

Public Ethics Radio

Public Ethics Radio • Centre for Applied Philosophy and Public Ethics
Australian National University • LPO Box 8260 • Canberra ACT 2601 Australia
contact@publicethicsradio.org

Transcript of Episode 11, Christopher Heath Wellman on Immigration

Released November 2, 2009

Please note: While we make every effort to ensure the accuracy of transcripts, they may vary slightly from the original broadcast.

MATT PETERSON: This is Public Ethics Radio. I'm Matt Peterson.

We normally think it's unfair when people have poor lots in life because of their ethnicity or their gender. These characteristics are morally arbitrary, and, by and large, we think individuals' chances at a good life shouldn't depend on arbitrary characteristics.

Nevertheless, in reality, one of the most important determinants of a person's quality of life is her place of birth. We understand intuitively that a person born in Norway has much better odds of doing well in life than a person born in Chad. At least part of the reason for the difference is that people aren't able to freely move across borders to places where their life prospects would be considerably better.

Take the example of Haiti and the Dominican Republic, which share a Caribbean island. Life expectancy at birth in Haiti is 58 years. In the Dominican Republic, it's 70. The border between those two countries—justifiably or not—prevents some from improving their life prospects; we know this because many thousands of Haitians cross the border each year illegally, despite harsh sanctions that face them if they are caught.

Yet what could be more arbitrary, morally speaking, than where a person happens to be born? It has long been uncontroversial to say that governments don't have an absolute sovereign right to do as they wish within their borders. Granted, states still do harass and repress their populations, but we don't believe that it's right. It is much more controversial, however, to suggest that states have a less than absolute right to control their borders—to allow or prevent people to come into their territory, and to freely grant or deny citizenship.

The philosopher Joseph Carens has called the control over national borders "the modern equivalent to inherited feudal privilege." Is this critique accurate? Or can the absolute right to control borders be justified, and form part of a fair international order?

To get a grip on these questions, Christian Barry discussed immigration and citizenship policies with Christopher Heath Wellman, Professor of Philosophy at the University of Washington, St. Louis, and a Professorial Research Fellow at the Centre for Applied Philosophy and Public Ethics, an Australian Research Council Special Research Centre.

CHRISTIAN BARRY: Christopher Heath Wellman, welcome to Public Ethics Radio, and thank you for joining us.

CHRISTOPHER HEATH WELLMAN: Well, thank you for having me.

CHRISTIAN BARRY: So you're a liberal theorist yourself, yet you also disagree with Joseph Carens and others who've advocated an open borders strategy or at least you argue with the claim that states do not have as they currently enjoy a moral right to exclude people from becoming citizens of their territories.

CHRISTOPHER HEATH WELLMAN: Right. Yeah, I think that on its face, it seems pretty clear that you need to open borders, precisely because of the idea of treating people as free and equal. My own view is that when you scratch a little deeper though and you start thinking seriously about how we should understand freedom, and how we should understand equality, that it's not necessarily unjust to have closed borders. Now that said, I hasten to add, I'm not defending the status quo. I don't think the status quo is justified, and I can understand why people like Carens and others object to it. But my point is that there would be a way of arranging things, international affairs, which is compatible with treating people freely and equally and also having closed borders.

CHRISTIAN BARRY: So how would that work exactly? If states enjoy the right to exclude people from their borders, unless they choose to exercise that right in a way that is relatively liberal, namely allowing large flows of people, how is it possible that the international order as a whole could be treating people equally, where the interest is of equal weight, if it was still allowing states' prerogative, at least if it was any time in the near or middle term, people's life prospects are going to be very strongly differentially affected by their place of birth and citizenship.

CHRISTOPHER HEATH WELLMAN: Right, well, there are two parts to the answer. Even if we just focus on equality, which I think has traditionally been the most popular avenue for those people who want to defend the necessity of open borders. I think there's two things to bear in mind. One is that, following authors like Elizabeth Anderson, I'm not convinced that the reason we should really care about equality is to get rid of all matters of luck involved. I think that the real reason we care about equality is because those who have less are often predictably vulnerable to oppression. And so I think that the mere fact that someone may be worse off than another just because she was unlucky enough to be born in another country is not necessarily unjust.

But put that to the side. I think that even if you are worried about the dramatically different life prospects, say, between what Norwegians can expect and what Chadians can expect, one obvious way is to open the borders. But that's not the only way that you can correct that. So if you're really concerned about how much Norwegians have and how little Chadians have, you can also take some of the wealth and assets of the Norwegians, and redistribute it to Chad. And if you do that, it may not necessarily be unjust for the Norwegians to say that we would like to keep it an exclusive political community here. And the point is—and this is why I say I don't defend the status quo—the point is not to say that the Norwegians can just turn their back on everyone who's less fortunate than they. On the contrary, the point is that if they want to jealously guard their borders, they have other ways they can attend to some of the legitimate interests of

foreigners, rather than just opening up their borders. They could distribute to them and stay exclusive.

And I just briefly I want to add, this is how we do things domestically, for instance. If you have a very wealthy person, say you've got someone like Warren Buffett, and he makes a spectacular amount of money, and there may be other people who make considerably less, nobody thinks that Warren Buffett because he's so wealthy may not marry or raise a family which excludes these less well-off people, rather—and there's a great deal of variety about how much people think that Buffett may keep—but there seems to be a consensus that whatever Buffett owes to those less fortunate fellow citizens, that it's perfectly within his rights to maintain an exclusive family, and just transfer some of his funds, share some of his funds with less-fortunate compatriots.

CHRISTIAN BARRY: Let me take up that analogy, because of course when you're talking about the Buffett example, you're talking about citizens within the domestic context, in this case the United States, which, for all of its political and economic flaws, is a reasonably well-governed society, at least to the extent that engaging in some kinds of transfers arguably, would have a pretty good likelihood of making the recipients pretty—better off. I think that one of the doubts that people have when we're talking about those particular those that have strongly, strong feeling of necessity, for migration, is that there simply aren't alternative means of making those people not even equal, but even have a minimally adequate package of basic liberties, that throwing money at the problem as it were is not one way that's going to work, and so liberalization may be, if not the only way, at least the best bet in the short term or medium term.

CHRISTOPHER HEATH WELLMAN: Right, yeah, so, you know this literature better than I, but my sense is that there's an enormous amount of work going on right now questioning how effective foreign aid is, and saying that a lot of times it's inefficient, ineffective, a lot of times it's actually counterproductive and does more harm than good. And contrast that with immigrants, who on the whole seem to do dramatically better once they're admitted to relatively stable liberal democratic states with robust economies. Given that, it's tempting to say, OK, in theory perhaps you could redistribute, but not so fast. As our recent history shows, redistribution doesn't do the good that immigration would do, and so as a matter of fact in the real world, with our limits of understanding, we are in fact required to open our borders.

I think though this is a little quick for a couple of reasons. One is—and the most obvious—and this is a point that's been made by David Miller and others—is that when we have relatively porous borders, the people who end up profiting in the poorest countries, are the relatively well off, not the poorest of the poor. And so what happens is that, the Chadians for instance who do make it up to Norway are not the worst of the worst. They tend to be the engineers, the nurses and things like this. And so it's not just that we're not helping the worst of the worst, but the worst of the worst may end up being in a worse situation than before because of the brain drain or the loss of human capital. On the other hand, people point to—they say not so fast, because when these laborers come over, often times they remit much of their money. And so, say if somebody comes over to the United States, from Mexico for instance, and she works in the United States, and she remits half of what she makes to her family in Mexico, that

dramatically helps her family because of the proportionate income in Mexico, it dramatically helps the family at home, and so it's a more complicated story.

But the other thing is, and I'm, I just may not be as familiar with the literature, but I'm just not confident that over the long haul, that we can't figure out better ways to help people where they are. And I think that immigration is not over the long haul going to be the best solution for the world's worst-off people. Because even if we have entirely open borders, there are going to be masses of people who stay in these areas, who are going to need help one way or another, and so I think that we need to go about finding more effective ways to help them.

CHRISTIAN BARRY: You mentioned remittances, and you also mentioned the fact that the people who do tend to come into countries tend not to be the poorest of the poor or the most vulnerable. I mean that's not strictly true, but it often is the case. And I wondered, since we were talking about the rights that states have, to refuse entry to would-be migrants, whether you had views about the permission that these states have to accept would-be migrants, given what might be happening as a result to their sending communities. So, for example, if what you say is true, and certainly with respect to certain professions and certain areas, the brain-drain is a real phenomenon, where highly skilled people are leaving their countries, in which often there's been a lot of expensive investment in their skills, going to opportunities, they're not going illegally, they're going because they have skills-based migration visas available to them. And this puts a tremendous strain on health infrastructure and many in that country. What sort of attitude do you think that a state, not what it should do, but what do they have a right to do in those sorts of cases? Is it even permissible for them to engage in skills-based migration? Is it something that they can do it, but they owe further compensation?

CHRISTOPHER HEATH WELLMAN: Yeah, that's a great question. My thinking has been influenced by Gillian Brock's work on this. She's got a recent book, *Global Justice*, which has a chapter on immigration. So we have countries like Canada, for instance, who very actively recruit certain professions. So what they'll do is they'll do a survey of their economy, and they'll recognize that we have a relative shortage of nurses, say, and computer programmers. OK, and so then they will not just allow open immigration, but they will actively recruit, and they'll say we have this many spots for nurses. And what ends up happening is that nurses don't come from the United States to Canada. What you have is you have nurses coming from developing countries where there is not the best provision of health care. And so this is especially important. It's one thing if Canada is stealing away the best opera singers from Italy or something like this. Not nice perhaps, but it doesn't seem like a human rights issue. But if Canada is actively recruiting and admitting nurses from a developing country where the people already don't have an adequate access to health practitioners, then that seem like a human rights issue.

Now the knee-jerk reaction is to say Canada may not admit these people; it has to exclude them. And I think that's too quick.

A more sensible solution, and this, as I understand it, is Brock's proposal, is that the wealthy countries which are importing these workers need to be cognizant of the situation on the ground and if they're—in the countries from which they're imported, and if the people there are—have a health deficit for instance, then the importing

country has a responsibility to transfer funds or try to help build schools which teach nursing in these countries, so that it ends up not being a net loss for the country from whom these people come.

CHRISTIAN BARRY: You're listening to Public Ethics Radio, where we're discussing immigration in theory and practice with Christopher Heath Wellman. We're going to take a short break, and we'll be back.

MATT PETERSON: This is Public Ethics Radio.

CHRISTIAN BARRY: Welcome back to Public Ethics Radio, where we're discussing immigration in theory and practice with Christopher Heath Wellman.

CHRISTIAN BARRY: One of the things that we've been discussing so far has been what states owe to other states insofar as they exercise their right to exclude would-be migrants from becoming citizens. But we haven't really talked about why we should believe that states have this right in the first place. We mentioned one consideration that might suggest that they don't have this right, namely equality of opportunity, understood in some way. So what in your view is the fundamental moral ground of the right that you assert that states have to exclude would-be migrants?

CHRISTOPHER HEATH WELLMAN: The short answer is political self-determination. And I should specify that I don't think all de facto states necessarily have the right. My view is that only legitimate states have the right to exclude outsiders. And my reasoning is - involves three basic steps.

The first is that legitimate states are entitled to a right of political self-determination. The second point is that freedom of association is an integral component of self-determination. Unless you enjoy freedom of association, you're not entirely self-determining. And third of all, that freedom of association necessarily involves the right not to associate with some others. All right, the difference between freedom of association and a right of assembly, for example, is that you can choose whether or not you want to associate with certain peoples, and in some cases to disassociate from them. So if you put those three together, I think that there's a natural presumptive—not necessarily an absolute, but a natural presumptive right for legitimate states to be able to decide whether or not they want to associate with other immigrants who would like to come in.

So if you'd just like an analogy—a domestic analogy is that an average person is supposed to be self-determining. She has the right to be the author of her own life, OK? And a very important component of that is freedom of association. So it's thought for instance that you get to decide who you're going to marry or if you're going to marry, somebody, as much as I might love—

CHRISTIAN BARRY: It's a very domestic analogy

CHRISTOPHER HEATH WELLMAN: Yes [laugh]. That's right, as much as I might love you, that doesn't give me the right to unilaterally marry you. I can invite you to marry me, and then you might say yes or no. So you have the option to reject an association. And you can see why that's such an integral part of self-determination, and

how much your self-determination would be undermined if you were not given that right. And so if I'm correct that legitimate states are entitled to be political—politically self-determining, I think it follows pretty straightforwardly that that includes at least a presumptive right to exclude others who would like to join in the political association.

CHRISTIAN BARRY: And is this right symmetrical, such that a self-determining state can also exclude present members? Or is it asymmetrical in that sense?

CHRISTOPHER HEATH WELLMAN: So that's a good question. I actually don't think that there's symmetry between who a state may keep out and who a state may kick out. So I do believe that legitimate states are entitled to exclude everyone if they would choose to do so. But I certainly don't think that a state can tell its constituents or a portion of its constituents that they have to leave. And the reason for this, in my view, goes back to what it is to be a legitimate state. In my view states are legitimated functionally. Which is to say they're legitimate just in case it performs the requisite political functions. Which is, I think, protecting the human rights of its constituents. And I think that function of protecting those human rights is so important that that is able to justify its coercive presence over the territory. OK? But notice this coercive presence is non-voluntary. It's not that people say oh yes, we really want you to perform this function, I agree. Rather, whether or not the constituents in the territory want to be coerced, they're going to be coerced. And in virtue of that, states have a responsibility not just to perform these functions, but they have to do so without demanding too much of their constituents. That's part of what makes political membership different from slavery, even though both are non-consensually coercive. And in my view, it would just be way too demanding, it would require much too much of a sacrifice for a state to have the power to be able to tell people you have to leave the territory. On the contrary, it's incumbent upon the state to be able to perform its functions, while treating everyone in its territory as a free and equal citizen.

CHRISTIAN BARRY: Well, one thing that you've been stressing is this idea of freedom of association, which might seem a little bit puzzling because it's a very specific type of freedom of association. It's a freedom of association as understood as a group right, or as a collective right. And it seems at least that there could be a lot of conflicts between the exercise of freedom of association understood as the right of a group, and freedom of association as a right of individuals or groups within the group. So you could imagine for example an immigrant community of Armenians who have family members who would like to come and would like to have them come, and they want this. And it may be a matter of very great importance for them that this happen. And it may be a matter of relative indifference to the society at large, but it may be that they lean slightly against it. Which would mean that this collective right of association would be in effect overriding this individual or smaller-group right of the Armenian community to have members. So how would you respond to the challenge that if we really take freedom of association seriously, we should think of it as individual, or we should at least think that these claims of individual association should have some weight against this collective right of association?

CHRISTOPHER HEATH WELLMAN: No, right, that's a good question because there's, in my view, there is a genuine tension between individual freedom of association, and the country's group right to freedom of association. It certainly seems like individuals also have a right of freedom of association. For instance, we talked

about your freedom of association about who you choose to marry. OK, and some people are going to suggest that when we have a contest between the group having this right and the individual having this right, the individual's dominion should prevail, especially in cases for instance when it's talking about a reunion of a family or something like this.

Now, the reason why I'm inclined to favor the group right of freedom of association over the group's right is because of the costs involved to the group as a whole if individuals are allowed to invite immigrants in. And the point here is two-fold.

One is that if I, say, have the right as an individual to invite anyone I want to immigrate to the United States, say, then this has important effects on all of my compatriots. Now you might come back and say how does it affect them? They don't have to live with them. They don't have to hang out with them. They don't have to join the same clubs with these people. And so it affects you and not them, but I think that's too quick for a couple of reasons.

One is that I think again it's important that a political entity treat all of its constituents as free and equal citizens. So that means that if people are brought in then they have to be politically enfranchised. They have to be given the right to vote, and they also have to have the same political rights as the rest of us, which is going to have effects upon the distribution of the benefits and burdens of the political cooperative.

But it's also true that these new people are going to determine the course or be part of what determines the course of the country. And the key is that, in the case of group self-determination, an important component is having the group determine what the self is; what the group is going to be. And so when these immigrants come in, they are going to then, they must be given a say in the future course of the country. And so that has important consequences for everybody. And so it doesn't seem inappropriate that everyone should have a say about who's going to join the political collective.

CHRISTIAN BARRY: So just to follow up, just to make sure I understand. I could see how that could be an argument against a right of association, an individual right of a certain scope. Namely, the right of each individual to associate with anyone. Because of the costs it would infer. But certainly we could imagine narrower-scope rights of association as having privilege over a group right. So, for example, I remember a friend in New York, not American, who had—was there and was granted permanent residency, who was gay. And he could not get recognition of status of his partner, such that it was impossible for them, basically—even though they had been married in Sweden—it was simply impossible for them to go. Now that might be a case where one might say, listen, you know, this is an individual right not to have anybody, but to have somebody where there is a demonstrated special relationship of a certain kind, and to what extent does the group really have a claim?

CHRISTOPHER HEATH WELLMAN: Well, I should say a couple things as preface before we get into the details of this very interesting case. The first is that my argument's focused on what the group has a right to do, not what it *ought* to do. And so when I allege that legitimate states have the right to exclude others, I shouldn't be understood as encouraging states to exclude others. I'm not an advocate of restricting

immigration. I actually think that many states would be much better off, and certainly humanity as a whole would be much better off if we had much more porous borders.

OK. So now let's go to this case. And let's assume, just for the sake of argument, that the state does have the right to tell even individuals like your friend that they may not unilaterally invite their life partner to immigrate. If they have this right, part of what we need to recognize is that this group has this right because it's not telling individuals with and with whom it may associate. It's saying you may associate with this person anywhere you want in the world, you just may not invite her into the United States. But it's not even saying you may not invite her into the United States. It's saying you may not invite her indefinitely into the United States.

But I take your point that once we look at the costs of the group as a whole, it may turn out that we're going to want to make exceptions. Or that as a matter of principle we should make exceptions. Because if we made an exception only in the case for instance of bringing over your life partner, or only in the case of bringing over your children, or something like this. This is the type of exception which is going to make an enormous difference to the welfare of these individuals and is going to make a negligible difference to the community as a whole. It's not wholesale immigration, and it's not going to change the complexion of a political community. And so we can't assume right of the bat that the group's right of freedom of association always and necessarily trumps the individual right. I think in general it does. But your case is an excellent one of a potential objection to that.

CHRISTIAN BARRY: What kinds of constraints do you think there are on the content of what states use to determine whether or not people can become migrants?

CHRISTOPHER HEATH WELLMAN: This is, I think, an incredibly difficult question. Now as you know, for some time—it's no longer the case now—but for some time Australia had a policy of allowing only immigrant, white immigrants. And in particular they wanted to get immigrants from England and the United States, and they didn't want Asian immigrants. And Michael Walzer takes this up and says look, I believe that Australia has the right to exclude whomever they want, but may they use racist criteria?

And any right-thinking person abhors racism. And so it seems like the obvious answer should be no. But this is too quick. Right, so I abhor racism, right? But if it turns out that you don't—are racist and don't want to marry anyone who's red-headed or anyone who's a Christian, or anything like this, then it seems like you have the right to refuse to associate with those people. You don't have to marry someone of that nature. So why couldn't a country also do that?

I could imagine a black woman or man for that matter being insulted that I would reject him or her on the base of his or her race, but I don't think that necessarily gives him or her a right to marry me. So I think that we need another explanation. And the best one of which I'm familiar in the literature is that one given by Michael Blake. And he says that the problem with excluding people according to this sexist or racist criteria is it treats members of that group who are *already* in the state as second-class citizens.

CHRISTIAN BARRY: You're listening to Public Ethics Radio, where we're discussing immigration in theory and practice with Christopher Heath Wellman.

CHRISTIAN BARRY: Another policy issue distinct from that of irregular migrants, is that of regular, temporary migrants. There are guest-worker programs in many developed countries throughout the world and also in some developing countries throughout the world. What is your view of such programs? You mentioned before the issue that people who are residing within a territory for a long time are owed citizenship, a full range of rights. How should we think about issues of guest workers, particularly guest workers who often are, as in the case of the Turkish communities working in Germany, there for quite a while?

CHRISTOPHER HEATH WELLMAN: Well I'm not—I have no general prohibition against using guest workers. But I think that the status quo, the way they're currently used is often horribly problematic. And so I think that what you need to do is look at a case by case basis and in many instances I'd say that it would be OK to use guest workers, but only under certain conditions. So you mentioned the case of Turkish workers in Germany. The classic discussion of that is Michael Walzer's, and he takes the following line. He says, look, Germany does not have a duty to include any Turkish workers if it doesn't want to, but if it does include them, it has to treat them as free and equal citizens. And the problem is you had these Turkish workers coming and moving up with their families and living there indefinitely, but never having a chance to gain equal citizenship. You even had children who were born there and grew up there exclusively in Germany who you know spoke German, didn't know the first thing about life in Turkey, had never been to Turkey, and yet they didn't have an option to become German citizens. And this is problematic. This is—

CHRISTIAN BARRY: Not even an option?

CHRISTOPHER HEATH WELLMAN: Yeah, they didn't have an option. They were excluded from citizenship.

CHRISTIAN BARRY: From ordinary application for citizenship?

CHRISTOPHER HEATH WELLMAN: I shouldn't say that. But they had no claim.

CHRISTIAN BARRY: They have no special claim.

CHRISTOPHER HEATH WELLMAN: Right. Whereas for instance, and I should specify that—this is true at the time of Walzer's treatment of the subject—Germany has since revised this policy. For instance, you might have someone born in Turkey to German parents, who would automatically qualify for citizenship. But you'd have someone born and raised in Germany, to Turkish parents, who would have no automatic claim to citizenship. So Walzer I think rightly objected and said, look, if you're going to bring these workers in, you're going to have to treat them as free and equal citizens. So you've got two choices, either figure out how to do this undesirable but socially necessary work on your own, with German employees. Or, if you're going to bring in Turks, treat them as political equals. Now I think that's right, but that doesn't generalize to all cases of guest workers. And what is key about this case is that these Turks came in and stayed indefinitely. And so if you had a different situation, say if you had a farmer

in the southern United States, who had a crop, and wanted to bring in Mexican migrant workers, for two months to help pick the crops, that that would not be objectionable, even if these Mexicans were denied citizenship. But I hasten to add that just because they may be brought in as guest workers and not given citizenship that doesn't mean they can be treated in anything like the fashion they often are. So it may even be a moral improvement if a lot of these countries had guest-worker programs, and once it were legitimate and above-board, then, these workers would have recourse to go to the government and complain about a lot of the injustice which they currently experience, but can't object about because they have no legal standing.

CHRISTIAN BARRY: Kit Wellman, thank you for joining us on Public Ethics Radio.

CHRISTOPHER HEATH WELLMAN: It was my pleasure, thanks for having me.

MATT PETERSON: Public Ethics Radio is a podcast featuring conversations between our host, Christian Barry, and scholars and thinkers who engage with ethical issues that arise in public life. The show is an independent production, supported by Yale University, the Australian National University, and the Centre for Applied Philosophy and Public Ethics, in association with the Carnegie Ethics Studio at the Carnegie Council for Ethics in International Affairs. We'll be back soon with another conversation about public ethics. In the meantime, you can find out more about us and our guests on the web at www.publicethicsradio.org.