

Hospitality: Entry and Membership

We decide who comes into this country and the circumstances in which they come.

Campaign speech, Australian Prime Minister John Howard, 28 October 2001; cited in Gelber and McDonald 2006: 277

Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life.

Walzer 1983: 62

Introduction

This chapter examines the issue of moral exclusion in a very literal sense. The issues of entry and membership go directly to the heart of the tension between the rights of communities and the rights of the individual, and to the meaning of justice. Questions of entry are so important because they are foundational and yet, because they are foundational, they are often taken for granted and assumed. Once we examine the ethical foundations of our communities, then the categories we use for thinking about ethics come into question and stand the risk of seeming inadequate.

Ethical debates around migration and people movements examine the ethical justifications of the right of exclusion, and attempt to establish whether and how states can have such rights. Millions of people

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

every day seek to gain entry to countries other than their country of origin (32.9 million refugees and 'persons of interest' to UNHCR in 2008, according to the United Nations High Commissioner for Refugees). The movement of people between communities is as old as humanity itself, and it has always been accompanied by attempts to restrict the entry of strangers into 'bounded' communities. The mass movement of peoples since the middle of the twentieth century, and again since the end of the Cold War, goes to the heart of the nation-state's claim to exist as a sovereign and exclusive political community. In the era of nation-states, the right of territorial exclusion has become a defining prerogative of sovereignty. However, a survey of books on international ethics reveals that, for most, the questions of immigration and refugees are not considered (see Amstutz 1999; Harbour 1998; Vails 2000; Dower 1998; Hayden 2005). The implication is that such questions are matters of purely domestic concern, internal to the community of the nation-state. It is a curious omission because membership and entry are arguably the first way in which states' actions have international impacts. Every time a state declares or is declared sovereign it asserts the right to decide upon membership and to restrict entry. Arguably, policies regarding access to citizenship ought not to be viewed as unilateral acts of self-determination, but rather must be seen as decisions with multilateral consequences that influence other entities in the world community (Benhabib 2004: 21). Every decision by a state to refuse admission to refugees or potential migrants impacts upon the international community, either bilaterally or multilaterally, via the offices of the United Nations High Commissioner for Refugees (UNHCR), by directing claims elsewhere.

As many cosmopolitan theorists note, ethical reflection must begin with the exclusions accompanying the domestic social contract. Therefore, it makes sense to begin with reflection upon the defence of the right of exclusion and the way in which it is exercised. The question addressed in this chapter is how members of bounded political communities ought to weigh the claims of outsiders who wish to join the social contract. More specifically, discussion of immigration, refugees, asylum seekers and the status of residents raises two questions: questions of entry and questions of membership. Immigration debates address the question of whether states have a right to restrict entry, or whether people ought to have the right to absolute free movement to settle where they choose. The fundamental issue that immigration brings to the fore is whether community rights trump individual rights and whether outsiders' interests should count as much as insiders'. This is especially so in the case of refugees and asylum seekers

who attempt to flee persecution or extreme disorder or suffering. These people present the closed political communities with a moral demand to allow unconditional entry in order to relieve suffering and save lives.

The second issue which follows concerns the status that people have once they are granted entry, in terms of who is entitled to full citizenship or membership rights and the state's grounds for denying such rights to people it has admitted. For instance, guest workers, or foreigners who migrate exclusively for work purposes, raise the issue of membership because they do not have full citizenship rights and are excluded from political life, and do not have the rights enjoyed by other citizens. Having accepted foreigners into their midst, political communities are faced with two further ethical choices: (i) are the new arrivals granted full membership of the community, including permanent residency or citizenship?; or (ii) are the new arrivals granted merely hospitality or safe haven, but not made full members or citizens? The first and largest part of this chapter discusses the ethics of entry and the second part discusses the question of membership. The first part itself is divided into two sections: (i) relating to the general case of immigration; and (ii) to the specific challenges of refugees and asylum seekers.

Ethics of entry: cosmopolitanism and anti-cosmopolitanism on migration

The questions of entry and membership refer to the positive and negative duties 'we' owe to 'them', and equally raise the universal obligations of what everybody owes because there is a claim that deciding entry is not just a national problem, but also a global one. Any immigration and refugee policy takes place in the context of a global movement of people or a global refugee crisis, and is not just a national decision.

In some ways, the distinction between cosmopolitans and anti-cosmopolitans is clearest in relation to questions of entry and membership. At its most categorical, liberal cosmopolitanism argues for no restriction on movement and anti-cosmopolitan means the absolute rights of a state to restrict movement. However, cosmopolitan authors also include arguments that political communities do have some rights to decide who enters and remains and who does not, while anti-cosmopolitans also accept the claims of some outsiders to first priority. The chief difference between cosmopolitans and

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

anti-cosmopolitans is that the latter see this issue primarily in terms of 'what we do to them', while cosmopolitans also understand this as a question of justice, i.e., what we owe to everybody and what everybody does to everybody else. That is, cosmopolitans and anti-cosmopolitans disagree over whether this is a matter of justice or of mutual aid.

The natural duties argument in the case of refugees sees entry as a question of state prerogative, that is, a matter of discretion and charity. It gives wide scope to states to decide the 'mix' and number of immigrants and refugees. In contrast, the cosmopolitan approach argues that the presumption is for inclusion, and that outsiders' interests deserve equal weight to insiders. Cosmopolitans also argue that liberal states have particular cosmopolitan duties of open borders, regardless of what other states' policies are. The real difference between cosmopolitans and anti-cosmopolitans here is between those who argue there should be a presumption of free movement, the onus being on the state to justify exclusion, and those who argue there should be a presumption of a right of exclusion with the onus being on the outsider to justify their claim to entry.

While the situation of refugees and asylum seekers is often that of desperate displaced persons, refugees and asylum seekers only become ethical problems when the right of closure exists for a political community. Logically, prior to the question and possibility of refugees, is the more general question of the right of free movement and entry. If there were absolute freedom of movement then there would be no distinction between refugees and migrants, except as might arise from their different circumstances of departure. For this reason, it is necessary to discuss migration before turning to the more fraught question of refugees.

Cosmopolitanism: Kant and universal hospitality

Many people associate cosmopolitan ethics with either the ethics of an ideal world or with the humanitarian duties we have to far-flung foreigners, which is with 'what we do to them' over there. However, cosmopolitanism, like charity, begins at home. While certain contemporary accounts of cosmopolitanism may not pay sufficient attention to the movement of peoples, they were a concern in the beginning of modern cosmopolitanism in the work of Immanuel Kant. There was, for Kant, a cosmopolitan right of freedom of movement that overrode state sovereignty. The principle of hospitality refers to the obligations

we have to others or 'outsiders' who wish to access 'our' territory or community. Cosmopolitan hospitality recognizes the right of a stranger entering foreign territory to be treated as a friend 'so long as he conducts himself peaceably he must not be treated as an enemy' (Kant 1983: 137; Benhabib 2004). For Kant, universal hospitality was one of the few cosmopolitan duties required of republican states in relation to the individuals of other states.

Cosmopolitan hospitality involves an assumption not only of goodwill towards strangers, but also a recognition of their right to travel the surface of the Earth. Kant believed that as long as no considerable harm was foreseeable all people had the right to travel and engage in commerce with each other without restriction. States had a duty not to harm those who sought to enter in good conscience. Kant made no distinction between those who seek access to another territory for commercial purposes, and those who wish to simply travel or migrate. Kantian hospitality did not extend as far as a right of permanent membership, or what we would term citizenship; it was only a temporary right of sojourn, and it was also an imperfect duty of beneficence of the sovereign. In other words, sovereigns had a duty to presume in favour of free movement but had the right to exclude where necessary.

The right of sojourn represented a positive right of movement or association, to be treated as a friend not an enemy, as well as the negative right not to be harmed. Benhabib (2004) points out that Kant did not want to restrict interaction between people and peoples; he wanted to encourage civil society and relationships while also discouraging domination and imperialism. Benhabib explains Kant's reasoning as follows:

the right of humanity in our person imposes a reciprocal obligation on us to enter into civil society and to accept that our freedom will be limited by civil legislation, such that the freedom of one can be made compatible with the freedom of each under a universal law The right of humanity entitles us to become a member of civil society such that we can then be entitled to juridico-civil rights. The moral claim of the guest not to be treated with hostility upon arriving in the lands of another and his or her claim to temporary hospitality rest upon this moral injunction against violating the rights of humanity in the individual person. (2004: 59)

For David Held, universal hospitality is an expression of a principle of freedom of *communication* and interaction, and the right to engage with others in non-violent ways. Held argues that the third article of perpetual peace 'connotes a right and duty which must be accepted if people are to learn to tolerate one another's company and

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

to coexist peacefully . . . universal hospitality is, therefore, the condition of cooperative relations and of just conduct' (1997: 228).

Behind Kant's argument lay a distinction between the territory and the political community or *polis*. The political community was a body of people who recognized each other as co-legislators, and they just happened to inhabit a particular piece of territory. For Kant, there was nothing in the nature of the political community that gave it absolute right over territory. Territory belonged to all humans in common; what mattered politically was access to a community of rights-bearing co-legislators. Because the Earth belonged exclusively to no one, Kant allowed freedom of movement, but he did not allow for membership because membership required an act of recognition and a commitment to a certain public realm. Kant's limiting of the right of hospitality to temporary sojourn is also informed by recognition of the need to prevent the Western appropriation of non-Western peoples' land and territory, and to defend them against Western expansion. It was a rejection of Lockean property rights and *res nullius* thesis, and an affirmation of an anti-cosmopolitan value that 'every community has the right to defend itself against those who seek access to its territories' (Benhabib, 2004: 28). In other words, the Kantian hospitality claim was strictly limited in order to preserve communal autonomy.

What then are the implications of Kant's hospitality principles? The first is that states have no right to a priori exclusion of well-intended outsiders. A cosmopolitan order requires freedom of movement and interaction and communication. However, the principle of free movement was not extended to a right of permanent residence or migration. This would suggest that states retain the right to control membership but not entry.

The only additional ethical criterion Kant gives refers to something like the contemporary right of asylum, which is now enshrined in international law: it is unjustifiable to deny sojourn if to do so would cause a serious harm or lead to 'destruction'. A Kantian hospitality principle involves the recognition that treating people as equals requires acknowledging that they ought to be allowed in if they will be harmed or (destroyed) by exclusion. The only condition under which this might be modified is if the presence of others would constitute a significant harm to us. Thus, a state has a duty to its own people to exclude, for instance, known terrorists or criminals. It also means that refugees and asylum seekers have an unqualified right of entry, based on the threat to their personal safety. Kant then can be understood as balancing the right of individuals with the rights of political communities to self-preservation, but he does so within the

framework of the categorical imperative (CI) which places ultimate reference on the right of individual freedom (see Timmons 2002).

It is interesting to note that in practice Kant's position is now closer to such anti-cosmopolitan authors as Rawls, Walzer and Miller, than it is to contemporary liberals and cosmopolitans such as Beitz or Joseph Carens. The following sections examine these contemporary cosmopolitan accounts.

Liberal cosmopolitanism: open borders

In chapter 2, it was argued that cosmopolitanism consisted of three basic qualities: universality, individualism and impartiality. For certain liberal cosmopolitans, recognition of these requires that liberal states, and by implication others, should eradicate border control policies and any real distinction between residents and citizens. If the world is one single community from a moral perspective, and national boundaries have no deep *moral* significance, then national communities have no basic right of exclusion (in the absence of pragmatic counter-arguments).

The case for open borders has been most vigorously argued by Joseph Carens. Carens (1980) begins with the liberal cosmopolitan premise that impartiality requires a viewpoint that perceives national borders as arbitrary and contingent and therefore morally unjustifiable. From an impartial position, citizenship in Western (affluent) states is an arbitrary privilege. It is only by luck that some people have the rights and privileges associated with membership in affluent Western liberal democracies. For Carens, the implication of this reading is that 'one could not justify restrictions on the grounds that those born in a given territory or born of parents who were citizens were more entitled to the benefits of citizenship than those born elsewhere or born of alien parents' (1980: 261). In other words, members of rich countries cannot justify their right to exclude others from the privileges they accrue merely from being lucky enough to have been born into an affluent part of the world. Current state policies restricting immigration in Western democracies, therefore, 'are not justifiable. Like feudal barriers they protect unjust privileges' (Carens 1980: 261). An impartial (cosmopolitan) position requires that there be free movement across the surface of the Earth and that people from poor countries ought to be able to move into wealthy countries (and vice versa) without restrictions (other than those required for law and order).

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

I or liberal cosmopolitans, this argument applies first and foremost to liberal states. As Phillip Cole argues, 'with its universalist commitment to the moral equality of humanity, liberal theory cannot coherently justify these practices of exclusion, which constitute "outsiders" on grounds any recognizable liberal theory would condemn as arbitrary' (2000: 2). For liberal democratic states, there is particular tension, if not outright contradiction, between their principles of individual autonomy and human rights and state autonomy and self-determination, or sovereignty.

Liberalism is first and foremost a universal doctrine premised on the universality of individual rights and freedoms. There is a particular moral burden that falls to liberal states because of this commitment. More specifically, for the liberal position to be consistent, it must recognize the universal right of free movement. Liberal states impose no internal restrictions upon movement for their own citizens and cannot justify doing so for outsiders (see also Moses 2006). According to Carens (1980: 251), individuals also possess the same right to free movement globally and 'borders should generally be open and people should normally be free to leave their country of origin and settle in another subject only to the sorts of constraints that bind current citizens in their new countries'.¹ As Dummett argues:

The presumption of individuals is always for freedom: there must be a particular ground why any state is entitled to curtail that freedom, if indeed it is . . . The onus of proof always lies with a claim to the right to exclude would-be immigrants. (2001: 57)

Carens argues that these conclusions are consistent with and can be derived from the major varieties of liberalism - Nozickian libertarianism, utilitarianism and Rawlsian. Robert Goodin (1992) has pointed out that liberalism is inconsistent between its attitude to money and people; in practice, money has far greater freedom of movement than people do, and this is generally seen as consistent with liberalism. So it stands to reason that people ought to have at least as much freedom as money.

For utilitarians, the argument is not so clear-cut, as it depends upon a number of variables such as what sort of utilitarianism you use. It depends also on what the overall utility would be, and this may change at different times as, say, economic circumstances vary. For Rawlsians, a right of free movement could be envisioned as a reasonable conclusion. Behind the veil of ignorance, it can be imagined that most contractors would favour open borders for the following reasons: 'if one does not know which country one will reside in one does not know whether one will need to settle in another country for

economic or political reasons . . . [and]; if liberty includes the right of free movement then all individuals should have equal rights to move around freely across borders' (Fabre 2007: 118), so long as this does not undermine the exercise of liberty. Rawlsians also might argue on distributive grounds that immigration could be restricted only if doing so would benefit the worst off.

Carens's argument, while logically persuasive, is also very illustrative of the limits of this sort of idealized or decontextualized thinking and the problems with liberal cosmopolitan understanding of deontology. Carens's argument rests not on the consequences of a right of free movement, but purely on its inherent qualities. As a result, he pays little heed to what the possible implications of adopting such a policy in the real world might be.² In the context of contemporary politics, it is quite possible that such a policy would actually work against the achievement of another cosmopolitan goal of egalitarian global justice.

Many liberals have also defended free movement as a way of achieving distributive justice, as it would facilitate a net transfer of wealth to the poor via repatriation, or because it would simply allow the poorest people to move to the wealthier parts of the world and so escape poverty (Carens 1980; Moses 2006). One way in which states can fulfil their cosmopolitan distributive responsibilities to end poverty might be to allow entry to the poor. However, the problem here with using global distributive justice as a category for immigration, as Carens and also Pogge (1997) acknowledges, is that the movement of people might not be the most effective way of discharging obligations of justice. Redistribution of resources or a more just world order, and other global economic arrangements, may deliver this result more effectively.

More importantly, there could also be good reason for thinking that the movement of people from the poor to the rich world might actually contribute to the continued poor conditions of the south due to brain drain or the departure of capital (Kapur and McHale 2006). Arguably, one of the most liberal areas of current immigration practice is in the area of skilled migrants. Many states target skilled migrants for entry as they offer the best 'value added' and the lowest adjustment costs, with the highest likelihood of adapting to new countries. However, the result of this has been a brain drain from the poorer countries to the richer, with skilled migrants seeking to improve their quality of life by taking advantage of the relative freedom of movement offered them. This in turn has meant a lack of such skills in the developing countries where they are needed more. According to one account, there are more Malawian medical

practitioners in Manchester than there are in Malawi (Kapur and McHale 2006). A regime of free movement could contribute to such a drain, as the less skilled and destitute are less likely to be able to move to take advantage of opportunities. A possible Rawlsian response to this problem would be to invoke the difference principle (see chapter 7), where the movement of people might make the worst off even more worse off. So movement of people can only be justified if it will improve the position of the worse off.

However, for Carens, these types of calculation are hard to defend from a deontological liberal position which emphasizes individual rights over consequences or utility 'to say that we should actually try to keep people from emigrating (by denying them a place to go) because they represent a valuable resource to their country of origin would be dramatic departure from the liberal tradition' (1980: 261); instead, distributive duties should be discharged through means other than immigration. It is possible that such a position would be less problematic for utilitarianism because, while it is individualistic, it is also consequentialist and therefore less concerned with rights than with outcomes. Restricting entry on the grounds of stopping brain drain is therefore a plausible utilitarian response if the brain drain can be shown to have reduced overall utility (welfare)

These issues point to the problem or contradiction at the heart of the liberal project, between its universalistic assumptions and the reality of a world divided into sovereign nation-states in which 'the existence of a liberal polity made up of free and equal citizens rests upon the existence of outsiders who are refused a share of the good of the liberal community' (Cole 2000: 2). Liberal states are just that, liberal *states*, existing in a sovereign political order with other non-liberal states. This means that liberalism will always be modified by that situation. However, recognizing this political reality does not necessarily mean that open borders can be rejected out of hand or that cosmopolitanism is always inconsistent with some form of control over populations and borders. This next section examines the democratic cosmopolitan argument that a degree of exclusion is necessary in order to maintain liberal, human rights-enforcing democratic institutions.

Democratic cosmopolitanism on exclusion

The radical conclusion of 'open borders' liberals like Carens is not shared by all cosmopolitans. Cosmopolitan democrats such

110 HOSPITALITY: ENTRY AND MEMBERSHIP

as Habermas, Benhabib and Linklater argue that justifications for limited practices of exclusion exist, but only if they have the consent of those excluded as well as those included. In other words, justifications of exclusion must in principle be acceptable to both insiders and outsiders. For instance, Benhabib argues:

if you and I enter into a moral dialogue with one another, and I am a member of a state of which you are seeking membership and you are not, then I must be able to show with good grounds, with grounds that would be acceptable to each of us equally, why you can never join our association and become one of us. These must be grounds that you would accept if you were in my situation and I were in yours. Our reasons must be reciprocally acceptable; they must apply to each of us equally. (2004: 138)

States must be able to give equal weight to the legitimate interests of outsiders as well.

It is possible to develop legitimate arguments for exclusion because most people value communal autonomy and freedom from external domination. People also value the freedom to move when circumstances face them with a choice between living and dying, so it is also likely that consensus might exist regarding the free entry of people fleeing persecution, starvation or destitution. In addition, it is not unreasonable to imagine that people might also agree to a restriction on their own freedom of movement in order to preserve a valuable asset, such as restriction of access to national parks. According to this logic, immigration restrictions might be justifiable to everyone if it can be shown that open borders would lead to destruction or harm for a receiving country (see Barry: 1992).

The fundamental principle upon which both liberal and democratic cosmopolitans agree is that the onus of proof is in favour of open borders. There is a presumption in favour of inclusion; therefore the state must justify exclusion rather than inclusion. The state does not have the right to choose to restrict everyone; it must open its doors to all, in principle, unless there is good reason to believe a person might harm the community in some way. For cosmopolitan democrats, only certain forms of restrictions are compatible with such a stance and only certain forms of harm justify exclusion. As Mervyn Frost argues:

when dealing with a civilian (member of civil society who claims basic rights for themselves and recognize them in others) the presumption is that people have a right to freedom of movement. Democratic states may only limit movement when they have good reason, such as public order, security, or the threat to liberty of all. (1998: 288)

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

The most important justification is a threat to democracy itself. Cosmopolitan democrats agree that while liberalism favours open borders, democracy requires some restrictions because democratic processes can be threatened by an influx of people not committed to this process. Democratic citizens therefore have a legitimate interest in the preservation of their political culture. Democratic states base their claim for self-determination upon their political culture rather than exclusively on their ethnic or historical culture (though it is never this simple). This necessarily means they invoke universal values, such as individual liberty and the right of individuals to consent to or participate in the making of laws. This is an act of both individual and communal self-determination. As Habermas argues, 'The democratic right to self-determination includes the right to preserve one's own political culture, which forms a concrete context for rights of citizenship, but it does not include the right to a self-assertion of privileged cultural form of life' (Habermas 1992/2008: 307) Therefore, the preservation of democratic political communities is important because of their claim to universality and legitimacy, not just because they enshrine 'our values'.

Liberal democratic states have no right to systemically exclude, say, Muslims as a group on the grounds that Islam is claimed to be incompatible with democracy. But they do have grounds to exclude political extremists of any kind who endorse or engage in terrorist or violent action. This sort of discrimination can only be against individuals; the presumption ought to be that Muslims have as much right of entry as anyone else. The relevant point to be taken from these debates is not the generic fear of cultural incompatibility, but rather the argument that a state is justified in excluding those who are unwilling to abide by democratic laws. This sort of approach is consistent with the liberal nationalism advocated by Kymlicka (2001: 173). Thus, for cosmopolitan democrats, the right of democratic self-determination is couched in a cosmopolitan framework where individual human rights trump state or communal rights and where the interests of outsiders are equal to those of insiders.

Anti-cosmopolitanism and exclusion

In contrast to liberal cosmopolitans, 'anti-cosmopolitans' reflect the more everyday belief that states have the right to decide the terms of entry and membership for themselves. As noted in chapter 3, for the anti-cosmopolitan critics, the cosmopolitan assumption that we can

decide things from an impartial view is simply a misunderstanding of the nature of the communities we live in and the moral worlds we inhabit. Therefore, according to anti-cosmopolitans, the cosmopolitan argument for open borders is premised on false assumptions about 'the moral point of view'.

The anti-cosmopolitan position on immigration and membership of political communities emphasizes the political and cultural dangers of the 'open borders' position. Ultimately, the principal difference between anti-cosmopolitans and cosmopolitans is that for anti-cosmopolitans the onus of proof for entry lies with the applicant, and not with the state to defend its exclusion. The only circumstance in which individual rights might trump community rights is when individuals are at risk of great suffering or loss of life, in which case a duty of mutual aid may override communal autonomy, or when a state has a causal responsibility in the decision to seek entry.

David Miller disputes the argument that freedom of movement is a basic right as claimed by Carens. Instead, freedom of movement is a means to achieve other more basic rights such as a right to work for a living. In this sense, freedom of movement is a secondary right at best and it is dependent upon other rights being unfulfilled: 'People may have an interest in being able to move to a new country but there is no straightforward reason why that interest leads to an absolute right to a freedom of movement. . . they do not have a basic interest of the kind that would be required to ground a human right' (2005: 196). However, if an individual is likely to be persecuted or perhaps starve due to lack of work in his or her own state, then he or she may claim a right of movement to fulfil other basic needs. Where there is a right to free movement, it applies only in cases where basic rights to security of an individual cannot be met in the country of current residence. Thus, Miller argues there might be a right of exit, to search for work or to escape persecution, but it does not follow that this right to exit creates a basic right to move to any country. People do not have a right to move to a different country because they prefer their culture or are more likely to secure a better-paid job. If a person can find work in his or her own state, there is no need for a global right of free movement. If such free movement is not a basic human right, then states possess a right to determine their own admissions policy. Miller's argument, however, is not representative of most anti-cosmopolitan positions as it works within a cosmopolitan frame of universal rights (Miller 2007).

Most arguments for a right of closure begin from the premise of communal self-determination. Walzer's account of the 'distribution' of membership indicates the basic assumptions of anti-cosmopolitanism

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

and the resulting political outcomes and his views are largely, though not entirely, endorsed by other anti-cosmopolitans (see Meilaender 2001). According to Walzer, of all the things that communities distribute membership is the most important because it is the ultimate determinant of identity, and if a community cannot determine its own terms of membership then it has no capacity to determine its own identity:

The primary good that we distribute to one another is membership in some human community. And what we do with regard to membership structures all our other distributive choices. It determines with whom we make those choices, from whom we require obedience and collect taxes, and to whom we allocate goods and services. (1981: 2)

For Walzer, the state, as a self-determining community, is the ideal vehicle for containing and preserving cultures. According to Walzer, states 'don't merely preside over a piece of territory and a random collection of inhabitants; they are also the political expression of a common life, and (most often) of a national "family" that is never entirely enclosed within their legal boundaries' (1981: 13).

Cosmopolitan liberals are therefore incorrect to claim that individuals come *before* community because individuals are always/already members of communities that provide our identity in any meaningful sense. The community has a right to defend and preserve this identity against outsiders or anything that may threaten it. The right to exclusion plays a central part in this defence: 'The restraint of entry serves to defend the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life' (Walzer 1981: 10). Because belonging furnishes us with the relationships and meanings that make us who we are, the communal right of self-determination trumps the individual right to move freely and settle where one chooses because communities have to defend that relationship. Thus, it is ultimately by reference to internal communal values that the right to exclusion or inclusion can be negotiated and this right overrides individual or cosmopolitan human rights.

For Walzer, states are anomalous to clubs; they exist for a purpose and have a right to choose which types of people they let in and to exclude those who don't share their purposes. Thus, states have no obligation to prioritize the needs of migrants in their selection criteria. Internal criteria are the only grounds used to decide entry policies. Therefore it is perfectly justified for states to select potential immigrants with whom they have some 'fellow feeling' or cultural similarity. One illustration is the state of Israel. Israel's very identity

as a Jewish homeland state rests upon the capacity to exclude non-Jews. Were Israel to abandon its capacity to set its own immigration policy it might soon end up as a non-Jewish state (hence Israel's refusal to recognize a Palestinian 'right of return'). This would fundamentally challenge the capacity of self-determination of those who identify themselves as Israeli.

Different communities can use different internal criteria for exclusion. For liberal democratic states, this could conceivably mean they allow in anyone who is committed to liberal democracy. But for some states, alternatively, it might mean only those who are culturally similar are given priority (i.e., white Christian Europeans). Many states host cultures in which discrimination on these grounds is arguably central to maintaining their identity. Excluding people who do not share these traits could be easily justified in terms of preserving their political culture. In the case of the 'White Australia' policy prior to 1972, the exclusion of Asians and Africans was justified as defending the character of Australia as a white Anglo-Saxon country.³ Australia at this time was a liberal democracy with a largely European heritage.

These sorts of arguments are what prompt some commentators such as Seglow (2005: 321) to claim that anti-cosmopolitanism provides 'an academic rendering of the prejudice that a mass influx of immigrants would "swamp" our way of life'. The underlying premise of their view is that uncontrolled immigration may change the political culture in this way. Most anti-cosmopolitan accounts rest on some variant of the argument that open borders will lead to the destruction or 'swamping' of the community by outsiders. Seglow (2005) points out that arguments of the 'swamping' type actually consist of two components. The first component refers to the need for communal or cultural preservation, and the second component refers to the quality of a state's democracy. The first, Seglow notes, 'need not involve any special commitment to democracy'. A culture may or may not have such a commitment, but as a culture it nonetheless enjoys a right to self-determination and continued existence. (2005: 321)

David Miller (2005, 2007) and Rawls both cite protecting 'a people's political culture and its constitutional principles' (Rawls 1999: 39; Benhabib 2004: 88) as *additional* grounds for a right to exclusion. Anti-cosmopolitans such as Walzer, Miller, Rawls and Mielaender argue that 'the public culture of their country is something that people have an interest in controlling; they want to be able to shape the way that their nations develop, including the values that are contained in the public culture' (Miller 2005: 200). Like Walzer, Miller emphasizes the right to 'give precedence to people whose cultural

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

values are closer to those of the existing population' (2005: 205). Thus, 'a political judgment needs to be made about the scale and type of immigration that will enrich rather than dislocate the existing public culture' (2005: 200; see also 2007: chapter 8).

These sorts of argument are especially evident in Western Europe today where many claim that substantial Islamic minorities are incompatible with, say, Dutch social democracy or British liberalism (rather than, say, Christianity or 'whiteness'). A similar claim is often made in relation to the social welfare policies of Western states. In particular, it is claimed that these policies rely on a degree of cultural cohesion that unlimited migration would undermine (for a good refutation of this argument, see Kymlicka 2001; Carens 2000). At this point, debate about immigration feeds into debates about multiculturalism and membership.

John Rawls's (1999) account in *The Law of Peoples* also supports, or at least implies, that states have a near absolute right of discretion when it comes to migration. At the core of Rawls's theory is a description of 'peoples' as self-sufficient, composing 'a complete and closed social system . . . entry into it is only by birth and exit from it is only by death' (Rawls 1999: 41). According to Rawls, then, the ideal decent political society provides for all the needs of its people; therefore, in ideal theory, there is no need or desire for large-scale or continuing migration (1999: 74). (He does, however, acknowledge that decent peoples and liberal peoples must allow for a limited right of migration in relation to religious minorities.) In fact, Rawls views migration under ideal theory, as a *problem* that has been solved because people no longer need to move between political communities. The obvious limitation here is that he misunderstands the nature of mobility. Humans are restless and freedom of movement is a basic right for this reason, i.e., because people should be free to choose their destinies (see Jordan and Duvall 2003).

Rawls's account of migration is even more stark than the views of either Walzer or Miller because it implies the ultimate illegitimacy of migration. Even the non-ideal theoretical duty of mutual aid, or assistance to burdened societies, does not necessarily cover any right of movement. According to Rawls, the duty of assistance only covers a duty to help burdened societies become decent, presumably, in part, in order to prevent population movements, rather than any duty to any individuals to help them escape hardship or to achieve their own well-being.

It is worth closing this survey by referring to the realist position on immigration. Immigration as such normally falls outside the normal range of concern for realists as it does not directly relate to

110 HOSPITALITY: ENTRY AND MEMBERSHIP

security issues. For realists, the only criteria to be used in assessing and deciding migration policy is that of national interest. This does not lead to a principled position in favour of or against more or less migration. Migration may serve the national interest, such as in nineteenth-century America, or not (during the great Depression). What realism shares with other anti-cosmopolitans is that it views the political community and not humankind as forming the relevant moral community (see Hendrickson 1992). Realism therefore would not renounce the state's right to make these decisions in favour of a cosmopolitan good.

Despite their emphasis on communal discretion, anti-cosmopolitans also attempt to indicate that communities have some obligations to outsiders that limit their right to determine their own entrance policy. Such rights, Miller argues, ought to be balanced by the interest of people wishing to migrate, but interests of the migrants do not confer a right of migration. In a remarkably similar vein to cosmopolitan democrats, he argues that hopeful migrants are owed a reasonable explanation for their exclusion and that racial, religious or gender grounds to discriminate against outsiders 'cannot be defended in any circumstances' (Miller 2005: 204).

The basic assumptions of anti-cosmopolitanism work against this type of argument and provide no real reasons for why the state cannot offend people by using race, religion, ethnicity and sexuality as grounds for exclusion. For Miller to argue as he does requires advocating a universal theory of human rights that states must respect in their migration policies (Miller 2007). However, to do so is to seriously qualify states' rights with cosmopolitan clauses, even if it does not grant a right of migration.

In a curious turn, Walzer has also sought to limit states' right of exclusion by claiming that the White Australia policy was unacceptable, not because of its inherent racism or denial of human rights, but because it preserved an unequal share of the Earth's surface for a small minority of people. Australia is a large country, sparsely populated, and cannot justify this under-population to the rest of the world. Walzer's appeal to the criteria of access to a fair share of the Earth's surface seems to invoke a Kantian defence of hospitality. However, Walzer's argument is contradictory. Why should one impartial criteria such as the fair share of land be acceptable, while another impartial criteria such as racial equality is not? Like Miller's, Walzer's account gives us neither criteria by which we can accept his conclusion nor any reason by which we can condemn the racial component of the white Australia policy.

According to Gibney, three questions can be asked of those who

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

claim partiality for compatriots (partialism, anti-cosmopolitanism). The first is:

What gives any particular state the right to exclusive use of the territory it occupies? This reveals partialism's unspoken and unjustifiable assumption of the legitimacy of the current territorial holdings of states. The second question is: What is shared by citizens that distinguishes them from outsiders? This illustrates the elision of the claims of states and those of nations that plague the partialist account of the state as a human community. The third question is: Are states responsible for the harm they cause? This makes clear the failure of partialists to deal with the full implications of states as agents and as actors in a globalized world. (Gibney 2004: 36)

The implication of the partialist argument is that whoever has control of the state is the legitimate decider of culture and community. Where the incorporation of large numbers of outsiders might actually lead to a significant change to host country identity, it might well be argued that their incorporation poses a harm and they ought to be excluded.

Gibney's argument is that many if not most states, including liberal democratic states, have a questionable claim to legitimacy. Australia, the US and Canada all claim a legitimate right to determine the entry to their territory, yet in all these cases that territory was acquired by questionable means, including war, genocide and forced assimilation. While this is not to claim that the current states have no legitimacy, it simply reminds us that the legitimacy of territorial occupation cannot be taken for granted, nor should it be.

Gibney's second point is that for many political communities their supposed cultural identity is actually shared with many other states. Very few if any cultural norms are shared between all countries. But many are shared across the world. The same countries might share a common language and common heritage, derived from a colonial past, similar political institutions and common festivals. For example, Australians, Americans and Canadians share Christmas and the English language (but not Thanksgiving or Anzac Day). Likewise, Malaysia, Singapore and many parts of Asia have significant Chinese populations who share territory with the native population. This means that these cultures are not necessarily separated from each other - indeed they share many common aspects from a common heritage. Not only does this suggest that these communities are not homogenous but also that they are not entirely distinct from each other.

A further point undermining the exclusivist rights of political communities is that the anti-cosmopolitan picture is one of an unchanging

culture, or a culture that should be defended against any external change. In this context, the job of the state is to protect the members from outside change. While some forms of outside change are clearly worse than others (empire, colonization), not all outside influences are equally bad or harmful. The point is that cultures change, and they change because of both internal and external interactions. This weakens the claim that it is the state's job to protect culture.

In summary, immigration illustrates the anti-cosmopolitan prioritization of the needs of insiders over outsiders whose rights can be overridden by communal rights. As summarized by Michael Blake in anti-cosmopolitanism arguments:

[t]he decisions about immigration are to be made with reference to the impact of such immigration upon the lives and projects of those already within the cultural group. If immigration would undermine cultural integrity and continuity, then such immigration may legitimately be precluded . . . outsiders . . . do not have an equivalent standing to challenge the actions and decision of the state in question. (2003: 23)

This is a fundamental difference from the cosmopolitan position that argues insiders' interests and outsiders' interests must both be weighed and taken into account from an impartial position.

The only other qualifying factor acknowledged by anti-cosmopolitans is the case of refugees and asylum seekers where there is a real likelihood of loss of life. Even these cases are qualified by the 'communitarian' criteria outlined here. If states have some discretion over 'who enters' and 'under what circumstance', does this mean they can be free to turn away those seeking refuge and asylum? Or do the claims of refugees and asylum seekers trump the exclusive claims of communities, even democratic ones? This is the topic of the next section.

Refugees and asylum seekers: the right to have rights

The omission of the question of membership and entry from international ethics and political theory speaks directly to both the situation of refugees and asylum seekers. Writing in the aftermath of the Second World War, Hannah Arendt (1951/1967) was one of the first to think seriously about the ethical problems associated with refugees. For Arendt, refugees are caught between states and are therefore technically no one's responsibility. She argued that refugees were arguably amongst the worst off in the world because they no longer had a state

to protect or recognize their rights. In her memorable phrase, they had lost the 'right to have rights' when they left their home states. Arendt, of course, was not endorsing this situation; rather, she was pointing to the moral challenge to recognize the humanity of people who were no longer citizens anywhere (Arendt 1951/1967). She was articulating an idea of the need to recognize cosmopolitan duties to people who were without protection.

In recent years, the Italian philosopher Giorgio Agamben and the French philosopher Jacques Derrida (Derrida 2001) have both reflected upon the plight of the refugee. For Agamben, and those who interpret him (see Edkins 2003), the situation of the modern refugee who may have to spend years in refugee camps where there may be only minimal security is also a situation where they are not capable of making a future for themselves. They are reduced to the status of 'bare life', understood as merely physical sustenance. As refugees they are situated in a limbo where they have no agency and no capacity to determine their own future.

Arendt recognized that refugees present special claims that might override any justifications that states have to exclude other migrants because refugees have a claim based on need, rather than simply interest or desire. Thus, moral issues surrounding refugee claims don't extend from the claim to a right of free movement, but rather from a claim to end suffering. They invoke positive duties to aid (stop suffering) rather than negative duties (preventing movement). As we saw for Kant, there was a cosmopolitan duty to allow entry to those who may be harmed, hurt or killed by their exclusion. The types of harms refugees may suffer are multiform; they include loss of life, torture, physical suffering and religious persecution. For Arendt, they also suffered the harm of being 'stateless' which included the loss of their capacity to be members in a civil society, or *polis* - that is, their capacity for freedom and self-determination. Ultimately, refugees raise the claim that the moral duty to relieve suffering outweighs the claims of communal rights of self-determination.

Currently, the right of refuge is enshrined in international law in the international refugee convention (UNCRSR 1951) which stipulates that states have obligations to accept the claims of those (he or she) who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former

110 HOSPITALITY: ENTRY AND MEMBERSHIP

habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

This means that states must offer hospitality to refugees or those fleeing persecutions and cannot return them to the state of origin. It is worth noting that the Convention does not include those fleeing war. However, many refugees from war can claim a risk of persecution if, for instance, one side wins. States are obliged by the principle of *non-refoulement* to provide asylum at least until it is safe for the refugees to return to their country of origin. This means refugees cannot be deported or returned home if they are likely to face persecution and so forth upon their return. States are not obliged to offer permanent residency or resettlement, but must allow refugees the opportunity to work and move freely within their borders until such time as their permanent status has been decided. In Kantian terms, they are to be treated as friends not enemies, but they are also to be distinguished from migrants and permanent residents or citizens.

Refugees and asylum seekers are often considered identical but there is an important distinction between them. Refugees often make claims upon more than one state, that is, they may arrive in one state but seek relocation or resettlement in a third state.⁴ Asylum seekers prompt a different response. Their claims are more immediate because they claim asylum not from a third-party state, but directly by arriving at the borders of the state. They are on the doorstep, so to speak. In these cases, the claim is made directly to the receiving state for help, thus 'what gives asylum seekers a vital moral claim, however is the fact that their arrival involves the state directly and immediately in their fate' (Carens 2003: 101). This immediate claim is hard to refuse by any ethical standard. There is a direct claim to alleviate suffering 'if asylum seekers are denied entry and sent back, the state is directly involved in what happens to them, . . . (therefore) the moral responsibility for what happens to them is greater' (Carens 2003: 101). It is implied that by refusing such a claim states are denying the rights of others and contributing to the infliction of harm.

In practice, however, asylum seekers are often treated worse than other immigrants and forced into camps, or granted only limited and temporary rights in their new communities. This practice is becoming increasingly widespread as many states adopt tougher practices that implicitly reject any right of asylum (see Hayter 2000). For instance, between 2001 and 2008, the Australian government practised a policy of deterrence towards asylum seekers who sought to enter Australia by sea. This has involved a complicated arrangement called the 'pacific solution' in which asylum seekers are housed and

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

their claims processed in third-party states after they have reached Australia's shores or territorial waters.⁵ Arguably, the Australian government's response to asylum seekers, informed by the idea the 'we control who comes here', is in fact a rejection of any right of asylum because it implies that nobody has the right to turn up unannounced at the door. In Australia, the Howard government encouraged a view that asylum seekers are queue jumpers or people pushing their way to the front of the line, using unfair means to cheat the system. Why should people with the capacity to charter a boat and travel from Afghanistan to Australia not simply wait their turn? Though, of course, the Australian government does admit asylum seekers, it is often only after incarceration for up to several years and it has gone to extraordinary lengths to deter the relatively few asylum seekers who do arrive in this country (for detailed discussion, see Gelber and McDonald 2006).

While asylum seekers make a more direct claim to specific states, it is by no means clear that their claims outweigh those of refugees in third-party states. Carens has argued that there is a significant moral distinction between the two cases on the grounds that many refugees are relatively safe, i.e., in camps, whereas 'refusal of entry to a refugee seeking asylum leads directly to his or her suffering' (Carens 2003: 102)

While it is true that refugees in camps are making a more indirect claim for resettlement, usually via a third party like the UNHCR, it is actually more likely that their suffering is even greater than many who are counted as asylum seekers because life in a refugee camp is anything but 'safe'. This argument is supported, for instance, by evidence concerning the incidence of rape against women in refugee camps where, in some cases at least, most women are likely to be raped (see Pittaway and Pittaway 2004).

In short, to allow people to languish for years in refugees camps may in many instances involve imposing or being complicit in a continuing harm to both their physical person and their agency. These harmful conditions of refugee camps support the argument that states should be obliged to accept refugees or partake in a scheme to ensure that some state accepts them, so that they may have their rights recognized and not be harmed. But also it reinforces the argument that refugees and asylum seekers have a greater claim than do ordinary immigrants, and that refugees have an at least equal claim to asylum seekers. They therefore should be given priority both in terms of processing and in numbers accepted.

While many states seek to display their humanitarian credentials by accepting refugees, most liberal democratic states still accept more

migrants than they do refugees. Duties to refugees and asylum seekers are given lower priority than state interests such as labour to fuel a growing economy. The discussion in the following section evaluates this practice from both cosmopolitan and anti-cosmopolitan perspectives.

Cosmopolitanism and refugees

Kantian hospitality provides the basic starting point for cosmopolitan positions on refugees and asylum seekers. Hospitality towards strangers in need is one of the basic cosmopolitan clauses of the 'pacific federation'. Kantian cosmopolitanism therefore favours an open-door policy with regard to refugees and asylum seekers. These people have lost the recognition of their moral status as ends in themselves, insofar as they are seen as throwing themselves on the mercy of others and insofar as they have lost their own political communities. In order for them to be recognized as ends in themselves, they need at least to have their human rights recognized by belonging to a republican state.

For egalitarian liberals, such as Carens and Goodin, it follows that if there is a right of free movement then, strictly speaking, there would be no refugees or asylum seeking as such. There would be no obstacles to people fleeing persecution and no need for a right of refuge or asylum. However, when they step from the realm of ideal theory to non-ideal theory (see Rawls 1972) - that is, when they recognize the reality of a world of states with boundaries - they argue that it is almost self-evident that refugees and asylum seekers have a greater and more immediate claim than others, based on their need to avoid suffering (see Carens 2003). Thus, Carens argues, if we accept a provisional right of state exclusion then that right is still overwhelmed or modified by the needs of refugees and asylum seekers.

The right to refuge and asylum is a basic human right to be free from persecution and suffering. For cosmopolitans, there is a corresponding duty for states to accept refugees and asylum seekers who appeal to them. Thus, individual rights trump communal rights when that individual faces suffering or punishment if not accepted into a new community. A liberal/egalitarian cosmopolitan perspective emphasizes that the consequences for outsiders and for insiders must be taken into account (and weighed against each other). This means that, in terms of individual refugee admissions, states clearly have a duty to individuals who are going to be significantly worse off, either by remaining in refugee camps or returning to their home country.

In the context of state policy, it means that refugee admission policy should be driven by the needs of the refugee before the needs of the state receiving the refugees.

For utilitarian cosmopolitans, the greatest good of the greatest number calculation suggests that it is only in states where the risk of suffering or persecution is equally high that a corresponding right to restrict entry exists. In this sense, utilitarians would argue that the overall utility would not be helped by fleeing genocide only to find a famine. Utilitarians would calculate that from a global position, overall utility would be achieved by allowing for movement of refugees and that, generally, in the case where it is rich states who are being appealed to, that the utility (welfare) of their residents should not outweigh that of the refugees. On the whole, the utility calculus is in favour of the right of refugees because 'the sacrifices (losses of well-being) made by those who must provide asylum will normally be considerably outweighed by the gains in well-being of those who thus find refuge from repression' (Penz 2000: 49).

However, as Penz (2000: 49) further explains, the obligation to provide asylum is not unlimited and 'the limit is reached when the effort to provide asylum costs more, in terms of human lives, than the lives saved by the provision of asylum'. Given that most of the world's refugees and asylum seekers are housed by developing countries, then there might well be a case for restricting numbers because the costs to poor countries are high. Thus, the countries neighbouring Iraq, Afghanistan, Sudan or the Democratic Republic of Congo have to absorb millions of refugees while still struggling to feed their own populations. Instead, in most of these cases, the rights of asylum are respected while the ultimate destination of refugees is assessed, one major exception being the Democratic Republic of Congo. In many more affluent countries, as noted, the right of asylum is increasingly restricted even though the numbers are vastly lower.⁶ The impact of absorbing refugees therefore actually falls disproportionately upon the poorer countries. However, it is also easy to believe that with equitable dispersal among the world's wealthier countries the impact of 33 million people would be relatively imperceptible (see Carens 2000).

Overall Penz draws the following conclusions from the utilitarian premise:

- (1) Asylum is important to the global public interest and is to be instituted in a strong form, not merely as a right not to be returned to the country of origin, but also as a right of entry to other countries in the first place.
- (2) Refugees - those entitled to asylum - should be defined in much broader terms than those who have been persecuted and should include those

victimized by violence, famine, and disasters. (3) Asylum is to be provided with adequate assistance, but also at least cost. The balance is to be struck globally rather than in relation to local conditions, given the cosmopolitan frame at work. (4) The least-cost approach can mean that asylum is provided largely in neighbouring countries. (5) The least-cost approach may mean no more than temporary asylum in many cases. (6) The least-cost approach also requires that measures to prevent or minimize displacement, including humanitarian or preventive intervention, need to be considered first and that can also minimize the need for asylum . . . (7) *The dangers and deprivations of refugees are so important that their protection comes before practically all other concerns.* (8) Progressive levies to distribute the burden of providing asylum on the basis of international ability to pay are essential. (2000: 51-2; italics added)

In other words, Penz argues that the utilitarian approach would suggest a radical restyling of the current priorities of states and the international community, so that the overall amount of suffering could be reduced globally. I doubt many cosmopolitans would reject this formulation even if they disagree with the means by which it is achieved (utility) because of the emphasis on placing the suffering of refugees first (point no 7). In other words, because it recognizes that refugee suffering is amongst the worst forms of suffering in the current world and that the suffering of few, if any, citizens of the developed countries is comparable.

Matthew Gibney (2004) has argued that the both utilitarian and liberal egalitarian solutions are unrealistic and that the cosmopolitan principle of humanitarianism (mutual aid; see chapter 5) provides the best starting point. Humanitarianism requires that all states and especially liberal democratic states have a duty to accept refugees but not 'up to the edge of a morally undesirable state of affairs' (i.e., marginal utility) implied in utilitarianism (Gibney 2004: 234). In addition, Gibney argues that humanitarianism is capable of incorporating the anti-cosmopolitan concern with swamping. Humanitarianism is, in Kantian terms, an imperfect obligation of hospitality because 'as the cost of assisting outsiders comes increasingly to impinge upon these commitments a state's duty to help outsiders correspondingly decreases' (Gibney 2004: 234). Gibney claims that properly defined humanitarian duties provide a significant requirement to *balance* the absolute needs of refugees with their own ability to absorb them. Humanitarianism requires states to 'accept as many refugees as they can without undermining the civil, political and importantly the social rights associated with the liberal democratic state' (Gibney 2004: 230).

Thus, there is 'a prima facie case for liberal democracies giving

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

refugees at least as high priority in entrance decisions as regular and family migrants' (Gibney 2004: 243). The problem with this formulation is that humanitarianism begins to sound less like obligation and more like charity because, in another place, Gibney claims that 'states have an obligation to assist refugees (only) when the costs of doing so are low' (2004: 231). There is a significant degree of latitude between accepting as many as possible and accepting only those who impose low costs. If this is the case, then Gibney's humanitarianism skates very close to putting the interests of domestic constituency above the suffering for refugees and represents no major modification to current practices, and it is therefore only a marginally cosmopolitan solution.

For cosmopolitans, the clear ethical choice in refugee and asylum policy is to work through a balance of political and ethical considerations. But, in achieving such a balance, the overall guiding value should not be advancing the interests or the well-being of insiders; rather, it should be that of achieving overall well-being and relief from suffering for refugees. Refugees and asylum seekers should have equal if not first priority over other potential entrants in admissions because they present a special case. Their claims should be given equal weight with insiders.

One conclusion shared by cosmopolitans (and some anti-cosmopolitans) is that an ethically adequate solution to the problems posed by refugees requires an international system for assessing and distributing the responsibility for refugees. In the words of Penz, 'once one acknowledges that states have a duty to accept asylum seekers, the issue of justly distributing the asylum burden between states emerges' (2000: 56). If it is accepted that there is a right of refuge and *non-refoulement*, it is not clear whose obligation it is and how that obligation may be dispersed given that no single country could really accept them all. This in turn suggests that refugees are not only a problem for 'us', in relation to 'them', but a problem of what we all owe to each other, that is, of justice. That is, even when any given state has accepted as many as is reasonable, it still has not discharged all its responsibilities; instead, it has continuing cosmopolitan duties to assist in finding global solutions to the needs of refugees.

These types of considerations are in keeping with cosmopolitans' transformative agenda, which requires a longer-term project of 'reshaping the political environment . . . in ways more conducive to the protection of refugees' (Gibney 2004: 257). Cosmopolitan egalitarians, such as Carens and Beitz, seek to establish a global egalitarian distribution regime (see chapter 7). For them, the question of a state's responsibility towards refugees cannot be understood without an

account of global poverty and affluence. Thus, policies for distributing the refugee burden must be conceptualized within the framework of global distributive justice. Ultimately, this includes the duty to reform the international order in line with principles of justice in order to eliminate the factors such as poverty which generate refugee flows (see Jordan and Duvell 2003). For this reason, refugee problems not only generate obligations in relation to admissions policies, but include responsibilities, especially for rich states, to end refugee suffering by aid, or policies targeting refugee-generating states.

Anti-cosmopolitanism, refugees and asylum seekers

The anti-cosmopolitan position is premised on the state's ultimate right of exclusion and tends to give preference to asylum seekers over refugees. Thus, anti-cosmopolitans tend to accept a duty of hospitality or mutual aid in relation to certain outsiders under certain circumstances, but this duty is heavily qualified by the community's right of exclusion.

The logic of the anti-cosmopolitan position is best demonstrated by Michael Walzer. Walzer claims that states do not have a perfect obligation to refugees to end their suffering. They have at best an imperfect duty of mutual aid. Walzer argues that states should only take refugees who have some connection or adherence to the dominant culture of the receiving states:

So long as the number of victims is small, the mutual aid principle will generate similar practical results (to justice), and when the number increases, and we are forced to choose among the victims, we shall look rightfully, for some more direct connections with our own way of life. If on the other hand, there is no connection at all, antipathy, rather than affinity, there can't be a requirement of any sort to take people in. (1983: 21)

Refugees' claims must be assessed according to suitability to the host community. States have the right to reject refugees because communities 'depend with regard to a population on sense of relatedness and mutuality. Refugees must appeal to that sense. One wishes them success, but in particular cases, with references to a particular state they may well have no right to be successful' (Walzer 1981: 21). According to this logic, Christian states could rightfully discriminate against Muslims on religious grounds, and vice versa, regardless of the needs of those people. Of course, Walzer is not saying that states

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

can't take in refugees on any other grounds, rather that they are not *obliged* to take in refugees.

Human rights claims, or merely the duty of avoidance of suffering, do not matter in this context. While it might be cruel and indifferent not to help those in dire need, it would not be ethically 'wrong' in any basic sense. Thus, good samaritanism or mutual aid is ultimately trumped by communal autonomy. Communal autonomy overrides individuals' rights to avoid suffering. In a sense, Walzer's argument equates refugees with migrants because he does not acknowledge that by refusing entry to refugees a state may be exposing them to harm or depriving them of life. He implicitly accepts Carens's observation that refugees are 'safe'.

For Walzer, the only case that might override communal priority is the asylum seeker. The asylum seeker arrives on the shore of another country and has a claim of immediacy that is not mediated by third parties, such as UN agencies or other countries. The asylum seeker has a right to entry that might override the community that extends from a sort of communal right, i.e., the right to make a life, or the right to belong to a community. The asylum seeker has nowhere else to go, no other state that will take him or her, no capacity to make a life anywhere, and no community to be a member of. In the words of Walzer, 'Though he is a stranger and newly come, the rule against his expulsion applies to him as if he had already made a life where he is; for there is no other place where he can make a life' (1981: 22). What Walzer is claiming is that everyone has a right to be a member of a community and to make a life for himself or herself.

Walzer claims that asylum seekers, those refugees who are not situated in other states but who have arrived 'on our shores' or 'at our door', with a claim to be let in, are a special case. For them, it seems the situation of their need is so great that to turn them away is to deny them the opportunity to live or to make a life for themselves because they have nowhere else to go. Asylum seekers have no state, therefore we ought to provide them with a state and the opportunity to make a life. In this way, Walzer's view echoes Arendt's point about the right to have rights, only Walzer gives priority to asylum seekers over refugees. But, in so doing, he is claiming that in this instance communal autonomy comes second to an individual right to rights, or to a home, to belong somewhere.

In addition to this basic quasi-universal claim, liberal states also have special duties. Liberal states should, according to Walzer (1981: 23), grant asylum 'for two reasons: because its denial would require us to use force against helpless and desperate people, and because the numbers likely to be involved except in unusual cases, are small

and the people easily absorbed'. However, even this is a pragmatic acknowledgement and is conditioned by the swamping concern because 'if we offered refuge to everybody in the world who could plausibly say that he needed it, we might be overwhelmed' (Walzer 1981: 23).

It is doubtful that Walzer's distinction between asylum seekers and refugees generates the special claims of asylum seekers that he defends.⁷ As noted above, the lives of refugees in many parts of the world are more desperate in the majority of cases than those of asylum seekers. Nor, on the other hand, is it clear why, according to Walzer's logic, asylum seekers' potential incompatibility to the community should be overridden by the immediacy of their claim or their physical proximity when, in the case of refugees whose need may be just as great, it is not.

David Miller would seem to concur with Walzer that the immediacy of the asylum seeker's claim is what makes it a specific responsibility of the receiving state. However, he accepts that the refugees are owed the same standing as asylum seekers. Miller nonetheless goes further than Walzer because he is willing to apply the criterion of need, and not just communal compatibility to refugees. According to Miller:

states have an obligation to admit refugees, indeed refugees defined more broadly than is often the case to include people who are being deprived of rights to subsistence, basic healthcare . . . [because] refugees are owed more than the immediate protection of their basic rights - they are owed something like the chance to make a proper life for themselves. (2005: 203)

However, for Miller, this recognition generates no corresponding obligation on any *particular* state, instead 'the responsibility for ensuring this is diffused among states in such a way that we cannot say that any particular state has an obligation to admit refugees. Each state is at some point entitled to say that it has done enough to cope with the refugee crisis' (2005: 204; see also Meilaender 2001). Miller claims that, in the absence of a universal system of allocation, then 'there can be no guarantee that every bona fide refugee will find a state willing to take him or her in' (2005: 204). In sum, both Miller and Walzer reiterate the anti-cosmopolitan argument that places the needs of the national community ahead of the rights of the foreign individual and this can, for Walzer at least, qualify even the limited cosmopolitan responsibilities of mutual aid.

But Walzer, Miller and others accept that the anti-cosmopolitan position is consistent with obligations to refugees extending from the natural duty to do no harm. Thus, according to Walzer, the US and Australia in the years after the fall of Saigon had a special

responsibility to accept refugees from Vietnam. Having played a major role in the social upheaval that was the Vietnam War, the US and Australia can be said to have a causal responsibility generating a positive duty to accept refugees from Vietnam (Walzer 1981). Likewise, today, they and other members of the 'coalition of the willing' have a special responsibility to accept Iraqi and Afghan refugees fleeing the wars in those countries de-stabilized by their interventions. Thus, Walzer indicates that anti-cosmopolitanism acknowledges that a responsibility for the harm caused by one community to another leads to ethical duties to outsiders.

Ethics of membership

The final ethical problem confronting states in response to the movement of people (and especially in the case of refugees and asylum seekers) is whether or not, once permitted entry, they should be granted full membership or citizenship. Most states make a distinction between citizens and mere residents. In many countries, this is expressed in a variety of ways, such as short-term work visas for temporary residents, longer-term work visas for 'guest workers', temporary protection visas (TPV) for refugees, or rights of permanent residency. In many cases, the new migrants are not allowed voting rights but are still taxed. In some cases, their movement may be restricted, and sometimes their children are also denied permanent residency or citizenship even if born in that country. All of these types of measures place the new immigrant or arrival in a different category from the citizen.

In addition, many states place refugees and asylum seekers in camps or detention centres while their asylum claims are processed. These practices place asylum seekers in limbo indefinitely, and can legitimately be seen to be inhumane or unethical because while in asylum they are unable to continue to live as full human beings. In Walzer's terms, they are denied the right to 'make a life' or, in Arendt's terms, 'the right to have rights'. In some states, such as Australia, temporary protection visas were given to asylum seekers on the grounds that the conditions in their home country may change and then they can return. However, this may take many years. This policy comes close to denial of the right of *non-refoulement* (the right to not be returned to one's point of origin if the cause of departure has not changed), as it is up to the receiving state to determine when conditions are safe. For instance, the Australian government has repatriated asylum seekers

when they are still likely to suffer persecution on ethnic grounds, or torture, and indeed there is evidence that at least nine deportees have died since their return (ARRA 2007).

Anti-cosmopolitans and cosmopolitans share common ground in rejecting these practices. It is clear that an individual's freedom is inconsistent with prolonged detention and exclusion from the political community. Therefore, in general, the logic of cosmopolitan thought, with its emphasis on rights, freedom and autonomy, is in favour of associating residence with membership. In other words, once you are in you are presumed to be entitled to full participatory membership.

While bordering on the inhumane, current practices of states in this regard do not depart too much from the obligations Kant thought accompanied the cosmopolitan right of hospitality. Individuals can be refused entry if it is not going to lead to their deaths but they cannot be excluded if it is likely to lead to their destruction. The costs of these practices in the contemporary world help us to see the limitations of Kant's interpretation of the duty of hospitality identified by Benhabib (above). Hospitality, as Kant understood it, is not enough to ensure an individual's treatment as an end in itself; membership is also required. Benhabib argues that hospitality is not, as Kant argued, a 'sovereign' prerogative but a basic human right: 'Permanent alienage is not only incompatible with a liberal democratic understanding of human community it is also a violation of the fundamental human rights' (2004: 3). Hospitality includes not only a right of transit, but a right of permanent residency and citizenship. For Benhabib, this is achieved by extending the discourse ethics interpretation of the categorical imperative (see chapter 1) because 'I cannot justify to you with good grounds why you should remain a permanent stranger upon the land. This would amount to a denial of your communicative freedom' (2004: 140). Once people have been allowed into a political community they ought to be, or have the option of being made, full members or citizens of the community so that they can participate in political life:

In the meantime, the practical outcome of democratic cosmopolitan standpoint in relation to questions of entry and membership requires:

Recognizing the moral claims of refugees and asylees to first admittance, a regime of porous borders for immigrants, an injunction against denationalization and the loss of citizenship rights, and the vindication of the right of every human "to have rights" that is to be a legal person entitled to certain inalienable rights, regardless of the status of their political membership. (2004: 3)

Incorporating this recognition, Benhabib argues, provides the most important cosmopolitan corrective to state policies regarding entry and membership.

The logic of anti-cosmopolitanism on this issue is mixed because, on the one hand, it follows that communities should decide for themselves what criteria should be used for membership, i.e., citizenship rights. It could mean that residents have to pass citizenship tests that indicate a commitment to and familiarity with their new country. There is also no intrinsic reason why communities should not keep immigrants in a state of second-class citizenship, if that is what their traditional values suggest. Despite this logic, few anti-cosmopolitans take this line and instead they emphasize that because membership in some community is a universal need then no one should be denied that need. Thus, for Walzer, if you are to be allowed in then there is no reason not to be granted full membership rights, as long as it is clear you intend to stay and partake of the community. Full citizenship should be granted so the person can make a life. Walzer argues that within liberal democracies this is especially the case because in the basic premises of liberal democratic thought if individuals live, work, buy property, pay taxes and participate in the life of the community, then they ought to be able to partake in the political process that determines and influences that life. Miller agrees that 'what is unacceptable is the emergence of a permanent class of non-citizens, whether these are guest workers, illegal immigrants or asylum seekers waiting to have their applications adjudicated' (2005: 205). In this sense, individuals cannot remain mere subjects but must become citizens.

In sum, cosmopolitan and anti-cosmopolitan authors agree that once entry is granted it is not justifiable for states to continue to enforce moral distinctions between insiders and outsiders (though it is unclear whether such a position is actually consistent with the premises of anti-cosmopolitanism understood as communitarianism). What this conclusion points to, in fact, is a recognition of the universalism, and indeed liberalism, contained within many anti-cosmopolitan positions.

Conclusions

The debate between those who advocate open borders and those who defend states' rights threatens to repeat the mistake of pitting the principles of local self-determination, and communal autonomy

and cultural difference, against cosmopolitanism. Instead, what the discussion in this chapter has shown is that group self-determination should be understood as necessarily couched in and mediated through a cosmopolitan framework and balanced by the needs of individuals. There are good reasons for thinking that neither the 'open borders' policy nor the states' rights policy are entirely adequate or realistic options. As Mathew Gibney (2004: 230) argues, 'While accepting the full logic of impartialism might lead to policies which would undermine the conditions necessary for communal self-determination and the provision of public goods, adhering to partialism risks sacralizing entrance policies that attach little weight to the claims of refugees.' Open borders accounts of migration pay too little attention to the meaning of community and the value of self-determination. The claim that national communities are equivalent to distinctions of races is somewhat misleading. States and other political communities are not simply a given, except by nationalist ideologues, but rather are 'shaped' by their members and so embody, or attempt to embody, certain values and norms. While there is no reason for always believing the claims of communities about how they do this, there is also no doubting the value that most people see in communal self-determination.

In this context domination by 'outsiders' is a legitimate fear for many, especially post-colonial communities. On the other hand, the implications of an unqualified right of self-determination of entry and membership is that the right to maintain an identity is used to justify the exclusion of those in dire need or at risk of 'destruction'. The advantage of the cosmopolitan argument is that it denies states the right to use cultural preservation as a trump card over the well-being and sometimes the right to life of other human beings. As we have seen, the anti-cosmopolitan position gives insufficient weight to the suffering of outsiders and the harm done to them by continued exclusion.

The arguments presented above are best (but not perfectly) reconciled from a Kantian perspective. The argument for open borders, based as it is on a fundamentalist rights account, while universalist, is not Kantian. The main problem is that it emphasizes freedom as an individual and absolute right and not as a contextual capacity. If we recall, the test of the CI was whether a principle could be universalized, not whether it was inherently owed to all. The CI emphasizes the compatibility of any individual's right of freedom with all others' capacity to exercise freedom. Thus, any freedom of movement would always be limited by the freedom of others. There are no absolute freedoms in this sense. It is quite conceivable that the CI does not

I 10 HOSPITALITY: ENTRY AND MEMBERSHIP

justify freedom of movement as an absolute, or perfect, duty; rather that it is an imperfect duty, or a secondary right, as suggested by Miller. Therefore, an individual's absolute right of freedom would be curtailed by the rights of others, including the rights of political self-determination. In other words, because autonomy is exercised in relation to others, one's freedom is always limited by what is acceptable to others. Therefore, any right to freedom of movement is going to be conditioned by its impact upon the conditions of others' freedoms. Democratic citizenship is one condition for individual freedom. Therefore it becomes possible to restrict membership or entry according to whether it will undermine democratic freedom, i.e., the condition of individual freedom. That is, there is good reason to think that the universal freedom of movement for all would undermine the conditions of freedom itself. In this sense, universal free movement is not universalizable. Hence hospitality is an imperfect duty.

This does not mean that states are always justified in excluding outsiders, or that there are no rights of free movement. Any individual's right of free movement can be legitimately compared with the individual's rights to participate in a community of self-legislating agents. States have a duty to maintain the conditions of their democratic practices and their own democratic identities. States which are not democratic but are merely national, republican or otherwise, have less rights of exclusion, that is, if they do not enable their citizens to treat each other as ends, they cannot exclude outsiders on the grounds of preserving autonomy. Nationalism and communal identities are relevant only insofar as they provide the conditions for individual agency. When they function to deny individual rights and cause suffering, then they are unjustifiable exclusions. Ultimately, the question of entry and membership comes down to whether identity matters over survival. If exclusion results in people's significant persecution or a more serious harm, such as exposure to genocide or death, the principle of hospitality or individual rights should override the principle of identity or group rights.

The second conclusion to be drawn from this position is that those escaping persecution and unfreedom have the greatest right of entry, because they are unable to exercise their autonomy. Kant's argument for an imperfect duty of mutual aid was justified on the grounds that suffering prevented effective agency. Therefore, there was a duty to aid others to achieve the conditions of agency. Thus, the weight of argument is in favour of first priority to asylum seekers and refugees over 'economic migrants' because in principle their agency, i.e., their status as ends in themselves, is at stake.

The other way of framing the same argument is to say that to deny

asylum seekers and refugees the right of entry is to clearly harm them or to contribute to a continuing harm. However, it is not clear that denial of entry is *in itself* a harm in the same sense as others such as poverty, torture and statelessness. Because suffering or unjustifiable harms are the worst things we can do, and because they present the bedrock of human agency - i.e., when suffering is so great that humans cannot exercise agency - then relieving suffering is the first priority of cosmopolitanism. The next chapter examines this aspect of cosmopolitan thought in the context of the practice of humanitarianism, or mutual aid.