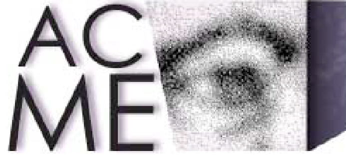

Some Reasons and Conditions for a World Without Immigration Restrictions[1]

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Harald Bauder, taking as a starting point the professional ethics of his discipline, applies political theory and political philosophy to the case of Canada. He also refers to the growing number of publications that are concerned about the justification, legitimacy and utility of present immigration regimes. In particular, 'Western' readers have been brought up in the spirit of liberalism and its commitment to individualism, freedom and pluralism, justice and democracy. In response to authoritarian post-war communist regimes and the Iron Curtain, so painful for Eastern and Western Europeans alike, those from the western countries preferred, appreciated and enjoyed some kind of freedom of movement. This principle has entered into Rawls' concept of political liberalism (Rawls, 1993). Within nation states and even across certain borders, such as within the European Union or in regions where borders are traditionally less meaningful, we can observe some freedom to choose where to live and where to work. But what a disappointment to observe that the fall of communism and the hated Iron Curtain apparently corresponds with ever-fiercer entry restrictions instead of extending liberal principles to the wider world (Cornelius et al, 1994; Düvell, 2003). Instead, liberal ideals meanwhile have been fading away. Therefore, one might wonder whether these have been simply a political strategy in the competition with communism, whilst now, once communism has disappeared, liberalism too may become somewhat redundant. In fact, the new world order shows a tendency towards more exclusive and authoritarian (migration) regimes instead of, for example, taking advantage of the historical opportunity to extend liberal freedoms. Any

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step to challenge that, as Bauder does, is highly welcomed. However, I would like to add a few thoughts to the debate that Bauder has opened here, and also situate the Canadian case in a transatlantic, if not international, perspective.

The Historical Lesson

In 1938, the western allies held a conference in Evian, France, to discuss the European refugee problem, and what could be done to help in particular the German Jews. The answer was as cruel as it was clear: Nothing. No country, and Canada played a particularly unpleasant role (Abella and Troper, 1982), was willing to accept Jewish refugees; both exit from the Nazi countries and entry to safe countries were restricted, and they were left at the mercy of the Nazis (Weingarten, 1981). In the absence of internationally agreed obligations or laws, racism, and in particular anti-Semitism, and economic and social considerations guided the decisions. The historical lesson is clearly that exclusion on grounds of immigration restrictions can, and all too often does, kill. In post-war politics, this failure of international refugee policy has been recognised: first, by introducing two major internationally binding conventions, one on human rights and another one on refugees; and second, by setting up two international bodies, the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee for European Migration, later renamed the International Organisation for Migration (IOM).

Unfortunately, in recent times several incidents have made it clear that there continue to be the same underlying problems in international relations. The failure of the concept of UN-protected 'Safe Havens', such as in Srebrenica/Bosnia, the failure to rescue the Tutsi people in Rwanda, and the failure to protect minorities in Congo raised serious doubts about the effectiveness of international refugee protection (see, for example, Hyndman, 2000). Furthermore, a Human Rights Watch report (HRW, 2000) lists thousands of cases of human rights and refugee rights violations by the IOM in their attempt to implement a policy of return of migrants and refugees to their countries of origin. And, finally, many countries host so-called 'illegal immigrants,' several millions worldwide (Miller, 1995), who are integrated into the economic sphere but excluded from the political sphere. The consequence is a social stratum of residents in our societies, who are basically deprived of any rights and who could be seen as a renaissance of the medieval outlaws. All these examples show that the existing immigration policies and international organisations are still seriously flawed (Düvell, 2002).

For these and other reasons, the concept of global migration management has become popular (see, for example, Ghosh, 2002; Veenkamp, 2003). But again, any proposal for such a regime, no matter how strict or well intentioned it might be, appears liberal, human, and thereby acceptable only as long as it ignores the consequences for those who will be rejected. Any such regime must produce losers, and those who are excluded may, as a final consequence, find their lives at risk.

The Ethical Perspective

The balance between the exclusion and inclusion of migrants is a typical ethical dilemma. It is to decide what has priority — individual or collective rights and individual or collective goods (Carens, 1996; Weiner, 1996; Gibney, 1996). From a strictly liberal

point of view, the moral equality of persons (Dworkin, 1981), freedom of choice (Rawls, 1993), and a universal respect for the autonomy of any person must be given some priority (Perry, 1995). Perry himself limits these principles to the interior of political communities. But, as Rawls (1979) argues, because places of birth are arbitrary, and as Coleman and Harding (1995) equally points out, because borders are arbitrary, both these institutions lack justification.

Another typical example of an ethical dilemma is the lifeboat case, where either all will die or only some have to be selected for survival. In his reconstruction of the case of the sailing vessel *Essex,* Philbrick (2001), for example, found that all those who survived at the expense of others consequently suffered from serious mental illness and that some failed completely to come to terms with their actions and thereby committed suicide. This example demonstrates the risks of utilitarian decisions, and, translated into immigration politics, it might serve as a warning that the exclusion of migrants on economic grounds is itself not without risks to those who aim to defend their economic, social, or cultural survival. Cohen (2003) argues that there can be no fair or non-racist immigration controls, and Castles (1987) shows how racist immigration policies lead to racist societies. But racism undermines the coherence of a society in such a way that in the long-term social pathologies, as for example in xenophobia, may become a greater threat to social coherence than the migrants initially experienced. Racist riots or the black revolts in the UK and in France in the 1970s and 1980s, as well as in Germany since 1989 support this point. Immigration regimes are not only unjust, they also create as many problems as they claim to solve.

The Anthropological Argument

Migration studies have all too long taken for granted two major modern assumptions: that nation states are taken as given and that migration is the exception to the norm. But in fact nation states, and with them immigration controls, are rather new features that came into existence only in the late 19th century. It has been shown as well from an anthropological perspective that migration is a continuous, quasi-natural strategy (Hoerder, 2002). One also needs to consider the fact that *Homo sapiens* would not have spread around the globe without its desire to migrate (Enzensberger, 1993). In that light, migration seems to be the norm rather than the exception.

Given that 40 per cent of the world's population live in poverty and are starving yet remain where they are instead of moving to a more friendly environment, it should perhaps be less of a concern why only a minority is on the move, but more as to why the overwhelming majority of people living in poverty is immobile (see, for example, Hammar, 1997). Is it not the national, international, and global migration regimes that keep people where they are, and thus contribute to inequality and poverty, and eventually to starvation and even death?

Schlögel (2002), for example, has concluded that migration regulations based on principles of inclusion and exclusion seem to be unnatural and therefore unacceptable. From such an anthropological perspective, migration presents itself as a natural human behaviour as well as a survival strategy. Migration regimes seem to not account for this, thereby, producing restrictive immigration policies that potentially violate human dignity and, in the worst case undermine the right to life.

The Empirical Background

Those who argue in favour of immigration restrictions usually base their opinion on two main and interrelated concerns: the perception that immigration is a one-way process and therefore one of permanent settlement, and that migration leads to overcrowding, labour and housing market competition, extra burdens on the welfare system, and threats to the national identities of the receiving countries. These reasons, however, may to some extent be patterns of the past because the era of globalisation has not only unchained information, capital and goods from their constraints allowing circulation freely around the globe, but has also contributed to the emergence of global labour markets (see, for example, Mehmet et al., 1999). This corresponds with some neoliberal principles that require workers to be more competitive, mobile and flexible. With both the emergence of global labour markets and increasingly flexible workers, the result is a globally mobile labour force. Such a shift is inherent to globalisation (and seems to be the price having to be paid for participation) and, in a neoliberal sense, societies should have to comply with the basic ethical principle to acknowledge such a reality (Müller, 1997). Therefore, in a globalizing era, receiving countries should not have to accept *immigrants*; rather, they should be receiving either *transnational migrants*, who are rooted in more than one country (Pries, 1997), or *transglobal migrants*, who only stay on a temporary basis and then move on to other destinations (Düvell, 2004). These migrants are not only elites or from professional and business classes, but also workers such as nurses, carers or servants.

With respect to these new, prevalent forms of mass migration, migration policies have failed in two often interlinked ways. First, the large number of undocumented immigrants not only proves that immigration controls do not work anyway (Düvell, 2002), but also that the immigrants' individual aspirations frequently override institutional goals represented by immigration control agencies (Shresta, 1987). Second, several countries engaged in the global "competition for the brightest," scarce professionals, for example, frequently fail (Cyrus and Düvell, 2002). Germany, for example, in comparison to the US, Canada and the UK, was unable to attract the specialists wanted (see, for example, *Süddeutsche Zeitung*, 19./20.7.2003, Im Land der begrenzten Möglichkeiten).

With regard to the various shortcomings of the traditional migration regimes, the need for alternative and flexible immigration regulations that suit our flexible and mobile world better seems obvious.

The Political Theoretical Concept

One of the most important ethical justifications for liberal democracy is Rawls' "Theory of justice," although this theory is not mentioned by Bauder. Rawls imagines a state of origin in which individuals who are morally equal come together for the first time to decide on a consensual contract. Because rational individuals are aware of their interests they would not agree to a contract that undermines their own well-being. As an example, Rawls contemplates a community that is culturally homogenous and where people are sedentary. He comes to the conclusion that the right to freedom of movement exists only within the community but not between different communities. However, the anthropological and historical perspectives suggest that such an assumption is incorrect: migration is a continuous feature in human history. The rational conclusion to Rawls'

experiment might instead be that individuals in a state of origin, some mobile and some sedentary, would prefer to negotiate a system that does justice to both ways of living than to consent to a contract that favours the sedentary at the expense of the mobile. Only a theory that includes the principle of freedom of movement can be called a true "theory of justice."

The Political-Economic Point

Economic thinking is currently dominated by neoliberal ideologies and policies. Because of the fundamental belief in neoliberalism in the free factor movement (Krugman and Obstfeld, 1997) and economic freedom (Friedman, 1962), some Chicago School economists or scholars from the Cato Institute suggest to include "freedom of choice in location" as well (Reder, 1982, 31; see also Schultz, 1978). Bauder somewhat blows the same horn. It is, however, a misconception that capitalism can do without borders. Instead, quite the opposite is true. Neoliberalism's primary think tanks, including the Organisation for Economic Co-operation and Development (OECD) and the Trilateral Commission, insist in keeping borders as they are (see, for example, Dreher, 2002). What is neglected is the notion that political economy is founded on the politics of differences — differences between genders, races, and nations (as reflected in the division of labour, Fröbel et al., 1977; segmented labour markets, Piore, 1979; and price differentials, Helliwell, 1998; see also Moulier-Boutang, 1998). These differences are then translated into a system of different rights (and indeed immigration status), different wages and different levels of reproduction. And, finally, transnational businesses exploit such differences as manifest in, for example, the US-Mexican, German-Polish or Singapore-Indonesia wage differentials. Border regimes are there to maintain and enforce these differences in order to keep individuals where they are. Neoliberal economists therefore reject application of the Heckler-Ohlin model of price-factor equalisation onto migration, arguing that open borders do not benefit the receiving countries but "benefit only the migrant" (Simon, 1989, 19). From the political-economic point of view, and in particular a neoliberal point of view, borders and with them migration regimes are a prerequisite of capitalism. In fact, migration regimes mirror typical value-added chains.

Conclusion: Preconditions for a World without Immigration Restrictions

Ethically, borders and the policies of exclusion on grounds of immigration are hardly justified when economically borders seem to be a prerequisite of capitalism. This tension leads me conclude that a solution cannot realistically be found within the existing political and economic environment. It would be misleading to imply that the world as it is, is ready for concepts of open borders and unrestricted movement of people because capitalism needs borders.

Let me, however, imagine some good reasons for, and some aspects of, such a vision. A world without borders would be a radically different, and possibly a fairer world. Migration is a major challenge to the sending and receiving countries alike. But because migration is so much an inherent element of human history, progress and development, and because our migration regimes have failed in more than one way, with liberal political philosophies hardly justifying them, one should perhaps turn the discourse about migration upside down. Why not take as a starting point the assumption that migration is not the

problem; rather, the problem lies in systems and institutions that are unable to adequately cope and respond to migration needs. In such a case, the main challenge no longer is to manage and restrict migration but to reform the existing systems and institutions in order to enable them to reconcile the sedentary with the mobile populations and to design policies that do justice to both (Jordan and Düvell, 2003).

There are already some scholars that have thought of new models of political and economic membership, such as cosmopolitan global citizenship (Sinclair, 2003), or transnational citizenship (Bauboeck, 1994). Economic integration as such has rarely been a problem for migrants, as they most often tend to work and thereby have already been economically integrated even though some often remain politically excluded. In order to cure this imbalance one could link economic membership with political membership and acknowledge that any contribution either to markets or to society in a wider sense should coincide with a mutual access to political and social resources. New welfare and labour market systems would also be required. These new configurations must seek a just and equal distribution of primary social goods among the world's population (Jordan and Düvell 2002). Socially, global systems of taxation (Tobin tax, see for e.g. Kaul et al., 1999), basic income schemes (Fitzpatrick, 1999), social dividends (Ackerman and Alstott, 1999) and planet-wide citizen income (Frankman, 2002) have already been suggested. A political vision, including a globalisation of ethics (Sandvoss, 1999), embracing both mobile and sedentary people is long overdue. Such a vision needs to acknowledge our increasingly mobile world populations and accept the right of exit and access, which would then therefore be capable of translating ideas of denizenship as temporary or cosmopolitan citizenship into practice.

In order to address the dilemma of globalisation, migration, membership and rights, a satisfying solution seems difficult, if not impossible, to reach within the existing frames of references, such as nation states, citizenship and political economy. As yet, many scholars seem hesitant to cross the invisible line that separates the well-chartered coastal waters with its traditional intellectual landmarks from the open sea in order to seek solutions that lie beyond the horizon. It may require some imagination, and some courage, to do so. But considering the concerns presented in this exchange, it is high time to try.

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