

# SETTLER COLONIALISM AND ARGUMENTS FOR OPEN BORDERS

Karl Martin Adam

A thesis submitted to the faculty at the University of North Carolina at Chapel Hill in partial fulfillment of the requirements for the degree of Master of Arts in the Department of Philosophy.

Chapel Hill  
2018

Approved by:

Gerald J. Postema

Susan R. Wolf

Geoffrey Sayre-McCord

© 2018  
Karl Martin Adam  
ALL RIGHTS RESERVED

## ABSTRACT

Karl Martin Adam: Settler Colonialism and Arguments for Open Borders  
(Under the direction of Gerald Postema)

The debate over whether, and if so, when, political communities have the right to restrict immigration has largely focused on the U.S. and Europe. In this paper I attempt to broaden this debate by interrogating the implications of three families of open borders arguments for historical cases of settler colonialism. These arguments, I show, support a great deal of historical settler colonialism and also have problematic implications for the rights of contemporary indigenous peoples, which should not be surprising since the historical defenders of settler colonialism themselves made arguments in the three families I discuss. Appealing to this history, I provide a republican justification for some restrictions on immigration as being necessary to prevent domination. Whether or not they are convinced by my specific proposals regarding when immigration may be restricted, I hope that advocates for immigrant rights become more cautious regarding the implications of their arguments for indigenous rights.

## TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. ARGUMENTS FOR OPEN BORDERS.....	4
A. Arguments from Fairness.....	4
Historical Antecedents.....	7
B. Arguments From Freedom.....	10
Historical Antecedents.....	12
C. Utilitarian Arguments.....	15
Historical Antecedents.....	15
III. BORDER CONTROLS AND REPUBLICAN FREEDOM.....	18
A. Republican Lessons From Some Historical Cases of Settler Colonialism.....	19
B. Republican Freedom and Arguments For Open Borders.....	26
1. The Utilitarian Argument for Open Borders.....	27
2. Freedom Based Arguments for Open Borders.....	28
3. Fairness Based Arguments for Open Borders.....	32
IV. CONCLUSION.....	36
REFERENCES.....	38

## I. Introduction

In 1987, Joseph Carens published a ground-breaking article arguing for open borders. In this article, he argued that considerations of utility, equality, and freedom all count in favor of the conclusion that borders should be open (Carens 1987, 251-2). Since that time, the defenders of open borders have elaborated arguments of these three types while their opponents, whose position has unfortunately been named the "closed borders position" instead of something better reflective of its content like "the controlled borders position," have provided various counter arguments. By "open borders" I mean here, and throughout, the view that states are not morally entitled to control who crosses their borders and that people should generally be free to travel to, reside in, and become members of any country they wish with only very limited and unimportant qualifications. The inaptly named "closed borders" position in the literature is not, as one might think, the view that states should prohibit immigration but rather simply the denial of the open borders position. Therefore, philosophers like Christopher Wellman (2011), who believes that states have the right to decide who enters and who their members are but also that the U.S. and Europe should admit many more immigrants, and David Miller (2016), who believes that states have the right to choose which and how many immigrants to admit in order to pursue their societal goals are two of the most influential contemporary defenders of "closed borders."

This debate has almost entirely been focused on the contemporary immigration policies of the United States and various European countries, but it takes on new significance when we consider its implications for other times and places. Specifically, these three most influential families of open borders arguments, I shall argue below, are closely related to arguments made

by the apologists of settler colonialism in the 16th through 19th centuries. If we recognize that settler colonialism is unjust, we should not be using arguments that support it, let alone arguments specifically designed to support it, to justify other things, like opposition to anti-immigrant sentiment in the U.S. and Europe.

This point is not merely academic. The justice, or lack thereof, of historical settler colonialism matters in the present for such things as indigenous land claims. Furthermore, if the open borders position were generally accepted, it would have disastrous results for those indigenous people around the world who have some level of sub-state autonomy, because it would mean that reservations and similar legal arrangements are unjust because they violate the rights of non-members of the indigenous communities in question.

The most popular open borders arguments of these three types go wrong, I shall argue, because they do not take into account the importance of republican freedom, i.e. freedom from domination. Securing republican freedom in many cases requires the ability to restrict immigration into either a state or a smaller political entity, like a Native American reservation.

This paper has two main sections. In Section II, I discuss these three families of open borders arguments. I describe their connection to historical arguments for settler colonialism and show their propensity to justify settler colonialism. In section III, I give my positive account of border controls as necessary to preserve freedom as non-domination. In this context, I discuss some historical cases of settler colonialism focusing on British, and later American, settlement on Native American lands in Eastern North America and Anglo immigration into Texas in order to show the sorts of dangers to republican freedom that immigration can pose.

Before I proceed, however, a point of clarification. This paper is emphatically not intended as an apology for current U.S. immigration policies. Most proponents of open borders

are motivated by an entirely admirable recognition that these policies are manifestly unjust. I shall argue, however, that they misdiagnose what is unjust about the policies they criticize. It is not unjust merely to have borders and exclude certain people from becoming members of a given society. It is, however, unjust to create a system in which millions of people are forced to live in the shadows due to their immigration status. Especially from a republican perspective, a situation in which much of our agricultural, construction, and cleaning work is done by people who cannot go to the authorities to report the abusive practices of their employers for fear of being deported is intolerable. It is unjust to rely on natural barriers like deserts and the Caribbean to prevent unauthorized immigration when these barriers are not effective enough to prevent migrants from trying to cross them but dangerous enough to cause the deaths of many migrants each year. It is unjust to have statutes of limitations for nearly all the most heinous felonies but no statute of limitations for the misdemeanor of entering the country illegally or overstaying a visa. It is unjust to consistently work to undermine, and in many cases overthrow, governments in nearby countries who try to improve the lives of their people and to enter into trade agreements with these countries that predictably cause economic harm to many of their poorest citizens. The history of U.S. relations with Latin America and the Caribbean might themselves ground a compensatory duty to allow immigration, but even if it does not, it is unjust to punish unauthorized migrants whose lives are worse off because of American policies for violating U.S. immigration law in search of a better life. The great classical Chinese philosopher Mengzi observed that most people are not able to be virtuous and law abiding if they lack a decent, and reliable, standard of living because they will be too focused on survival to fulfill their social obligations and too tempted to cheat, steal, and otherwise break the law to achieve a better life. Therefore, if the government establishes institutions and laws in such a way that people do not

have a decent and reliable standard of living, and then punishes them for breaking the law, it is like setting a trap for the people (Mengzi 1A7, 3A3). Similarly, if the U.S. causes Haitian farmers to lose their land by pressuring the Haitian government to allow the importation of subsidized American rice or Haitian industrial workers to lose their jobs because it pressures the Haitian government to sell off its nationalized industries or Mexican farmers to lose their land because it gains permission to sell subsidized American corn in Mexico and then punishes migrants from these countries for violating American immigration law, it is setting a trap for the people. Finally, it is unjust to design immigration policies to cater to the xenophobia and racism of current American citizens.

## II. Arguments for Open Borders

### A. Arguments from Fairness

Joseph Carens begins his argument for open borders by making an analogy between the privilege of citizens of rich countries and the privilege of the feudal nobility (2013, 226). Carens does not define what he means by "feudalism", but from what he says it appears that by "feudalism" he means a system in which there is a legally recognized division between those born nobles and those born commoners and in which nobles have much better life prospects than commoners (2013, 226, 228). He draws attention to two analogies between feudalism and contemporary border controls. The first of these is that being born into a rich country dramatically improves one's life prospects in the same way that being born into the feudal nobility did though there are poor people in rich countries and rich people in poor countries just as in feudal systems there are some poor nobles and some rich commoners. The second is that this privilege of birth is defended by laws that keep the citizens of poor countries out of rich countries and keep the commoners down. Feudalism, Carens believes his readers will agree, was



unjust because it involved this sort of legal barrier to equal opportunity. He challenges the defenders of border controls to explain why the barrier to equal opportunity involved in a legal prohibition (backed by people with guns) of people from poor countries moving to rich countries is any less unjust (2013, 226, 228). Opening borders, Carens admits, might well not do much to ameliorate substantive global inequality since it takes resources to migrate, and even with open borders, migration would likely not be an option for the poorest of the poor. But opening careers to talents did not significantly improve the lot of most peasants, though it was still a moral advance over feudalism. Similarly, he argues that even if opening borders will not significantly improve the lives of most of the world's poor, doing so would make the world more just because they would at least have formal equality of opportunity (Carens 2013, 235).

Another argument Carens offers for open borders is based not on equality of opportunity but on his claim that "a commitment to equal moral worth entails some commitment to economic, social, and political equality" (2013, 228). One might think Carens would argue that borders must be opened because doing so would reduce the economic, social, and political inequality in the world by allowing at least some poor people to become less poor by emigrating to a rich country. As mentioned above, however, Carens admits that opening borders would only be moderately effective at reducing global inequality not least because the poorest people would not have the resources to emigrate even if borders were open. In addition, he accepts the criticism that there is something morally perverse about responding to poverty in poor countries by encouraging people to leave their homes instead of helping them to have a good life where they live. Therefore, he agrees that what is needed to reduce global inequality is a host of other measures, which he describes as a transfer of wealth from rich to poor countries and a transformation of global institutions (Carens 2013, 233). Furthermore, he makes clear that he is

not making a policy proposal to current states saying that they should open their borders. This is politically unachievable given the current political climate and raises significant issues of non-ideal theory that fall outside the scope of Carens's book, such as how one state should act given that the other rich states do not fulfill their obligations to open their borders (Carens 2013, 229-30). Rather, he is claiming that in a just world, borders would be open. The other measures to reduce global inequality he calls for, he believes, would make open borders politically possible, because they would result in a world without poor countries that vast numbers of people would want to immigrate from. As he puts it, "In principle, free movement is not in conflict with global justice but rather is part of what global justice requires" (Carens 2013, 234). So how does our commitment to economic, social, and political equality justify open borders? In part, the answer is the argument from equality of opportunity above, but in part the connection is that the argument for open borders removes excuses for inaction regarding global inequality. This is so because at least some poor people are poor because we use force to prevent them entering rich countries. Therefore, whatever one thinks of the arguments that purport to show that the economic policies and imperialism of the rich countries are responsible for global poverty, our unjust border controls make us responsible, and this grounds a duty to reduce global inequality by means other than opening borders (Carens 2013, 234-5).

Mathias Risse builds another fairness based argument not for open borders but for a more limited conclusion, the right of people in overpopulated countries to move to less populated countries. When he introduces this argument, he has already argued that the earth is owned in common by all people, and that what this amounts to is that each person has a human right to have their basic needs met where they live. In this argument he assumes that all people have their basic needs met to show that even if this is the case, there is a right to immigrate to less

populated countries for people from more populated countries (Risse 2012, 153). He starts his discussion with a thought experiment in which the population of the United States has fallen to two persons, who have the technology to control the borders. These people, he thinks we will agree, must not restrict the entry of others who wish to enter the country in order to keep it all for themselves (Risse 2012, 253). He then explains that population density alone is not enough to tell if a country is over using or under using its resources because the resources in different countries vary and are more or less useful to humans. Therefore, we need a measure of over use or under use of resources. The best such measure, he argues, is whether the bundle of resources used by the average inhabitant of a country has a market value higher or lower than the bundle of resources used by the average human (Risse 2012, 154-6). This argument is based on the idea that no society should use a disproportionate amount of resources because doing so would be unfair, so it does not justify immigration into countries where the standard of living is higher because resources are used more efficiently (Risse 2012, 165). There are complications here involving resources becoming useful as a result of human labor, e.g. the Dutch dikes producing useful farmland (Risse 2012, 157-9), but a detailed discussion of Risse's handling of this issue is not necessary for the present paper.

#### Historical Antecedents

An early argument of this type is put forward in Sir Thomas More's dialogue, *Utopia*. In this dialogue, the character Hythlodai explains that when Utopia becomes over populated, that is when its population exceeds the number the Utopians believe is ideal, they form colonies on the mainland. They do this by taking land from its original inhabitants and giving the original inhabitants the choice between becoming members of the Utopian colony and living under Utopian laws on the one hand and being driven away or killed on the other. The Utopians

provide two justifications for their taking of land. One is a utilitarian argument that I will discuss in Section C below. The other is based on the principle that when some people have more land than they need, it is just for those who do not have enough to take some of it. Furthermore, if those with more land resist, the law of nature justifies war against them (More 2014, 67). I do not intend, here, to enter the debate over the extent to which More endorses the institutions and arguments of his fictional Utopians. Whether or not More endorsed them, however, the actions and justifications of his fictional Utopians anticipated the practice and justification of real settler colonialism, which had not yet begun when the dialogue was published in 1516.

Thomas Hobbes, too, provides a brief argument of this type. In a famous passage of *Leviathan* he writes, "The multitude of poor (and yet strong) people still increasing, they are to be transplanted into countries not sufficiently inhabited, where, nevertheless, they are not to exterminate those they find there, but constrain them to inhabit closer together, and not range a great deal of ground to snatch what they find, but to court each little plot with art and labour, to give them their sustenance in due season" (2.30.19). Again we have here the idea that overpopulation in one community justifies migration to another.

A more developed form of this argument was put forward by Emer de Vattel who argues that no nation is entitled to more than its fair share of the world's resources. In the past, it may have been permissible for people to be pastoralists or hunter-gatherers, but the world's population is now too high for all to live this way, so no people has the right to claim a larger portion of land than they need so that they can have a higher quality of life as nomads rather than laboring as farmers. Therefore, the conquest of the densely populated Meso-American and Andean states by the Spanish was unjust, but conquest of Native Americans who claimed large tracts of land they would not need if they were agriculturalists was, in Vattel's phrase, "most just"

(1.8.81, 1.18.209). Vattel seems to take much of this back, however, when he argues later that one people cannot simply take the land of another even if that nation is not really using it because doing so would violate that nation's rights of property and would, by analogy, permit peasants to take over the properties of the lords (2.8.86-90). This is, I think, meant to apply only after the principle that a nation cannot take a disproportionate part of the earth's resources, which is the only way I see of interpreting Vattel to be consistent. In any case, the original argument Vattel makes should be compelling to contemporary proponents of fairness based arguments for open borders.

I have called the arguments discussed in this section fairness based because they all rely on the claim that certain kinds of inequalities are unfair. I have not called them egalitarian, because some, e.g. More's argument, are better thought of as sufficientarian with a high sufficiency threshold. Risse's argument is fairly clearly a modification of those of More, Hobbes, and Vattel, but the connection to Carens's argument might be less apparent. Things have changed significantly in the last several centuries so that whereas Vattel started by appealing to the intuition that it was unfair for some people to have a good life as hunter-gatherers if the population was too high for everyone to do so and tried to counteract the obvious implication of his argument that feudalism was unjust, Carens has a much broader thoroughgoing egalitarian position and starts with the injustice of feudalism and attempts to discredit border controls by association. Carens is, I think, appealing to the same sorts of intuitions about fairness as Vattel, More, and maybe even Hobbes though he is more consistent and uses them to construct broader more egalitarian principles.

It is very difficult for the arguments discussed in this section to reject Vattel's conclusion that European settler colonialism in areas of relatively low population density, like North

America, was just. If the mere exclusion of people from certain territories is analogous to feudalism, as Carens argues, then Native American attempts to keep Europeans off their land are analogous to noble's clinging to their feudal privileges. Interestingly enough, the concept of the "noble savage" was originally coined by Marc Lescarbot when he observed that all Native Americans were "noble" because they hunted, a privilege restricted to the nobility in Europe (Ellingson 2001, 21-4). Europeans in the 16th through 18th centuries were in many ways worse off than Native Americans. They had poorer nutrition and worse quality of life due to their higher population densities (Bailyn 2012, 25-7; Richter 2003, 56-7). In addition to those fleeing religious persecution, many immigrants, though not the poorest of the poor, were dispossessed peasants and small farmers suffering the effects of enclosure (Kulicoff 2000, 7-8, 16-27, 39-41, 53-61, 165-7, 174-190). Attempts to keep Europeans off Native American land, thus, functioned to keep the poor poor and preserve a status quo in which natural resources in some areas were underused while natural resources in other areas were overused. If these are wrong-making features of contemporary immigration restrictions, then they were wrong-making features of historical immigration restrictions as well.

#### B. Arguments from Freedom

Michael Huemer provides an argument that attempts to build up from shared intuitions about justifications for coercing an individual to the conclusion that we have the right to cross borders. He describes a case in which a man, Marvin, wants to walk to the market to buy food and another man, Sam, prevents him from doing so. Sam's action, he thinks we will all agree, is unjust barring special circumstances such as Marvin having previously hired Sam to prevent him from going to the market. In this scenario, Huemer thinks that Marvin is analogous to an immigrant, the market place is analogous to the country they wish to emigrate to, and Sam is

analogous to the government that tries to prevent them. This analogy shows, Huemer thinks, that immigration restrictions are *prima facie* rights violations and require a significant justification. He goes through the various reasons a government might want to keep immigrants out such as fear of economic competition, a desire to promote the interests of those to which it has special obligations, prioritizing the least well off, cultural preservation, etc. and argues that Sam could not legitimately prevent Marvin from going to the market for any of these reasons. Therefore, the government cannot prevent immigration for these sorts of reasons either (Huemer 2010, 431-50). Only truly catastrophic effects of immigration could justify immigration restrictions and he does not believe that the catastrophic effects he has in mind such as environmental devastation, the collapse of social programs, the collapse of liberal democracy, etc. are likely. This being said, he suggests only gradually opening the borders to ensure that they can be closed again if this sort of catastrophe threatens (Huemer 2010, 450-5).

In addition to the egalitarian arguments discussed above, Carens provides what he calls a cantilever argument for open borders. This argument begins with what he takes to be the shared assumption that there is a human right to freedom of movement within the state and attempts to extend this to a human right to freedom of movement across borders. The human right to freedom of movement within the state is recognized in various human rights documents including the UDHR, and, Carens believes, will be endorsed by liberals and democrats. This human right cantilevers to a human right to move across borders, he argues, because there is no human interest protected by the human right to freedom of movement within the state that could not equally lead one to wish to move from one state to another. Therefore, he argues, whatever reasons there are for protecting the ability of people to move freely within the state are also reasons to protect their ability to move from one state to another. He then refutes five attempts to

show that the analogy between movement within the state and movement from one state to another fails and concludes that he has shown that his cantilever argument succeeds (Carens 2013, 237-45).

### Historical Antecedents

In his "On the American Indians," Francisco de Vitoria provides a series of grounds that could have made the Spanish conquests in the new world just. The first of these is that it would have been just to conquer any Native American community that prevented the Spanish from exercising their natural right to trade and live in these Native American communities. Vitoria, in good neo-scholastic fashion, justifies this supposed natural right with a long list of different scriptural and historical authorities, with appeals to the consent of mankind, and, most importantly for my purposes, with two arguments appealing to the idea of freedom of movement. The first of these is that freedom is the default position, and a political community must provide a good reason to restrict it, but the only legitimate reason would be that the movement in question causes actual harm. The second is that either one of two conditions attain; either the Spanish are subjects of the Native Americans or they are not. If they are not, Native American laws cannot infringe on the freedom of the Spanish to go where they wish, and if they are, then the Native Americans cannot exclude them (3.1.1-2). From this Vitoria believes it follows that the Spanish have the right to trade and settle, again unless they cause actual harm (3.1.3). Finally, he argues that if there are things in a particular community that are not individually owned and may be appropriated by any member of the community, then foreigners can also appropriate these things (3.1.4).

My, admittedly minority, interpretation of Vitoria is that he believed the actual Spanish conquests in the Americas were unjust because they were not in fact a response to Native



Americans denying the Spanish their right to trade and live in their communities. What is of interest here, however, is not whether he was an apologist for the Spanish crown but rather that he provided an argument that it is wrong to prevent foreigners from trading and living in one's community, which clearly implies that later Native Americans when they faced settlers rather than conquering armies had no right to exclude those settlers from their lands. His argument was, indeed, used to justify precisely this by English colonial apologists (Fitzmaurice 2014, Ch. 3).

In his *The Rights of War and Peace*, Hugo Grotius develops this sort of argument further. He distinguishes between individual (and presumably family, partnership, etc.) ownership of land and national ownership of land, or as he also phrases it, jurisdiction. Individual ownership of land he argues, is based on first occupation and use, but a nation can claim ownership of unused land (2.2.4). Property rights, whether national or individual, however, come with the proviso that the property may be used by non-owners for non-harmful purposes. This is because people would not have agreed to the creation of individual or national property without this proviso since agreeing to the creation of property without this proviso would not be in anyone's interest prior to the establishment of property (2.2.11).

As an application of this, nations (and presumably individuals) must allow passage through their territory, though they may demand compensation for any damage done by those passing. This applies to not only trade goods but also to migrants and to armies engaged in just wars. Possible retaliation by the enemies of the army seeking passage is not a reason to deny passage and, furthermore, neither is fear that the army will conquer one because, "one Man's Right is not diminished by another Man's Fear..." (2.2.13). He then argues that victims of shipwrecks and similar occurrences must be allowed to stay for a short time in one's country and refugees must be allowed to stay permanently on the condition that they obey the laws (2.2.15-

6). Finally, he argues that if there is land owned by a nation but not individually owned, it must be granted to foreigners upon request provided, once again, that they obey the laws. The only exception to this is land used for an important collective purpose, he gives the example of land owned by Rome and used to graze cattle for the army (2.2.17). Grotius does not explicitly say what if any remedy there is if a political community prevents settlement on unowned land, but he does defend the use of force to secure passage if one's passage through a nation's territory is denied (2.2.13). Therefore, it seems likely that he would also support force by would-be settlers. Grotius, again, does not specifically address this point, but it also seems clearly to follow that if foreigners must be allowed to enter a country and take unclaimed land, they must be allowed to purchase existing land especially given his claim that trade may not be restricted by the state (2.2.13).

Both Vitoria and Grotius assume that in the state of nature, people would be free to move as they wished through the world. They then ask whether the creation of political communities meant that people no longer had this freedom and answer in the negative. Only private property gives individuals the right to prevent other individuals from settling on particular pieces of land, though it does not give individual property owners the right to prevent passage across their property. Huemer's argument is similar to this beginning with Sam and Marvin meeting in what might as well be the state of nature, and concluding from the wrongfulness of Sam's obstruction of Marvin that the introduction of a state with a border between Marvin and the Market does not make it permissible for him to be obstructed. Carens's cantilever argument is even stronger than those of Vitoria, Grotius, and Huemer. Rather than simply asserting that the restriction of human freedom involved in border controls requires justification and rejecting possible justifications as they do, Carens asserts that freedom of movement in particular is a human right.

Like those of Grotius and Vitoria, the arguments of Huemer and Carens put significant pressure on indigenous rights. If there is a human right to cross borders as Carens suggests or if preventing someone from crossing a border is wrongful coercion analogous to Sam preventing Marvin from reaching the Market as Huemer suggests, then settlers had at least a right to move onto indigenous lands that were not privately owned.

### C. Utilitarian Arguments

Oddly enough considering their importance in debates over global justice more generally, influential contemporary utilitarians like Peter Singer have not become prominent participants in the debate over open borders. Open borders proponents who are not utilitarians, however, bolster their other arguments with the claim that open borders would maximize utility because open borders maximize economic efficiency. The same reasons that justify free trade, they argue, also justify free movement of people to where the jobs are. Free movement of workers would ensure that skilled workers go where their skills can best be put to use and unskilled workers would work where cheap labor is most efficient maximizing production and minimizing production costs (Carens 1987, 263; Johnson 2007, 137-43).

### Historical Antecedents

More, as I mentioned above, provides an early Utilitarian argument for settler colonialism. What is relevant for my purposes here is that the Utopians justify their settler colonialism in part by the fact that their methods of agriculture are more productive. Because of this, the land they colonize can support both the colonists and the original inhabitants at a higher standard of living than the original inhabitants enjoyed prior to the founding of the colony. So when the Utopians give the natives of nearby lands the choice between living as members of a Utopian colony or being driven out, they are offering them the chance to have a higher standard

of living (More 2014, 66-7).

A much more famous, and very influential argument, along the same lines was provided by John Locke in his *Second Treatise on Government*. This argument is embedded in a larger argument in which Locke attempts to show that individual appropriation of things owned in common can be justified. Locke has argued that individual appropriation is permissible only when "enough and as good" is left for others (5.33). He then points out that cultivated land produces significantly more than uncultivated land. Therefore, when someone appropriates land and cultivates it, they increase the amount of produce available to humanity. In Locke's example, cultivated land produces ten times as much as uncultivated land, so someone who appropriates and cultivates ten acres of land produces as much from those ten acres as was originally produced from 100 acres. This means, according to Locke, that the person has in effect given 90 acres to humanity since the yield of the remaining 90 acres is now in addition to the yield from the ten cultivated acres, which produce a yield of the same quantity as the original 100 acres (5.37). He then goes on to claim that Native American land management practices are unproductive in this way compared to European methods of land use (5.41-3). Furthermore, Native American lands can be appropriated by anyone who will appropriate and cultivate them because Native American lands have not been claimed by individual Native Americans and are, thus, still part of the global commons. Or as he puts it, "in the beginning all the World was America" (5.49). Thus, by implication, European settlers who appropriate and cultivate Native American land are benefiting humanity.

There are significant problems with Locke's overall complex argument. For one thing, it is not clear that someone who cultivates ten acres and makes them produce as much as 100 uncultivated acres has left enough and as good for others even if they have increased global

production. This is because the cultivator keeps the product of the ten cultivated acres and leaves only the product of the 90 acres free to be gathered by the rest of humanity. Humanity as a whole may have more product to use in this situation, but less of the product is available to everyone except the cultivator. Of course, the rest of humanity could trade for what is now owned by the cultivator, but in many cases having to exchange something else for this product leaves them with less than when they could simply gather and hunt on the land that has now been cultivated. Perhaps more importantly, Locke offers an inconsistent position in that he recognizes that one cannot simply appropriate part of the land set aside as a commons by law in European countries. This is because this land is common to a particular community not to humanity as a whole, and members of the community must follow the law (5.35). But Native American communities also had societal agreements that land was common to a particular community (Greer 2018, Chs. 2, 7; Jennings 1975, 67, 71, 94). If the fact that England say has reserved some land in common means that people from other political communities cannot increase the resources available to humanity by appropriating and cultivating it, then it is quite dubious to claim that people can increase the resources available to humanity by appropriating and cultivating the land held in common by Native American communities.

Abstracted from Locke's larger argumentative structure, however, his appeal to economic efficiency and to the increase in the standard of living it enables form a powerful argument if one is a utilitarian or regards utility as extremely important. Here, for instance, is Andrew Jackson making the economic efficiency argument by itself as a justification for settler colonialism:

Humanity has often wept over the fate of the aborigines of this country, and Philanthropy has been long busily employed in devising means to avert it, but its progress has never for a moment been arrested, and one by one have many powerful tribes disappeared from the earth. To follow to the tomb the last of his race and to tread on the graves of extinct nations excite melancholy reflections. But true philanthropy reconciles the mind to these vicissitudes as it does to the extinction of one generation to make room for another... Nor

is there anything in this which, upon a comprehensive view of the general interests of the human race, is to be regretted. Philanthropy could not wish to see this continent restored to the condition in which it was found by our forefathers. What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms, embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of Liberty civilization, and religion? (qtd in Richter 2003, 235-6)

Now, there are many reasons to question whether open borders would in fact maximize utility. Like the benefits of "free trade," the benefits from free movement of workers might primarily go to the already wealthy, which given the diminishing marginal utility of wealth could mean that aggregate utility actually goes down. Then there are possible negative side effects of open borders. As David Miller argues, for instance, open borders could seriously harm global efforts to reduce population growth since countries have less of an interest in limiting population growth if people can easily move to a less populated country (Miller 2005, 201). More importantly for my purposes here, however, is the fact that this appeal to economic efficiency is almost identical to the appeal to economic efficiency of Locke or Andrew Jackson. The only difference is that the contemporary version of the argument appeals to workers maximizing efficiency by moving to where the jobs are while the settler colonial variant appeals to farmers maximizing efficiency by moving to where the land is. If anything, the utilitarian argument for settler colonialism is stronger than the utilitarian argument for open borders--as I have suggested, there are many reasons to question whether open borders would in fact maximize utility, but at least aggregate utility was clearly maximized when Europeans displaced Native Americans and formed societies with much higher population densities.

### III. Border Controls and Republican Freedom

I follow Philip Pettit in holding that one of the, if not the, primary purposes of the state is

to secure republican freedom, i.e. freedom from the arbitrary will of another, to those individuals who live under its jurisdiction (Pettit 2012, 1, 5). I do not have the space in this paper to justify this claim (for a defense see Pettit 1997; Pettit 2012). Pettit also holds that a state with a monopoly of coercion is necessary to secure republican freedom to individuals because only this type of state can protect those who live under it from domination by other members of the community (Pettit 2012, 132-6). This would have the unwelcome consequence that upon the arrival of Europeans Native Americans north of Mexico lacked republican freedom because they did not have states. It might be argued, then, that conquest and incorporation into the state system provided Native Americans with the opportunity of achieving republican freedom, which on this view is only possible within a state. Furthermore, it might be argued, preventing domination only justifies a policy, restricting immigration in this case, if the policy actually prevents domination, and this would not be the case if Native Americans lacked republican freedom prior to the encroachment of Europeans. My view, which I cannot defend in any depth here, is that non-state forms of political organization, including many of those possessed by Native Americans north of Mexico, could do a good job of securing republican freedom to their members. Be that as it may, however, freedom from domination comes in degrees, and the fact that many Native Americans, the subjects of Powhatan for instance, indisputably were not free of all domination since they lived under political systems that dominated them to some degree does not justify their greater subjection to the colonists. The next subsection will appeal to the history of settler colonialism to discuss the danger that people who begin as immigrants will end as dominators. Then Subsection B will discuss how the republican justification for limiting some kinds of immigration that I argue for relates to the open borders arguments described above.

#### A. Republican Lessons from Some Historical Cases of Settler Colonialism

In 1607, a group of English colonists established themselves in the territory of the Powhatan Chiefdom in what is now Virginia. At first, the Powhatan's tolerated these newcomers and soon formed an alliance with them. The Powhatans seem to have believed that the English agreed to be subordinate to their paramount chief, whose throne name was also Powhatan, when Powhatan adopted John Smith as his son, though the English saw things differently. By 1611, however, relations had deteriorated largely because of the English forcibly seizing caches of corn and other goods when several years of drought made food more valuable to the Powhatans than most English trade goods, and the Powhatans stopped trading entirely and tried to drive the English out by attrition. This plan failed, however, largely because the Powhatans did not realize the extent to which the English could be resupplied with new colonists, and they eventually formed a new peace. By 1622, when relations deteriorated once again, the English population in Virginia rivaled that of the Powhatans, and when the Powhatans resorted to all-out war, they were defeated and forced into a subordinate status in a much reduced territory (Bailyn 2012, Chs. 2-5; Kulicoff 2000, 85-6, 94-5, 97-8; Richter 2003, 69-76; Rountree 2005, 46-236).

In 1620, another group of English settlers, many of them fleeing religious persecution, landed at Plymouth Rock, in modern Massachusetts. The local Wampanoag Native Americans had recently been decimated by an epidemic and saw the English as potential allies who could keep them from being conquered by their Native American enemies, so they fed the English and prevented them all from dying over the winter. This alliance only worked in the short term, however. More and more English settled in New England forming several other colonies, most of which also began by securing permission from local Native Americans to settle. Once the English grew numerous, however, and once they no longer needed the Native Americans to survive, they began expanding at the expense of their Native American neighbors. Pigs and



Cows were turned loose in the forests, and wreaked havoc with unfenced Native American fields as well as destroying much of the wild food, from clam beds to nuts, that the Native Americans traditionally harvested. Force, fraud, and deals with individual Native Americans who had no right to sell communal lands were used to claim title, and many Native Americans sold land because they came to realize that if they did not sell, it would be taken anyway. In 1775, most of the Native Americans of Southern New England were desperate enough to try to solve their problems with all-out war against the English, but as happened with the Powhatans, the English were by then too powerful, and they defeated the Native American alliance and seized nearly all the remaining Native American land (Greer 2018, Ch. 6, 259-64; Jennings 1975, Chs. 11-18; Kulicoff 2000, 95-9; Lepore 1998, Chs. 3-6; Mann 2011, 35-70; Philbrick 2006, Chs. 3, 6-16; Richter 2003, 90-107).

As the English colonies, and later the United States, continued to expand, treaty after treaty was signed with Native American nations guaranteeing that they could keep certain lands. Repeatedly the British and American governments were unable or unwilling to keep white settlers off Native American lands, and repeatedly British and American governments came to the aid of squatters on Native American lands if Native Americans used violence to remove them. When Native Americans were not able to remove squatters from their lands, they were after a time pressured to sign new treaties signing away rights to the land that had been squatted upon (Greer 2018, 382-6, 405-15; Kulicoff 2000, 99-106, 138-44; Merrell 2009, Chs. 5-6; Perdue and Green, Chs. 2-4; Richter 2003, 171-3, 184-7, 192-216, 222-235; Shannon 2008, Ch. 6).

This sort of settler colonialism was not only a danger to stateless Native American societies. In the 1810s, American squatters began settling in what at the time was part of the

Spanish colony of New Spain and now is East Texas. Mexico, including Texas, became independent from Spain in 1821 and began allowing legitimate immigration into Texas in 1825 both to develop the economy and, perhaps more importantly, to serve as a buffer against the Comanches. By 1830, however, Anglos outnumbered Tejanos (hispanic inhabitants of Texas) in Texas, and there had already been a short-lived rebellion by one group of Anglos, joined by some Native Americans, and significant friction over issues from slavery to taxes. The Mexican government tried to enforce a ban on immigration from the U.S. while encouraging internal migration to Texas as well as immigration from Europe, but this policy was dismantled shortly thereafter. By 1836, when Texas became independent from Mexico, Tejanos were outnumbered by Anglos in Texas ten to one. Most Tejanos joined the Anglo led revolution, but after Texas became a Republic and later was annexed by the U.S., anglo distrust and violence forced many Tejanos to flee to Mexico (Campbell 2012, Chs. 4-7; Reséndez 2004, 17-25, Ch. 5; Torget 2015, Chs. 1-4).

In all these cases, newcomers ended up subjugating the inhabitants of the place they immigrated to and relegating them to the status of second-class citizens. Many ended up confined to tiny enclaves politically subordinated by the settler state. There was, of course, a great deal of violence involved, but much of the dispossession was relatively peaceful because many Native Americans realized that violent resistance was futile, and Native American nations allied with the United States like the Catawbas, the Cherokees the Oneidas, and the Crows ended up as subjugated and dispossessed as those nations who fought back.

In the world as it is, political communities, whether states or some other form of political organization, require land bases. For there to be a community in which the good of non-domination for each of its members is realized, there must be a territory in which the members of

that community live and on which they do not depend on the arbitrary will of other communities, individuals, and organizations. The all too brief historical discussion above suggests a number of cases in which preventing domination would have required the ability of a community to exclude others from its land base. One issue, is that newcomers, if unchecked, can rapidly come to rival the inhabitants in population as happened to the Powhatans, in New England, in Texas, and in other places. Whether or not the original immigrants intended this, once there is a large population of recent immigrants there is a danger that they will seize power by force, as the settlers in Virginia and New England did, or if they become the majority, seize power Democratically as the Anglo leaders of the Texas Republic did and then dominate the original inhabitants. Thus, there is a Republican argument for keeping immigration to a level low enough that at any one time only a small percentage of the population are recent immigrants. Similarly, there is a republican argument to make sure, preferably through incentives rather than outright coercion, that recent immigrants do not predominate in a particular region as happened in Texas despite the fact that Anglo immigrants were a tiny fraction of the population of Mexico as a whole. There is also a republican argument against admitting significant numbers of immigrants from powerful neighboring countries especially if they are likely to owe allegiance to their country of origin or to appeal to a powerful neighboring country in internal political disputes. Another important observation is that though there is certainly a history of anti-immigrant hysteria and bogus claims that immigrants are a security threat, there is also a history of political leaders underestimating the threat posed by immigrants as Powhatan, the Wampanoags, and the Mexican government did. Therefore, we should not have a default position of skepticism towards concerns over immigration but should rather assess such concerns on a case by case basis.

Moving to a higher level of generalization, political communities, if they are to ensure

non-domination, must exercise enough control over the related issues of membership and who comes onto their land to prevent two possible situations. One of these is the newcomers coming to outnumber the original inhabitants whether in a political community as a whole or merely in a particular area, e.g. Mexican Texas, and dominating the original inhabitants. This domination might be violent, but it might also be legal and take place through the forms of majoritarian democracy if the immigrants relegate the original inhabitants to what Pettit calls a "sticky minority," i.e. a group that systematically loses votes on a certain range of issues (Pettit 2012, 212; Pettit 2014, 124-5). The other is the newcomers coming to dominate the original inhabitants because even though they are a minority, they have greater power due to wealth, superior technology, political connections to other powerful countries or to a federal or national government, etc. As my reference to connections to federal and national governments suggests, I have been using the phrase "political communities" rather than "states" because I think these reasons apply to any political community including members of federal states, e.g. Quebec, and to indigenous communities partly incorporated into settler states.

Two conclusions follow from what I have said here. First, the more populous a state is, and the more stable a state's government is, the weaker is the Republican justification for restricting immigration, or, perhaps more accurately, the more numerous immigrants have to be to pose a threat. By this criterion, the United States has less justification to restrict immigration than nearly any other country (and perhaps less than any other country given that the only two other countries with higher populations, China and India, have much higher population densities). Also by this criterion, modern day indigenous peoples have very strong justification for keeping others off their land and restricting membership of their communities because they mostly have small populations and most of those who want access to their lands come from the

larger settler states in which their communities are embedded and from which they often already suffer some level of domination. The second conclusion is that when anti-immigration advocates argue that immigrants are military threats, e.g. when they argue that Muslim immigrants want to destroy western states from within, or when they argue that immigrants are political threats, e.g. when conservatives in the U.S. argue that the left wants to import its majority, which on its most charitable interpretation might be thought of as expressing a worry about becoming a sticky minority due to immigration, they are making arguments of the correct form. If we resist these arguments, as I believe we should, we must resist the empirical claims they contain rather than appeal to the injustice of border controls.

One defense of the rights of indigenous peoples to restrict access to their lands is that indigenous peoples are sovereign nations and, therefore, have the right to restrict membership or that they were at one point sovereign nations with the right to restrict membership and maintained that right after agreeing to become subordinate to the various settler-colonial states. This account of indigenous rights in general is often put forward by indigenous people themselves (see e.g. Alfred 2015; Barcham 2000; Coulthard 2014; Audra Simpson 2014; Leanne Simpson 2017; Trask 1999; Turner 2006; Wilkins 1997) and by non-indigenous scholars who advocate for indigenous rights (see e.g. Nichols 2014; Rifkin 2014; Weber 2000). One way to make this argument is to hold that sovereignty (or self-determination or autonomy or another synonymous or nearly synonymous concept) simply implies the right to restrict immigration to any degree whatever since what it means for a political community to be sovereign is for it to be able to do whatever it wants. Carens, rightly I think, argues against this understanding of sovereignty pointing out that human rights are restrictions on what sovereign political communities may do, so if he is correct that there is a human right to freedom of movement,

sovereign political communities must respect it (2013, 270-4). What I have tried to do here is provide an argument that sovereign political communities, and, indeed, political communities in general, have the right to significantly restrict immigration because doing so is often necessary to reliably prevent their members from suffering domination. The purpose of this argument is to show why it is that seizures of and squatting on indigenous lands were and are wrongful and why treaties with indigenous peoples did not involve the indigenous peoples extorting compensation in exchange for respecting the rights of settlers and settler states.

### B. Republican Freedom and Arguments for Open Borders

It might be objected here that all I have showed is that the freedom of movement is not absolute and need not always prevail when it conflicts with the prevention of domination. After all, the theorists of open borders I have discussed are not freedom of movement absolutists, and they all acknowledge limited cases in which immigration can be restricted. I wish to establish a somewhat stronger conclusion, however namely that preventing domination often justifies restrictions on immigration. The open borders advocates, as I have said, endorse some circumstances in which immigration can be restricted, but they see these as very limited exceptional cases, likely because they focus on the policies of huge political communities like the U.S., Canada, and the EU. There are a great many small countries, however. Furthermore, even within the giant political communities I mentioned, there are many small political communities, e.g. Native American nations, the semi-autonomous Russian republics, etc. who, on my account, have the right to significantly restrict immigration. Another reason that I do not think my republican argument only establishes a limited exception in which extreme circumstances restrict the application of open borders, is that I think the open borders arguments I have discussed at most provide weak reasons to open borders while preventing domination is a

very strong reason. In the remainder of this section, I shall discuss the open borders arguments and attempt to justify my claim that they at most provide weak reasons for open borders.

### 1. The Utilitarian Argument for Open Borders

I said just above that I would try to show that the arguments for open borders were significantly weaker than their proponents supposed, but this is not strictly correct, because I will only provide counter arguments to what I take to be the five most plausible such arguments. Committed utilitarians already have to endorse a whole host of repugnant conclusions, so I doubt they will be moved by the fact that their theory provides some of the strongest support to settler colonialism. As I said above, there are reasons to doubt whether open borders in today's world would maximize utility, such as the possibility of open borders exacerbating population growth and the possibility that open borders would benefit the well off at the expense of the poor--leading to less happiness being produced over all due to the problem of diminishing marginal utility. I have no illusions, however, of being able to convince those who accept the principle of utility that they are wrong to do so if they are not already convinced by the vast literature by the critics of utilitarianism that already exists. Thus, I admit that what I have to say is for those of us who are not utilitarians. One might of course be a pluralist of some kind and think that the fact that open borders would maximize utility is an important moral consideration but is not decisive. Such a person, could, and I believe should, accept my points about domination. Unfortunately for my argument, there is room in such a position to take utility maximization to be a very important moral reason and to take preventing domination to be a relatively unimportant moral reason, or to do the reverse, and I have nothing to say within the space of this paper to convince such a pluralist that preventing domination is much more important than maximizing utility apart from the fact that this sort of pluralist will likely be committed to many of the repugnant conclusions

that full-throated utilitarianism implies and which convince many of us non-utilitarians that utilitarianism is false.

## 2. Freedom Based Arguments for Open Borders

Turning now to freedom based arguments, there is a serious problem with Huemer's analogy between Marvin and Sam and the case of immigration, namely that what one private citizen may prevent another from doing or what one person in the state of nature may prevent another from doing is a bad guide to what the state may prevent someone from doing. In the state of nature, for instance, it would be wrong for Sam to prevent Marvin from gathering edible plants to eat, and it would similarly be wrong for Sam the private citizen to prevent Marvin from gathering edible plants if doing so were legal. But if the plants are on Sam's property or if the state forbids harvesting them for environmental or other reasons, Sam can legitimately prevent Marvin from harvesting them. Similarly, in the state of nature, it would be wrong for Sam to coerce Marvin not to engage in manufacturing because, say, Sam was annoyed by the noise it produced, but this does not mean that it is wrong for local governments to forbid manufacturing in order to reduce noise. Perhaps Huemer is right that individuals have a *prima facie* right not to be coerced to refrain from an action that would benefit them, but with the exception of libertarians, we think this is a fairly weak right indeed that can be overridden by public purposes such as preventing the neighbors from being annoyed by noise. The case is different, of course, if Marvin is really desperate, as in a variant of Huemer's thought experiment in which he will starve to death if he is not allowed to go to the market or if he will starve if he does not gather and eat the edible plants, but what is at issue then is need not freedom. Even most of the defenders of "closed borders" acknowledge that the state's discretion when dealing with most refugees at most amounts to the right to choose whether to let them in or to ensure they are



capable of a minimally decent life somewhere else (see Walzer 1983, 48-51; Wellman 2011, ch. 6). It would also be different if the right of freedom of movement across borders were a human right along with such other rights as the right to engage in political speech as Carens suggests (I will get to this argument shortly) because then the state would require a very strong justification for limiting this right. But for us non-libertarians, the mere fact that Marvin would benefit, even benefit greatly, from doing x does not mean that the state must show that preventing Marvin from doing X would have catastrophic consequences or have any justification beyond the fact that it would promote some public interest. After all, Marvin might be able to benefit greatly by engaging in annoyingly noisy manufacturing or harvesting plants (if they were sufficiently rare to command a high price), but this does not show that the state violates his rights by preventing his manufacturing and plant gathering. We non-libertarians should conclude, then, that not much follows for the permissibility of the state preventing Marvin from immigrating or gathering plants or manufacturing from the fact that in the state of nature or in the case where what Marvin is doing is perfectly legal it is wrong for Sam the private person to coerce Marvin not to go to the market or to gather plants or to engage in manufacturing.

Huemer, of course, though he wishes his thought experiment to be convincing to a wide range of readers, is a libertarian. Even for a libertarian, however, there are problems with the analogy. What if, for instance, Sam owns the road? Surely no libertarian could then say it would be wrong for him to prevent Marvin from using his road to get to the market, even if he did so for petty reasons or no reason at all. Why, then, cannot we the people exercise discretionary control over who uses the commons we control, i.e. public property? Perhaps in an ideal libertarian state there would be no commons because roads, parks, and the like would all be privatized, but in the real world, political communities have commons, and Huemer's argument

implies that they must grant a share in the use of those commons to anyone who wishes for a share and tries to move into the community. Grotius has an argument for this, namely that property rights do not give the right to restrict passage since this serves no purpose and thus would not be agreed to in the state of nature. I have suggested an answer to Grotius, namely that the ability to restrict, at least to a significant extent, serves the purpose of preventing domination. Therefore, I suggest, that in the state of nature, people would agree to make the ability to restrict a part at least of public property. Contemporary libertarians, however, work with a much stronger conception of property rights than Grotius and thus do not have the ability to say that it doesn't matter whether Sam owns the road. Similarly, they should not say that it doesn't matter whether Sam is standing at the border between the commons belonging to one community and the commons belonging to another with authorization from his community to keep outsiders out. At least not based on the fact that doing this is violating Marvin's right not to be coerced.

Carens's cantilever also fails to establish a strong reason for open borders because he fails to understand the human right to freedom of movement within the state. As Carens acknowledges, the human right to freedom of movement within the state does not mean that I can go wherever I wish within that state. He analogizes this to the freedom of speech, which does not give me the right to say whatever I want whenever I want. According to Carens, restrictions on freedom of movement within the state include, "respect for private property, imprisonment and parole for criminal offenses, medical quarantines, prohibitions on settling on indigenous lands, traffic regulations, and so on" (2013, 247). Notice that with these and other restrictions, the freedom of movement within the state does not permit me to go to most of the territory within the U.S. since I do not have a right to go onto private property or indigenous lands and since some public land is completely restricted, e.g. military bases and lands used by the military

for training, and much of the remaining public land can only be accessed for a fee. Carens sees the freedom of movement as a right to go wherever one wishes which is limited in these ways, but I submit that it is better understood as a right not to be bound to a particular place, which is limited in far more narrow circumstances such as punishment for crime and medical quarantine. On this interpretation, the purpose of article 13 of the UDHR is to prevent a government from trapping its people in a particular place, which is why it has two sections the first guaranteeing freedom of movement and residence within the state and the second protecting the right to leave one's state and reenter (United Nations 1948, Article 13). This interpretation means that there is a human right not to be bound to the land in serfdom or to be restricted to a particular region of a state as in the South African "bantustans" or to be interned by the state as in the case of Japanese-Americans during WWII or to be prevented from leaving one's state as in the East Block during the Cold War. There is not, however, on this interpretation a general right to go wherever one wishes that is somehow overridden in the case of private property, most public lands, etc. In addition to interpreting the UDHR to be consistent, my interpretation has the merit of explaining why we do not think that, for instance, the state's charging entrance fees to national and state parks is either a human rights violation or something that requires the sort of strong justification required for the state preventing someone engaging in certain types of speech etc. If I am correct about this, then the cantilever argument from freedom of movement within the state leads to precisely what is already recognized in international law, namely a human right not to be detained in a state (with exceptions involving crime, quarantine, etc.), and is completely consistent with the rights of indigenous peoples to restrict access to their lands and with states to close their borders.

Now Carens would likely object that there is no important moral difference between

being prevented from leaving a state when the state refuses to let you cross the border out and being prevented from leaving the state because no other state will let you in. In either case, you're stuck in the state you want to leave. This is true, and to mitigate its harmful effects, the UDHR contains a provision protecting the right to asylum precisely to prevent people suffering massive abuses at the hands of their state because of their inability to gain entrance to another (United Nations 1948, Article 14). In the absence of conditions giving rise to asylum claims, however, the fact that one can be trapped by things other than one's government does not mean that one has a right not only not to be prevented from leaving by one's government but also to be allowed entrance by another. In many cases, there is a right against one's government so that the government cannot prevent one doing something but not a right that one can actually do the thing because it requires the concurrence of others. For instance, there is a human right to join a trade union (United Nations 1948, Article 23.4), but if no one else at one's place of employment wishes to be in a trade union, one cannot actually join a trade union in one's workplace. There is a human right to marry and form a family (United Nations 1948, Article 16), but one can only do this if another person agrees to marry one.

### 3. Fairness Based Arguments for Open Borders

Turning to fairness based arguments, the weakest of this type of argument I have discussed is, I believe, Carens's feudalism argument because there is an important disanalogy between feudalism and border controls. What it is for there to be a privileged class of nobility is for the nobility to be ranked above the commoners. Thus, feudalism precisely is the denial of equal opportunity. If being born a noble did not mean that one had advantages that commoners did not, whether it be wealth or land or merely the ability to lord it over the common people, one would not live under a feudal system of law. There is nothing about the institution of borders,

however, that requires there to be vast disparities in the life prospects of people from different countries. In a more just world, in which there were not poor and rich countries, it would not be true that border controls function to keep people in some countries poor and with a lower quality of life.

It is true that in our actual world, border controls are a barrier to equal opportunity. But many other things are barriers to equal opportunity in the actual world. The fact that we allow parents to raise their children is a barrier to equal opportunity, for instance, because some parents have more wealth, time, skills, connections, etc. than others and pass these things on to their children, but this does not mean that the institution of the family is analogous to feudalism. One might oppose the institution of the family or the institution of the border control on instrumental grounds because of a commitment to equality of opportunity, but this sort of objection to these institutions only leads to the conclusion that the family or the border control should be abolished if there is no better way of achieving this degree of equality of opportunity and if the moral costs of abolishing the institution in question are outweighed by the importance of the gain in equality of opportunity eliminating the institution would secure. Even the most committed egalitarians, for instance, mostly do not advocate the abolition of the family, though they do advocate other ways of reducing its effects on equality of opportunity like free high-quality education, high taxes on inheritance, affirmative action programs, legal prohibitions of nepotism, etc. Similarly, the opponents of open borders can, and should, support a wide variety of policies to reduce global inequality of opportunity such as fair trade practices, reparations paid by imperial powers, polluters, etc. to those harmed by their activities, no strings attached development aid and debt relief, etc. It might be that the best way all things considered to reduce global inequality of opportunity is to institute a global regime of open borders and that the moral costs of this

proposal would be outweighed by the importance of the resulting increase in global equality of opportunity, but Carens does not even try to show this.

As for Carens's argument from substantive inequality, Carens explicitly states that he is making an argument of principle that purports to show that border controls would not be part of a just world. But in a just world, as Carens defines it, there would be no disparities among states, as Carens acknowledges when he argues that open borders would be feasible in a just world because few people would want to move. Therefore, the fact that in our actual far from just world border controls help keep poor people poor is not an argument that border controls would not be part of a just world. If the trouble with border controls is based on a consequence they have, keeping poor people poor, then there is nothing wrong with them in the absence of that consequence, i.e. in a just world where they do not keep poor people poor. Thus, in so far as the goal is to show that justice requires open borders, Carens argument only works in non-ideal theory if at all.

Perhaps Carens could modify his argument by giving up his appeal to ideal theory and simply pointing out that border controls are unjust in the actual world because they keep the poor poor. But of course, this does not show that border controls are unjust. An institution that is significantly responsible for keeping the poor poor is the institution of private property. Because of the institution of private property, people with guns prevent the poor from using most of the world's resources no matter what country they live in and would continue to do so even if borders were opened or eliminated entirely. So unless Carens wishes to reject liberal democracy in favor of anarchism or communism, he cannot hold that an institution is unjust whenever it involves the use of force and has the effect of keeping the poor poor. It may well be, of course, that the institution of private property is justified while the institution of border controls is not

because some moral consideration counts in favor of private property that does not count in favor of border controls. If this is so, however, Carens would have to provide an argument for this conclusion. Even more importantly, he would have to establish that the fact that an institution has the effect of helping keep the poor poor is a pro tanto reason that it is unjust. It is at least as plausible that the injustice involves the fact that there exist categories of the rich and the poor, either because of the injustice of the historical processes that lead to these categories or because this sort of inequality in distribution is unjust independent of historical concerns, and that there is nothing at all unjust about border controls or private property apart from the fact that some people have far too much property while others have far too little or that the communities protected by border controls that some people live in are prosperous at the expense of the communities others live in being poor.

Risse's argument is, I think, the strongest of the open borders arguments I have discussed, and it does provide some reason for permitting immigration into countries that relatively underuse resources. There is, however, one consideration that significantly weakens the argument. This is that permitting this sort of immigration leads to a race to the bottom. As I mentioned earlier, citing David Miller, allowing countries with high population growth to export citizens, reduces their incentive to undertake costly programs to limit population growth. It also creates a collective action problem in which countries that do successfully limit population growth will not benefit from lower population densities but will, instead, receive more immigrants from countries that have failed to limit population growth. This will likely lead to people everywhere living in more overpopulated countries. The history of settler colonialism also gives some support to this worry. Because of access to the frontier, i.e. the ability to take Native American Lands, British colonists married earlier and had significantly higher population

growth, an additional three births per woman, than people back in Britain (Kulicoff 2000, 227-31). Of course, a world in which all countries are overpopulated would in one sense be more fair than a world in which only some were, but this seems to be the sort of leveling down that causes trouble for egalitarians. In any case, this sort of fairness at the cost of leveling down does not seem to justify overriding the interest of political communities in preventing domination when these two moral reasons conflict.

#### IV. Conclusion

In this paper I have discussed three popular families of arguments for open borders that can be traced back to arguments for settler colonialism. These arguments, I have shown, if unqualified and even with the qualifications their proponents have actually provided have negative implications for the rights of indigenous peoples and yield perverse conclusions regarding the history of settler colonialism. Political communities, I have argued, must be able to restrict immigration to a certain extent to prevent domination. Defenders of open borders might be able to simply accept this point as a qualification of their arguments, and I hope they do so and consider the implications of their arguments in more diverse contexts than contemporary immigration into the U.S. and Europe in the future. Some proponents of open borders already take into account indigenous rights, e.g. Harsha Walia's *Valiant*, though in my view ultimately unsuccessful, attempt to provide an argument for open borders that respects indigenous sovereignty (Walia 2013). Some even take the history of settler colonialism to be an argument for open borders today on the principle that it is unfair to change the rules of international law now to benefit the current settler states when they wish to prevent immigration (Cole 2011). And then there is the argument of Arash Abizadeh who, though he does not directly address settler colonialism or the rights of contemporary indigenous peoples, uses democratic theory both to



argue for open borders and to maintain that immigration must sometimes be restricted to protect the rights of the peoples of small communities to democracy (Abizadeh 2008). I disagree with all three of these theorists, especially Walia and Cole, but they are arguing for open borders in what I think is a much better way than those I have spent most of my paper discussing, and I hope the open borders movement will follow their lead.

## REFERENCES:

- Abizadeh, Arash. 2008 "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders." *Political Theory* 36, 1 (February): 37-65.
- Alfred, Taiaiake. 2015 *Wasáse: Indigenous Pathways of Action and Freedom*. Toronto: University of Toronto Press.
- Bailyn, Bernard E. 2012 *The Barbarous Years: The Peopling of British North America: The Conflict of Cultures, 1600-1675*. New York: Alfred A. Knopf.
- Barcham, Manuhaia. 2000 "(De) Constructing Indigenous Politics" in Duncan Ivison, Paul Patton, and Will Sanders (eds.). *Political Theory and the Rights of Indigenous Peoples*. New York: Cambridge University Press.
- Campbell, Randolph B. 2012 *Gone to Texas: A History of the Lone Star State*. New York: Oxford University Press.
- Carens, Joseph. 1987 "Alienation and Citizenship." *The Review of Politics* 49, 2 (Spring): 251-273.
- Carens, Joseph. 2013 *The Ethics of Immigration*. New York: Oxford University Press.
- Cole, Phillip, "Open Borders: An Ethical Defense" in Christopher Heath Wellman and Phillip Cole. *Debating the Ethics of Immigration: Is There a Right to Exclude?* New York: Oxford University Press.
- Coulthard, Glen Sean. 2014 *Red Skin White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota Press.
- Ellingson, Terry Jay. 2001 *The Myth of the Noble Savage*. Berkeley: University of California Press.
- Fitzmaurice, Andrew. 2014 *Sovereignty, Property, and Empire, 1500-2000*. New York: Cambridge University Press.
- Greer, Allan. 2018 *Property and Dispossession: Natives, Empire, and Land in North America*. New York: Cambridge University Press.
- Grotius, Hugo. 2005 *The Rights of War and Peace*. Ed. Richard Tuck. Indianapolis: Liberty Fund.
- Hobbes, Thomas. 1994 *Leviathan with Selected Variants from the Latin Edition of 1668*. Ed. Edwin Curley. Indianapolis: Hackett.
- Huemer, Michael. 2010 "Is There a Right to Immigrate?" *Social Theory and Practice* 36, 3

(July): 429-461.

Jennings, Francis. 1975 *The Invasion of America*. Chapel Hill: University of North Carolina Press.

Johnson, Kevin R. 2007 *Opening the Floodgates: Why America Needs to Rethink its Borders and Immigration Laws*. New York: New York University Press.

Kulicoff, Allan, 2000 *From British Peasants to Colonial American Farmers*. Chapel Hill: University of North Carolina Press.

Lepore, Jill. 1998 *The Name of War: King Philip's War and the Origins of American Identity*. New York: Random House.

Locke, John. 1988 *Two Treatises of Government*. Ed. Peter Laslett. New York: Cambridge University Press.

Mann, Charles C. 2011 *1491: The World Before Columbus* rev. ed. New York: Vintage.

Mengzi, 2008 *Mengzi with Selections from Traditional Commentaries*. Trans. Bryan W. Van Norden. Indianapolis: Hackett.

Merrell, James H. 2009 *The Indians' New World: Catawbas and Their Neighbors from European Contact Through the Era of Removal* 2nd ed. Chapel Hill: University of North Carolina Press.

Miller, David. 2005 "Immigration: The Case for Limits." In Andrew I. Cohen and Christopher Heath Wellman (eds.). *Contemporary Debates in Applied Ethics*. Malden MA: Blackwell.

Miller, David. 2016 *Strangers in Our Midst: The Political Philosophy of Immigration*. Cambridge MA: Harvard University Press.

More, Sir Thomas. 2014 *Utopia* 2nd ed. Trans. Clarence H. Miller. New Haven: Yale University Press.

Nichols, Robert. 2014 "Contract and Usurpation: Enfranchisement and Racial Governance in Settler-Colonial Situations." In Audra Simpson and Andrea Smith (eds.). *Theorizing Native Studies*. Durham: Duke University Press.

Perdue, Theda and Michael D. Green. 2007 *The Cherokee Nation and the Trail of Tears*. New York: Penguin.

Pettit, Philip. 1997 *Republicanism: A Theory of Freedom and Government*. New York: Oxford University Press.

- Pettit, Philip. 2012 *On the People's Terms: A Republican Model of Democracy*. New York: Cambridge University Press.
- Pettit, Philip. 2014 *Just Freedom: A Moral Compass for a Complex World*. New York: W. W. Norton.
- Philbrick, Nathaniel. 2006 *Mayflower*. New York: Viking.
- Reséndez, Andrés. 2004 *Changing National Identities at the Frontier: Texas and New Mexico, 1800-1850*. New York: Cambridge University Press.
- Richter, Daniel K. 2003 *Facing East from Indian Country*. Cambridge MA: Harvard University Press.
- Rifkin, Mark. 2014 "Making Peoples into Populations: The Racial Limits of Tribal Sovereignty." In Audra Simpson and Andrea Smith (eds.). *Theorizing Native Studies*. Durham: Duke University Press.
- Risse, Mathias. 2012 *On Global Justice*. Princeton: Princeton University Press.
- Rountree, Helen C. 2005 *Pocahontas, Powhatan, Opechancanough: Three Indian Lives Changed by Jamestown*. Charlottesville VA: University of Virginia Press.
- Shannon, Timothy J. 2008 *Iroquois Diplomacy on the Early American Frontier*. New York: Penguin.
- Simpson, Audra. 2014 *Mohawk Interruptus: Political Life Across the Borders of Settler States*. Durham: Duke University Press.
- Simpson, Leanne Betasamosake. 2017 *As We Have Always Done: Indigenous Freedom Through Radical Resistance*. Minneapolis: University of Minnesota Press.
- Torget, Andrew J. 2015 *Seeds of Empire: Cotton, Slavery, and the Transformation of the Texas Borderlands, 1800-1850*. Chapel Hill: University of North Carolina Press.
- Trask, Haunani-kay. 1999 *From a Native Daughter: Colonialism and Sovereignty in Hawai'i* rev. ed. Honolulu: University of Hawai'i Press.
- Turner, Dale. 2006 *This Is Not a Peace Pipe: Towards a Critical Indigenous Philosophy*. Toronto: University of Toronto Press.
- United Nations. 1948 *Universal Declaration of Human Rights*.
- Vattel, Emer de. 2008 *The Law of Nations*. Indianapolis: Liberty Fund.
- Vitoria, Francisco de,. 1991 "On the American Indians." In Anthony Pagden and Jeremy

- Lawrence (eds.). *Francisco de Vitoria: Political Writings*. New York: Cambridge University Press.
- Walia, Harsha. 2013 *Undoing Border Imperialism*. Oakland CA: AK Press.
- Walzer, Michael. 1983 *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.
- Webber, Jeremy. 2000 "Beyond Regret: Mapo's Implications for Australian Constitutionalism" in Duncan Ivison, Paul Patton, and Will Sanders (eds.), *Political Theory and the Rights of Indigenous Peoples*. New York: Cambridge University Press.
- Wellman, Christopher Heath. 2011 "Freedom of Association and the Right to Exclude" in Christopher Heath Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* New York: Oxford University Press.
- Wilkins, David E. 1997 *American Indian Sovereignty and the U.S. Supreme Court: The Masks of Justice*. Austin: University of Texas Press.