

## Philos 117AC, Fall 2017

Main Text:

John Simmons, *Boundaries of Authority*, Ch. 9, "Borders"

We treat state's control over borders very much like landowner's control over land.

- Rights to install fences, locks, etc.
- Rights to use force to prevent access or to remove trespassers.
- For any reason.
- With the only exceptions being emergency situations: e.g., refugees.

Does anything justify border controls of this kind? If so, what?

*Carens's arbitrariness argument:*

- Nationality or citizenship (at least at birth) is unchosen, so undeserved.
- Border crossing, residence in another country, etc. goods, opportunities that border control in effect distributes.
- Unjust to distribute goods, opportunities according to factors other than desert
- So, border control unjust.

*Simmons's reply:*

- The fact that I do not deserve something does not mean that it is unjust that I have it.
- Even if I don't deserve something, still it may be my property. Perhaps I acquired it in the way that Locke or Nozick describes.
- Granted, Rawls denies there are prepolitical property rights of the kind that Locke or Nozick describes. He then asks: Given that there are no such rights constraining how the basic structure distributes resources, how should the basic structure distribute them? And he argues that it should not be sensitive to "morally arbitrary" factors. But Rawls's approach then just denies what the Lockean asserts. Lockeans have no reason to accept this argument for open borders.

*Carens's freedom of movement argument:*

- If we recognize internal freedom of movement, then we should recognize external freedom of movement, because there is no relevant difference.

*Simmons's reply: A dilemma...*

- *Either* opportunities in one's own country are adequate, in which case external freedom of movement is not required,
- *Or* opportunities in one's own country are not adequate, in which one has something like refugee status. To grant that *refugees* cannot be turned away is not to endorse open borders.

*Abizadeh's argument from coercion:*

- No one should be coerced without having a vote over the use of coercion.
- Border controls coerce outsiders who have no vote.

*Simmons's reply:*

- Some kinds of coercion are not as bad as others—or at least they don't need to meet the same standards to be justified.
- "Being 'stopped from' doing some specific act (such as crossing a border)" is somehow not as bad as "being 'forced to' do a specific act (such as serving in your country's military)." Perhaps because even if one is stopped from doing one thing, one can still do lots of other things.
- Border control, for the most part, just stops people.

- So perhaps it doesn't require a vote.
- After all, landowners may "close" their "borders" without giving trespassers a vote.

*A right of collective self-determination?*

- Why should states have a right of self-determination?
  - Freedom of association (Wellman)
  - Preservation of language, culture, etc., perhaps because this is necessary for social solidarity (nationalism).
- Note that it is not enough merely to list interests in self-determination. Also need to show that this is fair to the interests of the excluded.

*Lockean voluntarism:*

- The state's rights to control its borders derive from consenting individuals' partial transfer of their natural rights to land.
- "The rights over land that are thus shared between landholders and state add up to (since they were derived from splitting the incidents of) the strong ownership rights over land which individuals may naturally acquire"
- No wonder, then, that a state is entitled to fence, exclude, etc. in the same ways that an individual landowner is!
- No wonder that rights to internal freedom of movement don't imply rights to external freedom of movement. The rights to internal freedom of movement resulted from conditions consented to by members of the state in establishing it. But outsiders have no rights to external freedom of movement (except insofar as the insiders consented to it).

*There are, however, limits to the state's rights:*

- Proviso on appropriation applies to individuals' natural property rights.
- Moreover, what justifies the appropriation of property in the first place is that it is necessary "if individuals are to have an effective right to be genuinely self-governing." So, even if others are left enough and as good, still they have rights to help in what they need to be self-governing. So, there may be a natural duty to give foreign development aid.

*Real-world states act wrongly in asserting their territorial rights in several respects:*

1. "the land possessed by individuals and incorporated into state territories is often not innocently possessed, possession instead resting on a history of unjust and violent seizures or deceptive negotiations"
2. states "subject to their political authority many unwilling persons"
3. "the land and resources held as property by individuals and/or as territory by their states often do not satisfy the proviso" of as good and enough for others
4. and land and resources "not being productively used" by members

*How can states rectify this?*

- "tolerate the existence of independent political (or nonpolitical) territories within their legitimate domains or..."
- "contract their outer boundaries in order to create external space for such territories"
- "offer those who were unwillingly subjected (or wrongfully expelled), or their heirs, favorable terms of membership"