Immigration: A Lockean Approach

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IMMIGRATION: A LOCKEAN APPROACH  
Jeremy Waldron*

1. Some questions
I want to ask some questions about immigration controls, questions that will probe the common assumption that setting up and enforcing such controls is something a state is entitled to do if it judges such controls to be in the interests of the community it governs. And in what follows I want to entertain a particular approach to the answering of such questions, an approach that differs, I think, from the usual “applied ethics” sort of approach.

My first question is obvious:

i. By what right do states prohibit migrants from entering their territories? What reasons could possibly support the right to impose such prohibitions

* a migrant...

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1 Footnotes are digressions; endnotes are citations.

On the “applied ethics” approach: one sets out the problem as it currently exists and one adduces considerations in favor of or against opening borders that are at present closed or modifying immigration laws that are at the moment restrictive or tightening immigration laws that one views as too lax. This consideration is supposed to go directly to questions of policy: it offers an ethical perspective on the matters that politicians and law-makers—and thus indirectly citizens—have to address.

Another approach might ask about contending positions that are deep and philosophical rather than surface level and policy-oriented. One might consider a general right to freedom of movement in the world, and ask what it might be based on and what its limits might be. Or one might consider the general position that human communities are entitled to close themselves off from the rest of the world—or that it is sometimes important for them to close themselves off from the rest of the world—and ask what the grounds for this might be. I would like to explore an approach of this foundational kind, not because it will conclude anything so far as immigration policy is concerned, but because it will give us a better philosophical perspective on issues about community and human movement that are implicated in this matter.
Question (i) asks about the moral position of states in countries that immigrants might try to enter. Do they have a right to restrict entry? Is that the sort of thing states have a right to do? And what distinguishes it from things that states have no right to do, whatever advantages may accrue therefrom? One might equally ask a similar question about the actions of the citizens of such states:

ii. Is it appropriate for the people of a state to advocate the passage of laws to prohibit migrants (or particular classes of migrants) from entering their territories? What kinds of reasons could possibly justify such advocacy?

After all, if prohibiting immigration is something that states have no right to do, then arguably it is something that citizens have no right to pressure their governments into doing.²

² I admit it is not common for political philosophers to transform a question about the legitimacy of state action into a question about the legitimacy of citizen advocacy. We sometimes feel uneasy—more uneasy than we should—about bringing to bear on citizens’ political behavior the normative force of negative arguments concerning what their state has a right to do; we may feel uneasy about this because we are inclined to think that—whatever states have a right to do—citizens have a right (a free speech right) to advocate whatever policies they like and also a right (a democratic right) to exercise their vote however they please. But in some areas where the legitimacy of state action is restricted, it is actually not inappropriate to infer restrictions on citizen advocacy. The logic of human rights seems to imply this: if it is wrong for the state to torture terrorist detainees, then it is wrong for citizens to pressure the state to torture terrorist detainees. In some areas—international human rights law, for example—it is said explicitly that certain legal restrictions apply to citizens’ advocacy. So in the International Covenant on Civil and Political Rights, we are told that

Article 20. 1: Any propaganda for war shall be prohibited by law. 2: Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Also we should remember that in most advanced democracies a lot of immigration law is driven very strongly and directly by citizen sentiments and by legislators’ fears of seeming “out of touch” with citizens’ sentiments on this matter. Those who oppose such policies are accused more often of being out of touch with what ordinary citizens feel on this matter than of any particular failing in their policy calculations. All of which goes to show that we have to consider not just the legitimacy of government action but the legitimacy of citizen pressure on immigration.
2. The Lockean approach

Consider now the converse point. Instead of deriving the reasons which govern citizen advocacy in this matter from the reasons which govern state action, we might approach things the other way round. Maybe the reasons which make it either permissible or illegitimate for the state to restrict immigration derive from reasons that apply, in the first instance, to individuals considered apart from the state. So maybe the following question is a good way of approaching the question of whether states have the right in question:

iii. If there were no state or system of positive law, would individuals organized less formally into communities have the right to drive away strangers who approached their vicinity?

With question (iii), we contemplate the possibility that states have this right because individuals and communities would have this right independently of the existence of states, and the individuals and communities who have this right confer it on states to exercise it as their agents. In other words, we contemplate a roughly Lockean approach—an approach that attempts to trace the rights of the state to the rights of those who form the state in a social contract. Such an approach uses a state-of-nature perspective as a way of figuring out the legitimacy of certain state powers. One asks, concerning a power P that is claimed by some states:

iv. Is P the sort of power that individuals or communities might have over others in the state of nature, and, if so, would it be appropriate for them to transfer the power to the state once the state was instituted?

In John Locke’s political theory, the power to punish is approached in this way. The state has the power to punish because individuals have transferred to the state the power to punish that they had, by virtue of
natural law, in the absence of a state. So legitimizing the state’s power to punish is partly a matter of showing that it makes sense to suppose that individuals or communities once had a legitimate power to punish outwith any arrangements for state action and that it makes sense to suppose they might rightfully transfer this to a state that they have set up for its better administration.\(^b\) By contrast a state’s power to impose religious coercion cannot be justified in this way: individuals have no right to exercise coercion over their neighbors in matters of religion, since one person’s salvation or perdition is no prejudice to any other person’s affairs; and therefore people have no power of this kind to transfer to the state.\(^c\)

So which of these is the better analogue to the alleged power to restrict immigration? Is it a right that people had but which (like the power to punish) they transferred to the state for its better administration? Or is it a power (like the power of religious coercion) which ordinary people and their communities cannot be supposed to have had apart from the state, and so cannot be supposed to have been transferred by the people to the state? Is the putative right to restrict immigration a right that is susceptible of a Lockean justification?

The idea is not to figure out what John Locke thought about immigration.\(^3\) Instead the idea is to use some Lockean theoretical structure along the lines of the approach taken in Robert Nozick’s *Anarchy, State and Utopia*.\(^d\) We start with a non-political situation and see how certain aspects of what we now take for granted as aspects of state power might conceivably grow out of it. We don’t assume necessarily that there once was a Lockean state of nature or that this is a good or the best historical or pre-historical *explanation* of immigration.

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\(^3\) Locke did speak in the *Second Treatise* about the position of aliens in a commonwealth, a position that seemed to presuppose that such aliens might come and go. (This is in his discussion of tacit consent.) But he didn’t explicitly address the right to cross borders or the commonwealth’s right to close them. See Locke, *Second Treatise*, §§ 9 and 122.
laws. We imagine a state of nature and ask about certain powers in that situation.

Some may ask: why should we indulge in this counterfactual speculation at all?\textsuperscript{4} There is no point imagining the state away, they may say, for human life is unimaginable without it. Why not just accept the fact that immigration restrictions are enforced by the modern state and then ask straightforward policy questions—to be answered probably in consequentialist terms, cost/benefit terms—about what the state does and can do in this regard?

But actually it is not true that human life as we know it is unimaginable without the sort of state that enforces immigration restrictions. States of this kind are quite new and have superseded relatively recent forms of political organization that did not typically have this power. Michael Walzer quotes a view entertained by Henry Sidgwick in the 1890s to the effect that the only business of state officials is “to maintain order over [a] particular territory ... but not in any way to determine who is to inhabit this territory, or to restrict the enjoyment of its natural advantages to any particular portion of the

\textsuperscript{4} Our characterization is, as Nozick put it, fact-defective:

Fact-defective fundamental potential explanations, if their false initial conditions ‘could have been true,’ will carry great illumination; even wildly false initial conditions will illuminate, sometimes very greatly. ...We learn much by seeing how the state could have arisen, even if it didn't arise that way. (ASU pp. 8-9)

Nozick is interested in an account of this sort justifying the overall structure and functions of the state. But I am sure he would have agreed that this can also illuminate particular controversial state powers, like the power to restrict immigration. I should emphasize the word “illumination” in this statement of Nozick’s. The idea need not be that fact-defective explanations are good at explaining things. That would be the case perhaps if their premises were approximately true as opposed to simply false. But even if they are not approximately true, it may still be illuminating to consider how these explanations might go—illuminating in the sense of helping us expose or unravel a normative argument. Even if immigration restrictions were never enforced except by states, it might nevertheless help us understand the case for their enforcement by imagining whether something like them would be needed in a state of nature. For then this helps us see what the state contributes to our common life.
human race.” Maybe it is hard to imagine life without the state, but is it so hard to imagine life without a immigration-blocking state as opposed to a state of this Sidgwickian kind?

I acknowledge that the approach I am suggesting is not conclusive. Lockeans sometimes insist that governments, being empowered by contract, can have no right at all to do what individuals don’t already have a right to do. I do not insist on this. The Lockean approach is not the only way of justifying state powers. For some powers of government, there may be no question of their existence (or the existence of even a prototypical version of them) in the absence of a state; and yet they may still be justified. I am not stipulating this possibility away and I will consider it briefly for immigration powers in section 11. Even so, I believe the Lockean approach can be helpful. If the Lockean approach does not vindicate the right to prohibit immigration, then the options for its justification are drastically reduced. So this would be a telling move, even if not conclusive.

3. Assumptions for the Lockean model
We are imagining people living in a state of nature, perhaps gathering together in a village or a community, and they are faced with the

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5 Is there something question-begging in posing the question as one about a community imagined at the level of a village? Maybe. A defender of immigration restrictions may vehemently deny the state’s right to prohibit internal migration. And he might regard the village-level thought-experiment as a model of the latter, not the former.

Michael Walzer is an example. He says: “Neighborhoods can be open only if countries are at least potentially closed” (Spheres of Justice, p. 38). Certainly neighborhoods can be open while countries are potentially closed, even if Walzer is wrong in his pronouncement that the latter is a necessary condition for the former; and that might be enough to embarrass my project. Some points in response:

(1) One possibility is that the justification for immigration restrictions only arises at a scalar level of community organization unimaginable apart from a state. If so, assessment of such justifications must wait till section 11 of this paper (and beyond).
possibility of newcomers migrating into and proposing to settle in their vicinity. The question is: could they be justified in driving the new comers away—for example, by shouting threats at them, throwing rocks, or tearing up their encampments?

We need to refine the question a little, so that we will not be distracted by irrelevant considerations. So here are some additional assumptions for our thought-experiment.

First, it should not be open to doubt that people are entitled to drive away bandits or marauders in their vicinity, those who come to prey on their persons and property. Occasionally the rhetoric appropriate to a response to marauders is used in the immigration debate. But it is not generally appropriate. And I shall assume for the purposes of argument here that the newcomers do not constitute any sort of physical threat.6

This assumption is important. In the real world, would-be immigrants, including most of those whose immigration to our society is restricted as things stand, are not marauders. They do not approach our territory with the intention of attacking our persons, stealing our stuff, or driving us off our land. If they had their way, they would be just like people moving from one vicinity in a given country to another vicinity in that country: they come with the intention of buying or renting

(2) On the other hand, states of all sorts and sizes, ranging from Canada to San Marino, maintain immigration restrictions; and so we must be allowed to explore Lockean possibilities without regard to (or without prejudice to) the issue of size.

(3) I am, in any case, not convinced by Walzer’s dictum. In part it is intended to finesse the possibility of transferring to the case of national immigration restrictions criticisms by Adam Smith and others of parish-level mobility restrictions (The Wealth of Nations, Bk. I, Ch. 10, Part 2). But also the factual premises of Walzer’s pronouncement are not convincing. Indeed, it is arguable that the type of cultural preservation often cited by defenders of immigration restrictions makes much more sense at the parish level than at the level of the nation-state. (See section 9 below.)

6 I assume also that they are not bearers of plague or other contagious diseases. People may be entitled to drive plague-bearers away; but I am stipulating that this is not true of the case we are considering. And they may be entitled to impose quarantine.
someplace to live and seeking employment or setting up a business in
the neighborhood. They seek to involve themselves in the open
economic networks that already exist in this vicinity—the market for
labor, the market for property, the ordinary basis on which goods and
services are provided for people around here. They want to make a life
for themselves in our vicinity in much the same way that we make lives
for ourselves in this vicinity. They are not thieves or predators.\(^7\)

John Locke’s state of nature has features that help us envisage this.
In a classic Lockean model, we may think, in the first instance, of
strangers approaching a vicinity in which much but not all of the
productive land has been appropriated by those who are already there or
thereabouts, but in which there is still land available for private
appropriation on a basis that would satisfy a Lockean proviso (that the
appropriation leaves “enough and as good” for others).\(^6\) For that
scenario, the question is whether those who have already made
acquisitions of land under these conditions have the right to drive away
others who might in the future make acquisitions of land on the same
basis as they did.

Or, in a different scenario—still within the Lockean model—let’s
say that all of the land in the vicinity has been appropriated, but that
outsiders still come there anyway because they know that the
privatization of the economy in that area has led to the establishment of
open economic networks that offer prosperity to all who reside there,
whether they own land or not.\(^8\) The stranger expects that even as a mere

\(^7\) Also, they do not come demanding what some may think of as “their fair share” of local
resources. The argument I make in this paper has nothing to do with issues of global justice
(see also footnote 27) or with local redistribution (see footnote 11; but see also the discussion
of charity/welfare in section 8).

\(^8\) We should bear in mind that many people already in the vicinity may be disposed to deal with
the strangers—to employ them or to rent houses to them or to sell stuff to them. If the
strangers are to be driven away, then (among other things) pressure will have to put on those
“day-laborer” in the country of immigration he will feed, lodge, and be clad better than the best-off inhabitants of the “large and fruitful territory” that he comes from. For this scenario, we ask whether those who are already living in the vicinity under these conditions have the right to drive away people who are coming to better themselves on this basis.

A second assumption—stipulated in fairness to the defenders of restrictions—is that the migrants, the newcomers, will not die if they are driven away: there is no question of throwing them back into the sea, for example. In some tragic real world situations, this is not the case; I think these raise special concerns; they do not go to the heart of the issue about the legitimacy of migration restrictions.

A third assumption has to do with the sort of restrictive activity whose permissibility we are considering. Although we are imagining away the state, we are not imagining away coercion. Our question is whether those who are already settled in a given area are permitted to use threats and force to drive newcomers away. A coercive response of

who are willing to deal with the strangers not to do so. (And immigration laws often do this as well. And, of such laws, we may also ask, “By what right does the state impose them and enforce them?”)

David Miller, in “Why Immigration Controls Are Not Coercive,” Political Theory, 38 (2010), 111, has suggested that immigration controls are not necessarily coercive. He says:

It is important not to be misled by the specific (and often unpleasant) activities that may be involved in enforcing a regime of border control. We see people being bundled on to aeroplanes to take them back to their country of origin, or small boats being ... forced back to their point of departure. These actions are indeed coercive.... But this is not to say that border controls themselves—the act of preventing somebody from entering a specific territory without authorization—are coercive in the same sense. Consider instead a state that simply erects a physical barrier around its territory, a barrier that is uncrossable unless officials open it to allow authorised persons to pass. But of course in real-world cases, coercion is used also to stop people approaching the wall and to stop them from trying to climb over it. In any case, Miller seems happy to concede that immigration barriers are set up deliberately to prevent people from entering, to defeat their hopes and frustrate their expectations of entering; and our questions can be rephrased to
this kind would be sufficiently like our restrictive immigration laws to offer some Lockean illumination of the immigration questions we actually face via this model.\(^{10}\)

As a third assumption—also stipulated in fairness to the defenders of restrictions—let us acknowledge that the communities approached by the would-be migrants comprise not just scattered individuals, but people who share a way of life. I say this because I know some of my opponents—including David Miller—want to rest their case for the right to drive the strangers away on this basis, and I want the premise of their approach to be available upfront for their use, or to see whether any appropriate use can be made of it. (We will discuss this in section 9.) I will insist though that when we talk of individuals sharing a culture, we do so realistically—so that the sharing is loose and open, and the culture is compromised in various ways in the lives of those who share it,\(^{h}\) and so that there are cultural and perhaps religious tensions within the relevant community, which may or may not be fissiparous.

\(^{10}\) Instead of asking about coercion, an alternative Lockean approach would be to ask whether, in the absence of positive law, would-be immigrants should regard themselves as doing anything wrong by coming into the vicinity of an existing community. Are they violating natural law? If they come as predators, then the answer is “yes” and members of the community may have a natural right to resist the wrongdoing. But if they come peacefully with no intention to dispossess the existing inhabitants, then it is hard to see that there is any violation. We could pursue this all the way through the following sections, asking whether the newcomer’s economically competitive presence or culturally-disruptive presence amounts to wrong-doing on their part (under natural law)? I shall not pursue this line, but it is worth thinking about. If I did pursue it, I think the answer would have to be “no.”
4. A background right to freedom of movement?

Am I assuming as—a fourth preliminary—that, absent any special concern, the migrants have a background entitlement to go where they will—a natural right to freedom of movement? One doesn’t want to beg any questions here and it is hard to know how exactly to approach this, but some reflection on the baseline seems necessary.

We certainly should assume that the villagers in the target community have a right to be where they are; and the newcomers have no right to drive them away. We should also assume that the would-be migrants had a right to be where they were, before they set out on this journey. That is, we are not talking about refugees who have already been driven from their own lands.

Perhaps this is all we need to assume in order to make the premises of our discussion consistent with the Kantian idea that “all human beings … have a right to be wherever nature or chance … has placed them” by virtue of the fact that the world belongs to humanity in common.

I am inclined to say more, however. To these innocuous assumptions, we should add something in the way of a weak natural right to movement in the world (“weak” enough so as not to beg the question against the anti-immigrant position). So, there should be some sort of a priori recognition of the point that humans are and always have been migratory animals, and that our natural relation to land and territory includes wandering as well as settlement. David Miller has argued that humans do not need to wander and migrate; it is not as though there is a compulsion to this effect hard-wired into us, like swallows. But peoples and people do migrate and always have. It is not an unnatural activity.

So I believe we have to recognize at the very least a weak presumption in favor of people and peoples having the right to wander and settle where they will so long as they don’t encroach on others’
legitimate property. (The presumption is defeasible and what we will consider in sections 5 through 9 is whether it can be defeated by the sorts of considerations that feature in typical anti-immigrant arguments.)

The point can be put in Lockean terms. In John Locke’s state of nature, any land in the world that is not already appropriated as property is available to anyone for traverse or for acquisition and settlement. The process of Lockean acquisition in the state of nature knows no prior boundaries, apart from respect for the acquisitions of others. Maybe the introduction of the territorial aspect of a state changes things; but in a state of nature, it can’t be the case that a person is precluded from making an otherwise legitimate acquisition of a piece of land, La, simply because other pieces of land in that vicinity—Lb, Lc, and Ld—have been acquired by people who resemble and like each other more than they like or resemble the wannabe appropriator of La. Lockean acquisition is not “clubbable” in that way.

5. Gut reactions
The state-of-nature imagery I have evoked—villagers driving away strangers, perhaps throwing rocks at them, shouting threats, uprooting their tents, and so on—is not pleasant. It is not intended to be. One of the advantages of the state of nature approach is that we abandon any sanitized image of an efficient stainless-steel state, with fancy-dress and official forms, acting impersonally in our name. We have to consider how attractive the powers that our state is supposed to possess would be if we had to wield those powers ourselves, without the sanitization of state or law. If it were just us doing this—us driving strangers away—would it feel as rightful as it might appear when it is done under the auspices of positive law? If not, then we have some hard questions to face about what law adds to the situation (apart from some comforting distance for us and a degree of impersonal deniability).
Still I want to go beyond mere gut reactions to the scenario I am painting. The question is whether this putative right of individuals (acting on their own or together) to drive people away can possibly be justified, however unpleasant it may seem.

What sort of reasons might people in a settled community have for trying to drive away strangers? Apart from fear of predators, the reasons are likely to fall into two categories—economic and cultural. The two categories may combine to establish a third sort of argument—a “social model” argument that I will deal with in section 10. But let’s look first to economic and cultural considerations standing on their own.

6. Economic competition
The economic factors, which I will deal with first, may comprise a number of possible elements. Common to them all will be some sense of the undesirability of competition\(^1\) for land, resources, business, and opportunities.

Let us keep faith with what I said in section 3 was our first assumption, that the migrants do not come as predators or marauders. It is not their intention to seize or damage any of the private holdings that already exist. Rather, the assumption is that they see some advantage in being in the vicinity of the existing holdings. If they are in the vicinity, then they may contract with those who already hold resources, or work

\(^{11}\)It is a further question—which I shall not consider—whether the arrival of immigrants can constrain a revision of the local distribution of property (land, for example). Suppose that the number of immigrants greatly enlarges the size of the population of the target community. Then either immediately or after some time, perhaps a compelling argument can be made for redistribution of land on the ground that existing holdings were based on demographic assumptions that no longer apply. (After all, if the population were to increase through some mechanism other than immigration—an uptick in child-birth, for example—something along these lines might have to happen.) Or perhaps no such argument can be made. I do not think that the possibility of such an argument could itself support an entitlement among the members of the community to drive the newcomers away—on the ground that their presence would affect calculations of distributive justice in this way.
for them, or offer services to them, or sell things to or buy things from
them. In doing this they compete with others. And such competition
may make those others worse off. But it is long- and well-established in
our social philosophy that the mere fact of competition is not an injury
and losses caused by competition are not harm for purposes of a “harm
principle” that purports to justify coercion, and that nobody is entitled to
limit the freedom of another simply to avoid competition.\(^m\) Certainly we
are not entitled forcibly to limit the class of our potential competitors or
to try to drive some of them away.\(^{12}\)

In Lockean terms, economic arguments that attempt to justify
driving away would-be immigrants have the unpleasant characteristic
that they assume property-holders may control not just their holdings but
the vicinity of their holdings for economic purposes. They want to use
this vicinity-control to exclude anyone other than an existing member of
the society from coming near their property. But this makes no sense.
Appropriation of property is justified with respect to a particular holding
of a particular size and, in theory, it is supposed to be governed by a
Lockean proviso to the effect that “enough and as good” must be left to
others.\(^n\) It is in and with respect to that holding that the appropriator
acquires the right to exclude others. Were the appropriator also to
acquire the right to exclude others from the vicinity of his holding, the
whole allocation of holdings would have to be rethought, since the
Lockean proviso will generate different results for (i) a holding and for

\(^{12}\) What if competition threatens survival? A territory may be already overcrowded and its
resources depleted: it simply will not support more people. In those circumstances, may the
existing inhabitants drive newcomers away? Perhaps, but the case has to be genuinely
extreme, analogous to an overcrowded lifeboat that will sink if more swimmers are taken on
board. It can’t just be that the territory won’t support more people in the style to which the
existing inhabitants have become accustomed, or that there will be a drop in overall standard of
living if newcomers are allowed in. For interesting discussion of over-crowding, see Michael
Dummett, “Immigration,” 10 Res Publica 115, 119 (2004) and Michael Blake & Mathias Risse,
“Immigration and Original Ownership of the Earth,” 23 Notre Dame Journal of Law, Ethics &
Public Policy 133 (2009), at 148-54.
(ii) a holding-plus-its-vicinity. I know of no theory of property that could generate the result that because one acquires a patch of land in a particular area as private property one is therefore entitled to economic control over the area as well as the patch of land.13

There is a broader point here too. For an approach of the sort we are considering, it is not enough to point to interests that may be served by immigration restrictions.14 Some interests that X has may legitimately be pursued coercively by X (X’s interest in not being killed, for example) and some may not (e.g., X’s interest in marrying Y). An interest in lessening the number of one’s economic competitors is more like the second of these than the first. What’s the basis of the difference? One plausible theory would be that I have no right to pursue an interest of mine coercively if the coercion would have to be targeted at those who are, for their part, pursuing an exactly similar interest as the one I am pursuing and if their pursuit of such interest and my pursuit of such interest are compossible under a general principle of freedom.

7. Public goods
Economic arguments are not just about private property and competition. We also have to consider various public goods that may

13 What if the members of the target community own the general area as a collective? Then there are two things to think about: (1) Are the collective owners of the area entitled also to control the vicinity of the area? (2) Does their (exclusive) collective control of the area have to be rethought once other people settle nearby? (Nozick points out in ASU 178 that collective entitlements to property have to be justified (to those whom they exclude) just as much as exclusive private property does.) Both may generate reason for thinking that the collective owners are not entitled to drive away newcomers who want to settle near them.

14 Another way of developing the same point is to say that not every interest that would be served by excluding outsiders rises to the level of a right to exclude outsiders. And our question is precisely about whether people can be imagined to have such a right, not just about whether they would benefit from outsiders’ being excluded.
have been established in a community. The demography of a community with a given set of public goods may change due to immigration. (Of course it may change for all sorts of other reasons too.) The impact of such changes on public goods may vary according to the nature of the publicness. If a given public good is non-crowdable, then the only question is whether the would-be immigrants are prepared to contribute their fair share of maintaining it. (Nothing in my argument would yield the result that it is wrong to force them to pay.) If a public good is crowdable (but public nevertheless on account of the nature of its provision), it is conceivable that a new good will have to be set up whose scale can accommodate the new-comers. Or it is possible that the existing inhabitants of the area might want to convert the relevant public good into an exclusive collective good.

Whether this is permissible or not is another matter. It will depend on the character of the good. Some public goods that we set up may be understood as potentially private in their ethos and orientation. We may set up a neighborhood garden which, under present circumstances, is open to anyone; but which might be closed, under other circumstances, and made available only to the residents of the neighborhood without undermining the point of setting it up. (Certain “public” gardens in Edinburgh’s New Town are like this.) Our understanding of other public goods may not permit this. Having set up a voluntary fire brigade or a free clinic or a neighborhood watch, it may be difficult to

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15 I am imagining that some public goods may come into existence even apart from state and law—though obviously state and law play an important part in overcoming the collective action problems involved in the provision of certain public goods.

16 Goods are sometimes referred to as public goods on account of their non-excludability, or on account of their non-crowdability, or on account of the necessarily collective character of their provision. These different senses of publicness raise different issues for our discussion. Notice also that these characteristics are all matters of degree. A good may be effectively non-excludable because of the high costs of exclusion; and it may be effectively non-crowdable under certain demographic assumptions and not others. And so on.
reconcile oneself to their “privatization.” Though privatized forms of these goods are imaginable, their privatization in response to the presence of newcomers might seem indefensible. We might say to ourselves, “Having set up goods of this kind, we must set them up in an open way, so that they are potentially available to anyone who makes a life for themselves around here.”

Either way—I mean, whether we privatize previously public goods or make them available to newcomers—it is not possible to see in these issues any justification for the proposition that the existing set of providers and beneficiaries are entitled, jointly or individually, to drive the newcomers away. Existing societies have to make adjustments in their public goods for all sorts of reasons—endogenously generated changes in population, for example—and in all sorts of circumstances. No individual or community has a right to protection against the prospect of such changes, let alone a right to act forcibly to prevent them.

8. Redistributive practices
The society that the newcomers are targeting may operate some form of charitable redistribution from rich to poor, and it is often said that immigration puts pressure on such a practice by introducing more poor people into the community. The result may be that the practice of charity either becomes more demanding on contributors or more restrictive on beneficiaries or both.

There are empirical issues here and moral issues. Empirically we may query whether immigrants are more or less likely to be self-sufficient than the existing poor of a society. Even if they are, there are questions about the appropriate moral response to such pressure, along lines similar to those discussed towards the end of the previous section.
With an influx of newcomers, existing members of the society may contract their charitable practices so that they offer assistance only to those indigent members whom they are already helping. Or they might reckon that this would be unconscionable, since charitable practices are predicated on the sheer fact of need, whatever its volume; so they will go ahead and adjust their contributions one way or another to take into account this new set of mouths to be fed.

Either alternative may be painful for those who contribute charity. But again—as with competitive loss—this is not the sort of pain that one is entitled to defend oneself against using physical force. Indeed it approaches obscenity to say that people are entitled to drive newcomers away in order to avoid pressure to modify their own charitable practices to cope with the newcomers’ needs. If I have a practice of regularly giving charity to a particular small set of needy people and then two or three new needy people come along into the same vicinity, I may have to modify my giving or combine it with hard-heartedness. But I am not entitled to drive away the two or three newcomers away just because their presence puts me to this difficult choice.

9. Cultural arguments
Besides economic arguments, cultural arguments are sometimes adduced to justify restrictions on immigration. How do these fare in a Lockean state of nature?

First, a provocation. Consider the most deeply felt form of cultural solidarity: the shared beliefs and practices of a religion. Are the practitionerers of a given religion entitled to drive those who hold different beliefs and hew to different forms of worship away from their vicinity? Again it is long- and well-established in our tradition that religious belief and practice are not be protected with any sort of coercive rule, let alone a rule that excludes from a given vicinity people whose faith is
heterodox (in that vicinity). The prevalence of religious belief in a given area just has to take its chances with the mix of people who are in that vicinity from to time to time. A cluster of adherents to a given faith are not entitled to establish the religious homogeneity of the area where they live by driving others out of that area and nor are they entitled to protect such homogeneity as happens to exist by driving newcomers away.\textsuperscript{17}

Most modern defenders of cultural homogeneity are not comfortable with analogies between culture and religion. But a shared religion is usually every bit as important to the people who enjoy it as a shared non-religious culture is; often more so. If we accept the established assumptions of the previous paragraph, we cannot possibly think that driving people away because of a difference of non-religious culture can be justified because of the importance, to those who practice it, of a shared culture.

Modern political philosophy has really never been shabbier than in its invocation of “cultural rights.” Citizens of prosperous and indubitably pluralistic societies feel entitled to cobble together some image of French culture or English culture, as it might be, which they then maintain as being imperiled by immigration. I know the English case best. English political philosophers talk about the importance of defending English culture. When challenged to say what it is, they will mumble uneasily, mention something about queueing at bus-stops, and maybe they will invoke John Major’s \textit{bons mots}:

\textsuperscript{17} We sometimes talk loosely about the modern state as “Westphalian.” But under the Peace of Westphalia, princes were permitted to established religious orthodoxy in their territories. \textit{Cuius regio, eius religio}. No one now believes that states are entitled to organize themselves on this basis, or that modern states might inherit this right from the communities that they govern. How then did it come about that so many political philosophers are comfortable with the idea of cultural homogeneity, or at least cultural privilege for the customs or way of life of the majority of inhabitants of a territory? Mainly, I think, by refusing to consider the analogy between culture and religion
Fifty years on from now, Britain will still be the country of long shadows on cricket grounds, warm beer, invincible green suburbs, dog lovers and pools fillers\(^{18}\) and, as George Orwell said, “Old maids bicycling to holy communion through the morning mist” and, if we get our way, Shakespeare will still be read even in school.\(^{19}\)

It is on the basis of this sort of nonsense, that people who don’t play cricket and wouldn’t be seen dead going to Holy Communion claim that they are entitled to resist the immigrant hordes on cultural grounds.

But I digress. Let’s not deny (at least not here) that a shared culture is important.\(^{19}\) Opinions differ on this, and no doubt it is something we should all be studying. I am saying that even if it is important, it is not the sort of importance that could justify coercion or justify driving people away.

The value of the Lockean style of argument we are exploring is that it forces us to confront this difference. There are lots of things we might wish for, for our community—lots of things which are in our interests, even—but which we are not entitled to secure coercively on our own behalf.\(^{20}\) Sometimes advocates of immigration restrictions write

\[^{18}\text{This is not a reference to swimming pools but to “football pools,” a form of legalized gambling on weekly soccer results.}\]

\[^{19}\text{What about the protection of a language? Some may infer from the general acquiescence in Francophone signage laws in Quebec that coercion in the preservation of a language is not per se objectionable. Maybe our villagers are entitled to drive others away if they speak a different language or if they represent the incursion of a regionally dominant language into the enclave of a minority linguistic community. I am not sure what to say about this, except that many of us oppose the premise or any inference from the premise that would justify this sort of coercion.}\]

\[^{20}\text{Compare David Miller, in “Immigration: the Case for Limits,” on interests:}\]

[T]he public culture of their country is *something that people have an interest in controlling*: they want to be able to shape the way that their nation develops, including the values that are contained in the public culture. They may not of course succeed: valued cultural features can be eroded by economic and other forces that evade
as though attention to these cultural interests “dictates” the imposition of restrictions on immigration; but that is too simple as an account of the relation between interests, on the one hand, and coercive restrictions on the other.

People who take the sort of “applied ethics” approach to immigration that I mentioned at the beginning of this paper often think of it as just the accumulation of reasons that favor allowing immigrants in and reasons for excluding them—both sets of reasons applying to the state, which is assumed to have jurisdiction in the matter. The idea is that we set out the various reasons on both sides and then weigh and balance them in a broadly consequentialist way, hopefully a fair way; and we reach a conclusion about what the state is justified in doing. But the Lockean approach forces us to look behind the easy assumption of the state as the subject of these arguments. It forces us to consider directly the coercion that is always in prospect in state action. If we consider such coercion apart from the state—imagining instead the members of a settled community (without a state) rushing at newcomers, uprooting their tents, beating them up, throwing rocks at them, driving them away—then we have to ask whether the reasons on the applied ethicist’s list in favor of excluding immigrants can possibly justify actions of this kind. In and of themselves, the reasons may sound relevant, harmless, admirable even, in a modern context of policy

political control. But they may certainly have good reason to try, and in particular to try to maintain cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches backward historically. (my emphasis)

I don’t believe that identifying an interest that people have in restricting immigration rises to the level of a justification of the coercive imposition of such restrictions. On the other hand, Miller is right to insist that, by itself, the interest that the immigrants have in coming to the target society doesn’t settle the issue either. (See ibid., p. 194.) We can however to point to one thing that distinguishes the would-be immigrant’s pursuit of his interests from the members of the target society’s pursuit of their interests: they propose to pursue their interests coercively; the would-be immigrant does not.
justification, where we can assume in principle that the state has a right to act in this matter. But any such assumption is question-begging in the Lockean approach. We have to confront the raw reality of coercion unsanitized by the assumptions that pervade the conventional treatment of this problem as just a problem of the costs and benefits of public policy.

Those who base their advocacy of immigration restrictions on cultural considerations are not always insensitive to this point. They may accept that the interest that the members of a society have in their shared culture has to be a pretty serious or intense interest, perhaps rising even to the level of a need, before it can justify restrictions on the movement of others. But the more serious or compelling the claim, the less it is likely to be satisfied by the threat (such as it is) that immigration poses to a particular shared culture. Everyone knows that cultures change and everyone acknowledges that immigration may be a source of such a change. But a changing shared culture is not the same as the destruction or absence of a shared culture. A society’s need for a shared culture—in any sense of need that can do the requisite legitimating work—may be satisfied by a culture that is the resultant of immigration-fuelled change as well as change driven by factors independent of immigration. David Miller calls this the “any culture will do” position and he argues that not any culture will do, because of people’s affection for the particular one they have grown accustomed to.

(Back to cricket and Holy Communion!) Maybe he is right; but that takes us back to the question of how serious or compelling their affectionate investment is. Is this aspect of their involvement with a particular version of cultural nostalgia so compelling as to justify restricting the freedom of others whose presence does not undermine the continuing possibility of a culture that is shared in some other sense?
10. Social models

Cultural arguments for opposing the approach of newcomers sometimes have to do not with the value of a particular way of life that we around here would rather like to continue, but with deeper issues of trust that go to the nature of the social bond that might or might not be formed between newcomers and members of the existing community. These considerations are partly cultural, partly economic.

In his excellent recent book *Exodus*, Paul Collier has spoken about the “social model” that characterizes any stable community; he means its institutions, norms, and expectations and the way they fit together to define not so much a culture in the sense we have been discussing but a way of interacting—a way in which one person’s getting on or one family’s getting on relates to thousands or millions of others’ getting on in the same society. The social model is a set of established pathways of trust, discipline, and interaction—ways in which cooperation and competition among thousands or millions of strangers are made possible. A good social model, conducive to security and prosperity, is a long-term achievement, he says; it is social capital built up over centuries.

Now, even though outsiders do not come as marauders, they often come from communities with dysfunctional social models: they are in fact in quest of the benefits of a better social model. But not having been participants in the social model of the target community, their actions and expectations taken in the aggregate may pose a threat to it by undermining or loosening the particular social bonds that hold it together. Collier identifies this as a major cost of immigration, and we may accept that. But again we must ask: is this the kind of cost that a

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21 In the real world, a social model is partly a political or legal achievement. But it is partly also a matter of social pathways and the sharing of informal norms and expectations which can be imagined apart from a state. So there is nothing inconsistent with our Lockean assumptions in imagining that members of a stateless community may apprehend the danger of stress to their social model by the approach of newcomers.
community is entitled to defend itself against forcibly, by its members’
driving the newcomers away?

I have my doubts. It is true that a social model may comprise
certain norms that are enforced coercively: members of the community
may enforce property laws and contracts (to the extent that this is
possible without a state). If newcomers migrate into the society they
will be liable to such enforcement as well. But that is quite a different
matter from driving people away simply because the relevant social
model is likely to come under stress from the presence of people like
them.

Also, a good social model has to have an amount of redundancy
built into it so it can cope with varying degrees of support and
compliance even within the given society over time. And it has to have
flexibility built into it to adapt to changes in attitudes, ethos, and so on
over time that are going to happen anyway. A social model that lacked
these attributes would hardly be worth defending. Moreover the social
model has to be able to accommodate various classes of newcomers—
quite apart from the issue of immigration. For instance, it has to be able
to accommodate new generations, new persons entering fields of
commerce or other economic activity in which they have hitherto not
been involved, and people working with new assumptions on account of
changes in surrounding circumstances.

But a more telling point is this. Defense of a social model is under
consideration here as something standing apart from the point that a
society is entitled to defend itself against predators and marauders (see
section 3, above). The suggestion is that the attitudes and cultural
experience of the newcomers can themselves constitute reasons to drive
the newcomers away, quite apart from whether those attitudes do or will
reveal themselves directly in anti-social behavior. I don’t doubt that
Collier has put his finger on something that is important and that should
be counted in a simple applied-ethics cost/benefit policy analysis of the gains and losses associated with immigration. (But we should also count the cases where a society’s social model is improved by immigrant entry.) For our purposes, the question as always is whether a consideration has been identified that would entitle people coercively to drive away those whose mere attitudes they suspect in this way.

I think it is difficult too to deal with the aggregative character of the changes that worry Collier. We are not talking about any particular immigrant or band of immigrants whose presence will upend the social model of the community they are approaching. The process Collier is talking about is long-terms and accumulative. But if immigration restrictions are a way of combatting it, they have to be administered migrant-by-migrant. We drive this person or this group away, because of what we fear from hundreds of such persons or groups over (say) twenty years. It is possible that with this prospect, we reach the limits of the Lockean model: perhaps states have to be instituted to safeguard goods whose endangerment has this *longue durée*.

But the longer the *durée*, the weaker the case that can be made for coercively defending the social model against outsiders. For as we have seen, social models have to change anyway. Like all economic structures, they have to be open to market relations, which are essentially relations among strangers, of various kinds, rather than intimates. If Adam Smith is right that “[i]n civilized society [man] stands at all times in need of the cooperation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship

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22 In these sections (6 through 10), I have not rested much on empirical doubts about the economic, cultural, and social-model claims made by the defenders of immigration restrictions. This is partly because contesting these claims would be entering into a game that had as one of its rules that if the claims *can* be sustained empirically, then they can justify driving would-be migrants away. I have not wanted to concede this. (Of course one can always argue in the alternative.)
of a few persons,” then a viable social model cannot be predicted on anything analogous to friendship relations within a community. It has to be more open and flexible than that.

11. Non-Lockean arguments

Maybe there are other Lockean arguments for the right to exclude outsiders in a state of nature that I have not considered. I can’t imagine what they are.23

In any case, I acknowledged in section 2 that non-Lockean arguments for restrictions on immigration are not out of the question. These will be arguments that make no sense apart from the situation where a state has become established. Such arguments assume—quite rightly—that some sort of state is justified, and not merely justified in a weak sense of the balance of reasons, but justified in the sense that it is entitled to act coercively, to defend itself qua state and to be defended by its subjects. This assumption in turn will be related to the point that the state serves compelling interests of its subjects in a legitimate way, and it is to be conceived as something (or as though it were something) that they had set up in order to do this.

Now this characterization cannot itself generate directly an argument for state-imposed restrictions on immigration. For it has not been shown that this is the sort of interest, which subjects have, that may in principle be pursued by coercive means. I guess what needs to be shown is that, having set up a state for other purposes that may legitimately be advanced by these means, they have a right to restrict

23 Many articles in the law review literature that link Locke to immigration issues, do so only in a broad sense, considering the relation between immigration restrictions and property or considering the relation between immigration restrictions and the general Lockean idea of a liberal constitutional state. This literature is valuable, but it does not really pursue what I called (in section 2) the “Lockean” approach to the legitimation of state powers by imagining such powers in the hands of individuals or communities in a state of nature.
immigration because that is necessary for the state to be able to operate for these other purposes.

Let me give an example of how such an argument might go. In order to do the things that it is entitled to do, and that its subjects are entitled to pressure it to do, a state may have to have some way of keeping track of who is who and who is in its territory. Maybe a modern state needs this knowledge in order to operate legitimate regulatory, welfare, and democratic mechanisms. This may therefore justify a requirement that any outsider who enters the jurisdiction of the state must register with the authorities. Of course that is not the same as an entitlement to restrict entry. But structurally it affords an illustration of the sort of thing I have in mind as a possible argument in this area.

Intimations of such an argument for a state’s right to restrict immigration are quite common. Michael Walzer suggests, in Spheres of Justice, that states, almost by definition, have a right and responsibility to control their borders. The idea is that if we set up a state to solve other social problems and advance other aspects of the common good, what we are setting up is some entity that must also take control of its borders.

I don’t think much can or should be rested on such a definitional move. Rest too much on it, and we may be required to rethink our assumption that states, so defined, are legitimate. For example, people sometimes refer to the modern state as “the Westphalian state.” But the Peace of Westphalia entitled every ruler to enforce his own religion within the borders of his own territory. We utterly reject this notion and if we were to use “Westphalian state” less loosely than we do, we would have to say that Westphalian states, as such, are not entitled to exist. Well similarly, anyone who uses a definition of the state that entails a right to restrict immigration has to be prepared to confront arguments

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24 This is the point I made in footnote 16 above.
that states so defined may not be permitted to exist, and that we should promote the existence of political entities that have all or most of the powers that “states” have on this definition, but just not this immigration power. In other words, we should insist, even in the face of such a definitional maneuver, that the legitimacy of the state’s right to restrict immigration must be regarded as an open question, to be settled by argument (of the right kind).

In any case, the term used in these proposed definitions—a state has a right “to control its borders”—is ambiguous. A state has the right and the responsibility to control its borders against the encroachments of other states—against their armies, for example. That much is clear. On the other hand, many of us insist that the state does not have the right to control the passage of ideas across its borders. Some would say that the state does not even have a right to control movements of capital and investment resources across its borders (though it may have a right to keep track of such movements). Many of us would say—Walzer announces that this is his view—that a state that has the right to control its borders does not have the right to restrict emigration. So: where, in this array of possible things that might or might not be comprised in the claim “a state has a right to control its borders,” would we locate a putative right to control immigrants? Is it more like a right to resist encroachments by other states’ armies, or is it more like the movement of capital or ideas? What we need at this stage are arguments, not definitions.

It is not my task here to come up with possible arguments; all I am doing in this final section is illustrating the relatively limited space that is left for the case in favor of immigration restrictions if what I have called the Lockean argument for such restrictions is unsuccessful.25

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25 If space permitted, I would give attention to an argument by Thomas Christiano, “Immigration, Political Community, and Cosmopolitanism,” 45 San Diego Law Review 933
Let me end, though, by illustrating one other argument, perhaps on the cusp of Lockean and non-Lockean arguments. It is sometimes said that the Lockean argument for a right to punish in the state of nature is precarious because punishment in the state of nature is always likely to be unruly, to get out of hand, to get horribly mixed up with vendetta and so on. In fact John Locke acknowledged this point:

To this strange doctrine, viz. That in the state of nature every one has the executive power of the law of nature, I doubt not but it will be objected, that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends: and on the other side, that ill nature, passion and revenge will carry them too far in punishing others; and hence nothing but confusion and disorder will follow…

And he responds:

I easily grant, that civil government is the proper remedy for the inconveniencies of the state of nature, which must certainly be great, where men may be judges in their own case.

(2008), to the effect that democratic states represent achievements which their citizens are entitled to defend against surges in immigration that might undermine them. It is an interesting argument. But as with our argument about social models in section 10, it may falter on the issue of the necessary open-ness of democratic arrangements. The fact that democracy works best for a club of people who like each other and are willing to work with each other is not in itself a reason for refusing to admit to the benefits and responsibilities of its operations others whose attitudes are somewhat different. If that were the case, then there would have been this to be said in favor of apartheid South Africa: that it defended democracy (amongst white citizens) from the transformation that would be involved in admitting black people to the franchise. But that would be a ludicrous argument: white Africans were not entitled to put the preservation of their comfortable democracy among themselves as a reason for denying democracy to other South Africans. Why, similarly, would it not be ludicrous to say that defending a comfortable democracy is in itself a reason for refusing to admit newcomers to a political community? If there is a difference between the two cases, it would have to depend on something else, not just the value of a comfortable democracy.
His whole point is that, even though in principle people have the right to punish in a state of nature, in fact the exercise of that right will be so unruly that it had better be vested in a state pretty damned quick. And we might express that point—though Locke didn’t—by saying that for all practical purposes people do not have a right to punish in the state of nature.26

I can imagine something similar being said about the right to drive away would-be migrants in a state of nature: it is likely to be so unruly and to get so out of hand that even if in principle people had this right in a state of nature, it could only be safely exercised by vesting it as soon as possible in the ordering power of a state. But in fact this was not the argument we made in sections 5-10. The argument there was that driving newcomers away was coercive and unpleasant—and so, by the way, are the anti-immigrant actions of modern states—and that the economic, cultural, and social-model justifications usually adduced for this are simply not the sort of reasons that could justify these sorts of actions. Nothing depended on the issue of unruliness. So this way of arguing that a right to restrict immigration comes into its own with the emergence of a modern state will not do.

12. So what?
What if there are no good arguments (Lockean or otherwise) for states’ having the right to prevent people from crossing their borders? It would be naïve to think such restrictions will wither away.

Societies differ in their attitudes to immigrants and states differ in the laws they impose. But, whatever the philosophers say, no state in the modern world is going to abandon immigration controls. The closest we will get is something like the Schengen accords in (a large part of)

26 The JSD dissertation of Rocío Lorca Ferreccio, which will be defended at NYU Law School on June 12, reaches a similar conclusion by a similar route.
the European Union and freedom of movement in the EU generally—and even that is under severe pressure from countries like the United Kingdom.

So what’s the point of a paper like this? The main aim has been to show that many of the arguments usually adduced in favor of immigration restrictions are not really good or complete arguments at all. They are just listings of costs and benefits; they have not really confronted the underlying issue of whether states have the right to act coercively on the basis of the kinds of interests that are asserted in this debate. They take on a different feel or flavor when they are considered in the state of nature context. Exhuming John Locke and Robert Nozick zombie-like from their graves does us at least this service. If this leads to a discussion of immigration that more seriously considers the fraught relation of cost-benefit analysis to the legitimacy of state power, then that will have been helpful.27

Beyond that, the aim of normative argument in these matters is not necessarily to galvanize political change. It is to have some impact on confidence or pride or self-satisfaction with which various state powers are administered (in our name). Some such powers we are proud of and rightly so. Others we are ambivalent about, or shame-faced in our willingness to put up with them. Should the right to restrict immigration

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27 I have also tried in this paper to indicate the possibility of lines of argument that do not concern themselves with global justice. Nothing in the pro-immigrant position defended here has anything directly to do with concerns about global justice or cosmopolitan conceptions of distributive justice. I don’t deny that those are important concerns, and that a case against immigration restrictions can be made on the basis of the arbitrariness of the assignment of valuable resources to particular territorial states and peoples. But I have not pursued that line of argument here, nor any of the restrictionist responses to it. Put crudely, the global justice case has migrants coming to a country to claim resources that they think they have some moral entitlement to under global justice. I have pursued the contrary but more realistic line that migrants come to a country not so much to demand a share of its resources, but to enjoy the benefits of its open economic networks. The Lockean scenarios set out on pp. 8-9 helped us with this. The case did not involve any challenge to existing property rights. (But see also the brief discussion in footnotes 7 and 11.)
fall into the latter category? Maybe. That’s what I have been trying to show.
Among others who challenge the fundamental assumption that states have the right to exclude immigrants is Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” 49 Review of Politics, 251 (1987), who challenges the view that the right to exclude may be exercised by each state in pursuit of its own national interest. Peter Schuck’s article “The Transformation of Immigration Law, 84 Columbia Law Review 1, 85 (1984), speculates that “in a truly liberal polity, it would be difficult to justify a restrictive immigration law or perhaps any immigration law at all.” See also Phillip Cole, Philosophies of Exclusion: Liberal Political Theory and Immigration (Edinburgh University Press, 2000).

b Locke, Second Treatise, §§7-13 and 190.

c Locke, Letter Concerning Toleration. Locke also uses the reverse argument that we considered in section 1: that since the state can have no power over people’s religious belief (because of the sort of entity it is), individuals can have no such power either.

d See Nozick, Anarchy State, and Utopia, pp. 6-9.


f Locke, Second Treatise, §§ 27 and 33.

g Locke, Second Treatise, §41.

h See Waldron, Minority Cultures and the Cosmopolitan Alternative” in Kymlicka (ed.)

i For a reasonably strong version of this, and an exploration of what it entails, see Michael Blake & Mathias Risse, “Immigration and Original Ownership of the Earth,” 23 Notre Dame Journal of Law, Ethics & Public Policy 133 (2009). They say (p. 137): “Our guiding thought is simple: if the earth is originally collectively owned, this fact must affect how political communities can regulate access to the part of the earth they occupy.”

j Kant, Metaphysics of Morals 6: 262 (Gregor, Practical Philosophy, p. 414). < check page no. 412 or 414? Kant’s philosophical use of this idea an original common right to the world has to be juxtaposed, however, to his more concrete concerns about imperial exploitation. See Kant, Metaphysics of Morals, 6: 352-3 and Towards Perpetual Peace, 8: 358-60.


n Locke, Second Treatise, §§ 27 and 33. See also Nozick on the “Lockean proviso” (ASU, pp. ___).

o Michael Walzer has done more than any other philosopher with this notion of the implicit understanding of certain goods. See Spheres of Justice, Ch. 1.
John Major, former Prime Minister, at a speech to the Conservative Group for Europe, April 22, 1993. The reference to Orwell is to a 1941 essay “The Lion and the Unicorn.”


Ibid.


Citation? (Maybe it wasn’t Walzer; but common enough.)

*Spheres of Justice*, p. ___.


Ibid.