



Shortcomings of Refugee Protection: An Argument for Open Borders

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“Citizenship in Western liberal democracies is the modern equivalent of feudal privilege – an inherited status that greatly enhances one’s life chances.”¹

- Joseph Carens

Abstract:

The purpose of this article is to highlight the current international system’s inability to protect the 3.5 million asylum-seekers and 25.9 million refugees found globally. I argue that in a world in which states continuously fail to help those in need of refuge, in spite of international legally-binding agreements, the only way to ensure their protection is to break down the barriers they face by allowing them to freely migrate and settle down in their country of choice, also known as a system of open borders. The lack of a supranational body of power that can ensure the implementation of international agreements, the usage of border walls and other security measures that lead migrants towards less guarded and unsafe routes of travel, the invasive and psychologically challenging asylum process, and the fundamental value that all people are morally equal are some of the arguments put forward.

Résumé :

Le but de cet article est de souligner l’incapacité du système international actuel à protéger les 3,5 millions de demandeurs d’asile et les 25,9 millions de réfugiés qui se trouvent dans le monde. Je soutiens que dans un monde où les États ne parviennent pas à venir en aide à ceux qui ont besoin d’un refuge, en dépit d’accords internationaux juridiquement contraignants, la seule façon d’assurer leur protection est de briser les barrières auxquelles ils sont confrontés en leur permettant de migrer librement et de s’installer dans leur pays de choix, également connu sous le nom de système de frontières ouvertes. L’absence d’un organe supranational puissant, capable d’assurer la mise en œuvre des accords internationaux, l’utilisation des barrières frontalières et d’autres

¹ Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” *The Review of Politics* 49, no. 2 (1987): 252.

mesures de sécurité qui conduisent les migrants vers des itinéraires moins protégés et dangereux, le processus d'asile hostile et psychologiquement difficile et la valeur fondamentale que tous les individus sont moralement égaux sont quelques-uns des arguments avancés.

Introduction

In 1998, Venezuela experienced a crucial turning point in its history. Hugo Chávez, a charismatic former military officer who had six years earlier led a failed coup d'état, was elected as president of the country, mainly appealing to the financially struggling lower and middle classes. Venezuela's immense oil reserves, the highest in the world, combined with the increasing prices of oil between 2005 and 2014, allowed its government to channel oil revenues into extensive social spending, such as welfare programs and house building for the poor. This resulted in decreasing unemployment, poverty, and child mortality rates, and an increasing support and praise from socialists around the world.² Fast-forward to 2019, Venezuela is experiencing an unprecedented political, humanitarian and financial crisis, plagued by food, medicine, employment and power shortages, all driven by immense hyperinflation after years of corruption and mismanagement of oil revenues. This has led more than 4 million of its citizens, well over 10 percent of the population, to flee the country.³

Reported by the United Nations International Organization for Migration, as of June 2019 approximately 130,000 Venezuelans left for Argentina, 168,000 left for Brazil, 263,000 for Ecuador and 288,000 for Chile. The country which has accepted the greatest number of migrants by far is Colombia, accepting approximately 1,300,000.⁴ While other neighbouring countries have tightened measures to discourage migrants from crossing their borders, Colombia's has stayed relatively easy to cross, with Ivan Duque, Colombia's president, stating last year on CNN that the

² Ben Chu, "Venezuela: How the Most Oil Rich Nation on Earth Was Brought to the Brink of Collapse," *The Independent*, published August 20, 2018, <https://www.independent.co.uk/news/business/analysis-and-features/venezuela-nicolas-maduro-economy-crisis-oil-prices-explained-history-hugo-chavez-a8494696.html>.

³ Rocío Cara Labrador, "The Venezuelan Exodus," Council on Foreign Relations, last updated July 8, 2019, <https://www.cfr.org/in-brief/venezuelan-exodus>; "Venezuela Situation," UNHCR, accessed September 29, 2019, <https://www.unhcr.org/venezuela-emergency.html>.

⁴ Labrador, "The Venezuelan Exodus."

country will not be closing its borders.⁵ The pending question now being, are countries justified in closing their borders when people in need are trying to cross them?

Migration covers such a large scope of subtopics and issues, that I have decided to focus on the most vulnerable people affected by it; that is, people who left their countries because they did not have a choice and did so to escape armed conflict and persecution. This research paper will therefore put a spotlight on refugees and argue for an open borders system, drawing from theory as well as empirical data. First, I will define and draw distinctions between key terms. Second, I will speak on the current state of refugees, the main legal instruments of refugee protection and shortcomings of the current refugee protection system. Finally, I will explore theoretical arguments put forward by academics and political scientists in the field.

Defining Key Terms

The signing of the treaty of Westphalia in 1648 not only put an end to Europe's tumultuous and war-ridden century, but it also signaled the beginning of a new world order. Sovereignty, the right by which each nation state may handle its domestic affairs the way it chooses to without external interference, and a clear definition of political and territorial borders, became the ruling principles in the international community. Nowadays it is difficult to imagine living in a world where we aren't constantly reminded of the physical boundaries that separate humankind, as well as the exact place where one territory ends, and another begins. In addition to that, we undergo well-established and selective processes that determine which of these borders we are allowed to cross. Like many other things throughout our lives, this regulation of travel and mobility is something that all of us have in some way or another learned to accept. Whether we agree with it

⁵ Christiane Amanpour, "Colombia Pres: Venezuela Crisis Is 'Terrifying' - CNN Video," CNN, accessed October 3, 2018. <https://www.cnn.com/videos/world/2018/10/03/intv-amanpour-ivan-duque-colombia.cnn>.

or not, we understand that not adhering to these long-established rules will lead to one of two things: we either face serious criminal charges for entering, living, or working in a foreign country undocumented, or we risk not ever seeing and getting to know other parts of the world. Those of us who disagree with this world order offer an alternative approach: the idea of ‘open borders.’

As defined by Joseph Carens, ‘open borders’ is a system in which people, as well as goods, can enter and exit a country freely, allowing people to leave their country of origin and migrate to another, where they would be subjected to the same laws, regulations, and constraints as the citizens of that country.⁶ An international open borders system would not only simplify migration, but also facilitate a more safe and dignified migration for refugees. Before moving forward, it is imperative to clearly define the term ‘refugee’ and establish how it differs from a migrant or asylum seeker. According to the United Nations High Commissioner for Refugees, a refugee is

“a person who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.”

An asylum seeker is “a person who is undergoing the process of seeking sanctuary in another country; once the process is completed, they are recognized as a refugee and can receive legal protection and material assistance.”⁷ A migrant, on the other hand, is a person who chooses to move, not in fear of persecution or death, but in order to improve their lives by finding work, reunite with family, have better access to education, and more.⁸ Although these three terms are often used interchangeably, there is a key distinction: a migrant is in search for a better life, an asylum-seeker is a person fleeing persecution and seeking international protection, and a refugee

⁶ Carens, “Aliens and Citizens: The Case for Open Borders,” 251.

⁷ “What Is a Refugee? Definition and Meaning,” UNHCR, accessed November 8, 2018. <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>.

⁸ “UNHCR Viewpoint: ‘Refugee’ or ‘Migrant’ – Which Is Right?,” UNHCR, accessed September 29, 2019, <https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>.

is a person who has already been recognized under the 1951 Convention Relating to the Status of Refugees as a refugee.

Because of this narrow definition, majority of migrants fleeing Venezuela will be recognized as migrants and not refugees, even though many of them lack basic resources to lead a safe life. In fact, only 460,000 of them have been able to claim asylum on the grounds of political persecution and violence. Moreover, even though 1.8 million others have gained other forms of residency in other Latin American countries, hundreds of thousands lack legal status, which means no access to employment, education and social services.⁹

Current State of Refugees in the World

The Right to Asylum

In order to understand the importance of open borders, we have to gain some insight into the dire state of refugees in the world. According to the UNHCR and Amnesty International, we are experiencing the highest level of displacement ever recorded. There are currently 70.8 million forcibly displaced people worldwide, over half of whom are under the age of 18. 25.9 million are refugees and 3.5 million are asylum-seekers. 57% of refugees worldwide come from just three countries: South Sudan, Afghanistan and Syria, while the top refugee-hosting countries are Turkey (3.7 million), Pakistan (1.4 million), Uganda (1.2 million), Sudan (1.1 million) and Germany (1.1 million).¹⁰ Canada is, according to the latest UNHCR Global Trends Report, the ninth-largest recipient of asylum claims, with 55,400 claims registered in 2018, with a population of approximately 114,000 refugees.¹¹ In 2018, Primer Minister Trudeau expressed his support for the

⁹ United Nations, "Venezuela Situation."

¹⁰ "Figures at a Glance," UNHCR, accessed September 29, 2019. <https://www.unhcr.org/figures-at-a-glance.html>.

¹¹ "Global Trends - Forced Displacement in 2018," UNHCR, published June 20, 2019. <https://www.unhcr.org/5d08d7ee7.pdf>.

Canadian asylum process, stating that “Canada has obligations under international treaties to give asylum seekers a hearing.”¹² The question is, what exactly are these obligations and what are the major international laws and Conventions in place to protect asylum-seekers and refugees?

The 1951 Geneva Convention Relating to the Status of Refugees along with the 1967 Protocol are the two main international instruments of refugee law. The Convention clearly describes who a refugee is and the kind of legal protection, social rights, and other assistance he or she should receive from the countries who have signed the document. The Convention also defines a refugee’s obligations to host governments and certain categories or people, such as war criminals, who do not qualify for refugee status. Because the initial 1951 Convention was limited to protecting mainly European refugees in the aftermath of World War II, the 1967 Protocol expanded the scope of the Convention and removed any temporal and geographic restrictions:

Art 1: (2) For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "...as a result of such events", in article 1 A (2) were omitted.¹³

The problem with this Convention is that although it is technically legally binding, there is no supranational body that can ensure and monitor the compliance of the signatory states. Although the UNHCR has supervisory responsibilities, it does not have the power to enforce the Convention.

The most important protection principle for refugees from the 1951 Convention is the concept of ‘non-refoulement’. Article 33 of the Convention states that

¹² Steve Lambert, "Trudeau Holds Town Hall Meeting in Winnipeg, Faces Questions about Immigration," National Newswatch, published February 1, 2018. <https://www.nationalnewswatch.com/2018/02/01/trudeau-talks-to-youth-council-holds-town-hall-in-manitoba-capital-2/#.XAFwO2hKhyw>.

¹³ "Convention and Protocol Relating to the Status of Refugees," UNHCR, accessed November 30, 2018. <https://www.unhcr.org/3b66c2aa10>.

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

At first, this Convention protection might seem like the equivalent of asylum, and although it could approximate an asylum-type protection, that is not exactly the case. That is because only if there is no safe country where the refugee could be sent, would the host country be obliged to keep the refugee within its territory? In addition, this section regarding non-refoulement is quite ambiguous, perhaps purposely. It raises significant questions such as: At which specific time and place does this protection apply? Is this only applicable if the person has entered the host country’s territory? Does it take effect at the border? Does it apply to mass flows, considering that the word ‘refugee’ is used in singular form? This vagueness has led to some concerning interpretations of the non-refoulement principle.

In 1992, former president George H. W. Bush signed Executive Order No. 12807, permitting the coast guard to turn back any undocumented migrants travelling from Haiti to the United States before reaching the border and before even establishing each passenger’s qualification for refugee status. Claiming that this Executive Order violated not only national law, with regards to Section 243 of the Immigration and Nationality Act of 1952, but equally that of international law; as per Article 33 of the Convention Relating to the Status of Refugees, the Haitian’s Centers Council Inc. requested the Courts to delay the implementation of the Order. The final verdict of the Courts stated that the Executive Order did not violate Section 243 nor Article 33, since these were not mentioned in their application in a non-territorial context. Meaning, the coast guard can prevent asylum seekers from entering the territorial waters of the US and send

them back to Haiti without violating the non-refoulement principle. This is due to the vagueness of the term ‘return’ and its territorial application.¹⁴

A similar case took place in Australia, when in 2001 the Federal Court ruled not to allow asylum-seekers that had boarded a Norwegian cargo vessel to enter the country. Although the vessel did enter Australian waters, the asylum-seekers were not allowed to settle in the country and were instead detained and expelled to the island of Nauru. Again, the government claimed not to be disobeying international law, and instead stated to be exercising its prerogative power. Para 126:

“whilst customary international law imposes an obligation upon a coastal state to provide humanitarian assistance to vessels in distress, international law imposes no obligation upon the coastal state to resettle those rescued in the coastal state's territory. This accords with the principles of the Refugee Convention. By Art 33, a person who has established refugee status may not be expelled to a territory where his life and freedom would be threatened for a Convention reason. Again, there is no obligation on the coastal state to resettle in its own territory.”¹⁵

Most recently, however, the Trump administration has been pressuring Central American countries into signing “safe third country” agreements, similarly to the one already in existence between the United States and Canada. U.S. Customs and Border Protection statistics show that the number of migrants apprehended at the U.S.-Mexico border reached 144,000 in May 2019, a 32 percent increase from April and the largest monthly number of apprehensions since 2006.¹⁶ A large number of these migrants is seeking asylum, and this is creating a strain on U.S. immigration courts and

¹⁴ Thomas David Jones, "Sale v. Haitian Centers Council, Inc," *The American Journal of International Law* 88, no. 1 (1994).

¹⁵ William Kirtley, "The Tampa Incident: The Legality of Ruddock v. Vadarlis Under International Law and the Implications of Australia's New Asylum Policy," *Columbia Journal of Transnational Law* 41 (2002).

¹⁶ “Southwest Border Migration FY 2019,” U.S. Customs and Border Protection, last modified September 9, 2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

detention facilities.¹⁷ Because the United States is by law not allowed to return migrants to territories where their lives are at risk, it is attempting to bypass this requirement by “creating a legal justification for deporting them without a hearing,” by means of “safe third country” agreements.¹⁸ Such agreements would establish that countries such as El Salvador, Honduras and Guatemala are in fact safe countries, contrary to what critics, the U.S. Department of State and travel advisories state.¹⁹ Repeatedly, states find ways to bypass the very Conventions meant to ensure the protection of those fleeing danger. As previously stated, even though there are international legally binding agreements in place, they contain loopholes. A lack of international body of power that can enforce the Convention allows countries to bypass or ignore these Conventions altogether.

Border Controls

Although Donald Trump’s “Build a wall!” statements might be considered controversial, several other countries are way ahead of the United States. Some contemporary examples of border walls include Egypt’s steel barrier with Gaza, Spain’s borders in its autonomous cities in Morocco and Israel’s southern immigration border. Mostly built unilaterally, the purpose of border walls has always been to freeze *de facto* situations, maintain peace, or limit the influx of migrants, contraband, armed groups, terrorists, or other threats. With the fall of the Berlin Wall and the ensuing collapse of the Soviet Union in the early 1990s, a new world order, characterized by the

¹⁷ Claire Felter and Amelia Cheatham, “Can ‘Safe Third Country’ Agreements Resolve the Asylum Crisis?,” Council on Foreign Relations, published August 29, 2019, <https://www.cfr.org/in-brief/can-safe-third-country-agreements-resolve-asylum-crisis>.

¹⁸ Felter and Cheatham, “Can ‘Safe Third Country’ Agreements Resolve the Asylum Crisis?”

¹⁹ Susan Gzesh, “‘Safe Third Country’ Agreements with Mexico and Guatemala Would Be Unlawful,” Just Security, published July 15, 2019. <https://www.justsecurity.org/64918/safe-third-country-agreements-with-mexico-and-guatemala-would-be-unlawful/>.

free movement of goods, capital, and people, became the standard. This fast-paced intertwining of economies and cultures led to a diminishing importance of national borders and sovereignty, but it all came to a halt with the Twin Towers terrorist attack in September 2001, after which a record number of border walls was constructed.²⁰

If we believe in the legitimacy of sovereignty and national borders, and we accept the need for these to be controlled as they offer a first-line of protection against outside threats, then asylum, as it has been established by international law and agreements, should represent a form of humanitarian exception, for example by granting admission to persecuted people. The reality, however, is that most states have adopted interdiction measures, making it difficult for asylum-seekers and potential refugees to cross international borders and plead their case. Some of these measures include visas, carrier sanctions, training of airport and border police personnel, strengthening of border security systems, readmission agreements, criminalization of migrant smuggling, and border control and police cooperation agreements such as Schengen and personal information data banks.

Establishing whether walls are effective at stopping or at least diminishing the influx of migrants, is difficult. The reality is that guarding short sections of walls with armed border patrol agents does in fact decrease the number of migrants willing to travel through those specific passages. This was proven for example in the 1990s when the first sections of fencing were constructed near San Diego, along the U.S.-Mexico border. It was reported that in the weeks that

²⁰ Uri Friedman, “Not Just U.S.-Mexico: Walls Are Going Up Around the World,” *The Atlantic*, published May 19, 2016. <https://www.theatlantic.com/international/archive/2016/05/donald-trump-wall-mexico/483156/>.

followed, crossings dropped to almost zero. As we now know, crossings simply shifted from those specific crossing points to other less-fortified, remote and dangerous locations.²¹

In the United States alone, between 5,984 and 6,548 migrant deaths have been reported along the U.S.-Mexico border within the last 16 years. These figures of course only represent the official number of bodies that have been found.²² The *Missing Migrants Project*, founded by the International Organization for Migration (IOM), tracks and reports migrants who have died or have gone missing in the process of migration, while crossing international borders. Its data is an estimate from IOM, national authorities, and media sources. In the Mediterranean Sea, 2,123 migrant fatalities have been reported for the year 2018, and 3,113 fatalities for the year 2017. Total number of worldwide fatalities in 2017 was 5,856 and in 2016 it was 7,369.²³ The conclusion is that security measures and walls are not necessarily keeping migrants out, but rather making it more difficult for migrants to cross international borders, leading to an increasing amount of fatalities.

Security Threats

An additional argument against open borders put forward by the Trump administration, as well as other governments around the world, is the threat to national security posed by migrants and asylum-seekers. When referring to them as “rapists”, “very bad people,” and stating that they are “bringing drugs and crime,” not only is Donald Trump playing into hateful and factually wrong rhetoric and stereotypes, but he is also stealing migrant’s opportunities to build a better life in a

²¹ Reece Jones, "Borders and Walls: Do Barriers Deter Unauthorized Migration?" Migration Policy Institute, published October 05, 2016. <https://www.migrationpolicy.org/article/borders-and-walls-do-barriers-deter-unauthorized-migration>.

²² Bob Ortega, "Border Patrol Failed to Count Hundreds of Migrant Deaths on US Soil," CNN, published May 15, 2018. <https://www.cnn.com/2018/05/14/us/border-patrol-migrant-death-count-invs/index.html>.

²³ "Migrant Fatalities Recorded Worldwide," Missing Migrants Project, accessed November 20, 2018. <https://missingmigrants.iom.int/>.

country founded on principles of refuge and security.²⁴ Is this fear of migrants and asylum-seekers infiltrating countries and raising the crime rate factually sound?

A study conducted by the CATO Institute in 2017 found that between 1975 and 2017 a total 20 refugee terrorists were admitted to the United States, and that they had succeeded in killing 3 Americans. They also state that the chances of an American being killed by a refugee is one in 3.6 billion a year.²⁵ To put this number into perspective, more Americans have died from eating detergent pods (8 deaths) and taking selfies (14 deaths).²⁶ The chances of immigrants committing any kind of violent crime is also low. According to a study conducted by the University of Buffalo, the immigrant population has risen by 118% since 1980. At the same time, the violent crime rate has decreased by -36%, meaning that an increase in the migrant population does not contribute to an increase in violent crime.²⁷

Section 2 of Article 33 of the 1951 Convention relating to the Status of Refugees clearly states that a country has every right to withhold refugee status to any individual who poses a threat to the country:²⁸

(2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

²⁴ Katie Reilly, "Donald Trump: All the Times He's Insulted Mexico," Time, published August 31, 2016, 2018. <http://time.com/4473972/donald-trump-mexico-meeting-insult/>.

²⁵ Alex Nowrasteh, "Syrian Refugees and the Precautionary Principle," Cato Institute, published January 28, 2017. <https://www.cato.org/blog/syrian-refugees-precautionary-principle>.

²⁶ Ben Popken, "More Adults Have Died from Eating Laundry Pods than Kids," NBC News, published June 16, 2017. https://www.nbcnews.com/business/consumer/laundry-pods-can-be-fatal-adults-dementia-n773366?cid=par-twitter-feed_20170616; Christopher Brito, "More than 250 People Died Trying to Snap Selfies over 6 Years, Study Finds," CBS News, published October 4, 2018, <https://www.cbsnews.com/news/selfie-deaths-study-united-states-india-russia/>.

²⁷ Anna Flagg. "The Myth of the Criminal Immigrant," The Marshall Project, published March 30, 2018. <https://www.themarshallproject.org/2018/03/30/the-myth-of-the-criminal-immigrant>.

²⁸ "Convention and Protocol Relating to the Status of Refugees," UNHCR.

The problem is that asylum-seekers are often not given the opportunity to make their case in the first place.

Failures of the Reviewing Process

Additional arguments for open borders can be made when examining the reviewing process and the negative psychological effects it inevitably has on asylum-seekers. A study conducted by Katrin Schock, an expert in clinical psychology, and colleagues, examined the psychological impact of asylum interviews. The participants were examined 10 days prior and 16 days after their asylum interview and the results clearly showed an “increase in posttraumatic intrusions and a significant decrease in posttraumatic avoidance and hyperarousal symptoms,” meaning that the findings confirm the stressful impact asylum interviews have.²⁹ In addition, experts in the field of psychology claim that the reviewing process is unfair and often leads to false conclusions. A study conducted by Jane Herlihy, a psychologist in clinical training, and colleagues, examined the consistency of memory of individuals seeking asylum, due to the underlying assumption that an inconsistency throughout interviews in the asylum process points to the fabrication of the stories. The study concluded that inconsistencies and discrepancies when recalling autobiographical memories, mostly due to the psychological trauma associated with those memories, are very common and therefore advise not to dismiss asylum-seekers on the grounds of lack of credibility.³⁰

Liberal Theory and Moral Equivalence

²⁹ Katrin Schock, Rita Rosner, and Christine Knaevelsrud, "Impact of Asylum Interviews on the Mental Health of Traumatized Asylum Seekers," *European Journal of Psychotraumatology* 6, no. 1 (2015).

³⁰ Jane Herlihy, Stuart Turner, and Peter Scragg, "Discrepancies in Autobiographical Memories," *BMJ* 324, no. 7333 (2002): 327.

Thus far, we have considered that the international legal protections refugees have, can be bypassed by states, that border controls and walls are not simply putting an end to migration, but rather giving migrants no choice than to find alternative paths to reach safety, and that the asylum reviewing process has detrimental psychological effects. We will now explore theoretical arguments for and against open border policy. This paper undeniably holds a liberal theoretical underpinning but also draws arguments from three contemporary approaches to political theory: that of Robert Nozick, John Rawls, and utilitarians. The central liberal argument in a discussion revolving migration, is that there is a commitment to the moral equivalence of all individuals as well as a commitment to ensuring that the rights of the individual have precedence over those of the community.³¹ The way this translates over to the topic of migration, is that because of their equal moral equivalence, immigrants to any given country have as much of a right to reside in that country as a citizen does.

Similarly, to John Locke, Robert Nozick states that in the state of nature, all individuals have the same natural rights, for instance the right to acquire and use property. Although everyone in theory are entitled to the same rights, in reality this is not the case and the accumulation of wealth allows for material inequalities that lead to the violation of these fundamental rights. That is why both Locke and Nozick argue, that the introduction of a governing body with minimal powers limited to the protection of people's most basic rights, is necessary.³²

Drawing from this conclusion, it is safe to assume that a government that prohibits an outsider's pursuit of 'a good life' and builds physical borders and arms those who safeguard them, is in no way what Nozick would interpret as a state exercising its minimal powers. After all, a government

³¹ John Isbister, "A Liberal Argument for Border Controls: Reply to Carens," *International Migration Review* 34, no.2 (2000): 630.

³² Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 10-25.

has the duty to protect the rights of all the individuals that choose to live within the territorial borders it has sovereignty over, regardless of their citizenship, as all individuals possess the same rights.

Rawls's theory of "the original position" also proves to be very interesting in the context of migration. According to Rawls, the original position is a fair and impartial point of view, in which individuals have no knowledge of their own characteristics or privileges, such as age, class, sex, religious beliefs, values, natural talents, etcetera. He argues that if individuals had to choose what principles should govern society behind this "veil of ignorance", they would choose principles that guarantee equal liberty to all, as well as those that permit some social and economic inequalities, so long as they are to the advantage of those who are the least well-off.³³ This means that if an individual did not know whether they were a citizen or a migrant, they would most likely choose a policy that protected their liberty of entering the country as a migrant and living in it, as this is the less privileged position of the two.

A utilitarian approach to migration, which focuses on "maximizing utility" would argue that with regards to economic motivations, the wins and losses of the migrants would count just as much as those of the citizens. According to Carens, the dominant consensus among classical and neoclassical economists is that in order to maximize economic gains, there needs to be a free mobility of capital and labor, which can only be achieved with open borders. That being said, while the potential economic losses of citizens at the hands of immigration are not irrelevant, the wins of such policy would be much greater.³⁴

This is not to say that liberal arguments against open borders have not been put forward. As stated previously, the central liberal argument in a discussion revolving around migration, is

³³ Carens, "Aliens and Citizens: The Case for Open Borders," 255.

³⁴ Carens, "Aliens and Citizens: The Case for Open Borders," 263.

that there is a commitment to the moral equivalence of all individuals. But as Isbister mentions, the heart of the argument against open borders is that this moral equivalence does not amount to the equal treatment of the individuals.³⁵ An example Isbister provides is the fact that we often prioritize the wellbeing or interests of our family members and close friends over those of other people in our communities, or people whom we do not know. Using this analogy, Isbister argues that the state can be an extension of a family and we therefore have moral grounds to prioritize the needs and wants of those living within our state borders. On the other hand, Joseph Carens, points out the weakness in this analogy and argument by expressing the fact that in many circumstances, such as sports games and legal proceedings, favoring family members over others is actually frowned upon and sometimes even illegal.³⁶

Isbister puts forward four additional arguments against borders, which he titles: efficiency, impossibility, moral saints, and unequal connections. Isbister first argues that it is more efficient for states to primarily care for its own citizens rather than those in other countries, as he believes that we understand the needs of our communities best and not necessarily those of others. Secondly, he argues that it is impossible for even the wealthiest of states to treat all the people in the world equally, including those of its own countries, as their economies would simply “not survive.” Carens offers a counter-argument by saying that even if total equality is neither possible or sustainable on an international scale, it shouldn’t keep us from trying to move in that direction.³⁷ Isbister’s third argument is that it is unfair to ask of people to be ‘moral saints’ and give up their own wellbeing to help others. He states that we, and the world, are naturally unjust and compares

³⁵ John Isbister, “A Liberal Argument for Border Controls: Reply to Carens,” *International Migration Review* 34, no. 2 (2000): 630.

³⁶ Joseph Carens, “Open Borders and Liberal Limits: A Response to Isbister,” *International Migration Review* 34, no. 2 (Summer 2000), 638.

³⁷ Carens, “Open Borders and Liberal Limits: A Response to Isbister,” 639.

this to the original sin. Therefore, stating that if we cannot “come anywhere close to being just” why try to be just at all? Similarly, to the previous argument, it can be argued that even if total justice cannot be achieved, there is nothing keeping us from at least attempting to ensure justice. Lastly, he argues that the idea of justice is only relevant under conditions of reciprocity, meaning that we have no obligations to individuals in other countries because this act of justice cannot be reciprocated. John Rawls himself stated in *Political Liberalism* that his theory of justice as fairness “is based on an idea of reciprocal cooperation among citizens”³⁸ Once again, Carens offers some counter arguments. He points out that reciprocity alone cannot be the one principle by which we measure justice. For one, it does not explain how we treat those in our communities who cannot contribute to justice, or how we treat those with whom we have not established reciprocal ties.³⁹

Conclusion

Migration, the act of travelling from one place to another with the intention of settling temporarily or permanently can be dated back 2 million years, way before *homo sapiens* as a species even existed.⁴⁰ One can argue that migrating from one part of the world to another is inherently present in our DNA. Over time, however, the principles of sovereignty have prevailed in the international community, and with that, the right for each state to severely restrict who may enter its territory.

International legally binding agreements such as the 1951 Convention and the 1967 Protocol are meant to offer protection to those individuals who find themselves fearing for their lives and seeking refuge across international borders. States find ways to bypass these agreements and with

³⁸ Christie Hartley, “Two Conceptions of Justice as Reciprocity,” *Social Theory and Practice* 40, no. 3 (July 2014): 409.

³⁹ Carens, “Open Borders and Liberal Limits: A Response to Isbister,” 641.

⁴⁰ Emma Groeneveld, "Early Human Migration," *Ancient History Encyclopedia*, published May 15, 2017. <https://www.ancient.eu/article/1070/early-human-migration/>.

no overarching international government in place, there is no way to ensure the implementation of these agreements. Border walls meant to discourage the influx of migrants and asylum-seekers, have only led them to choose unsafe routes of travel, putting their lives at risk. Even once asylum-seekers reach their supposed safe haven, they undergo an invasive and psychologically challenging asylum process, after which they might be falsely rejected if their case is assumed to be fabricated. Perhaps the most persuasive argument of all is that of peoples' moral equivalence: the idea that no matter where you were born or where you live, you have as much of a right to lead a life free from violence and persecution as anyone else, and that no wall, literal or figurative, should prevent this. The larger implications of this ineffective system are that we find ourselves part of an international community plagued by hypocrisy, unable or unwilling to help those it promises to protect, forcing us to question its purpose and integrity. This is precisely why I argue for open borders, a system in which people, specifically those who need it most, may leave their country of origin and migrate to another freely, without restrictions that put their life, dignity and future at risk.

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