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### Why open borders

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## *Why Open Borders?*

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**ABSTRACT.** The present contribution offers a defence of open borders. It presents a critique of the idea that the state has a justified claim to regulate the movement of people because they reflect the collective endeavours of the members of the state to pursue a shared project of self-rule or self-determination. It argues that this view rests on an indefensible understanding of the nature of the state, which should be viewed less as a collective endeavour than as a product of conflicts among political elites. There is a strong *prima facie* case for free movement that suggests there should be a presumption in favour of open borders. The argument from self-determination is not a sound basis for justifying restrictions on the movement of people.

**KEYWORDS.** Immigration, state, self-determination, justice, political community

### I. INTRODUCTION

In debates about immigration, one position that has little prospect of being adopted by any government, major political party, or significant advocacy group, is the view that the movement of people between states should be completely free. The idea that there should be no restrictions on people leaving or entering any country is generally regarded as politically naïve, if not entirely preposterous. In academic circles, there is generally much more sympathy for the open borders view, but this seems only to confirm that its advocates are out of touch, and that such defences of free movement could only be advanced from an ivory tower. Even among academic proponents of less restrictive immigration controls, many think it would be more defensible – and indeed, sensible – to argue for borders that are more porous rather than simply open. Given that the prospect of

removing immigration controls altogether is remote, one might well ask the advocate of open borders: why bother?

My purpose here is to address the question by taking issue not so much with the advocates of closed borders as with the reticent friends of free (or at least, *freer*) movement. The arguments I wish to consider are not those of people who are fearful or sceptical about the merits of high levels of immigration, but of others who see the value of free movement yet maintain that restrictions are warranted all the same. Some of these theorists are contributors to, or draw significantly from, an emerging literature in political theory on territorial rights. In defending the ethical justifiability of the territorial state, they typically uphold as fundamental the right of the state to exclude outsiders from its territory. Though not all of them are interested primarily in immigration, they have developed arguments that are central to the issue of the openness of borders (Miller 2008; 2009; Meisels 2009; Stilz 2011; Nine 2012).

However, an especially important critique of open borders has been advanced from this perspective by Ryan Pevnick, who argues for the reduction of immigration restrictions, but aims to strike a balance between open borders and “absolute sovereignty” (2011 *passim*). Much of this article addresses Pevnick’s concerns. His most important contention is that the advocates of open borders err in failing to recognize the significance of the fact that the state is a kind of political community. It is, he says, “a historical project that extends across generations” (2011, 38); and this fact tells against proposals that fail to recognize the legitimate claims of communities to protect their collective life, and pursue their shared endeavour. I wish to suggest, however, that we view this idea with scepticism, if not outright suspicion. Seeing why will enable us better to appreciate that the critique of open borders, even at its strongest, rests on weak foundations. More importantly, it should help us see why open borders are worth defending, even if the prospects for complete success in the real world are limited.

Much of the argument that follows turns on what amounts to a form of sociological analysis. A primary concern here is to show that contemporary discussions of the claims of the state to regulate movement rest on assumptions about the nature of the state that need to be questioned. Despite the many critiques of the state that have been developed by Marxists, postmodernists and realists – as well as libertarians and anarchists of various stripes – a substantial strand of liberal democratic theory continues to operate on the understanding that the state is a reflection or manifestation of our capacity for collective self-rule and self-determination, rather than an institution of domination by self-serving elites. One common response to such a critique has been for many contemporary theorists to say that they are not concerned so much with what actual states are like but with how states ought to be. The underlying assumption of the present contribution is that this move is not defensible, for any discussion of ethical issues involving such institutions as the state needs to take the historical reality they embody much more seriously.

Our argument is presented in four main sections. It begins with a discussion of the meaning of open borders to make clear what it is at issue. I then consider the *prima facie* case for free movement, and explain why there should be a strong presumption in favour of open borders. I next turn to Pevnick's treatment of the issue and explain why it presents an important critique of unrestricted movement. I follow this with a critique of Pevnick's view of the open borders issue and I conclude with some more general reflections on the case for open borders.

## II. THE MEANING OF OPEN BORDERS

Since we live in a world of states, and modern states are all territorially defined entities with geographic boundaries recognized under international law<sup>1</sup>, we clearly do not live in a borderless world. To advocate open borders is to argue not for the elimination of borders, but for changes in

how they are understood and how they affect those who might move across them.<sup>2</sup>

Borders are political constructions demarcating distinct and separate jurisdictions. Crossing a border does not always take one beyond the reach of the authority of any other jurisdictions, but it always means coming under the authority (even if only temporarily) of one other. To enter a jurisdiction is to assume certain liabilities (those that go with being subject to the laws of that territory), as well as to acquire any rights that go with being an inhabitant of the area. A border is open to the extent that persons are able to enter the jurisdiction it defines and acquire rights or exercise their freedom to act therein.

The openness of a border is not merely a matter of whether or not people may freely cross it in order to *enter* a jurisdiction. It is also a matter of what they may do once they have entered. If mere entry were sufficient, then most countries in the world could be said to have open borders, since few deny outsiders the opportunity to visit as tourists, and many grant foreigners rights of transit (whether as international airline pilots or merchant seamen, for example), or give them permission to stay temporarily (as sportsmen, or scholars, or performers, to name just a few cases). The openness of a border must be judged, in part, by the extent to which outsiders are permitted to *enter*, *participate* in the life of, and *remain* in the society that the border circumscribes.<sup>3</sup> A border is more open if people are free not only to *enter* for brief visits but also to *reside*, to *work*, to *settle*, and perhaps even to *join* the political community that border helps to define.

The openness of a border is thus determined, at least in part, by the rights people can enjoy upon entering a country or a state (Kukathas 2011). However, it may be no less important to consider not only the legal rights someone might acquire on entry, but also the extent to which such a person is able to get along without such rights. If the requirement to comply with immigration laws is enforced only weakly, regimes with restrictive laws that are poorly policed might have borders that are more

open *de facto* than regimes with generous provisions for foreign participation that are strictly monitored.

The more onerous it becomes to enter and settle in a society, the less open are its borders. A state could thus make its borders more closed by any of a variety (of combinations) of measures. It could demand that only visa holders may enter, or study, or work; it may limit the number or the duration or the transferability of work visas; it may raise the qualification requirements or the price of entry visas and deny or limit the rights of accompanying family members to work; and it may restrict the rights of entrants to acquire property. Without changing any immigration laws, it could make borders less open by building fences or walls, hiring more security guards, increasing the surveillance of employers to ensure that they do not take on foreign workers without authorization, and punishing transgressions (by citizens and foreigners alike) with less compromise. Equally, it is quite possible to have weakly enforced border controls in some respects along with very vigilant and even punitive controls in others: a nation that is poor at controlling entry might nonetheless deport people in large numbers or even conduct mass expulsions. Assessing the openness of a border requires careful examination of a variety of relevant factors.

To argue for open borders, then, is not simply to call for an increase in immigration. It is to call for the removal of a range of restrictions on the movement of people from one jurisdiction into another. The removal of such restrictions is not simply a matter of eliminating barriers to (mere) entry, but of transforming the terms and conditions under which people move.

There is, however, one further aspect to the question that needs to be clarified. To move from one jurisdiction to another may involve leaving one kind of association and *joining* or becoming a *member* of another. But entering a territory and taking part in its life is not the same as becoming a member of a particular group or entity, and need not involve joining anything (Guest 2011). This is important to bear in mind because,

all too often, discussions of immigration or free movement assume that it is membership that is the crucial issue (Walzer 1983, chapter 1). Yet this is only one aspect of the matter, important though it may be.

### III. A PRESUMPTION IN FAVOUR OF FREE MOVEMENT

Although there is a strong tendency in debates about immigration and population movements to begin with a presumption in favour of the claims of states and citizens, we should begin the analysis here with a presumption in favour of free movement and, consequently, of open borders. In ethical matters generally, it is intervention or interference in the activities of others that requires justification, for we take it that we need good reasons to deny anyone his or her freedom, and very strong reasons to exercise force to prevent a person from acting (Benn 1988). One of the strongest reasons we can offer is that such a person, in exercising his or her freedom, would deny freedom to another. Restrictions on movement generally, and across borders in particular, limit freedom, both because they prevent foreigners from travelling to visit, work or reside in a country they would otherwise have the opportunity to go to, and because they prevent citizens and residents of a country from engaging with those foreigners they wish to meet, employ, or befriend. Given the benefits that accrue to citizens and foreigners alike from enabling people to relate freely to one another, some very good reasons will be needed to justify preventing them from doing so.

The strength of the presumption in favour of free movement seems all the greater, however, when one considers the many positive benefits that would come with a world of open borders. The most obvious is the substantial contribution it would make to the reduction, and even eradication, of global poverty. A number of mechanisms would make this possible. First, gains from trade would create greater wealth, from which the poorest would benefit most either because they could move to societies that paid them more for their labour or because local wages would rise if

many workers moved to take advantage of opportunities abroad. Locals would also benefit from the remittances from relatives abroad that even now form a substantial portion of the income of many poor communities. Rich and poor alike would gain from an increase in general prosperity, but in these circumstances most of the gains would be captured by the poor rather than by elites.

The importance of this should not be underestimated. According to Michael Clemens, the “gains from eliminating migration barriers dwarf – by an order of magnitude or two – the gains from eliminating other types of barriers. For the elimination of trade policy barriers and capital flow barriers, the estimated gains amount to less than a few percent of world GDP. For labor mobility barriers, the estimated gains are often in the range of 50-150 percent of world GDP” (2011, 84).<sup>4</sup> If even modest gains in labour mobility can yield trillions of dollars in benefits – and benefits that would go disproportionately to the worst-off in the world – some very good reasons would have to be offered to restrict the movement of people.<sup>5</sup>

The depth of this challenge to the advocate of restrictions on movement becomes even more apparent, however, if we add to these considerations of economic advantage some reflections on the immediate practical effect of immigration controls on individual persons. While legal barriers and the threat of sanctions will deter the timid and the law-abiding, millions will nonetheless continue to try to cross borders even when states say they are not welcome. To deal with this, a system of police, prisons, courts, and public officials will be kept in place, and would-be immigrants unable to evade the law will become criminalized – even if only in the sense that their otherwise peaceful efforts to make better lives for themselves will be deemed unlawful. The depth of suffering this causes should not be set aside, for the cost is not trivial. Even those who move with the permission of the law must be monitored to ensure they comply with rules designed to separate, carefully, desirable from undesirable immigrants, so all must pay some price in anxiety and



lost time. For those whose status is difficult to determine, the price can be a life in limbo for months or years. For those who fall foul of bureaucratic indifference or confusion, there may be detention, deportation, and ruined lives. A policy that required such a system to be put in place would have to yield very great benefits to be justified.<sup>6</sup>

How, then, might restrictions on immigration, or free movement more generally, be justified? It is difficult to come up with a universal defence of restrictions on movement from the perspective of individuals or peoples since it looks unlikely that any good economic or ethical argument can be found that would work for everyone, regardless of where they are. An argument for limiting the free movement of persons will always be an argument offered to explain why particular (sometimes advantaged) groups should be protected in their enjoyment of the rents they have secured by having the relative good fortune to reside in one part of the world rather than another.

Several kinds of reasons might be offered, but most are unconvincing. The most prominent are reasons of distributive justice. Here, the argument is that freedom of movement advances the interests of the global poor and the local rich at the expense of the local poor – who bear the brunt of competition with foreign workers for scarce jobs and under-supplied social services. There is a dilemma confronting citizens of wealthy states, according to Stephen Macedo, because we in the host countries must weigh the competing interests of foreigners on the one hand and our fellow citizens on the other (Macedo 2007). While some of those foreigners may have claims of justice because immigration offers them hope of escape from poverty, our least well-off fellow citizens also have substantial claims to protection from the effects of immigration. To the extent that migrants compete for jobs with the low-skilled, and depress the wages of the poor (thereby exacerbating the inequalities between rich and poor in the nation), they are a cause of social injustice within states that admit them. Doing justice to our fellow citizens, it is implied (and sometimes asserted), is at least as important as doing justice

to the world's poor. Perhaps it is even more important (Brimelow 1994; 2007; Borjas 1999).

This argument is unconvincing as an argument of justice, since it suggests that when there are competing considerations about whose interests to serve, we should attend to the interests of the less badly-off rather than the worst-off. If the argument is an argument about the justice of the background rules, it cannot be a requirement of justice that some groups be privileged. If foreign workers are to be kept out in order to maintain higher wage levels for domestic labour, it cannot be argued that this is just; it can only be argued that other considerations, such as group or national loyalty trump considerations of justice or freedom.<sup>7</sup>

Even then, the argument is not compelling. Keeping out foreign labour may keep local wages higher and benefit domestic labour; but the costs may well be borne by other citizens, who will have to endure the higher prices that are the consequence of higher wage costs. As is often the case, the burden will fall most heavily on the poorest, even though its impact may be mitigated by institutional arrangements protecting the worst-off. If this is to be justified, it is hard to see how it might be defended as a matter of justice. Immigration restrictions do have redistributive consequences; but while it is clear that the foreign poor are harmed, it is also evident that not all members of the domestic poor benefit.

To defend restrictions on the movement of people it is necessary to show that what is warranted is the protection of particular kinds of people, or of particular kinds of group, like the nation or state. Several kinds of argument might be mounted here: arguments from the importance of preserving national identity; arguments from the need to secure social trust; and arguments from the value of cultural authenticity.<sup>8</sup> The empirical basis of these claims has been seriously challenged, notably by Will Kymlicka and Keith Banting (2006). These arguments are also carefully addressed by Pevnick, who, on the whole, finds them wanting – just as he finds the arguments from distributive justice not wholly persuasive.

The argument from national identity confronts the following dilemma (Pevnick 2011, 133-141). If the advocates of immigration restrictions wish to restrict on the basis of a thin conception of the cultural distinctiveness of national identity – one that sees identity as given by little more than a shared language and commitment to democratic institutions – the tendency of immigrants to assimilate suggests that there is little reason to limit either the numbers or source of people coming to settle. A thin conception of identity is difficult to undermine. On the other hand, if advocates of restrictive immigration adopt a thick or robust notion of national identity, it will be difficult to operate any policy that was not grounded in some form of racial, ethnic, religious, or broadly cultural profiling – which would be difficult in the case of most countries, since they are already internally diverse.<sup>9</sup>

The argument from social trust faces different difficulties (Pevnick 2011, 154-162). Here the claim is that immigration undermines the social trust necessary to sustain major social institutions, since a population is less likely to support, for example, welfare institutions, if the benefits are seen as going to outsiders rather than fellow citizens. The main problem with this argument is that the evidence for it is ambiguous at best. The negative effects of diversity are not significant and tend to wither away over time. No less importantly, however, it is not clear why any tendency on the part of the population to withdraw its support for its social institutions in the face of increased immigration *justifies* immigration restrictions – unless those institutions are unjustifiable in principle. Perhaps any decline in domestic support for social institutions as a consequence of increased and more diverse immigration is best met by reform of those institutions or by further efforts to explain to the public why support is warranted.

Ryan Pevnick offers some of the most powerful arguments ever made by a political theorist in defence of more open immigration. Much of the force of his analysis derives from the critique he offers of advocates of restrictive policies. Nonetheless, Pevnick rejects open

borders as a defensible idea, arguing that neither the beneficial consequences of immigration nor the weakness of many justifications for immigration restrictions suffices to justify the abandonment of immigration controls altogether. We should examine Pevnick's argument more closely to consider whether a presumption in favour of free movement might be turned into a more conclusive argument in defence of open borders.

#### IV. PEVNICK'S CRITIQUE OF OPEN BORDERS

In spite of his general sympathy with the lifting of many restrictions on the free movement of people, Ryan Pevnick rejects open borders as a defensible ethical ideal. His fundamental claim is that political communities have the right to self-determination, and from this, he maintains, follow a number of conclusions about the way in which the state may rightfully control its territory. Open borders are inconsistent with this understanding of political community, which provides the most appropriate framework for considering a range of policy questions, including questions about immigration. The right of self-determination is not unlimited, and does not justify everything states might try to do in the name of political community, but it is enough, he thinks, to make plain that open borders is an unsustainable ideal.

At the core of Pevnick's argument is an understanding of the state as a political community, and of the political community as a "historical project that extends across generations and into which individuals are born" (2011, 38). According to this view,

[t]he state is very largely a result of the labor and investment of the community. The citizenry raises resources through taxation and invests those resources in valuable public goods: basic infrastructure, defense, establishment and maintenance of an effective market, a system of education, and the like [...] these are goods that only exist as a result of the labor and investment of community members (2011, 38).

Pevnick invokes Abraham Lincoln to advance the view that those members of a political community who have perished (whether on the battlefield or from more mundane causes) bequeathed institutions to the current generation, which is now entrusted with the task of preserving and passing them on to the generations to come (2011, 39).<sup>10</sup> This is a view he also attributes to Rawls, for whom, he says, “the fundamental organizing idea of democratic theory is that of ‘society as a fair system of cooperation over time, from one generation to the next’” (Pevnick 2011, 39; Rawls 1993, 15). His overall purpose is to develop an account of political community as an intergenerational enterprise that can also be understood as an ‘associative ownership framework’.

The two aspects to this analysis are equally important. For Pevnick, the political community *owns* its institutions and its territory, but this can only be understood as the result of a *historical* process in which state institutions are brought into existence by a “concerted collective effort” (2011, 39). Recognizing the importance of self-determination depends upon appreciating both that political community is a form of collective ownership and that it is an inheritance. Ownership claims do not trump all other considerations, since owners may have substantial duties to others for all kinds of reasons. States may, for example, have duties to asylum-seekers that issues of ownership cannot diminish. However, the fact that people and states have duties to help others in distress in no way casts doubts on the legitimacy of any political community, or its right to self-determination (2011, 40). Nor, for that matter, does any defect in the state’s past: the injustices committed by the state may well render it responsible for rectifying past wrongs, but they do not weaken its right of self-determination (2011, 41-43).

According to Pevnick’s account, the state is a political community and a *jurisdiction*, but it is also a collective owner of all that falls within its jurisdiction. Invoking Jeremy Waldron, he argues that the state is a system of collective property, such that “the community as a whole

determines how important resources are to be used. These determinations are made on the basis of the social interest through mechanisms of collective decision-making” (Pevnick 2011, 44; Waldron 2004). Through their associational relationships, members of such a community provide each other with a range of valuable goods, such as protection from internal and external threats, risk-protection schemes (pensions and healthcare), and facilitating programmes (such as public education). Since such goods exist only because of the “coordinated decisions, labor, and contributions of members,” these members are “in a position to legitimately deny membership to some outsiders because this entitlement amounts to a *prima facie* privilege to do with it, within boundaries, what they wish” (2011, 53).

The advocates of open borders, in Pevnick’s understanding of the issue, are persons who “fail to appreciate the sense in which political communities are ongoing schemes of cooperation among members” (2011, 13). Such persons not only think that freedom of movement is highly desirable or beneficial, they also deny that states have any *right* to exclude others from entering or joining the political community. His rejection of open borders is therefore not a denial of the advantages of open immigration or free movement – on the contrary, he emphasises against ‘statists’ the importance and value of immigration – but an assertion of the *right* of states to exclude. He takes advocates of open borders to be people who deny the very legitimacy of border controls.

One possible response the defender of open borders might give to Pevnick would be to accept that, both *de facto* and *de jure*, states have the right to exclude, so the issue is whether or not they should adopt policies of exclusion they are perfectly entitled to enforce. That is not, however, the reply I wish to offer here. Pevnick’s view needs to be questioned not only because of the great benefits open borders would bring, to rich and poor alike, but because the legitimacy of border controls is indeed questionable.

## V. CRITICISMS OF PEVNICK'S VIEW

The fundamental problem with Pevnick's critique of open borders is that it rests on a mistaken understanding of the state, and of political community more generally. It is an image of the state that is neither historically accurate nor conceptually plausible. It is an account of the state that is very much a statement of contemporary, western, liberal democracy's self-image, but it does not correctly describe even modern North American and Western European states, let alone the states of Asia and Africa.

Consider first the claim that the state is a historical project extending across generations. While it is true enough that states, like all human institutions, are the product of human action and interaction, they are hardly the fruit of the efforts of generations of people who could meaningfully be described as engaged, consciously or otherwise, in a shared project. To the extent that any persons are so engaged, they are members of small political elites who have fostered institutional changes for a mixture of motives, from personal ambition to financial interest to ideological fervour. The vast majority of people are carried along by events, occasionally co-opted to facilitate changes when popular support is needed, but just as often simply left with no choice but to go along with the outcomes that result from the triumph of one elite or another, or the compromises contending elites strike.<sup>11</sup>

A number of commonplace observations suggest how difficult it is to defend the idea of the state as a shared historical project. First, innumerable states do not survive for more than a few generations. Most of the states of Africa, the Middle East, and Southeast Asia came into existence only in the twentieth century, the majority as a consequence of post-war decolonization. Very few of them have enjoyed stable political boundaries. Even Europe, the birthplace of the modern state, has seen continual re-drawings of boundaries as states have emerged, changed shape, and disappeared.<sup>12</sup> At present there are in Europe 50 sovereign states, six partially recognized states, and six dependent territories, as well

as two special areas of internal sovereignty.<sup>13</sup> In the course of its modern history, Europe encompassed hundreds of nations and city-states in the seventeenth century, and only twenty at the beginning of the twentieth. Second, hardly any states before the twentieth century were democracies, and there were few with mechanisms to ensure the accountability of rulers to the wishes or interests of the general population. Meaningful participation in the development of social and political institutions was limited to the elite. Even within democratic states, political structures mostly remain within elite control, though the extent of elite responsiveness has long been a subject of dispute (not only in politics but also in political science). This not to say that there may not be something to the Burkean view that Pevnick's position resembles, since there is no doubt that traditions and institutions survive generations, or that elites looking to trample upon them ought to be viewed with suspicion. But to see in the continuity of some political institutions evidence that states are shared projects is to take matters too far.

All too often, however, states do not so much develop out of the shared concerns of local populations as exploit and transform those populations in order to suit their own interests and the ambitions of the elites that dominate the political process. There may be cases in which the state evolves organically out of civil society, but it has frequently acted as a predator, which has tried to bring order not so much to serve the interests of society as to facilitate its own extractive activities (Scott 1999; 2010; Migdal 1988; 2011; Clastres 1987). Even if one sees state and society as mutually constitutive, it would be too much to claim that the outcome is the result of some shared concern rather than the product of contention among a range of forces and interests.

No less problematic is Pevnick's account of the state as the result of the labour and investment of the community, with citizens raising resources through taxation and investing those resources in public goods, from national defence to education to the market system itself. As history, this presents a somewhat romantic vision of the place of taxation in the



lives of societies. For most of human history, going back to the ninth century BCE, the main purpose of taxation was to fund military conflict. The modern European state has for much of its history found itself struggling against a population that was highly resistant to its demands for revenue, often to finance its wars (Wildavsky and Webber 1986; Burg 2003). Nonetheless, the emergence of what Schumpeter famously called the “tax state”, brought about profound changes to society, reshaping not only its institutions of economic management but also its cultural norms (Schumpeter 1918). The modern state is in part the creature of its own fiscal structure, which has itself transformed society, international trade, and international relations. It is simplistic to suggest that states raise revenues prompted by a civic-minded citizenry, intent on guiding them to provide public goods and services. States have fought wars of which citizens disapproved, and spent revenues on projects no one but the immediate beneficiaries of government funds have wanted. The distribution of the spoils of taxation requires a more sophisticated explanation.

Underlying all this, however, is a deeper problem with Pevnick’s general perspective. In his analysis, he presents a picture of the working of society as though society was somehow the construction of the political community or the state. At the very least, it appears to be a structure that is organized or managed by the state. But such an understanding is neither historically justified nor sociologically plausible. Societies precede, and generally survive, states and other forms of political organization, which come and go. To be sure, some societies have been eradicated, by violence or disease, or through their dissolution as the result of migration or assimilation into other societies. But the point is that they have a life independent of the state, though typically interdependent with other societies. Society is not subsumed by the state. When Rawls said that society is a fair system of cooperation over time, from one generation to the next, he should perhaps have noted too that it is also a system of cooperation over geographic space, from one jurisdiction to the next. Society is what Hayek called the “extended order of human cooperation” (1991),

a system that does not end at political boundaries, but exists continuously in the vast network of individuals and groups who collaborate to produce and exchange the fruits of their labours.

While it is necessary to understand that society is a system (or, better, network) of cooperation, it is important to recognize the spontaneous character of much of that process, for only some of it takes place through deliberate political organization. Pevnick writes as though the institutions of public education, health-care provision, and pensions were political achievements, fostered and supported by an engaged citizenry. Yet all of these institutions have their origins not in political agreement but in the practical efforts of smaller communities to serve their own needs (Bartholomew 2006). To a considerable extent, they have survived the development of state-constructed alternatives, or the interventions of state-mandated reforms. In many cases, problems with state-established schemes (e.g. for pensions) have led to privatization or de-nationalization or the emergence of parallel non-state institutions. In other cases, the state has struggled unsuccessfully to suppress institutions established by communities that have resisted efforts to standardize and control them.<sup>14</sup>

The general point towards which all this leads is that the idea that there is such a thing as a political community that *owns* its institutions and territory is implausible. What we have in reality is much more fluid and unstable. There is no doubt that states attempt to impose greater order upon the messy and variable character of society, and assert their ownership of the society they claim to keep in their trust, and promote narratives describing existing political orders in favourable terms. States require such narratives, no less than they need founding myths – such as those supplied in Locke’s defence of the Revolution Settlement in 1689, or by Lincoln in the Gettysburg Address that Pevnick quotes. But these stories are significant because of the purpose they serve or the function they perform, not because they are true.

Here it might be worth considering more closely one particular example Pevnick offers to sharpen and defend his view. Malaya and Singapore

became independent countries in 1957 and 1958, but formed a union when Singapore joined the Federation of Malaysia in 1965. Disagreements between the leaders of the two countries, however, led quickly to separation, and within a year Singapore was on its own. Pevnick writes: “The country then embarked upon a project of national unification and economic development that included a renewed commitment to education, the construction of an advanced infrastructure, and the recruitment of substantial foreign investment” (2011, 115). Such was Singapore’s success that by 2009 its per capita GDP was \$49,228, while Malaysia’s was little over \$14,000. In Pevnick’s assessment, “the development of Singapore was a triumph and the political community that generated these gains has at least some special entitlement to them” (2011, 115).

A number of things need to be noted here. First, it is misleading to say of Singapore that ‘the country embarked’ upon anything. The separation of the two states was the product of a squabble between two elites about how power should be shared. The policies pursued by Singapore were the policies favoured by its elites, often regardless of popular support. The same could be said of Malaysia. In neither case can it be said that the populace must take credit – or blame – for the course of economic development. Second, the gains that have accrued to Singapore have been gains to individuals or groups in Singapore and there is no justification for depriving them of their wealth; but this does not warrant preventing others from participating in a system that is capable of generating such benefits, particularly if individual Singaporeans are willing to hire them, sell them goods, rent them property, or simply welcome them as friends.<sup>15</sup> Third, even if Singaporeans have a right to the infrastructure that has been created, there is no reason to think that others joining the society will in any way diminish or destroy what they have built, or even give them a smaller share of the benefits that it brings. Indeed economic success in this case is attributable largely to the creation of an open, market economy – one characterized above all by the ease of trading and doing business – of entering and participating in the life of civil society.<sup>16</sup>

States try to impose order not only by controlling their historical narratives but also by controlling their boundaries. Immigration control is an important tool serving this end. Pevnick suggests that immigration control is justified because there is a pre-existing political community with interests it has every right to protect by excluding others from entering or participating in social life within its boundaries. But there is no such fixed community. It is a community that changes with the movement of peoples. What states have tried to do is fix the identity of that community by distinguishing people into categories, most generally into citizens and noncitizens, and then by making finer distinctions between different classes of residents, legal and illegal immigrants, refugees and asylum-seekers. As Linda Bosniak notes, “The idea of citizenship is commonly invoked to convey a state of democratic belonging or inclusion, yet this inclusion is usually premised on a conception of community that is bounded and exclusive” (2006, 4). The purpose of fixing the boundaries of citizenship is to establish the political community.

Now it might be argued in response to this that while it may be true that the exclusion of others from membership or entry serves to create and define a political community, this in no way changes the fact that such a community exists. There is a process of construction and reconstruction, but there is a political entity; and to it must accrue the right of self-definition, of self-determination. Here there are several responses to consider. First, the exercise of self-definition is only in a very weak sense a genuinely collective affair rather than one in which just a small segment of society participates. Conceptions of political community are elite constructions (Bras and Todd 2012). Second, to the extent that the said community has an independent existence, it would continue to do so regardless of who enters and leaves because the system of cooperation exists independently of political boundaries and the rules delimiting who may live or work or associate within the boundaries of the state. Third, the state in reality has only a limited capacity to distinguish its citizens from noncitizens. Once people are in the country and make

lives for themselves, they are quite capable of integrating into society and living as members of their particular communities, or even as citizens. The fact that they are illegal immigrants<sup>17</sup> may not make much difference to them (unless caught)<sup>18</sup> and makes no difference to the identity of the state.

This third point is worth dwelling upon a little further. Most theorizing about immigration and citizenship focuses on western liberal democracies, which have highly developed systems of documentation to identify members of society, from birth to death. Even so, large numbers of illegal immigrants continue to live within their boundaries. In other parts of the world, however, such monitoring systems are only weakly developed and many countries play host to hundreds of thousands, or even millions, of residents whom the state is unable to identify, or of whose presence it is completely unaware. In such countries, illegal immigrants not only reside and work but also participate politically. In these cases they form what Kamal Sadiq has called “networks of complicity”, as they develop systems of cooperation that integrate silently into state bureaucracies and facilitate the securing of documentation and rights to enable members to operate in a society that requires evidence of some kind of legal status (Sadiq 2009).<sup>19</sup> In time, many become citizens without states realizing what has happened, or how.

Although Pevnick wishes that borders were more open than they are today, particularly in the states of North America and Western Europe, he also wants to hold onto the principle that states are communities of citizens who have a collective right to determine who may enter or join their society. In doing so he is not claiming merely that states have the legal right to exclude (for they do, under international law<sup>20</sup>), or that they have the power to exclude (which they also do, as a matter of fact<sup>21</sup>), but that they have some other kind of fundamental (moral) right grounded in the right of every political community to self-determination. What I have tried to suggest is that this claim rests on very weak foundations. The entity he is describing, and to which he accords rights, does not exist.

## VI. IN DEFENCE OF OPEN BORDERS

Let me conclude with some general reflections on the case for open borders (see also Kukathas 2002; 2005). Most people, however sympathetic they might be to greater freedom of movement or simply to increased immigration, stop short of advocating (or agreeing to) open borders. Much of this may have to do with a conviction that, however open we might wish to be, the boundaries of the state ought to be policed and controlled. Ryan Pevnick's careful study of justice in immigration is a good example of this. Borders ought to be controlled, but people ought to be treated justly in the process.

What I have tried to suggest here, however, is that we should abandon the aspiration to control the movement of people. We have no good justifications for doing so. We do, however, have good reason to be concerned about creating or maintaining institutions that facilitate it.

Arguments for controlling borders and the movement of people presuppose the overwhelming importance of political community and, so, of the state. They tend to see the state as the source of order and, all too often, to describe economies as the products of their efforts. Yet while state institutions might be important for ensuring political stability, so that the costs of conflict between contending elites are controlled and the dangers of elite warfare are defused, states are not needed to sustain society – even if the actions of states can have an enormous bearing on the kind of society that develops.<sup>22</sup> Society is the product of individual cooperation, not of state construction; it is made up of people, not workers, or factors of production, or citizens.

Now one possible objection to this view is that, even if it rests on an understanding of the state that is more accurate, both historically and sociologically, the fact remains that the citizens of many, if not most, states willingly endorse its coercive institutions. Indeed, the citizens of many countries are suspicious of immigrants and in favour of their governments having the right and the readiness to control national borders. Even if the

reality of the state is as I have described it, the fiction that it is an expression of our collective self-determination, is one that is widely shared. If this is indeed the case, surely this gives us grounds for operating on the assumption that the state is a kind of collective endeavour, and not just an instrument of elite domination. This is an important consideration and answering it would take us further into questions about the nature of political society – questions I think that are ultimately inescapable. The preliminary answer I have to offer is to say that while it is indeed true that much of the general population buys into the fiction that the state is an expression of our capacity for self-determination, it is a fiction all the same and a morally troubling one at that. The role of the theorist in these circumstances is not to either endorse or ignore the reality of this general outlook, but to offer a critique of an understanding, shared by other theorists and parts of the general public alike, which is seriously in need of rethinking.

There is no ethical foundation for the idea of controlled borders, nor any general benefit that comes with the development of institutions for controlling movement. The costs of control, however, are substantial. For to maintain a regime of controlled borders requires the construction and maintenance of a substantial system of general social control. This requires not only vast resource-consuming bureaucracies, but legions of monitors to police both the boundaries of the state and the activities of everyone – citizens and aliens alike. It means establishing a system of reporting to ensure not only that the wrong people do not enter the country, but also that those who do enter for one reason, do not act in ways reserved for some classes of persons and not others. This burden falls not so much on aliens as on residents and citizens who must comply not only with laws forbidding forms of associating, but regulations requiring them to prove that they have so complied. Controlling the movement and behaviour of foreigners is impossible without controlling the behaviour of everyone.

The corrupting effects of this are all too obvious. The threat of deportation makes people vulnerable to unscrupulous employers or disgruntled neighbours. Employers are at the mercy of public officials,

particularly since immigration controls are notoriously under-enforced: since not all illegal immigrants can be deported without causing great upheaval in local economies, officials must exercise discretion in distinguishing those to be targeted for prosecution from those to be left alone. The criminalization of immigration threatens to foster greater criminality (Furman *et al.* 2012).

Controlled borders are frequently defended in the name of protecting the interests and rights of citizens against the dangers posed by an unmanaged or excessive influx of foreigners. In Pevnick's analysis, the ultimate justification is that this is consistent with, and perhaps even enables, a people's self-determination. The irony is that a regime founded on a right to control its borders has to be a regime with the right to control its population. To present this as a form of self-determination worth defending is curious to say the least.<sup>23</sup>

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## NOTES

1. This is not to deny that there are border disputes between countries, as well as disputes over particular territories laid claim to by different states.
2. For a different perspective see Anderson, Sharma and Wright (2009, 5-18). Their article defends a case for a borderless world as a practical political project. Though I am very sympathetic to this viewpoint, I will confine myself here to a discussion of ethics for a world of states and borders.
3. I leave out of this discussion the obvious point that the openness of a border depends also on the extent to which people within its jurisdictions are permitted to leave.
4. The magnitude of the estimates depend very much on the assumptions made; hence the wide range in the figures quoted. However, as Clemens notes, even conservative assumptions yield estimates of substantial gains in wealth. This does not mean that everyone will gain, or that the distribution of gains will be equitable, for much will depend on local factors, institutional constraints, the skills of migrants, and so on.
5. Chandy and Gertz estimate that even with the success of some current strategies to reduce world poverty, there would still be 600 million people living on less than \$1.25 a day in 2015 (2011, 18).
6. For an argument in defence of freedom of movement emphasizing the wrong of coercing – and so, violating the rights of – immigrants, see Huemer (2010).

7. In the United States, some research suggests that while immigration does depress the wages of the worst-off in the domestic labour force, this burden is borne primarily by the previous generation of immigrants. If this is so, the case for restricting migration on domestic equity grounds weakens, since the grounds for restricting immigration would be that it protects (mainly) the preceding cohort of immigrants.

8. These are arguments Stephen Macedo turns to in his own treatment of the immigration issue.

9. For an attempt to defend immigration restrictions on such grounds see Samuel Huntington (2004). The challenge facing Huntington, however, is that in claiming that Mexican immigration threatens the Protestant cultural identity of the United States he opens up the question of whether preserving that identity might require restricting immigration from other cultural regions.

10. The reference is to the Lincoln of the Gettysburg Address.

11. In the last years of the Soviet Union the following joke circulated in the geriatric wards of Leningrad hospitals. An official survey required patients to answer four questions: where we you born, where did you grow up, where do you live now, and where would you like to be? Patients everywhere answered: St Petersburg, Petrograd, Leningrad, St Petersburg (the name St Petersburg was restored by popular vote on the day of the first Russian presidential election on June 12, 1991, though even then with only 54% support.)

12. For an interesting history see Davies (2011).

13. The two special areas are the Åland Islands and Svalbard, which are special territories of Finland and Norway respectively, but have political arrangements that were settled through international agreements.

14. Here the history of state education is instructive. See, for example, West (1970); Lee (2011); Tooley (2009).

15. It is worth noting that Singapore in fact has unusually open borders – open not only to the movement of goods but also to people. Aside from the large numbers of Malaysians working in Singapore (some driving daily across the causeway that joins the island to the Malaysian peninsula), some 20 per cent of the population is made up of foreigners. This is not to say that it has no immigration controls. While it is easy for most people to enter the country, and very easy for skilled migrants to obtain permission to work and reside, unskilled labour is more tightly regulated, and the government retains the right to expel. However, compared with most states, Singapore has an economy that is very open to the movement of people.

16. Singapore consistently ranks second, behind Hong Kong, on the *Index of Economic Freedom*.

17. Though some scholars object to the term ‘illegal’ immigrant, I follow Pevnick’s usage (2011, 165-183).

18. I do not wish to suggest that being unauthorized is of no consequence. Everything here depends on the nature of immigration laws and their enforcement, as well as on the aspirations of the individual. For someone who hopes to make a permanent life in the United States, being unauthorized is a life-shaping burden. The point is that membership of a state, or citizenship, or permanent residence status for that matter, are not important in themselves, but only become significant because of immigration controls.

19. This is a particularly important study that challenges not only received understandings of illegal immigration, but also standard views of citizenship.

20. Though this right is not unqualified, depending upon a state's membership of international organizations or participation in international regimes, such as the 1951 Refugee Convention.

21. Though this power is not complete, since its exercise is not costless and no state is willing to devote the resources necessary to ensure high levels of success. Complete success is, in any case, unattainable.

22. I recognized that here a complicated analysis is called for. The key figure in political theory in this case is Montesquieu.

23. I wish to thank Liza Schuster, Lea Ypi and two anonymous reviewers for helpful comments on an earlier draft of this paper.