy to generate an onslaught of arguments against illegal immigration, making assertions such as, "*It's our country, so we make the rules,*" or, "*Immigrants are bad people who steal jobs and invite crime.*" These arguments perform well at the voting booth, giving them an aura of validity and weaving them further into the fabric of public belief.

However, in this essay, I argue that closed border policies are actually incompatible with democratic ideals. I begin by making an affirmative argument in support of open borders that shifts the burden of proof onto anyone who wishes to adopt closed border policies to demonstrate why those policies are justified. Then, I respond to a few of these proposed justifications and demonstrate why they each fail to override the initial argument in favor of open borders.

My essay draws on the work of liberal philosophers who defend open borders on the grounds of compatibility with liberalism. However, my arguments exist on a different plane than these do. The distinction is that open border policies can be simultaneously supported by liberal ideals and rejected by democratic ones. For example, a fair law that benefits society can align with liberalism but still fail the test of democratic justification if it was enacted by an autocrat. In this essay, I defend open borders as a necessary component of democratic ideals; that is, if one

supports democracy as a legitimate political theory, one must also advocate for open borders. I do not, however, address liberal arguments for open borders.

What Are Open Borders

Any discussion of borders and border policies must begin with a robust definition of what precisely is meant by the terms “open borders” and “closed borders.” I follow Alex Sager’s account on this topic, making a few important distinctions:

Borders are socially constructed boundaries between different territories. The mere existence of geographical features such as rivers or mountain ranges does not validate the presence of borders as borders must be socially recognized. As Sager writes, “Borders are in important respects socially constructed. Even navigating physical barriers depends on technology and knowledge. Traversing a mountain range turns from an ordeal to a scenic tour with a helicopter. Bolt cutters transform an unguarded barbed wire fence from barrier into a nuisance” (Sager, 2020, p. 9). The fact that borders are social constructs does not make them any less real, however. Migrants die every day attempting to traverse borders, and even domestic borders can shape one’s life in a very tangible way — for example, government benefits, tax policy, and representation can vary drastically even from county to county.

Next, it is important to clarify what open borders are. Advocates of open borders want to abolish institutions that use force to block or prevent immigrants from entering the country. As Sager puts it, “Immigrants, irrespective of their place of birth, ethnic affiliation, religion, political affiliation, or economic status should be free to visit, work, and settle in any country. [Open borders] reject the rights of states to create categories of people defined by their limited access to the rights allotted to citizens, including rights to work and to remain in the territory where one lives” (Sager, 2020, p. 12-13). Open border advocates also affirm an immigrant’s right to eventually gain membership to the state, which includes citizenship and voting rights, though access to these rights may be deferred until an immigrant has lived in the country for long enough.

Importantly, the open border position differs significantly from the no border position and the humane border policy. Advocates of no border policies reject that the state even has a moral

right or claim in creating boundaries of jurisdiction, while open border advocates merely reject that the state has the right to limit movement in and out of that territory and to block certain people from membership to that state. The humane border policy, on the other hand, only asks to reduce the use of force or to expel migrants in a more humane way without eliminating immigration restrictions, thus implicitly accepting that governments are justified in establishing and enforcing borders.

Open borders differ significantly from most status quo border policies. While it may appear that there are many legal pathways for prospective immigrants, the reality is that these pathways are often attached to specific conditions, such as the acquisition of a job or status as a student. And applications for asylum often take several years and have certain requirements. Open borders allow expeditious entry without the need to demonstrate that the entry is backed by an important reason.

For Open Borders: An Affirmative Argument

This discussion of what open borders help clarify this essay's main question: Why should the borders be open? Joseph Carens' work defending open borders begins with: "Borders have guards, and guards have guns" (Carens, 1987, p. 251). His wry observation is, admittedly, obvious, but it raises the critical questions of, "On what moral grounds can [immigrants] be kept out?" and, "What gives anyone the right to point guns at them?" Carens evaluates a number of arguments for closed borders under three different approaches (Nozick, Rawls, and communitarianism) and reaches the conclusion that there is little justification for restricting immigration.

I build on Carens' work by first identifying a positive right to immigration. Whereas Carens focuses on the lack of justification for restriction, he never explicitly explains why the lack of justification necessarily leads to an obligation to support open borders. In order to defend open borders, one must identify a right to immigration and explain why there is no overriding justification. Carens provides one half of that story, but defending a positive right to immigration is an important step in demonstrating why immigration restrictions are unjust, and consequently, why we should all be proponents of open borders.

Implicit in Carens' questions about what gives border patrol agents the right to point guns at migrants is the moral principle that the use of force requires justification. This moral principle nests itself within the larger principle that restrictions on rights require strong justifications. For example, in liberal democracies, the freedom of speech ought not be violated unless that speech would cause large amounts of harm, such as in instances of hate speech or libel.

This discussion of justifying force is important in setting up a positive argument in favor of freedom of immigration. We begin by asserting that everyone has a right to the freedom of movement. This right is rather uncontroversial — we can point to various justifications for why we ought to uphold the right to movement.

First, movement is often a prerequisite for our ability to fulfill our goals and desires. Hannah Arendt writes: "Being able to depart for where we will is the prototypical gesture of being free, as limitation of freedom of movement has from time immemorial been the precondition for enslavement. Freedom of movement is also the indispensable precondition for action, and it is in action that men primarily experience freedom in the world" (Arendt, 1959). Our ability to act depends on our ability to move freely, and most of our goals and ambitions rely on our ability to act.

Next, freedom of movement is interconnected with the execution of many other rights. The right to freedom of religion often involves traveling to religious sites, where movement is necessary. Other important rights such as that of association and assembly require the ability to move freely. Even more specific rights, such as the right to due process, involve protecting an individual against unlawful detention. It is clear that the right to movement is intertwined within a web of other rights, and removing movement from the equation has devastating consequences on our ability to exercise other rights.

Lastly, freedom of movement — even without specific aims — is valuable itself. We find enjoyment in taking a walk outside, and we don't need to explain or defend this feeling. Maurice Cranston notes that, "...the desire to move is a natural, universal, and reasonable one; and hence that it is not so much a man's desire to move that needs to be justified as any attempt to frustrate the satisfaction of that desire" (Cranston, 1973, p. 13).

We have established that individuals have a right to move freely and can now apply this to thinking about immigration. Immigration involves moving between different nations, and given that (1) we all have a general right to freedom of movement; and (2) the right to move freely in public spaces within countries is near-universally respected, we must ask why the same cannot be said about immigration. What feature of moving between the borders of different states makes it morally different from our otherwise broad right to move freely?

These questions reveal that the most effective strategy to defend the prima facie right to immigration is to shift the burden of proof onto those who believe in restricting that right. After all, if we have demonstrated that we all have the right to move freely, those against the right to immigration need to show why that right doesn't apply to immigration, or perhaps is outweighed by other competing rights.

Thus, the affirmative argument in favor of immigration is a simple, but powerful, one: We all have the right to move freely, so we have a prima facie right to immigration. Immigration restrictions violate individuals' rights to exercise their right to immigration, and restrictions on rights require strong justifications. In the absence of strong justifications, these restrictions are rights violations and should be abolished.

Responses to Objections

Given that the affirmative argument in favor of open borders relies on the existence of a prima facie right to immigration, the strongest arguments against open borders will attempt to demonstrate how other considerations or rights defeat the prima facie right to immigration.

Self-Determination

Perhaps the most plausible and popular argument against open borders is to say that a state's right to self-determination outweighs the prima facie right to immigration. There are several variations of this argument that rely on various features of democratic states to demonstrate why states — and more specifically, the people within them — have a right to exclude others from entry and membership. In common rhetoric, these arguments are often heard as, "It's our country, so we can do what we want," or, "I pay my taxes, so I get to decide what

laws get passed.” I will analyze two common versions of this argument and demonstrate why both fail to override the right to immigration.

General Self-Determination

I label the first version of the self-determination argument as the “general” version. Proponents of the general self-determination argument assert that democracy is grounded in the rule of the people. Thus, the people of a state have the right to decide who is allowed to enter and gain membership in that state. This right outweighs that of immigrants because democratic states have an utmost obligation to abide by the rule of its citizens. This argument is certainly appealing and ostensibly presents a democratic justification for why states can be justified in violating a right to immigration.

However, this argument errs in that privileging citizens’ voices in the context of immigration policy is at odds with democratic principles. All states use coercive acts and coercive threats to exercise political power and maintain order. Coercive acts look like public agents holding you back from murdering someone or from leaving a prison. Coercive threats can include the threat of punishment as response to legal code violations or a fine imposed for failure to pay taxes. At the core of democratic theory is the idea that states are justified in engaging in coercive acts and threats — which would otherwise be impermissible — because they can provide a coherent justification to the people subjected to the coercion. One common way democracies do so is by assuring constituents that the coerciveness of governance actually advances, in some way, the autonomy of those constituents.

Thus, democratic principles require that states can provide a robust defense of their political power to all people subjected to it. Abizadeh writes that, “The democratic theory of popular sovereignty holds that the exercise of political power is legitimate only insofar as it is actually justified by and to the very people over whom it is exercised, in a manner consistent with viewing them as free (autonomous) and equal” (Abizadeh, 2008, p. 41).

With this more nuanced understanding of democratic ideals in mind, it is easy to see where proponents of general self-determination go wrong: They fail to acknowledge that immigration policy involves making coercive threats to all individuals seeking to enter the

country, and thus, these individuals are stakeholders in the democratic process just as the citizens of a country are. Some argue that immigration restrictions are not actually coercive threats, but these arguments are swiftly rejected by most analyses (Sager, 2020, p. 52).

Immigration policy is one of the rare instances where a state's policies involve coercive threats to people outside its territory, making it understandable why proponents of general self-determination fail to recognize the immigrants as stakeholders. Whereas domestic policy generally involves the state exercising political power purely within the bounds of the territory (e.g. tax laws, police reform, or healthcare), immigration policy is unique in that it makes a coercive threat against every individual who wishes to enter the country.

Importantly, we must draw a distinction between those affected by a policy and those who the state subjects to coercion. It is compatible with democratic principles for nations to act in a manner that has consequences on people outside of its rule, but the same cannot be said for subjecting them to coercion. While a country's policies may affect a broad range of people in different ways (such as tariffs hurting farmers abroad), few of them actually subject people outside the country's geographic territory to coercive threats like immigration policy does. Thus, the extension of democratic privilege to those subjected to a state's political rule isn't actually as radical as it may appear.

Since immigrants are stakeholders in the democratic process (and subject to coercion), they must be given the opportunity to participate in the democratic process in a manner that respects their status as equal and free. This implication is damaging to those who assert "Immigration restrictions are justified because it's up to the citizens to decide what they want," because only including citizens in this decision-making process is antithetical to democracy. In other words, those who wish to maintain closed border policies while upholding democratic ideals must also ensure that everyone excluded is given an equal voice in the decision-making process, which is not a step that closed-border advocates are willing (or even able) to take.

Importantly, this view reveals a major flaw in the logic of the general self-determinists. The original argument — immigration restrictions are justified because citizens have the right to vote for what they want — mistakenly assumes that the exercise of political power is justified because it is the citizens who make the decision. In reality, all states must identify an *a priori*

justification to legitimize their exercise of political power that *precedes* the will of the people — simply stating that the will of the people justifies exercise of political power is a non sequitur.

In this case, the argument that the will of the people justifies immigration restrictions cuts no ice, because it presupposes that the “people” whose will is carried out includes all those who are subject to the political power. When it comes to immigration policy, that presupposition is false. Immigration restrictions are always created without allowing the immigrants a legitimate voice in the process, meaning that they cannot be compatible with strong democratic ideals.

Specific Self-Determination: Collective Ownership

The next form of a self-determination argument uses a specific aspect of citizenship to justify the exclusion of immigrants from entry and membership, namely: a version of collective property rights. If individuals can own property and are justified in excluding certain people from that property, the same argument can be made for states. In contributing to the upkeep of state institutions by paying taxes, voting, or serving jury duty, citizens gain collective ownership of a state, and consequently, can make decisions about who to admit into their state.

This version of self-determination avoids the pitfall of the general version: by focusing on a specific feature of citizenship and a resulting right, it avoids having to consider non-citizens as stakeholders in the decision-making. After all, non-citizens aren’t contributing to the state, and thus, have no say in the decision-making of that state.

However, it is specifically this feature of the collective ownership argument that opens it up to major problems. First, there is a logical disconnect between supporting the collective ownership position and justifying closed borders. Many immigrants who enter the country illegally still contribute to the upkeep of institutions within the state by participating in the economy, illicitly contributing to the workforce, etc. Why do these individuals not have an ownership claim? It appears that many of the people who proponents of the collective ownership argument wish to exclude from an ownership stake do, in fact, have a claim to ownership.

Some respond to this position by asserting that inserting oneself into an already established ownership does not grant that person ownership. For example, if a stranger insists on helping maintain my plot of land, they do not begin to acquire ownership of that land, because it

is my private property. Skeptics might apply the same argument to immigration: even if immigrants do contribute to the upkeep of the state, that contribution is irrelevant given that the state is already collectively owned by its citizens. This argument is circular, however, when applied to states: It seems that citizens gain collective ownership by contributing, but who gets to acquire collective ownership rights are determined by the community's collective ownership.

Next, it is very difficult to determine who is entitled to what collective property rights. Specifically, how are these rights acquired, and do some people gain more ownership than others? Michael Blake and Matthias Risse actually use the collective ownership argument to justify a positive right to immigration: we are all collectively owners of the earth's resources, giving us a right to immigrate across socially-constructed national borders (Blake and Risse 2009). If we are to believe that collective ownership of a certain area leads to a controlling right over that area, we would need to be prepared to accept that, as stewards of the Earth's resources, we collectively have a right over the entire earth, giving us at least a right to move freely across the Earth.

Another position related to the collective ownership argument is the one based on the right to disassociation. This argument can be analogized as such: If a stranger suddenly wishes to join my family and promises not to disturb our routines or use our finances, should we not have the right to deny him membership? This compelling objection raises an important question of if we have a right to disassociation — that is, to not be compelled to associate ourselves with people against our will.

The response to this position is rather simple. When blown up to a national level, it becomes much harder to justify why the nation's right of disassociation outweighs the countless claims to association that immigration restrictions positively violate. Within every nation, there are a plethora of families who wish to reunite, religious groups looking to bring other members of their communities together, or corporations looking to hire workers from other countries. Even individuals with no direct goals might wish to associate with a state at their whim. It is unclear why the nation as an entity possesses a more privileged right to disassociation that outweighs the countless (and very strong) desires of association by many of its members.

Another response is that families, unlike democratic states, are not bound by democratic ideals. Decision-makers within families need not justify their exercise of power or coercive actions to others within the family. States do. While a family may choose from — and be justified in choosing from — a multitude of reasons not to admit a stranger, states must provide a compelling justification for such a move, as discussed earlier.

Additionally, the right to disassociation isn't nearly as strong as we may think it is. While we do have the right to choose our membership in certain associations (such as our spouses), the same cannot be said for its resulting associations (like who our spouse's sister marries). This suggests that, oftentimes, we must exercise our right to disassociation not by excluding others from a group, but rather by exiting the group ourselves. When applied to immigration, then, the right to disassociation seems rather to support our rights to leave a country than to block others from entering. Of course, there are cases when excluding others does seem appropriate. For example, it would be appropriate to deny a passionate carnivore membership to a vegan club. However, in these cases it must be clear why the inclusion of that member would be damaging to the society — a condition that blanket closed border policies aren't able to satisfy.

Final Thoughts

It is important to note that, because this essay does not consider other objections to the affirmative argument for open borders, it is possible that other competing rights beyond the scope of this essay *do* outweigh the *prima facie* right to immigration. However, given that the concerns addressed in this essay represent some of the most robust arguments against open borders, such a failure is unlikely.

Notably absent from this essay are objections grounded in security, safety, or environmental pollution. Because of the highly empirical nature of these arguments (e.g. “How much crime exactly do immigrants contribute?” or, “What percentage of immigrants are terrorists?”) responses to these arguments are more suited for political papers rather than philosophical ones. However, I wish to briefly address these arguments with two points. First, depictions of immigrants coming in swarms and causing an onslaught of crime and terrorism are heavily exaggerated by depictions in the media. Second, and more importantly, taking actions to

reduce the entry of criminal immigrants is not incompatible with open borders. States can use security screenings to filter out only wanted criminals while still maintaining an open border policy.

But perhaps the more interesting discussion occurs if we grant the skeptics their premise that immigrants do increase crime and terrorism rates at a disproportionate rate and take resources away from citizens. These skeptics, often assuming a utilitarian position, would claim that the increased level of harm is a reason to block immigrants from entering. I do not address this objection in this essay, but it is one that should raise genuine concern for advocates of open borders, and one that is perhaps understudied in the literature. Existing responses have, albeit often successfully, focused on rejecting the empirical premise, leaving the theoretical one untouched.

In conclusion, I make the case for why countries should adopt open border policies. I first establish a basic affirmative argument in favor of open borders by depending on the prima facie right to immigration. Then, I address one of the strongest arguments against open borders — self-determination — and demonstrate why this argument fails to justify closed border policies.

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