

Heath Wellman, Christopher & Philip Cole, *Debating the Ethics of Immigration: Is there a Right to Exclude?* Oxford University Press, New York, 2011, 340 pp.

A quotation commonly attributed to the French essayist Joseph Joubert poignantly captures the driving idea behind Christopher Heath Wellman and Philip Cole's book: *Debating the Ethics of Immigration: Is there a Right to Exclude?*: "It is better to debate a question without settling it, than to settle a question without debating it?"

Wellman and Cole, professors of Philosophy at Washington University in St. Louis and the University of Wales, Newport respectively, set out to do just that with the question of "whether states have a unilateral right to control membership [or] whether individuals enjoy a fundamental right to freedom of international movement" (Wellman & Cole 2011: 7).

If we take the noun "debate" to mean, as the New Oxford American Dictionary defines it, "a formal discussion on a particular topic in a public meeting or legislative assembly in which opposing views are put forward", then Wellman and Cole's debate, publicly available in the reviewed volume, seems to fit the description flawlessly, for they put forward diametrically opposed views on the subject. As they state in their introduction: "Wellman defends a legitimate state's right to exclude outsiders, and Cole counters that countries have no moral right to prevent people from crossing their borders." (Wellman & Cole 2011: 2).

This novel approach lends the book its unique structure, which splits the book in half almost perfectly equally (143 versus 154 pages) between the two authors. In part one, titled "Freedom of Association and the Right to Exclude", Wellman makes the case that "legitimate political states are morally entitled to unilaterally design and enforce their own immigration policies, even if these policies exclude potential immigrants who desperately want to enter (Wellman & Cole 2011: 13).

In the second part of the work, under the title "Open Borders: An Ethical Defense", Cole argues "against the moral legitimacy of immigration control" (Wellman & Cole 2011: 159). Only the acknowledgements and short introduction were written jointly by the two authors.

The argument they put forward is about, as the book's subtitle puts it, the "right to exclude" and whether "states possess that right, not how they should, in fact, use it under current global circumstances" (Wellman & Cole 2011: 8, my italics).

This is important to point out, as it makes clear the theoretical contribution the book seeks to make. The authors are focusing on their two radical positions, rather than considering compromise positions between the two, because "the two 'extreme' positions mapped out in this text describe the ethical territory on which any such intermediate positions must be based." (Wellman & Cole 2011: 7)

So, as Cole rightly argues (c.f. p. 163), while the majority of the available literature is centred around the question "What can morally justify a state in restricting migration" (ibid.), he and Wellman focus on the more fundamental inquiry "What gives the state the *right* to control immigration?" (ibid., italics in original). The answer to the latter question must form the theoretical basis for the former.

Wellman's answer is that states do in fact possess this right. His argument is, as he readily admits, straightforward and rests on three basic premises which we can therefore quote here in full:

- (1) legitimate states are entitled to political self-determination, (2) freedom of association is an integral component of self-determination and (3) freedom of association entitles one to not associate with others. Based on this reasoning [he concludes] that legitimate states may choose to not associate with foreigners, including potential immigrants, as they see fit (Wellman & Cole 2011: 13).

He elaborates on each of these three points, explaining his view why states are entitled to self-determination and thereby to freedom of association as corporate political entities and not just as an aggregate of individual right holders, as "[i]nvoking individual human rights will not enable one to explain why it

is in principle wrong for an external body such as Sweden or the EU to forcibly annex a legitimate state like Norway" (Wellman & Cole 2011: 54).

Here, we see a major feature of Wellman's argument: the use of hypothetical scenarios (such as the EU's annexation of Norway) and the use of analogy. This leads Wellman to conclude that this right of association must, just as it does with individuals, entail a right *not* to associate: "Just as an individual has the right to determine whom (if anyone) he or she would like to marry, a group of fellow citizens has a right to determine whom (if anyone) it would like to invite into its political community" (ibid.).

This right, however, is just presumptive, in that it could potentially be overturned by other rights or concerns. So, after commencing to positively lay out his argument for a state's right to unilaterally control immigration, Wellman considers, in the latter half of his part, four cases made for open borders (by egalitarians, libertarians, democrats and utilitarians). All four, he suggests, "either do not establish a case in favor of open borders, or the one they provide is insufficient to outweigh a legitimate state's right to unilaterally design and enforce its own immigration policy" (Wellman & Cole 2011: 3).

He also considers the concrete situations of refugees and guest-workers as well as the issues of establishing an international institution with authority over migration and the permissibility of applying selection criteria as part of a state's immigration policy. In all cases, he shows "that none of those answers gives us any cause to doubt [the] more general thesis that legitimate political states occupy a privileged position of moral dominion over immigration" (Wellman & Cole 2011: 4).

It is worth mentioning that Wellman makes his positive argument first, while making the case against possible negating views later, while Cole chooses the opposite approach.

Cole, in the introduction to his half of the work, claims that "it is not a direct reply to the arguments Wellman has set out in the first part, but is rather setting out an alternative moral account of immigration as a contrast to his" (Wellman & Cole 2011: 161).

This claim, however, is unconvincing. Cole over wide stretches quotes Wellman's preceding part directly in order to refute his arguments and includes a sizable chapter titled "Wellman and Freedom of Association". This, apart from anticipating a reviewer's job (in a sense reviewing a partially self-reviewing book) reveals, as we shall see, a more fundamental flaw in the book's overall structure.

What follows is both a critical appraisal of two of Wellman's basic arguments as well as a presentation of the way they form the beginning of the negative arguments of Cole's thoughts.

What strikes me as essentially problematic with Wellman's argument is its basis in the idea of legitimacy. He is careful to restrict his claims to 'legitimate states', that is "only those regimes with a moral claim to rule have a moral right to political self-determination" (Wellman & Cole 2011: 15f).

In his view, "a regime is legitimate only if it adequately protects the human rights of its constituents and respects the rights of all others" (Wellman & Cole 2011: 16).

He goes on, in a footnote, to define human rights "to be individual moral rights to the protection against the standard and direct threats leading to a minimally decent life in modern society" (Wellman & Cole 2011: 55).

These three excerpts are reproduced here in full, as they form, the entire discussion of legitimacy in Wellman's argument. I find this basis very problematic, because it is nowhere near as stable as Wellman would like us to believe. While Cole (Wellman & Cole 2011: 234f) mainly criticizes Wellman on the "question of how the judgement of legitimacy is to be made" (and on this, Wellman is indeed silent), what strikes me as even more arguable is Wellman's distinction between the protection of human rights within the nation state and respecting them outside. This seems to constitute a form of ethical particularism, which undermines fundamentally the universality of human rights, which are awarded *qua* being human and not *qua* being a compatriot.

Cole seeks to show that "arguments developed within liberal political theory that claim to show that immigration restrictions exercised by liberal nation states are ethically justified [...] fail to be consistent with liberal theory's own central moral principles" (Wellman & Cole 2011: 159).

If liberal theory is based on a "commitment to ethical universalism and the principle of moral equal-

ity of humanity" (Wellman & Cole 2011: 210) then it can hardly be reconciled with a model in which "our obligations to our co-nationals come first" (Wellman & Cole 2011: 211).

He goes even further, in pointing out that the ethical particularism on which this communitarian view is based can't properly account for any of the content of moral obligations towards fellow humans:

In order to derive the content of universal human rights from the particularist perspective, I would have to work through my relations with humanity in general rather than work from a set of general facts about humanity. [...] It looks much more reasonable to say that I have moral obligations to my fellow human beings because of their humanity, not because I am in some kind of relationship with them. (ibid.)

This is a debatable point, as, for instance, Judith Butler, in "Frames of War" grounds her argument in precisely such a relationship with humanity in general.

An obligation does emerge from the fact that we are, as it were, social beings from the start, dependent on what is outside ourselves, on others, on institutions, and on sustained and sustainable environments, and so are, in this sense, precarious. (Butler 2009: 23)

Her critique of the different distributions of grievability rests firmly on this concept of precariousness, which, in turn, is based on the essential social (and thereby relational) nature of human existence.

The second objection to Wellman lies with his conception of freedom of association. Wellman uses the analogy of individual freedom of association to assert that it "seems hard to deny that the logic and morality of freedom of association applies in the political realm just as it does with our other relations" (Wellman & Cole 2011: 37)

Cole, in his negative argument against the right to exclude, makes the point that such an appeal to analogy is not enough to establish a state's right to exclude: "Whether or not the membership rules of any kind of association are ethically justified has to be established in relation to that kind of association, not by appeal to a "family resemblance" (Wellman & Cole 2011: 207).

He therefore argues that in the associations Wellman cites as analogous

there is what we might call an external "space" one can exit into, in most cases without any prospect of harm to one's life prospects, and without anybody seeking to prevent your entering that space. [...] But to exercise the right to leave a state, one needs another state to exit into – statelessness is a perilous condition [...] into which one cannot enter voluntarily: it is not a recognized political space at all. (Wellman & Cole 2011: 209)

This fraudulent analogy is the second 'fault line' which Cole finds in the arguments of Wellman in particular and in arguments for the right to exclude in general. To this, in the remainder of his part, he adds a third objection, that "the debates often neglect context, both past and present" (Wellman & Cole 2011: 159)

If the reader of this review has had the feeling that, after reading the preceding pages, most of my considerations have been with Wellman's argument and Cole's refuting of them, then this is precisely because this is how the vast proportion of the book reads.

Cole's approach is the opposite to Wellman's in that he begins his thoughts with a primarily negative critique, before setting out the "case for a universal human right to freedom of international movement." (Wellman & Cole 2011: 160)

The problem with this is, however, that apart from being rather short (only 13 out of 153 pages), this positive argument is nowhere near as elaborate or clear as either Wellman's initial argument or indeed Cole's criticism thereof.

Rather, it is based firstly on a negative argument, arguing that the view that mobility is not a universal human right is faulty because it neglects human agency and then going on to argue for "an idea

of membership of a global political community, such that to be a free and equal member of that global community, to be an equally powerful participant in it, is deeply connected with one's freedom of mobility throughout it" (Wellman & Cole 2011: 301).

This is a very confusing, and, as Cole himself admits, a "sketchy, if not flimsy, view" (ibid.) He argues that political thought needs to initiate bringing about such a utopian reality by "begin[ning] the process [of] how it can be made reality" (p. 306).

This rather unsatisfying conclusion becomes all the more so because there is no overreaching conclusion. All the book ends with is Cole's argument for open borders.

In my view, this structure greatly diminishes the value of the whole project. Upon consideration, *Debating the Ethics of Immigration* proves to be less a debate than a statement and an elaborate rebuttal.

Cole's part, even though he describes it as not being a "direct reply" to Wellman, proves to be just that over wide stretches. His part, in contrast to Wellman's (and despite the grave problems with his arguments as outlined above) could not stand alone, without the other.

This is even evident stylistically. Wellman quotes several of Cole's other publications, but never references Cole's part in the same book. Cole, however, quotes Wellman excessively in his critiques, which one can't help but feel is unfair, as Wellman is not awarded a chance to either defend himself and his arguments or to critique Cole's.

Undoubtedly such a defence would have been fascinating to read, but its lack unnecessarily diminishes the argument for open borders as it is presented not as valid on its own, but correct because the alternative is wrong.

A more fascinating structure could have been a presentation of both positive arguments in detail, followed by two rebuttals to the respective other position.

This critique of the structure of *Debating the Ethics of Immigration: Is there a Right to Exclude?* does however not diminish the overall force and intellectual clarity put forward by Cole and Wellman, which are for the most part erudite, clear and a fascinating introduction to a timely, necessary and often neglected debate.

The book itself, though, presenting mainly one positive argument and its critique, fails to debate the issue – which would have made this excellent book a truly outstanding project.

References:

Butler, Judith (2009). *Frames of War. When is Life Grievable*. London: Verso.

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