

Enforcement Matters: Reframing the Philosophical Debate over Immigration

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ABSTRACT: In debating the ethics of immigration, philosophers have focused much of their attention on determining whether a political community ought to have the discretionary right to control immigration. They have not, however, given the same amount of consideration to determining whether there are any ethical limits on *how* a political community enforces its immigration policy. This article, therefore, offers a different approach to immigration justice. It presents a case against legitimate states having discretionary control over immigration by showing both how ethical limits on enforcement circumscribe the options legitimate states have in determining their immigration policy and how all immigrants (including undocumented immigrants) are entitled to certain protections against a state's enforcement apparatus.

KEYWORDS: immigration, immigration enforcement, equality, ethics

In debating the ethics of immigration philosophers have tended to put aside questions of enforcement. In doing so philosophers have not done anything out of the ordinary. After all, philosophy typically brackets questions of enforcement, at least initially, when attempting to determine who is entitled to certain rights and who is bound by certain duties. The reason for this bracketing rests on the not-so-outlandish assumption that what a

right or duty *ought to be* is distinct from *how* that right or duty is to be exercised or guaranteed. In this regard, the ethics of immigration has not proved to be an exception: whether a political community *ought* to have the right to control immigration is taken to be a separate question from *how* a political community goes about enforcing this right.

In this article I raise a challenge to this conventional framing of the immigration debate. I argue that the issue of enforcement does matter in determining the presumptive rights or duties associated with immigration. In presenting my case, I begin in the first section by outlining a position put forth by Christopher Heath Wellman. I single out Wellman's position because it puts forth one of the most intuitively appealing defenses of a state's right to control immigration.

In the second section, I argue that Wellman's position does not hold up, at least not from an egalitarian point of view, when concerns over border enforcement are taken into consideration.¹ My claim is that when border enforcement is taken into consideration—which admittedly few philosophers have done—a commitment to universal equality cannot be reconciled with a state having a presumptive right to control immigration. Instead, we find that a commitment to universal equality entails that a state's right to control immigration be limited and that its admissions and exclusions criteria be determined largely by factors such as economic realities, family relationships, and sociohistorical circumstances. In short, when the ethics of immigration is considered in its entirety—admission, exclusion, and enforcement—the only way to consistently reconcile a people's right to self-determination with a commitment to human rights is for the burden of proof (i.e., the presumptive duty) to be on the state and not the migrant.

Freedom of Association as the Freedom to Control Immigration

Recently, moral and political philosophers have taken an interest in the issue of immigration. As Seyla Benhabib, John Exdell, and Eduardo Mendieta have correctly pointed out, the reason for this emergent interest is that the ethical and political questions surrounding immigration expose a deep-seated tension between democratic autonomy (i.e., a people's right to self-determination) and a commitment to human rights (i.e., liberal principles of individual freedom and universal equality).² Within the

philosophical literature on immigration, this tension has given rise to two opposing viewpoints. The first maintains that a commitment to democratic autonomy requires that a state have a presumptive—meaning an “all things equal”—right to control immigration.³ The other position gives greater weight to liberal principles of individual freedom and/or universal equality. This latter position maintains that a commitment to such principles is incompatible with a state having a presumptive right to control immigration.⁴

In an attempt to breach this gap, Christopher Heath Wellman has recently proposed an innovative argument that appears to bring these two divergent positions together.⁵ Wellman argues that if a state is legitimate—by which he means a political community that respects human rights—then that state is entitled to self-determination and part of being self-determined includes having freedom of association. With respect to immigration, this means that a legitimate state has the presumptive right to control immigration. Wellman’s position is therefore philosophically distinct in that it appears to have squared the immigration circle: it seems to have reconciled a people’s right to self-determination with liberal commitments to individual freedom and universal equality.

Wellman’s argument, by his own admission, is also wonderfully simple. His argument is composed of three, rather innocuous, premises:

P1: legitimate states are entitled to political self-determination.

P2: an integral component of self-determination is freedom of association.

P3: freedom of association includes the right *not* to associate.⁶

From these premises, Wellman derives the following conclusion: “Since freedom of association entitles one to refuse to associate with others, legitimate political states may permissibly refuse to associate with any and all potential immigrants who would like to enter their political communities.”⁷

As we can see from premise 1, Wellman’s argument is carefully restricted to “legitimate” states. In other words, Wellman’s argument is not meant to extend to all possible states but only to those that meet his standard of legitimacy. According to Wellman, legitimate states are those, and only those, states that respect human rights (i.e., respect individual freedom and universal equality). His justification/explanation for this is

as follows: “There is a moral presumption against political states because they are by nature coercive institutions. This presumption can be defeated, however, because this coercion is necessary to perform the requisite political functions of protecting basic moral rights. In my view, then, a regime is legitimate only if it adequately protects the human rights of its constituents and respects the rights of all others.”⁸

In an effort to generate intuitive support for premises 2 and 3, Wellman makes use of various analogies, the most persuasive being the analogy that likens immigration to marriage. According to this analogy, the autonomy of a legitimate state is a lot like the autonomy of an individual. An autonomous individual has the right to propose marriage to whomever he or she chooses (i.e., the right to associate with whomever one likes). This, however, is not the extent of the right; freedom of association also entails the right to rebuff a marriage proposal (e.g., the right not to associate with whomever one does not like).

This analogy has a lot of intuitive appeal, since what could exemplify autonomy better than saying that we have a right marry whom we want and by the same token that we cannot force, or be forced by, others into marriage? If the autonomy of a legitimate state is sufficiently similar to the autonomy of an individual, at least in this one regard, then it seems almost obvious that a legitimate state ought to be entitled to freedom of association.⁹ This analogy would therefore suggest that a legitimate state not only has the right to associate with whomever it wishes (e.g., has the right to admit whichever nonmembers it likes) but also has the right *not* to associate (e.g., the right to exclude nonmembers it does not like).¹⁰

The obvious problem that arises at this point in the argument is that, while Wellman gives lip service to respecting individual freedom and universal equality in premise 1, the rest of the argument seems ready to sacrifice these liberal principles for the sake of democratic autonomy. In order to complete his argument (i.e., show that his argument does indeed resolve the aforementioned tension between democratic autonomy and human rights), Wellman must demonstrate that his position, even if it does not necessarily promote individual freedom and universal equality, does not run afoul of these liberal commitments. In other words, Wellman must show that his position can hold up against both egalitarian and libertarian challenges. To this end, he goes on to consider four possible objections—two egalitarian and two libertarian—that could be raised against his position. In this article, I focus only on his response to the egalitarian challenges

because my objection to Wellman—and to the framing of the immigration debate in general—is egalitarian in nature.

In considering egalitarian challenges to his position, Wellman is careful not to conflate the distinction between moral and political equality.¹¹ Wellman therefore begins with the issue of moral equality and the possibility that immigration restrictions can undermine this liberal commitment. The first objection that Wellman considers focuses on the fact that people born in different countries have radically different life chances and that these different life chances are mainly the result of arbitrary luck. Because immigration controls can either perpetuate or ameliorate these arbitrary inequalities of birth, a commitment to moral equality would seem to entail that, as long as these arbitrary inequalities continue to radically affect people's life chances, restrictions on immigration are not justified.

With regard to this objection, Wellman concedes the crucial points: that all persons are due equal moral consideration and that there are indeed grave and unjustifiable global inequalities that both are arbitrarily assigned and radically affect people's life chances. He, however, rejects the contention that this alone is sufficient to override a legitimate state's freedom of association. This is because, for Wellman, there is an important difference between "luck egalitarianism" and "relational egalitarianism." According to luck egalitarianism any unequal distribution of goods must have a rational explanation. So, from a luck egalitarian perspective, immigration restrictions are at odds with giving all persons equal moral consideration. For Wellman, however, this is too simplistic a view of moral equality. Luck egalitarianism, Wellman claims, is guilty of conflating moral equality with political equality and therefore glosses over the possibility that "the same inequalities which would clearly be pernicious among compatriots might well be benign when present between foreigners."¹² For example, it might be unjust to let some citizens vote in national elections while not letting others, at least so long as there are no good reasons for this unequal treatment. It would not, however, be unjust to only let citizens vote in national elections while denying noncitizens the right to vote in those same elections.¹³

For this reason, Wellman argues that moral equality is best thought of in relational terms. In other words, moral equality is not simply a matter of having an equal distribution of goods but has other components to it as well. For example, in order for an inequality to be morally contemptible, both the inequality in question must be severe enough to warrant attention and there must also be a relation between the unequal parties, such

that one party is the cause of and/or unfairly benefits from this inequality. Wellman claims that under this view (i.e., the relational egalitarian position) a commitment to moral equality would not necessarily “require us to guarantee that no one’s life prospects are affected by matters of luck.”¹⁴

To flesh out this point, Wellman compares two different cases of unequal opportunities to go to college. In the first case, a family pays for their son’s college tuition but refuses to pay for their daughter’s. In the second case, one family pays for their children’s college tuition, while another family does not pay for theirs. According to Wellman, both cases are examples of unequal distribution of goods and therefore would be considered morally unjust from a luck egalitarian perspective. By contrast, from a relational egalitarian perspective only the former would be considered morally unjust and not the latter. Wellman believes that while we personally might find both cases objectionable, only the first case constitutes a violation of moral equality, while our objections to the second case are based on “Samaritan” concerns. The point to take away from this is that, for Wellman, only inequalities of the relational variety count as infringements on moral equality, and therefore “even if achieving relational equality is important enough to trump other values like freedom of association, realizing luck equality is not important enough to deny people their rights to self-determination.”¹⁵

But even if luck egalitarianism is not sufficient to trump a legitimate state’s freedom of association, Wellman acknowledges that a concern for relational equality would be.¹⁶ In considering this possibility, Wellman concedes that the world is indeed becoming more interrelated and distressingly unequal and furthermore that the wealth and prosperity of many countries can be directly linked to the poverty and misery of other countries.¹⁷ In this case, a commitment to moral equality does require that something be done to rectify these inequalities.

Yet even in these egregious cases Wellman denies that nonmembers have any moral claims to be admitted into or remain within a legitimate state. Wellman, following David Miller,¹⁸ argues that there are other ways for legitimate states to discharge their relational egalitarian obligations that do not require a legitimate state to admit or retain nonmembers that it does not wish to associate with. For example, a state could send some of its wealth to those less fortunate or intervene in certain parts of the world to make them safer or more hospitable.¹⁹ In other words, justice does not have to be done internally (e.g., accepting immigrants); it can also be “exported” out.

These two counterarguments, the first addressing the luck egalitarian objection and the second, the relational egalitarian objection, are for Wellman sufficient to show that his position is at least compatible with a commitment to moral equality. Yet there is still the possibility that granting a legitimate state the presumptive right to control immigration might lead to forms of discrimination that could threaten the political equality of citizens. For example, denying admission to immigrants on grounds that they belong to a certain race, ethnicity, religion, and/or gender could have the effect of denigrating the status of citizens who happen to share that race, ethnicity, religion, and/or gender. In such cases, immigration restrictions could be responsible for undermining political equality.²⁰

Wellman largely concedes this point and believes that there is something inherently wrong with discriminatory immigration policies.²¹ The problem he faces, however, is how to reject discriminatory immigration policies while consistently maintaining that legitimate states have a presumptive right to control immigration. This is especially problematic for Wellman because, as I explain below, he ultimately rejects a position such as that put forth by David Miller while at the same time being tempted by a position such as that of Michael Walzer.²²

David Miller, who also defends a state's presumptive right to control immigration, argues that a state can use various forms of criteria in setting its admissions policy. For example, a state could more readily admit immigrants who provide economic benefits or have values similar to those of its citizens. Yet Miller rejects the possibility that a state can use race or gender as a criterion for exclusion because "to be told that they belong to the wrong race, or sex . . . is insulting, given that these features do not connect to anything of real significance to the society they want to join."²³

Wellman, however, is not persuaded by Miller's argument. Returning to the marriage analogy, Wellman writes: "I would expect a black person to be insulted by a racist white who would never consider marrying someone who is black, but I would not say that this black person has a right not to be insulted in this way."²⁴ So while insults might be inappropriate, on Wellman's account they are not sufficient to limit a legitimate state's freedom of association. In other words, while it might be impolite, legitimate states are not bound by justice to not be insulting.

Wellman then considers an alternative to Miller's position in the work of Michael Walzer. According to Walzer, as long as certain stipulations are met, a legitimate state can use criteria such as race to exclude certain

groups of people. The example Walzer uses is the “White Australia” policy, where he contends that there is nothing inherently unjust about a policy that admits only whites, so long as enough land is left for nonwhites to live on.²⁵ Wellman is disturbed by Walzer’s position, but in returning to his own marriage analogy he notes that “as much as I abhor racism, I believe that racist individuals cannot permissibly be forced to marry someone outside of their race. . . . [Therefore] why does [freedom of association] not similarly entitle racist citizens to exclude immigrants based upon race?”²⁶

Wellman ultimately rejects both Walzer’s and Miller’s positions on discriminatory immigration policy and opts instead for a view put forth by Michael Blake. Blake’s rejection of discriminatory immigration policies is as follows: “In all cases in which there are national or ethnic minorities . . . to restrict immigration for national or ethnic reasons is to make some citizens politically inferior to others.”²⁷ This is a brilliant move. Blake’s rejection of discriminatory immigration policy is different from Miller’s because it rejects the policy not for the sake of nonmembers (i.e., it is not because the state owes something to would-be immigrants) but for the sake of doing justice to members who happen to share the race, ethnicity, religion, sex, gender, and so on being used as criteria for exclusion. The force of Blake’s argument, therefore, comes from its appeal to the political equality of citizens, which a legitimate state must accept. Even Walzer, the archcommunitarian, concedes as much when he writes: “No community can be half-metic, half-citizen and claim that its admissions policies are acts of self-determination or that its politics is democratic.”²⁸ Therefore, a legitimate state, in order to maintain its legitimacy, must refrain from adopting discriminatory immigration policies.

Wellman happily adopts Blake’s position and concludes: “Whether or not we are sympathetic to the idea of a state designed especially to serve a specific racial, ethnic, or religious constituency, such a state is not exempt from the requirement to treat all its subjects as equal citizens.”²⁹ In this way, Wellman believes that he has successfully defended a legitimate state’s presumptive right to control immigration against the possible objection that giving too much control to the state would undermine the political equality of citizens. This also brings to a close his larger response to the egalitarian challenge. Wellman, up to this point, has presented two egalitarian objections to his position, one concerning moral equality and the other, political equality, and he has provided responses to both that, at the same time, have not limited a legitimate state’s ability to control immigration.

At this point in the argument, Wellman moves on to consider libertarian challenges, but I will not consider his response to them. This is not because the arguments are not interesting but because my objection to Wellman is based on egalitarian concerns. Before I go into my view, however, I would like to acknowledge that there have already been various other objections raised against Wellman's position. Some of these objections have focused on Wellman's choice and selective use of analogies (e.g., immigration is like marriage and/or like a golf club).³⁰ Others have argued that Wellman's position overlooks nonideal harms, which in turn generate relational egalitarian duties to immigrants who have suffered (or will suffer) those harms.³¹ Still others have argued that Wellman's position conflates a state's right to control membership with a state's right to control entry into (and/or have jurisdiction over) its territory.³² Last, some have pointed out that a legitimate state's freedom of association is not a moral trump and can at times be overridden by other (and even similar) deontic concerns.³³

My criticism of Wellman, however, is different from these and is intended to challenge the overall framing of the immigration debate within philosophy. My criticism looks at an area of the immigration debate that philosophers have largely ignored but that outside of philosophy is one of the most contentious aspects of the immigration debate: the enforcement of the border. Wellman, in this regard, is not any more or less guilty than other philosophers. I focus on Wellman, however, for two reasons. First, as far as I can tell, his argument is the strongest anti-immigrant position that can reconcile a people's right to self-determination with a respect for human rights. Second, the egalitarian concerns I raise about border enforcement mirror the concerns he addresses, reviewed above. The difference, I hope to show, is that with regard to border enforcement a position such as Wellman's cannot discharge its commitments to universal equality, at least not without at the same time limiting a legitimate state's ability to control immigration.

Egalitarian Limits on Border Enforcement

Respect for the moral and political equality of persons can entail some fairly onerous duties. Regardless of whether one agrees with him or not, Wellman has taken those duties very seriously. In determining that a legitimate

state has the presumptive right to admit and exclude immigrants, Wellman acknowledges that his position would have to meet some strenuous moral and political obligations and therefore proposes various ways for how to discharge those obligations without, at the same time, accruing any limitations on a legitimate state's right to control immigration. In this section, however, I wish to challenge this conclusion—that a legitimate state has the presumptive right to control immigration—by considering what, if any, limits there are to enforcing borders. By border enforcement, I have in mind the entire coercive mechanism that a state has at its disposal to prevent the unauthorized entry of civilian migrants. This includes, but is not limited to, things such as guards, physical barriers, weapons, sensors, surveillance technology, and the strategies through which these are all used in concert.

Taking into consideration the ethical implications of border enforcement might at first seem odd. This is especially the case given that philosophers, like Wellman, have focused only on questions of admission and exclusion: questions of *who* may be let in and *who* may be kept out. Border enforcement, on the other hand, has to do with questions of *how* and to *what extent* people may be kept out. These are obviously very different questions, but an ethics of immigration needs to consider questions of enforcement for a number of reasons. First, people are not merely stopped, detained, delayed, or inconvenienced by border enforcement; people also die as a result of border enforcement. So regardless of how one sets one's moral compass (e.g., deontology, virtue ethics, consequentialism, care ethics, etc.), the human costs associated with border enforcement should not be taken lightly. Second, and related to the first, ethical limits on border enforcement provide an underappreciated rationale for why a state's admissions and exclusions criteria ought not to be discretionary but, instead, circumvented by factors such as economic realities, family relationships, and sociohistorical circumstances. The remainder of this section will be devoted to making this case.

In assessing the ethics of border enforcement, we must begin by assuming that a state's use of border enforcement must adhere to the principle of universal equality. If border enforcement does not adhere to this principle, then any state that deploys such enforcement cannot be said to be legitimate, or at least not legitimate under the definition supplied by Wellman. So, for example, even if it were morally permissible (or even politically necessary) to differentiate citizens from noncitizens at points of

entry, this allowance/necessity would not justify a state in using border enforcement that disproportionately targets people based on race, ethnicity, sex, or gender. Discriminatory border enforcement, like discriminatory admissions policy, would still be prohibited because it would fail to treat all citizens as political equals.

An account like Wellman's would find no trouble up to this point. Yes, certain limits must be placed on the type or amount of border enforcement a legitimate state may deploy, but these limits would be in place to protect the rights of citizens and not because the state owes anything to noncitizens. This would also not limit the discretion that a legitimate state has in determining admissions and exclusions criteria. In short, so long as the burdens associated with border enforcement (e.g., inspection and/or interrogation) do not affect citizens in an unequalitarian manner, there seems to be nothing unjust about immigration control remaining at the discretion of the state.

An account like Wellman's, however, begins to run into difficulties when a state's preferred admissions policy can only be enforced through the use of excessive means. This is problematic for two reasons. First, certain methods and practices of border enforcement, even if applied equally to all citizens, are nonetheless unjust because they would be too intrusive and therefore infringe on the basic liberties of individuals. For example, imagine that the only way to enforce a given immigration policy would be to detain everyone attempting to enter, including citizens, for a minimum of ninety-six hours and to subject them to full body cavity searches. One does not necessarily have to be a libertarian to see why this type of border enforcement, even if it were applied equally to everyone, would be objectionable.

A second and more difficult challenge for an account like Wellman's are cases where, even though the rights and equal standing of citizens are protected, border enforcement fails to give noncitizens equal moral consideration. Imagine, for example, that a state can only enforce its preferred immigration policy by instituting a mechanism that vaporizes any and all unlawful border crossers. This example might seem a bit outlandish, but it should hopefully illustrate the following point: there are limits to the amount and/or type of border enforcement a state may deploy and still be considered legitimate (i.e., respectful of the moral worth of all persons, including nonmembers). To be clear, border enforcement does not need to be this extreme in order for it to be considered excessive, and on the flip

side it is also true that these two examples have not shown that all forms of border enforcement are excessive. There is likely a middle ground, but the fact that excessive border enforcement is possible (i.e., border enforcement that fails to live up to liberal principles) raises a difficulty for an account like Wellman's. What should a state do when the only way to enforce its preferred immigration policy is through excessive border enforcement?

In such cases, a state seems to have four options. First, it could try to entice unwanted potential immigrants to either remain where they currently are or choose a different state to migrate to. This option would alleviate some of the pressure on border enforcement, thereby making it possible for a state to enforce its preferred immigration policy without the use of excessive force. Second, and maybe in conjunction with the first, a state could modify the internal "pull" factors that are attracting unwanted immigrants and again alleviate some of the pressure on border enforcement. Third, a state can limit its border enforcement to morally acceptable levels while at the same time tacitly accepting that there will be some degree of unauthorized entry into its territory. Last, a state can limit its border enforcement to morally acceptable levels while at the same time changing its immigration policy so that it better reflects the internal "pull" factors that are attracting immigrants.

Wellman has faced a similar dilemma before, so we have some idea as to which of these four options he would prefer. As noted earlier, Wellman proposes that a legitimate state could discharge its egalitarian duties by "exporting" justice (e.g., supply humanitarian aid, provide restitution, intervene in unjust societies, or pay other countries to take in needy immigrants). By exporting justice, Wellman believes, a state could be allowed to maintain discretion over its immigration policy while still meeting its egalitarian duties. But can a similar tactic work in the case of border enforcement? In the case of border enforcement, the closest thing to the "exporting" justice solution would be either option 1 or option 2.

On the surface, there seems to be nothing wrong with a state enticing unwanted potential immigrants to either remain where they currently are or choose a different state to migrate to. This could be done in a variety of creative and noncoercive ways. The problem, however, is that this will alleviate the pressure on enforcement only from those immigrants whose impetus to migrate is due to "push" factors, where immigrants are mainly trying to exit the state they are in and are not too concerned as to which state they eventually enter. Enticements to go to other states are much less

effective when migration is motivated by “pull” factors. These pull factors can include, but are not limited to, economic conditions where domestic labor will not or cannot adequately satisfy demand, where close family relations are present (e.g., young children trying to reunite with parents and vice versa), or where migration patterns have a long and established history (e.g., circular migration, colonialism, and military interventions). In these sorts of cases, enticements by themselves will not be enough to override the impetus that these migrants have to enter that particular state.

A state would therefore have to supplement option 1 with something like option 2: modify its internal factors that are attracting unwanted immigrants. This option, however, raises a host of serious problems. If these internal factors are primarily things such as the economy, family relationships, and history, it is unclear what a liberal (as opposed to a nationalist) state could do to significantly modify them. The economies of liberal states are increasingly becoming more and more globalized and are usually market-based as opposed to being nationalist and command-based. This means that while government intervention is not inconsistent with a globalized market economy, liberal governments do not enjoy the same kind of control they would under a nationalized command-based economy. In short, the economic factors that create the need for immigrant labor (e.g., domestic labor’s inability, unattractiveness, or unwillingness to satisfy domestic demand) are largely outside the control of liberal governments.

The same can also be said for family and sociohistorical relationships. Once these relationships are established it is not easy (and at times might even be immoral) to sever them. For example, it would be folly to expect that a parent would allow a lack of immigration status to prevent him or her from being with his or her child. In this case, a state might opt to deport the citizen child (or any other family member), so as to remove the attraction that noncitizen family members have to the state, but deporting citizens seems inconsistent with a commitment to political equality. There are also cases where circular migration, colonialism, and military involvement have had the effect of creating certain close relationships. In these sorts of cases a state can do some things to try and sever these relationships, but the inertia they carry will not easily or instantaneously be brought to a halt. For these reasons, options 1 and 2 do not provide a satisfactory enough response to how a state can maintain both its legitimacy and its presumptive right to control immigration.

A third option would be to limit border enforcement to morally acceptable levels and at the same time simply accept that there will be some degree of unauthorized entry. For an account like Wellman's, this option has a built-in downside. While this option does not deny that a legitimate state may attempt to deter unlawful border crossings, it does limit what a legitimate state can do to control immigration. It is true that these limits do not necessarily generate a positive right for noncitizens to immigrate (i.e., it is not an entitlement to be admitted), but they do generate a presumptive right in the negative sense: there are some things that a legitimate state cannot do to noncitizens, even when they are attempting to enter its territory without permission. Furthermore, these limits would not be in place to ensure the rights of citizens but, rather, to protect the equal moral standing of noncitizens. This option would therefore be a departure from Wellman's earlier position, where moral consideration for nonmembers does not necessarily limit a legitimate state's control over immigration. However, this option could still be made compatible with an account like Wellman's because it still allows a legitimate state to maintain discretion over admissions policy.

The problem, however, is this option's tacit acceptance of unauthorized entry. Besides the obvious hypocrisy this would involve, this option would enable conditions that lend themselves to exploitation and discrimination (i.e., violations of moral equality). Undocumented immigrants, because of their susceptibility to deportation, are one of the most vulnerable subgroups within any society. Their precarious situation leaves them virtually unprotected against various forms of exploitation and discrimination by both public (e.g., schools and police) and private (e.g., private employers and landlords) institutions. This kind of oppression and discrimination is a violation of moral equality because, even if undocumented immigrants do not have the political right to be present in a state, as persons they are entitled to have their basic human rights respected.³⁴

Some might argue that the situation undocumented immigrants find themselves in is "of their own making" and so the state has no moral requirement to help ameliorate it. This view is wrong for two reasons. First, it is not clear that there is ever a case where those who put themselves in a bad situation do not deserve to have their basic human rights respected. Second, even if there are such cases, this does not seem to be one of them. In the situation we are considering, the state has tacitly allowed some degree of unlawful entry and to that degree is itself responsible for the presence of undocumented immigrants and the injustices that result. Option 3, therefore, does not seem to be a viable option either.

The fourth and final option is for a state to limit its border enforcement to morally acceptable levels while also changing its immigration policy to better reflect internal “pull” factors. The upside of this option is that, if successfully implemented, it should reduce the demand for unlawful entry to a point where morally acceptable levels of border enforcement could be effective. By granting admission to those immigrants who are “pulled” into the state, most immigrants who are today undocumented would suddenly have lawful status. This would be a significant upgrade over option 3 because this would prevent the state from being implicated in the creation of a subgroup susceptible to exploitation and discrimination. It would also be an improvement over options 1 and 2 because it would deal with pull factors (not just “push” factors) and would not be asking the government to intrude into the economy or in the lives of its citizens in liberally problematic ways. Therefore, this option seems to be, at least as far as liberal principles are concerned, the best and most consistent option available.

The only problem is that this option is irreconcilable with a position like Wellman’s. For starters it has the same downside that we saw with option 3: it limits the discretion that a legitimate state has with respect to border enforcement. Furthermore, this option also limits the discretion that a state has over its admissions and exclusions criteria. Under the fourth option, admissions and exclusions criteria must come to reflect internal “pull” factors, such as economic realities, family relationships, and even socio-historical circumstances. These limitations are problematic for Wellman’s account because they show that, when border enforcement is factored in, legitimate states have presumptive duties that cannot be discharged without at the same time having to associate with noncitizens whom it would rather not associate with. In other words, there is no way to “export” justice under this fourth option. Under this option, a legitimate state’s immigration policy is already overdetermined by internal factors, such as economic realities, family relationships, and sociohistorical circumstances, and is not properly discretionary.

Conclusion

If the argument from the preceding section is correct, it shows that when the question of border enforcement is taken into consideration, Wellman is left with the following dilemma: Either abandon his claim to liberalism, or concede that a legitimate state’s immigration policy should be bound

by presumptive duties owed to noncitizens. While I am not sure which of these two options Wellman would prefer (although I strongly suspect that he would reject both), I suggest that philosophers adopt something like the latter position. When debating the ethics of immigration, philosophers should take into account the moral and political implications of border enforcement because of its lethal potential and the way these implications alter the admissions/exclusions dynamic. In short, when border enforcement is factored into an ethics of immigration philosophers will find that, in order to remain committed to universal equality, they must reject the notion that states (especially legitimate states) have a presumptive right to control immigration.

NOTES

1. I believe that this is also true for internal enforcement, but I do not have enough room in this article to go into much detail on that aspect of the immigration debate. I do, however, make an egalitarian argument against internal enforcement in "Discrimination and the Presumptive Rights of Immigrants," *Critical Philosophy of Race* 2, no. 1 (2014): 68–83.

2. See Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004); John Exdell, "Immigration, Nationalism, and Human Rights," *Metaphilosophy* 40, no. 1 (2009): 131–46; and Eduardo Mendieta, "The Right to Political Membership: Democratic Morality and the Right of Irregular Immigrants," *Radical Philosophy Review* 14, no. 2 (2011): 177–85.

3. See Michael H. Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983); David Miller, "Immigration: The Case for Limits," in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher Heath Wellman (Malden, Mass.: Blackwell Publishing, 2005), 193–206; and David Miller, "Immigrants, Nations, and Citizenship," *Journal of Political Philosophy* 16, no. 4 (2008): 371–90.

4. See Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press, 1997), 331–49; and Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000).

5. See Christopher Heath Wellman, "Immigration and Freedom of Association," *Ethics* 119 (2008): 109–41; and Christopher Heath Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (New York: Oxford University Press, 2011).

6. Wellman and Cole, *Debating the Ethics of Immigration*, 13.

7. *Ibid.*, 36–37.
8. *Ibid.*, 16.
9. Wellman, “Immigration and Freedom of Association,” 114.
10. *Ibid.*, 110–11.
11. For an excellent treatment on the distinction between moral and political equality and how it relates to the immigration debate, see Michael Blake, “Immigration,” in *A Companion to Applied Ethics*, ed. R. G. Frey and Christopher Heath Wellman (Oxford: Blackwell Publishing, 2003), 224–37.
12. Wellman, “Immigration and Freedom of Association,” 126.
13. For a more developed version of this argument, see Blake, “Immigration,” 228–30.
14. Wellman, “Immigration and Freedom of Association,” 120.
15. *Ibid.*, 122.
16. Shelley Wilcox, for example, makes an argument along these lines in “Immigrant Admissions and Global Relations of Harm,” *Journal of Social Philosophy* 38 (2007): 274–91.
17. Wellman, “Immigration and Freedom of Association,” 123.
18. Miller, “Immigration,” 198.
19. Wellman, “Immigration and Freedom of Association,” 127, 129.
20. For some philosophical treatments on how the political standing of certain citizens can be diminished by immigration controls, see Carlos Alberto Sánchez, “On Documents and Subjectivity,” *Radical Philosophy Review* 14, no. 2 (2011): 197–205; and Carlos Alberto Sánchez, “Philosophy and the Post-Immigrant Fear,” *Philosophy in the Contemporary World* 18, no. 1 (2011): 31–42.
21. Wellman, “Immigration and Freedom of Association,” 118.
22. *Ibid.*, 138.
23. Miller, “Immigration,” 204.
24. Wellman, “Immigration and Freedom of Association,” 138.
25. Walzer, *Spheres of Justice*, 47.
26. Wellman, “Immigration and Freedom of Association,” 138.
27. Blake, “Immigration,” 233.
28. Walzer, *Spheres of Justice*, 62.
29. Wellman, “Immigration and Freedom of Association,” 141.
30. See Sarah Fine, “Freedom of Association Is Not the Answer,” *Ethics* 120 (2010): 338–56.
31. See Shelley Wilcox, “Do Duties to Outsiders Entail Open Borders? A Reply to Wellman,” *Philosophical Studies*, 2012, accessed July 5, 2012, doi:10.1007/s11098-012-9902-y; and Peter Higgins, *Immigration Justice* (Edinburgh: Edinburgh University Press, 2013), 158–64.
32. See Ryan Pevnick, “Social Trust and the Ethics of Immigration Policy,” *Journal of Political Philosophy* 17, no. 2 (2009): 146–67; and Michael Blake,

"Immigration, Jurisdiction, and Exclusion," *Philosophy and Public Affairs* 41, no. 2 (2013): 103–30.

33. Mathew Lister, "Immigration, Association, and the Family," *Law and Philosophy*, 2010, accessed August 1, 2012, doi:10.1007/s10982-010-9083-9; and Michael Blake, "Immigration, Association, and Antidiscrimination," *Ethics* 122, no. 4 (2012): 748–62.

34. For a fuller discussion of social group membership, discrimination, and immigration, see Amy Reed-Sandoval, "Demystifying the Injustice of Undocumented Migrant Oppression" (forthcoming); and Higgins, *Immigration Justice*, 110–44.