

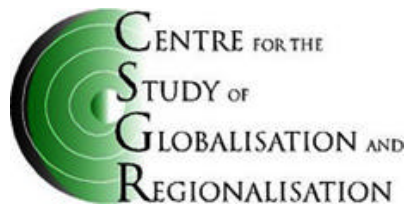
**The free movement of money and people: debates before  
and after '9/11'**

R Cohen

CSGR Working Paper No. 160/05

May 2005

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**The free movement of money and people: debates before and after ‘9/11’**

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**Abstract:**

In this paper I review the ethical, theoretical and practical cases for the free movement of people and money. I provide a commentary on the debates before and after the events of ‘9/11’, noting how the self-limiting conditions in historical debates on the free movement of labour contrast with neo-liberal demands for the unfettered market in the case of the free movement of money. Extensive restrictions on the movement of both money and people have been made in the post-‘9/11’ period, either in the name of cultural nationalism or the threat of terrorism. I examine whether these further measures are working or can be justified by reference to ‘the harm principle’ and to general concepts of social justice and the public good.

Keywords: Free movement / ethics of immigration / border control / migration security / migrant rights / movement of money

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With the collapse of communism in the Soviet Union and the other countries of the Warsaw Pact, *emigration* control effectively ended in all but one or two of the world's 191 UN-recognised states. By contrast, *immigration* control has been strengthened everywhere in response both to security concerns arising from the terrorist outrages of recent years and to public concern about the level of immigration. Security issues have also led to some attempts to regulate the flows of money. But how comprehensive and effective are such measures? Increased global mobility, regional free movement zones, dual citizenship, the growth of student and tourist mobility, the demographic and economic needs of rich countries, weak state structures in some developing countries and irregular migration (to name just the major factors) have compromised the effectiveness of policing national frontiers. Likewise, politicians have had difficulties in reversing the neo-liberal measures for free currency movements adopted in the last three decades designed to 'unfetter' the market. How these contradictory pressures will be resolved remains uncertain. In this working paper, I focus on the theoretical, ethical and rhetorical basis for state regulation of the flows of people, and to a lesser extent, money. I also, more cursorily, compare the two flows.

In the wake of 9/11 and 911 (the atrocities in New York and Madrid) the ethical case for the free migration of money and people was effectively silenced. As money was used to buy bombs and detonators for mass murder and certain migrants established terrorist networks their free movement, it was conventionally assumed, has to be carefully controlled and scrutinised. And who, effectively, can undertake this task if not co-operating state agencies, such as INTERPOL, or state fiscal, immigration and security departments? Precisely because the case for control seems self-evident it is timely to review the ethical and practical cases made for the free movement of people and money, their own self-limiting conditions and the extent to which the contemporary political pressures for further restrictions can be justified by reference to general concepts of social justice and the public good.<sup>1</sup>

### **The free movement of migrants: Kant and Carens**

The longstanding ethical argument for the free movement of migrants is often traced back to Kant's essay *Toward perpetual peace* (1795) where he claimed that rulers had become too powerful: they ordered people to 'immolate themselves' in the name of the state without any legal restraint and without putting themselves into danger. States perpetrated a 'savage and lawless freedom' and instead needed to submit themselves to 'public coercive laws', embracing all the peoples of the earth (Fine and Cohen 2002: 141). This is a powerful plea

for cosmopolitan law. It is based on the premise that the peoples of the earth (*not* rulers or states) own the earth and therefore they must be free to travel anywhere on its surface. It is unjustifiable, therefore, for states to section off this or that bit of the planet. However, as Bauböck (1994: 321–2) argues, Kant is effectively maintaining that anybody should be free to *travel* both in respect of conducting peaceful trade and ‘to *offer* themselves for social contact with established inhabitants of any territory’ (emphasis added). To be sure the host society, in Kant’s view, is bound to proffer hospitality.

Even in this generous formulation of free mobility there are clear limitations imposed by Kant himself and some that we may infer. Migration for the purposes of colonization can only be undertaken to ‘bring culture to uncivilised peoples’ (Kant betrays his ‘Occidental’ attitudes here), and only in a way that avoids the plunder, subjugation and extermination of conquered peoples (Fine and Cohen 2002: 143). As to limits we might infer, note that free migration for *peaceful trade* is defended – not a trade in arms, biological agents or drugs. The principle of restriction if there is a likelihood of ‘harm’ is implied, if not stated. Equally, there seems to be a necessary moment of *consent* by the current residents if travellers have to ‘offer’ themselves for social acceptance. Proffering hospitality is prior to and not the same thing as conferring social membership.

If we now turn to twentieth century political philosophers, probably the most widely cited discussion of the ethics of immigration was initiated by Joseph Carens (1987: 251–73). Drawing on Rawlsian ideas (Rawls 1971), which were predicated on a single society with a bounded social membership, Carens suggested that the principles of ‘fair opportunity’ and ‘equal liberty’ could be extended across societies (not merely within one) to cover such issues as trade (by analogy also money) and migration. With respect to migration a Rawlsian principle – that all people within a society are equal moral persons – could not, by extension, be denied to people of other origins. If we hold it right that people should be free to migrate within a country to better themselves, find a loved one, join their co-religionists or extend their cultural horizons, a similar principle could be applied across borders (p. 258). Carens derived from Nozick (1974) the argument that the state has no basis for compelling someone from treating an alien or a citizen either differently (or similarly). In one example he uses, an American employer had the right of offer a job to a Mexican or a native-born Californian without the interference of the state. Indeed, I may add, it is clear that many employers feel totally unconstrained in offering ‘American jobs’ to workers abroad, for example in China or

the border zone in northern Mexico. With the exception of a few labour unions, this 'right' by the employer has been unchallenged, certainly in the post-Reagan neo-liberal state.

To use the language of market economics, Carens proposed that there is a good philosophical basis for unimpeded human mobility both on the supply side and the demand side of the equation. Again, however, Carens (1987: 251) allowed a crucial limitation to his own case, distinguishing, in effect between the 'good' migrant and the 'bad' migrant. The former were cast in somewhat journalistic terms – Haitians in leaky boats, Salvadorians dying from heat in the Arizonian desert and Guatemalans crawling through rat-infested sewer pipes from Mexico to California ('ordinary peaceful people, seeking only the opportunity to build secure lives for themselves and their families'). The latter were 'criminals, subversives or armed invaders'. The bad migrants clearly could not have rights of free entry.

Carens also reviewed the extent to which Walzer (1983) successfully challenged his, that is Carens's, own case for 'relatively' open borders. He examined, in particular, the validity of Walzer's claim that too many migrants might threaten a society's achievements in the arts, science and culture or, perhaps more plausibly, might compromise a stable public order. He concedes much of Walzer's case. Though Carens was generally resolute in his defence of 'relative' free movement in 1987, in a later publication, five years on (Carens 1992: 45), he is noticeably back-peddalling. Even if liberal egalitarians are committed to the idea of free movement of people, 'that idea is not politically feasible today and so it mainly serves to provide a critical standard by which to assess existing restrictive practices and policies'. While all restrictions are wrong in an ideal world, he concludes, some restrictions are worse than others. By 1996 'realistic' and 'idealistic' approaches to the ethics of migration are given equal status. The former 'informs most actual discussions of public policy' and is 'a morally serious approach worthy of more attention than it has received in academic discussions of the ethics of public policy' (Carens 1996: 157). However much the idealistic approach is 'congenial' to philosophers, the realistic position has 'certain characteristic strengths that reveal the limitations and weaknesses' of his preferred position (p. 157).

### **The free movement of migrants: discussion after '9/11'**

In some ways it was surprising to find that the philosophical proponents of the free movement of migrants were so self-limiting and so timid in their claims. This weak advocacy opened them to at least three countermoves that were given additional impetus in the period

after '9/11'. First, border controls were naturalised so that opposition to excessive (and, as we will see later, expensive and ineffective) enforcement measures was deemed incredible or even treasonous. The expressed need for 'homeland security' has been invoked to the point that the historical rights and liberties of the settled populations are being undermined with little political resistance. Second, while in the wake of '9/11' liberal political theorists have articulated a modest defence of migrant rights; these have remained firmly constrained by acceptance of national sovereignty and the need for 'realism'. Finally, checks on immigration have provided the occasion for a reaffirmation of singular national, monochromatic identities and an attack on multiculturalism, diversity and immigration 'of the wrong sort'.

#### *Border controls and the erosion of domestic rights*

Passport controls are a much later manifestation of state power than has sometimes been supposed (Cohen 2005: Chapter 3). They were also imposed much more patchily than might be imagined. The frontiers between many countries were arbitrary (in the case of Africa most were invented in a conference room in Berlin in 1895 with scant regard to topography and ethnography) or were determined by mountains and oceans that were not regularly policed. In the period of vast migrations of Europeans to the USA between 1870 and 1914, border controls were class-based. Those in the upper decks landed without inspection, while only the passengers in steerage met the beady-eyed Ellis Island immigration officials. It is also a useful corrective to remember that as late as 2005 only 20 per cent of US citizens had passports, a percentage that is barely exceeded by members of the US Congress.

Despite the need for recognition of the fact that many do not travel outside their countries of origin, and that passport regimes are not universal, for the bulk of conventional travellers, whose numbers exceeded 700 million in 2004, enhanced border controls have become a tedious reality. Air-travellers have to accept extended check-in times and long lines at arrival gates. The security concerns of the USA have been gradually extended to the rest of the world. Border checks have been enhanced by biometric data (finger printing, digital photographs and iris recognition). Even travellers from those countries which have visa waiver arrangements with the USA are forced to submit to biometric checks on entry and exit.

The increased surveillance of the US border commenced virtually immediately after the events of '9/11', but the Commission established in its aftermath notably hardened its border

controls in its final report, issued in July 2004. In summarising that report, Cooper (2004) explains that it called for the integration of the border security system with screening networks used in the transport system and in the protection of sensitive facilities like nuclear plants. A comprehensive screening system at *external* points of entry had to be paralleled with a standardization of *internal* identity documents, in particular driving licenses and birth certificates. Foreign governments, private corporations and the 15 [sic] national intelligence agencies had to be encouraged or induced to cooperate and coordinate their security efforts. The Commission also recommended drawing citizens of the US itself and adjacent countries (like Canada) into the net with compulsory biometric passports.

In April 2005 the US administration responded by announcing that US nationals will need passports to re-enter the USA from Canada, Mexico, Panama and Bermuda by 2008 in view of the need to protect the USA against a terrorist threat. Similarly, Canadians will also have to present a passport to enter the USA. Asked about these measures in an interview with Associated Press, Secretary of State Condoleezza Rice said the USA had to take every precaution to screen out 'people who want to come in to hurt us', while President Bush said border controls with Mexico had to be tightened to make sure that terrorists, drug runners, gun runners and smugglers do not enter the USA (<http://www.cnn.com/2005/>)

I have already intimated that in many areas internal and external security measures, which have been historically separated, are rapidly converging.<sup>2</sup> At the level of street security, shoppers and residents have long had to accept both visible and covert surveillance of their movements. In shopping centres, cameras are pervasive. So many of them have now been installed, that there is said to be, in number, one camera for every street in Britain. Government-authorized phone tapping has been massively enhanced and there are many devices for eavesdropping that are available on the market and used illegitimately by private security agencies. The interception, scanning and reading of snail mail and email is now routinely undertaken. At airports (and now increasingly at railway, underground and bus stations) identity and luggage checks are increasingly frequent and pervasive. Body searches, X-rays and invasive cameras are either current or planned. Biometric data are now imbedded in passports, credit cards and other ID documents. These and other measures amount to a historically unprecedented intrusion into the private lives of citizens.

### *A defence of migrant rights*

In an important contribution to the post-‘9/11’ debate, Ruhs and Chang (2004: 70) argue that what is distinctive about international labour migration (in contrast to trade and capital flows) is that migrants ‘lay claim to certain rights vis-à-vis the host state and their fellow residents’. Despite an acceptance of the language of ‘rights’, they continue, the participants to the debate show a marked inability to discuss the ethical assumptions underpinning their arguments. Inward migration is discussed in terms of skill and utility, rather than the rights that are to be conferred, however minimal, after admission. Rights like job mobility, access to the courts, welfare services, health benefits and the right to vote are rarely made explicit. In some countries temporary workers can become permanent residents – a route that is explicitly prohibited in other countries. As Ruhs and Chang (2004) argue, the variation in the conferral of rights like these lead to quite different outcomes. For example, if migrant workers are permitted to change jobs, the preferential access of nationals to the internal labour market is thereby challenged.

Variations in accorded rights also, they argue (pp. 83–5), depend on the ‘moral standing’ accorded to nationals, migrants and the citizens of the sending countries, who may not themselves be migrants but may be affected by migration. The moral standing of the different participants in turn relates to where the social actors and decision-makers locate themselves on a cosmopolitan–nationalist spectrum. Here Ruhs and Chang (2004: 91 et seq.) are drawn back to the realistic–idealistic dyad enunciated by Carens and discussed earlier. Rights-based and cosmopolitan views of migrants may be held by international organizations like the ILO and NGOs (‘idealists’), but is hardly surprising that national policy-makers have to yield to the pressures that elevate the moral standing of nationals above that of migrants (‘realists’). So far, so predictable. However, Ruhs and Chang provide an unexpected twist to the argument. Because migrants are more productive, have lower claims on welfare and other benefits and are less likely to be criminals than the longstanding population (despite many myths to the contrary), there may be a material stake in protecting and furthering the interests of migrants.<sup>3</sup> It is also the case that most countries both send and receive migrants, so according a degree of recognition and respect to a migrant may be necessary to advance a moral claim to protect your own nationals abroad.



In combining realistic and idealistic perspectives Ruhs and Chang (2004) enunciate a balanced set of prescriptions, avoiding general declarations of human rights as applied to all migrants in favour of more targeted core rights that are carefully monitored, transparent and effectively enforced. Again, they deem programmes for temporary work (and enforced departure) legitimate so long as some pathways for permanent settlement are established in return for a largely unspecified set of positive ‘ticks’ against the temporary migrant. It is difficult to see what such an evaluation might comprise. Would it be too fanciful to imagine that such tests might include good conduct (denoted by the absence of a criminal record), a valued economic contribution, a high degree of assimilation to the majority’s language and way of life, a loyalty test, a limited number of dependents or a clean bill of health?

While I have considerable sympathy with many of the ethical dilemmas raised by Ruhs and Chang and some admiration for their detailed reasoning, it is nonetheless clear that liberal political philosophy on the ethics of immigration policy has been severely circumscribed by a self-denying ordinance arising from past tentativeness and a present atmosphere of immigration restrictions. On the one hand, this line of reasoning recognises the economic contribution of migrants and the need to protect minimal standards of decency and universality. On the other, the sovereignty of state power is left intact and it is acknowledged that politicians will find it impossible not to elevate the moral standing of the national over the migrant.

*The attack on diversity the question of immigration restriction*

The neo-conservative and conservative right in the USA and Europe has seized the political moment afforded by the terrorist threat to question both the extent of migration and the degree of recognition afforded to migrants’ home cultures, religions, languages and social practices. The attack on diversity and difference has been particularly fierce in the USA. Perhaps the most powerful academic voice on this question has been that of Samuel P. Huntington (2004: 142–43), a professor of politics at Harvard and the director of security planning for the National Security Council in the Carter administration. In his *cri de coeur* titled *Who are we?* he angrily denounces those in the USA who had discarded earlier notions that the USA was a ‘melting pot’ or ‘tomato soup’ and proposed instead that it was more like a ‘mosaic’ or ‘salad bowl’ of diverse peoples. He insists on the primacy of the English-speaking, Protestant, eastern seaboard and deplores the ‘deconstructionists’ who sought to

‘enhance the status and influence of subnational racial, ethnic, and cultural groups’ which, he claims, had deleterious effects on democratic values and liberties:

They downgraded the centrality of English in American life and pushed bilingual education and linguistic diversity. They advocated legal recognition of group rights and racial preferences over the individual rights central to the American Creed. They justified their actions by theories of multiculturalism and the idea that diversity rather than unity or community should be America’s overriding value. The combined effect of these efforts was to promote the deconstruction of the American identity that had been gradually created over three centuries (2004: 142)

The main implication of this argument for the free movement of migration is that freedom can be curtailed for the sake of freedom. This Rawlsian principle<sup>4</sup> could be used both to discountenance (a) ‘unlimited immigration’ or (b) the immigration of ‘dangerous’ people. Let us immediately concede the second example. It is generally not a good idea to roll out the red carpet for psychopaths, gangsters, drug dealers or terrorists. The first is more ambiguous. Does large-scale immigration really pose a threat to public order, economic prosperity, social well-being or cultural cohesion? This is by no means an invariable outcome. In circumstances of underpopulation and demoralisation, a large, culturally cognate cohort of immigrants with skills and capital will generally be welcomed. In circumstances where the settled population is under threat or perceives a threat (of job loss, housing shortage or welfare rationing) the arrival of a large, culturally dissimilar group may well be resisted even if the long-term effects may be benign. It is certainly more than possible that an ambitious politician will fan the flames of xenophobia.

It is justifiable to reduce the risk of this last negative reaction, thereby generating a moral purpose for immigration restriction? I would argue that defending a settled population’s rights must mean there is something worth defending – for example, hard-fought civil liberties, a tradition of toleration for unpopular minorities, the production of imaginative works of art and literature or a broad-minded education system. For immigration restrictions to have an ethical rationale it should be clear which freedom or freedoms are being protected, which are being threatened, why such a threat is real and how a restriction will help to retain a particular freedom. Perhaps it is easier to construe this argument in the opposite direction. Restricting inward migration (or appearing to advocate this position) to win an election, while pretending a more noble purpose is at stake, is clearly reprehensible.

In this respect it could be instructive to contrast the immigration policies of recent governments of Canada and Australia with the immigration practices of France and the UK. Whereas the former pair has entered into an open dialogue with its settled population on appropriate numbers and criteria for exclusion, governments in France the UK have on the whole remained secretive and patrician in the implementation of their policies, now recognising the claims of the gangmasters for cheap agricultural labour, later throwing sops to the right-wing newspapers and political parties. If they are to be legitimate at all, restrictions have to be open, consensual and clearly used to defend an existing freedom, which would otherwise be in jeopardy. Restrictions, in this moral universe we are constructing, cannot be used for a concealed purpose, especially if that purpose is unworthy.

### **The case for free movement of money**

Advocacy of the case for the free movement of money might conveniently begin with Adam Smith's views in *The wealth of nations* (cited Jordan and Düvell 2002: 242). As Smith, a man with his feet on the ground, pointed out in 1776:

A merchant, it has been said very properly, is not necessarily the citizen of any particular country. It is in great measure indifferent to him from what place he carries on his trade; and a very trifling disgust will make him remove his capital, and together with it all the industry which it supports, from one country to another. No part of it can be said to belong to any particular country, either in buildings, or in the lasting improvement of lands.

This is an interesting counterpoint to Marx's now discredited declaration that 'workers have no country'; it was clear in this respect that Smith was the more prescient political economist. Smith's comment also has the virtue of showing that, unlike his epigones, 'the invisible hand of the market' did not blind him. Here the agency that drives the market is all too visible. Whereas Smith (in this quote at least) overtly recognises the power of *capitalists* as autonomous and international economic actors, twentieth century neo-liberals like Hayek (1986) and Friedman (1962) first anthropomorphised the market, then virtually turned it into a God. Any restraint on capital was regarded as violating their primary conviction that economic power should not be subordinated to political power. With the benefit of perhaps 30 years of the partial implementation of this doctrine, it has to be conceded that freeing the market has exposed the limits of ill-informed and glacially slow growth by state planning, which often served the interests of the bureaucracy rather than the people in whose interests

the planners nominally held power. But the doctrine has become too indiscriminate and all embracing – encompassing constraints on politicians capacity to tax and spend, impose tariffs and quotas, regulate prices, wages, safety or environmental standards or to impose minimum standards of entry for skilled occupations and the professions.

Also central to the neo-liberal worldview was the removal of any limit on the movement of money. Perhaps in order to damn by association, Friedman claimed that exchange controls were ‘to the best of my knowledge invented by Hjalmar Schaaf in the early years of the Nazi regime’.<sup>5</sup> He continued (cited in Lal 1992: 99):

There is much experience to suggest that the most effective way to convert a market economy into an authoritarian economic society is to start by imposing direct controls on foreign exchange. This one step leads inevitably to the rationing of imports, to control over domestic production that uses imported products or that produces substitutes for imports, and so on in a never-ending spiral.

While even Friedman acknowledges that the state should act as an umpire to prevent economic actors from coercing one another, this role remains a residual afterthought. Markets for wages, prices, finance and investment capital should be freed, he thought. While neo-liberal doctrine has still remained dominant in most countries, the minimalist restrictions on the movement of money were undermined in the wake of the terrorist attacks on the World Trade Center and the Pentagon in 2001. Just 17 days after the attacks the UN passed a unanimous and wide-ranging Security Council resolution (Resolution 1373/2001) which demanded surveillance and major restrictions on the movement of finances. It is worth quoting these provisions at some length from the official press release:

... all States should prevent and suppress the financing of terrorism, as well as criminalize the wilful provision or collection of funds for such acts. The funds, financial assets and economic resources of those who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts and of persons and entities acting on behalf of terrorists should also be frozen without delay.

...

The Council also decided that States should prohibit their nationals or persons or entities in their territories from making funds, financial assets, economic resources, financial or other related services available to persons who commit or attempt to commit, facilitate or participate in the commission of terrorist acts. States should also refrain from providing any form of support to entities or persons involved in terrorist acts; take the necessary steps to prevent the commission of terrorist acts; deny safe haven to those who finance, plan, support, commit terrorist acts and provide safe havens as well. ...

The Council noted with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money laundering and illegal movement of nuclear, chemical, biological and other deadly materials. In that regard, it emphasized the need to enhance the coordination of national, subregional, regional and international efforts to strengthen a global response to that threat to international security.

The effect of this international concern has been to strengthen greatly the hands of those national authorities who, for other reasons, were also concerned about the largely unregulated movement of money. Those laundering drugs money, those involved in corrupt transactions (perhaps bribing state officials to award contracts) and those simply evading tax could conveniently be swept up in the discourse of ‘security’ and ‘terrorism’. Ordinary citizens wishing to open bank accounts, effect cash payments or transfer assets, have found that the level of intrusion by the banks, estate agents and lawyers violate any historical protections for the privacy of transactions. Even offshore accounts and those in countries like Switzerland or Bermuda have been prised open by investigators in the name of security. In Luxembourg, Russian entrepreneurs are simply and routinely told that the cost and nuisance value in making checks on them make it impossible to open a bank account.<sup>6</sup>

Without wishing to support such intrusions on personal liberty and privacy, the harm principle (the obligation not to injure or damage others) can be evoked to suggest at least some obligations to restrict the unfettered movement of capital. The following might provide a shopping list for beneficial restrictions:

- Regulating the operations of speculative finance, particularly in preventing massive fluctuations in the value of a country’s currency.
- Preventing ‘dumping’ and ‘swamping’ by external capital, which kills off local enterprise and initiative.
- Reducing the effects of capital flight by insisting on local labour and capital participation and a phased exit of profits and investment capital.
- Ensuring that capital movements are not the result or the means to conceal profits derived from drugs or people trafficking, illegal weapons, or illicit gambling profits.
- In line with the UN’s Security Resolution 1373 discussed earlier, monitoring the movement of money, which might provide vital leads to criminal or terrorist activities.

In short, given its disruptive effects, some now proven by bitter experience, the unconditional movement of money is no longer morally credible, even if powerful intellectual and political supporters continue to sustain the idea.

### **Putting the movement of people and money together**

If we are to synthesise the two sides to this argument, convincing cases either for unconstrained movement by people or money have not been made, a view that is partly conceded by the advocates of each position, though conceded more in the case of people than money. There remains, of course, a question about why the two propositions should be considered together. One proposition may be compelling and the other not, while the comparison between the two may be analytically useful without demonstrating a causal or reciprocal connection.

The argument that there is a connection is perhaps made most forcibly by Marxist scholars (for example Harris 1996) and by extreme libertarians. The former see the movement of workers as a scant but necessary form of balance against the power of capitalists to shift their money more or less at will (the point made by Adam Smith). Although workers may be forced to sell their labour-power, international mobility, so it is argued, at least gives them the opportunity to strike a better bargain. Or will it? The libertarian position is that all the factors of production (in Smith's day *land, labour and capital* – but we would nowadays have to add *knowledge*) should be equally mobile or 'free'. At least in the short and medium run, if this were to happen, capitalists (not workers) may be able to benefit from an international race to the bottom. The likelihood that workers would be able to level up depends on the assumption that their international mobility will lead to greater solidarity and cohesion of purpose with workers in other lands – an outcome that is by no means certain.

There is also a connection, though a more indirect one, between free money and free movement of people in the way that states have positioned themselves on each issue. Whereas all (let's say nearly all) states encourage the inward movement of capital, some continue to regulate the exit of money, though to an increasingly more limited degree. Again whereas all (again, nearly all) states have, since the collapse of the Warsaw pact, permitted free exit, all states have increased their controls on the entry of people. The reciprocal connection is that it is sometime possible to effect a 'trade off' between the two movements. Take but one example. Using the power of digital technology a cyberproletariat can be

created in call centres in Bangalore by the export of capital, rather than by the import of labour. It is perhaps not too fanciful to describe this as ‘virtual migration’.

### **The practical and political limits of restriction**

Even if the connection between, and the constraints on, the free movement of money and people are recognised, there remains the important task of justifying the extent of the limits on each and considering what consequences, intended and unintended, might arise from such constraints. Here I consider three questions (a) Can ‘good’ migrants be separated from ‘bad’ migrants? (b) Are restrictive measures likely to be affordable and effective? (c) Are politicians in a strong position to judge the potential threat posed by free movement?

#### *Can ‘good’ migrants can be separated from ‘bad’ migrants*

I have already alluded to Carens’s somewhat cardboard characterizations of migrants. However, immigrants do not arrive at Heathrow or Charles de Gaulle airports sporting devils’ tails or angels’ wings. Many immigrants are young or bring impressionable young families. It would be absurd to demand an oath of loyalty of a four-year-old or to interrogate such a child about ritual slaughter, nude sculptures, alcohol abuse, religious education or the wearing of veils. Perhaps it would not be so absurd to ask his or her parents about these things. What, however, would be the purpose of such an interrogation which seems to imply a non-questionable view that indigenous practices are not subject to comment or criticism?

Let me provide two examples. Family values are strongly articulated and defended by Indian and Chinese immigrants who characteristically show low rates of teenage pregnancy, single-headed households, juvenile delinquency and neglect of old people. Again abstinence or restraint in the consumption of alcohol (which results in so much needless deaths and injury) might also be a lesson usefully learned from some immigrants. I appreciate that many normative considerations are introduced by these examples, which require further defence. However, my primary argument is that it is not apparent on *prima facie* grounds that an imported culture is inferior to a host culture or will not offer positive alternatives to local social practices.

Consider a related question. There is nothing to stop migrants lying to the immigration authorities about their ideological convictions or preferred social attitudes, especially if these are not illegal. (By contrast, concealing an illegal source of money would be a criminal

offence, punishable by law.) Despite this, it seems to be a reasonable expectation on the part of the host society that immigrants should not be deceitful and intend to obey the laws of the country that they are entering. Likewise, there is nothing in principle offensive about a loyalty ceremony associated with citizenship (long held in Canada, recently initiated in Britain). The principle is not unlike that first enunciated by Kant – a (legal) immigrant may *offer* herself or himself for social membership; a citizenship ceremony would confer it in a public arena.

This is not an identical argument to the one made by Walzer (1983: 61) that states are like (private) clubs – the existing membership being free to exclude whosoever it pleases, subject to the rules of the club. Carens's (1987: 265–70) rebuttal of Walzer's conflation of a club and a state is persuasive on a number of grounds, the most obvious being that there is a legal and moral distinction between a private and public act of exclusion. In the former setting freedom of association is a paramount virtue, in the latter equal treatment between all is the major ethical consideration. To repeat – it may be legitimate to ask of an intending adult immigrant (of sound mind) is whether they intend to obey the laws of the land and are not harbouring a sinister intent directed against the life, liberty and well-being of the inhabitants of the country whose citizenship they aspire to. This creates a moral equivalence between a politician's demand for exclusion and an immigrant's claim for inclusion. And lest this appears too naïve, it may be useful to note that current immigration laws permit deportation on the grounds that an immigrant's statements to a responsible authority were shown to be intentionally misleading.

*Are control measures affordable and effective?*

In a 2003 report by the International Organisation of Migration (cited Pecoud and Guchteneire 2005: 4) the cost of enforcing immigration restrictions is estimated at US\$ 25–30 billion each year. This covers not only border controls, but the issuing of visas and passports, the apprehension, detention, prosecution and deportation of unwanted migrants, inspections of labour conditions, the processing of asylum-seekers claims and the resettlement of refugees. To get some sense of comparison, this sum is only about 1/16<sup>th</sup> of the US Defense budget. However, the sum would pay for three years of clean water for all the world's 6.1 billion people.



At any event, the costs of policing the frontiers are certainly not inconsiderable. And given that, it is a legitimate question to ask whether the measures undertaken are effective. A considerable weight of evidence has now built up to suggest that sophisticated control measures are met with more sophisticated methods of evasion. People trafficking is now highly profitable and professionally organized. Moreover, once a culture of emigration is established in a labour-exporting zone and networks of migrants are in place it is extremely difficult to stop the movement of determined migrants (see Pecoud and Guchteneire 2005: 4).

These general observations have been contradicted by those who believe that the extensive use of digital technology and a more determined and costly regime can finally control unwanted movement. Koslowski (2004, 2005), who has studied the implementation of the current policies, casts considerable doubt on their effectiveness. The magnitude of the task is considerable. Take the USA in the year after '9/11', remembering that there are 326 legitimate ports of entry, 2,000 miles along the Rio Grande and 5,500 miles separating Canada and the USA. Recorded entries for 2002 were 440 million (down from 500 million in 2001) and exits were not effectively recorded. As Koslowski argues (2004: 9) lost forms, incomplete data entry and missing exit date from a lightly-policed land frontier meant that there was no way that overstayers could be detected and deported with certainty. Indeed several of the '9/11' terrorists had overstayed their visas.

The two land borders with the USA (Canada and Mexico) presented special problems. The Ambassador Bridge, linking Windsor to Detroit, carried motor car parts for 'just-in-time' production to the three major automobile manufacturers in Michigan. Up to 10 million vehicles crossed the Ambassador Bridge each year – inspecting them all on the basis of the current infrastructure and technology would be impossible without halting production in a key manufacturing state. Nor should one forget that if the stakes are high enough, identity theft and the forging of passports will become more commonplace. According to Koslowski (2005) in 2004 there were 12,404 fraudulent claims to US citizenship detected and 79,273 fraudulent passports intercepted at all ports of entry. One can reasonably surmise that the number detected and intercepted was only a fraction of the total.

There is one other element to this story that needs mention. Much of the data capture and processing of the hundreds of millions of records that are needed to operate the US-VISIT system has been sub-contracted to companies that have inadequate security methods and

sometimes are located in countries with strong links to terrorism. A major security breach was reported in April 2005 (*The Guardian*, 13 April 2005: 21) when Reed Elsevier allowed access to the personal details of as many as 310,000 US citizens. Information that might have been accessed (and which could now be on the market for sale) includes names, addresses, social security and drivers' licence numbers, the precise building blocks for identity theft and illegal documentation. What is even more damaging is that those who operate the system are often victims of 'the technological fallacy'. Believing the system is secure when it is not leads to more serious errors in control systems (just as believing that wars can be won by guided missiles alone leads to 'Vietnams' and 'Iraqs').

*Can politicians effectively assess a potential threat?*

In public discussions about the legitimacy of the war in Iraq we have all been saturated with discussions of 'the precautionary principle'. It was said that even if Saddam Hussain did not possess weapons of mass destruction, he had *programmes* to produce them and the stated intention to use them. It is worth noting that if Bush and Blair believed Saddam Hussain's proclamations they have a higher estimation of the candour of politicians than most of the rest of us share. If, however, they were relying on credible intelligence reports they could validly argue that the precautionary principle dictated that they act decisively and overwhelmingly to disarm Saddam Hussain or overthrow his regime.

The burden of proof demanded is of course much lower than that demanded in a criminal court, where both the intention to act and the act itself must be attributed to the perpetrator without reasonable doubt. In the US constitutional tradition the president can also act on a less severe burden of proof – namely if there is 'a clear and present danger' to the country. But how clear and how present? Supposing an armed secret agent of the Spanish government observed a known member of a terrorist network about to push the keys on his mobile telephone that would trigger a bomb that would certainly kill many civilians. In such a circumstance that agent would, without doubt, seek to kill the terrorist and would, again without doubt, be supported in this act by the majority of public opinion.

Now consider money launderers and migrants. If they present a threat at all, it would be a far more diffuse, uncertain and long-term threat. The profits from illegal business activities might be used to further illicit activities, to invest in 'green equities' or to buy a life of affluence in the sun. Pace Carens, most migrants will be seeking a peaceful and secure life.

What they bring with them (in terms of skills, cultural practices and financial capital) and what they contribute may be wholly benign. There will be room for disagreement in making any cost/benefit assessment. Two equally experienced police officers might disagree as to the likely use of illicit gains of a particular money launderer. There might be short-term tensions, but long-term gains, in the admission of a particular cohort of migrants.

In short, assessing a potential threat arising from the movement of money or migrants is a matter of human judgement and, therefore, human error. Unfortunately, the political leaderships of many countries have three grave disadvantages in exercising wise judgements: (a) they are largely unskilled in philosophical reasoning or social scientific knowledge; (b) they are often in the hands of narrow ideologues or special interest groups; and (c) they are sometimes untrustworthy and often thought to be untrustworthy. What we saw on the streets on Spain after 911 was a populace angry that it was compelled to place life-and-death judgements in the hands of people not fully capable of making them without considering their own political advantage.

## **Conclusion**

Even interrogating proponents' views of the free movement of capital and persons reveals considerable self-doubt and a number of limiting conditions. When one adds to these old arguments the pressures derived from contemporary security concerns it is clear that the restrictionists have won the argument. But, as I have suggested, the debate about free movement cannot stop there. In imposing restrictions one has to bear in mind the justification for such limits and the dangers to our own freedoms in abnegating too much and too many of our hard-won freedoms.

The common thread underlying these measures is fear and the politicians' manipulation of fear. The public has accepted a level of surveillance that has escalated with the rising level of public concern for safety and security. The connection to the movement of money and migrants is that there are either proven or alleged causal links between unregulated mobility, and security and criminal concerns. Those who have worked in the field of ethnic relations are long used to the tendency of local populations to blame immigrants for anything that goes wrong – but in particular for street violence, criminal activity and drugs dealing. The nihilist terrorist, who sadly is not merely a phantom of the imagination, simply adds to the cast of folk devils. There are at least three grounds for concern:

- The first is that the more affluent sections of the population will become so preoccupied by personal security that they will retreat to gated communities, leaving the streets and public spaces to a condition previously depicted only in science fiction.
- The second is that the mesh that is used to filter out the dangerous alien and ill-gotten gains will become finer and finer. In this respect there will be an intractable escalator as the ‘bad guys’ (Bush’s term) get smarter and the ‘good guys’ have to try harder and harder to catch them.
- The third is that there are simply no serious mechanisms in place to restrain the security agencies from undertaking further and more far-reaching forms of surveillance. Particular measures may either be ineffective, inappropriate or disproportionate, yet we (the public) have no means to stop the escalator. People who have questioned security measures on grounds of civil liberties are largely ignored or derided.

Fear, it is rightly said, is contagious and with this primordial response irrationality and poorly considered responses become common. Investors who oil the wheels of the economy and migrants who generate jobs, wealth and creative cultural and social alternatives are important means of preventing economic stagnation, dulling cultural stasis and social decay. However, it is extremely difficult to tell the difference between benign and malign mobility. Consequentially, there are necessarily difficult questions in implementing a system of control, restriction, sorting and surveillance.

What values and freedoms do we wish to defend? Can we explicitly define them? Who is challenging our cherished freedoms and how are they doing so? Can we act in advance of a clear and present danger and how long in advance, at what level of threat and on what grounds? Have we honestly assessed the values and norms brought by migrants in an informed and open-minded way? Who is permitted to operate our systems of surveillance and restriction? Are they adequately trained and informed? Are their motives pure and untainted by personal interest or undisclosed influences? Are the measures we effect proportionate, appropriate, effective and legal? Who will police our police? These questions are unanswered here, but despite the current climate of fear and anger we need at least to ask them.

## Notes

1. The implications for international relations theory are covered particularly well in Parker and Brassnet (2005) My thanks go to my colleague James Brassnet for sight of this paper, which has not yet been integrated into my argument.
2. An innovative online journal, *Surveillance and Society*, can usefully be consulted to extend this discussion (see [www.surveillance-and-society.org](http://www.surveillance-and-society.org)).
3. The data on Britain are reproduced in the *Financial Times* Lex Column. They are as follows. Home Office figures for 1999/2000 show that those born outside the UK contributed £31.2 billion in taxes and claimed £28.8 billion in benefits and services. A study by the Institute for Public Policy Research using 2004 data shows an *increasing* net contribution by immigrants. Each immigrant contributed £7,203 to government revenues, £342 more than each UK-born person, while costing £476 less (*Financial Times*, 3 May 2005: 20).
4. Rawls uses 'liberty' not 'freedom'. I appreciate that much can be made of the distinction, but that debate is not salient here.
5. One hesitates to correct a Nobel laureate in economics, but it is well established that exchange controls were used by the belligerents in the First World War 'in order to pursue expansionary financial policies and still maintain their parities' (Bordo 2000: 17). The reference to Germany is also erroneous. Exchange controls were imposed in that country on 20 July 1931 'in the face of a speculative attack' on the mark (p. 9). This was 16 months before the Nazis came into power in November 1932.
6. My thanks to my colleague Eleni Tsingou for this information.

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