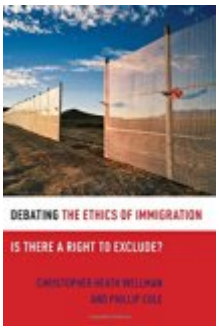
H-Net Reviews
in the Humanities & Social Sciences



Christopher Heath Wellman, Phillip Cole. *Debating the Ethics of Immigration: Is There a Right to Exclude?.* Oxford: Oxford University Press, 2011. 352 pp. $99.00, cloth, ISBN 978-0-19-973173-2.

Reviewed by Steven Wilson

Published on H-Law (December, 2013)

Commissioned by Ethan Zadoff (CUNY Graduate Center)

The uncontrolled transit of unauthorized peoples across international boundaries is a source of controversy not only in the United States, with its long southern border with Mexico, but in the countries of the European Union, the destination of choice from such hotspots as northern Africa and the Middle East, and in other nations that are relatively prosperous and peaceful. Would-be host countries face the practical questions of how many immigrants, if any, to accept; under what circumstances; for how long; and to what end--commerce, or citizenship? States usually choose one immigration policy over another after making pragmatic political, demographic, or economic calculations. Sensitivity to human rights issues may inform the thought of some leaders of those nations on the receiving end of substantial migrations (we are considering voluntary movement, not illicit human trafficking), but it is probably safe to assume that few of them will ponder the strictly *ethical* implications arising from their decisions either to allow or to interdict immigrants. The authors of *Debating the Ethics of Immigration*, philosophers Christopher Heath Wellman of Washington University in St. Louis and Phillip Cole of The University of Wales in Newport, do this pondering for them. Despite the main title, this book is not the record of a debate so much as an exercise in comparative essaying on the subject in the subtitle: is there a right to exclude?

Although Wellman and Cole also examine such related topics as the ethics of “guest” worker programs, the lingering impact of past colonialism on present-day international borders, and the moral status of (and potential legal obligations owed to) refugees, the main task at hand for both is to offer their best arguments that answer to the question of whether states are acting ethically if they exclude hopeful foreigners. Each author takes roughly half of the volume to lay out their respective positions--Wellman in the affirmative, then Cole offering the negative. Wellman argues that “legitimate” states have the right to regulate their memberships and populations, and that this right includes the exclusion of new members and would-be immigrants (chapter 1, “In Defense of

the Right to Exclude"). Wellman bases his argument on three stacked premises: first, legitimate states have a right to self-determination; second, freedom of association is an essential part of self-determination; and, third, freedom of association implies freedom not to associate with others not of one's choosing. What are the marks of "legitimacy"? In Wellman's opinion, a legitimate state is one that "adequately protects the human rights of its constituents and respects the rights of all others" (p. 16).

That bare definition might provoke either nodding or shaking of the reader's head, but it will not persuade many to reconsider their existing positions. A proponent of open borders will not see a policy of exclusion as "adequate" protection of rights, and hence never as a legitimate act. Cole, for example, essentially takes these three premises as self-evident: first, the central principles of liberalism are equality and universality; second, inequality is presumptively unjust when it is an artifact produced by morally arbitrary differences between persons; and, third, is it not "morally arbitrary" (basically, an accident of history) that an individual was born in one country and not another? And this is a key problem with a philosophical debate that pits politics against ethics. Instead of "legitimate," one side could argue variously that a policy of exclusion is legal, constitutional, customary, the mark of a sovereign power, expedient, or merely rational, and the other side will object to the premises and definitions. A simple historian may find this impasse frustrating; but, scoring the exchange on practical points alone, non-philosophers who pick up this book will probably award the cup to Wellman. Nevertheless, the full arguments are worth grappling with, as thought experiments that test our liberal assumptions.

Through a series of topical chapters, Wellman methodically examines "cases for open borders," and finds each case wanting. He considers four possible justifications for open borders which he calls the *democratic*, *libertarian*, *egalitarian*, and *utilitarian* arguments. The first argument is as follows: democracy gives people a voice in framing the coercive laws to which they are subject; foreigners wishing to enter a new country will be subject to that country's laws; therefore, the democratic principle requires that prospective immigrants participate in the framing of those immigration laws. Wellman sees this as impractical: if a poor state's citizens can vote themselves the right to move to a rich welfare state, what will prevent every poor group choosing the same country? This reviewer judges it confused: will democratic principles prevail in all cases but one--namely, the right to exclude? "Open borders" loses this round. The second, libertarian case emphasizes property rights of natives. For example, a business owner has a right to maximize profit by importing and employing cheap foreign labor. Wellman finds that a nation's rights, to stability and prosperity, should outweigh the owner's right, because supporting immigrants may impose costs on the rest of society (a balance, of course, is found through political processes, so the libertarian case relates to the democratic).

The third, egalitarian argument for open borders is a call to rebalance the unfair distribution of the world's wealth. Wellman claims to be sympathetic to the idea that the sad history of Western colonialism may require the prosperous nations to compensate the plundered, colonized peoples. Even while acquiescing to the principle, however he does not offer details on how the reparations would be calculated. This case conflates economic history with demographic determinism, which is perhaps inevitable. But, the conflation begs the following question: if someone in a poor, war-torn country expresses a desire to immigrate to a peaceful, prosperous part of the world, would a fat check actually suffice to keep them where they are? The fourth and final case is utilitarian. A cost-benefits analysis suggests that opening the borders would cost affluent nations less than it would help poor would-be immi-

grants. Moreover, free movement would allow for greater labor efficiencies. Finally, open borders would undercut political oppression, by enabling refugees to escape from tyrannical regimes. On the latter point, Wellman reiterates his idea that, under the rights of self-determination, a legitimate state "can entirely fulfill its responsibilities to persecuted refugees without allowing them to immigrate into its political community" (p. 123).

Cole follows Wellman to propose "an ethical defense" of open borders. His view of the human right to free mobility across boundaries is based the idea that there is or ought to be a symmetry between exit and entry. Hence, the right to immigrate has a strong moral claim, to be curtailed only in exceptional circumstances. In most cases, the right to free movement trumps sovereignty. Cole surveys various rationales advanced for rejecting potential immigrants, and asks if any of these are morally legitimate, or defensible within any coherent version of liberalism. Because Cole takes the liberal commitment to human equality and freedom to its radical conclusion, his answer is no. Cole's uncompromising position seems to be counter to current international law (or at least centuries of practice), but this is his point: what may be considered strictly legal is not therefore ethical, and Cole decries a "compromise" solution on exclusion (p. 162). Cole also insists that, when debating of borders and exclusion, arguments from analogy may be attractive but are morally misleading. Wellman, for example, likens membership in a club to membership in a state: exclusivity is part of the institution's nature. Wellman suggests in another passage that the right to exit a country is analogous to the right to be married--although a human right, it can still be restricted in various legitimate ways (you cannot marry someone who does not wish to be your spouse). Cole disputes that state membership is analogous to marriage, or other voluntary statuses. He notes that while a person can survive single, it is perilous to be stateless (p. 204).

The second thread of Cole's side of the debate is rooted in history. He asserts that the borders that now divide rich and poor peoples were, in large part, created by the powerful and wealthy, and are still maintained for their benefit. Colonial powers long felt (and still feel) comfortable with the results of their exploitation (and enslavement) of others, and continue to enforce rules that profit them (p. 220). This leads to the third line of Cole's attack on closed borders. Arguments against the right of the poor to cross borders not of their making are unjust and so illiberal. They are also often steeped in barely concealed racism. Closed borders simply violate the egalitarianism that is at the heart of the liberal ideal, and are contrary to liberal universalism. Cole then examines--and rejects--common objections about the practicability of open borders, and concludes by speculating about what a regime of open borders might look like in practice.

The structure of the book, basically a monologue and then another monologue, permits sustained arguments to be made about this complex issue. Yet, although they are clearly familiar with and able to refer to one another's previously published contributions to the ongoing discourse, this serial arrangement effectively prevents Cole and Wellman from engaging in a point-by-point consideration (Cole's chapter rebutting "Wellman on Freedom of Association" is an exception, but it refers to earlier articles, not the first half of the book). This is not a flaw, since the careful reader can mentally construct an engagement of opposing arguments. Indeed, some will see the structure as a feature (for example, teachers of politics, international relations, philosophy, or rhetoric may find it useful to put their students deliberately in the middle of this debate and let them hash it out). There is no clear winning argument, and victory is evidently not the point. Rather, the thorough, provocative, respectful examination of apparently incompatible first premises is intended to spark further thought, not generate solutions.

In this effort, professors Wellman and Cole succeed.

ing

If there is additional discussion of this review, you may access it through the network, at https://networks.h-net.org/h-law

Citation: Steven Wilson. Review of Wellman, Christopher Heath; Cole, Phillip. *Debating the Ethics of Immigration: Is There a Right to Exclude?.* H-Law, H-Net Reviews. December, 2013.

URL: https://www.h-net.org/reviews/showrev.php?id=34778