Can Immigration be Truly Liberal? 
Rawlsian Principles on the Cultural Frontier

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After the Council of the European Union voted to go forward with a controversial refugee settlement plan in the autumn of 2015, Central Europe pushed back to defend their national cultures. “We will wake up one day and have 100,000 people from the Arab world and that is a problem I would not like Slovakia to have,” said Robert Fico, the Slovak prime minister. ¹ The Czech president, Milos Zeman, took a similar line, referring to Islam as “the enemy of euro-Atlantic civilisation.”² On the surface, these statements seem to convey an intolerance that goes against the liberal commitments of the European Union.

Is it always illiberal to defend national culture at the cost of keeping refugees and would-be immigrants out? As John Rawls understood it, societies can only fulfill liberal commitments when their sense of justice is completely unbiased, when their sense of justice rests on an appropriate understanding of what citizens are morally capable of, and when their sense of justice is supported by citizens’ overlapping conviction that their institutions are just. The problem is, when these commitments are applied to immigration and asylum, a tension emerges on the question of whether national cultures matter.

In the first section of this article, I will explain how immigration fits within Rawls’ philosophical project and then, in the sections that follow, I will set up the tension that emerges within the cultural dimension of immigration. The second section develops the idea that using borders to protect culture is just another way of protecting unfair privilege, which is inconsistent with the liberal commitment to being completely unbiased. In conflict with this, the third section develops the idea that, in order for individuals to do what citizens are morally capable of, democratic societies must maintain their cultural integrity by imposing some limit on immigrants and refugees. There is, then, this tension in applying Rawls’ liberal justice to immigration: borders are always biased against would-be immigrants and refugees but borders protect the cultural ground needed for citizens to participate in liberal societies. This contradiction

² Cameron, “Migrant Crisis.”
strains Rawls’ political theory and, more than this, it strains the possibility that democratic nations can ever take a fair stance on immigration.

The final section offers a resolution. It draws on Rawls’ insight that justice in liberal societies only becomes possible when it rests on citizens’ overlapping conviction that their institutions are just. In his words, “an overlapping consensus” between individual interests determines the limit of what justice can ask of us. By considering the interests of locals, refugees, and voluntary migrants, it is possible to attain an overlapping consensus on the right to asylum while it is not possible to arrive at such a consensus on the right to voluntary migration. This means that all justice requires of democracies and their immigration policies is the right to asylum—that is, the right for individuals to take refuge when they are threatened in their country of origin and the obligation on the part of safe countries to grant this protection.²

Rawls in the Context of Immigration

The fundamental element of Rawls’ theory is predicated on the idea that the most reasonable principles of justice could be arrived at through fair and mutual agreement.⁴ To be sure, this refers to hypothetical rather than real-world, literal agreement. Admittedly, Rawls never intended this idea be applied to immigration and asylum, his intentions were to apply the idea to local citizens.⁵ For Rawls, fair and mutual agreement matters to justice because it allows us to uncover the terms of “a fair system of cooperation over time from one generation to the next, where those engaged in cooperation are viewed as free and equal citizens and normal cooperating members of society over a complete life.”⁶ The idea is that because all citizens have to live under the same institutions, their fates are tied together, therefore their institutions can only be just if all citizens could conceivably agree that their shared institutions are fair.

With immigration, the situation seems to be entirely different. Unlike the relationship that exists between citizens of the same country, locals do not live under the same political institutions as the would-be immigrants and refugees at their border. Yet there is still an important similarity: locals, would-be immigrants, and

³ No international legal definition of this right can be provided because the right to asylum does not currently exist under international law or in treaties. For a short discussion, see Ionel Zamfir. “Refugee Status Under International Law.” European Parliament Think Tank, October 27, 2015, https://epthinktank.eu/2015/10/27/refugee-status-under-international-law/.
⁶ Rawls, Justice as Fairness, xi.
Can Immigration be Truly Liberal?

refugees alike are on the verge of living under the same institutions and so the decision to permit or prohibit the right to cross the border will nonetheless have profound and lasting effects for everyone on both sides. Here, if would-be immigrants and refugees are allowed in, it permits them to live a life they want or need while it imposes an obligation on locals to include these newcomers into their society and its system of cooperation. If they are denied entry, however, it permits locals to coerce would-be immigrants and refugees at the border, forcing them to accept that a life they want or need is forbidden for them. So, just as citizens of the same country must all live under the same constitution, locals on one side of the border and prospective newcomers on the other must all endure a common institution: the openness or firmness of the border. Obviously, the reality of sovereignty is that locals and their governments decide on their own terms what happens with immigration and asylum seekers. But under this expanded take on Rawls’ idea—where the underlying principle is that for everyone affected by the same political institution, justice requires that those same people could conceivably agree on the form it should take—it follows that borders should be enforced in a way that locals and prospective newcomers alike could agree on as fair.

To put it another way, if we think of would-be immigrants and refugees as seeking to join society as a fair system of cooperation—as individuals looking to take part in the social contract and respect its terms—it would require an explanation of why life in democratic societies is usually reserved for naturally born citizens. After all, democracies take their citizens to be morally equal and equally deserving of their place in society. What makes prospective newcomers unworthy of playing this same part? In order to justly deny would-be immigrants and refugees their place in local society, there would have to be a convincing reason explaining why prospective newcomers are meaningfully different from locals. This reason would only be just if locals, would-be immigrants, and refugees alike could agree it is fair.

National culture—thought of here as the locals’ language and standards of behaviour—seems to be an effective way of distinguishing who has the right to live in a territory. It seemingly explains why would-be immigrants and refugees, who must usually learn the culture of the host nation in order to act within it, cannot easily become citizens; and why locals, who grow up within that culture and can act easily within it, are entitled to citizenship. But if we follow Rawls and argue that justice in immigration should emerge from principles that could be fairly and mutually agreed on, it does not seem promising that locals and prospective newcomers could agree fairly and mutually on justice in immigration because they are divided on the relevance of culture. On the part of prospective newcomers, an attempt to protect national culture through exclusive
immigration policies seems to be an arbitrary bias in favor of local values and beliefs. On the locals’ part, this same stance is an effort to protect the important sharing of cultural features that allow citizens to pursue value in their private lives and uphold liberal commitments as a society. The next two sections will consider this tension—a tension that seems to be the most obvious way of explaining why would-be immigrants and refugees could not simply take their place beside locals as members of Rawls’ “fair system of cooperation.”

Culture and Biased Ideal

Rawls understood the “veil of ignorance” as a “device of representation” in that it removes the effects of biases in order to ground justice in fair and mutual agreement. Behind this veil, Rawls argues, we should contemplate and agree to the requirements of justice as if we did not know our social position, our moral and religious beliefs, our ethnic group, our gender, or our natural abilities. Following Joseph Carens, I will add culture of origin to this list. That way, we can consider the demands of justice in immigration without the distractions of difference. While Rawls assumed a closed domestic society, I see this as an appropriate addition. The role of the veil of ignorance is to set aside those features of our lives that are contingent and ground the demands of justice on what we see as necessary in democracies: the freedom and equality of the individual.

Rawls understood the veil of ignorance as modeling two things: “fair conditions” for agreement and “acceptable restrictions on the reasons for agreeing.” Behind the veil of ignorance, conditions are fair because it removes the effects of biases and privileges. Simply, from this position, we can consider the terms of society without trying to protect the privileges of our own circumstances because we are feigning that we are not aware of them. This allows the veil of ignorance to restrict the reasons for agreeing: we do not agree because it favors our place in society, or because it disfavors others, but out of pure concern for the formal equality and freedom of individuals.

Using a global view of the veil of ignorance, Joseph Carens has argued that it is unfair for democratic societies to deny foreigners the freedom to immigrate. “Behind the veil of ignorance,” Carens writes, “in considering possible restrictions on freedom, one adopts the perspective of the one who would be most disadvantaged by the restrictions.” For Carens, borders are harmful because they interfere with a move that “might

7 Rawls, Justice as Fairness, 18.
9 Rawls, Justice as Fairness, 17.
prove essential to one’s plan of life.”\textsuperscript{11} By this logic, the individual’s “plan of life” is central and liberties are inadequate insofar as they unjustly interfere with these plans. Carens gives examples of a migrant pursuing work and a better life in another country, of a migrant pursuing a religious community established abroad, and of a migrant pursuing cultural opportunities in a distinctive foreign society to illustrate his point.\textsuperscript{12} If the citizens and politicians of democratic states set aside their biases and consider what their borders look like for would-be immigrants with these plans of life, they can come to appreciate borders as biased institutions.

Further, the veil of ignorance restricts the kind of reasons that democracies can use to support or reject the freedom to immigrate. For instance, Carens offers a broad category of cases in which democracies can permissibly restrict this freedom: in situations of heavy immigration where the local economy is struggling and local state apparatuses are unable to maintain order, society could experience security threats. Carens argues that in institutions like these, democracies can rightly limit immigration on the grounds of a “public order restriction” because even behind the veil of ignorance everyone could agree to save order from chaos.\textsuperscript{13} But unlike security threats, the impulse to preserve a cultural ideal is not usable behind the veil of ignorance. This is because appeals to culture are the sort of considerations that are secondary and contingent—they rest on the distractions of difference, rather than on a fairly agreed upon respect for individual freedom. Here, Carens evokes Rawls’ discussion of perfectionism. From behind the veil of ignorance, Carens writes, “no one would accept any perfectionist standard because no one would be willing to risk the possibility of being required to forego some important right or freedom for the sake of an ideal that might prove irrelevant to one’s own concerns.”\textsuperscript{14} In his view, it would be an unfair bias to exclude immigrants from other cultures in the interest of protecting the local language and ways. This means that because democratic commitments require the complete removal of bias, borders are always in tension with democratic commitments.

\noindent\textbf{Culture as Ground for Freedom}

While eliminating bias is an important part of Rawls’ understanding of justice in a liberal society, it is only one component. In his view, an understanding of what we can do as citizens must also feature into a democratic understanding of justice. In this section, I will look past the interpretation that borders are a biased obstacle to individual freedom and, instead,
consider freedom in terms of an individual’s capacity to pursue meaningful practices in democratic society. With this view, freedom is not just the absence of obstacles. Instead, it relies on the cultural context through which individuals find their place and contribute to the broader order.

This view comes as a consequence of what Rawls called “the moral powers” of citizens. By his account, citizens are free and equal members of society in virtue of their power “for a conception of the good” and their power “for a sense of justice.”15 This understanding of the person is a product of the way individuals are thought of in democratic society. In Rawls’ words, it “is worked up from the way citizens are regarded in the public political culture of democratic society.”16 I argue that culture is a medium for moral individuals to define themselves within and, sometimes, to even define themselves against. In this way, it allows individuals to meaningfully exert their moral powers and, through this exertion, it allows them to confirm their place as free and equal persons in a democratic society. In other words, culture is a moral ground to stand on and borders—insofar as they contain a coherent culture—have some role to play in protecting and preserving that moral ground.

**Culture and a Capacity for a Conception of the Good**

In Rawls’ own words, free and equal persons have the power “[to hold,] to revise, and to rationally pursue a conception of the good.”17 This places the individual in a position where they can go out and find meaning in their lives by embracing the value systems they were brought up with or by looking for new ones. It is an effectively self-regarding moral power that individuals use in the expression of their own conscience and in their association with other like-minded individuals. Further, Rawls describes the conception of the good as endowing the individual with a “moral identity.”18 In this way, an individual’s conception of the good not only shapes his self-regarding affairs and his understanding of a worthwhile life but also becomes a constitutive part of himself. In Rawls’ words, an individual’s conception of the good produces “affections, devotions, and loyalties that they believe they would not, indeed could and should not, stand apart from and evaluate objectively.”19

This is where the principles of justice enter. It is also where the ethics of immigration enters. Once we understand individuals as having conceptions of the good because of their intimate link with their own moral personality and place demands on institutions, borders come into consideration.

Borders deny a world of choice in favor of the choices that are locally available. The question, then, becomes whether dismantling borders is reconcilable with an individual’s power to have and to revise a conception of the good.

I suggest this requires that we think of borders not only as political frontiers but also as cultural frontiers. That is to say, borders are not only the outer edge of sovereignty but the outer edge of a society, and importantly, the outer edge of the shared cultural features that allow society to work. In my view, there is reason to think that borders—thought of as the edge of a cultural space—actually ground the individual’s conception of the good rather than restricting it.

Will Kymlicka argues that “freedom is meaningfully linked with, and dependent, on culture.” This begins from his understanding of “societal cultures,” which he describes as providing “meaningful ways of life across the full range of human activities.” This includes a range of activities across social, educational, religious, and economic spheres. Importantly, Kymlicka maintains, societal cultures “tend to be territorially concentrated, and based on a shared language.”

Kymlicka writes that “it is only through having access to a societal culture that people have access to a range of meaningful options.” I see Kymlicka’s account of culture as too limiting. I argue that culture is not just a range of choices: it is the possibility of choice. It is not just about claiming a value among the cultural values already there, but about using language and customs to take up, revise, question, and reject values. The capacity to latch onto, reject, revaluate—even create—a conception of the good works with culture as a medium. I argue that culture can be the ground from which conceptions of the good emerge from or find a footing. These conceptions of the good—these systems of value residing in culture and produced out of culture—in turn, lend meaning to the lives of individuals in democratic society.

This means that culture is not valuable in and of itself. Instead, culture is merely a formal condition that individuals use to develop, pursue, and revise values. This means that the state’s role is not to protect culture in a conservative sense. Instead, the place of culture in individual freedom puts the state in a delicate place. As Rawls acknowledges in his work on the topic, individuals value their place within a society and within a culture because “we use [its language] in speech and thought to express and understand ourselves, our aims, goals, and values” and that we rely on its “history, customs and conventions [… ] to find our place in our social world.” As a correlative, the state is

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21 Kymlicka, Multicultural Citizenship, 77.
22 Kymlicka, Multicultural Citizenship, 84.
23 Rawls, Justice as Fairness, 93-94.
responsible for protecting culture as the ground of freedom because it monopolizes the territory where that culture exists. For the individual, it is limiting—and even debilitating—to exert their capacity for the good anywhere else and within any other culture.

Culture and a Sense of Justice

In Rawls’ own words, the other moral power is a capacity “to understand, to apply, and to act from [...] the principles of political justice.”24 This is an other-regarding moral power that citizens use in the way they understand and interact with fellow citizens. This means that while this power is intimately attached to citizens’ individual conceptions of the good and their private lives, it also contributes to the social good. “Establishing and successfully maintaining reasonably just [...] democratic institutions over a long period of time,” Rawls writes, “perhaps gradually reforming them over generations, though not, to be sure, without lapses, is a great social good and appreciated as such.”25 In this way, a sense of justice and the good it brings to society are to be understood as an intergenerational good—not just cooperation here and now, but the combined accomplishment of succeeding generations occupying their place under the same institutions.

I argue that just institutions are considered the same because the same culture occupies them over time. They are not the same in their liberal character, because this can advance and lapse. Nor are they the same in virtue of their population, because this undergoes steady change. In order to link together Rawls’ “fair system of cooperation over time from one generation to the next,” I argue that the attention must shift to a society’s political culture and the way in which this provides a medium for a sense of justice to develop and find meaningful expression. In this way, borders and culture are the institutions that make possible the ends of political society and the sense of justice that shapes it. In the political sense, this seems to be what is inviolable about a culture: because other factors cannot sustain the momentum of justice in society—insitutions only respond to it and individual lives are too short—justice relies on the overlapping and succeeding generations that carry it forward, using culture as a medium.

Where a sense of justice consists of an individual’s capacity to understand, apply, and act from the principles of political justice, the culture of a democratic society introduces each generation to this understanding, makes each generation aware of its application, and allows each generation to act from it. Justice is not embedded in culture—because we cannot speak of cultures that have always been or will never be just—but, instead, justice

24 Rawls, Justice as Fairness, 19.
25 Rawls, Justice as Fairness, 201.
is communicated to individuals, with each succeeding generation, through the cultural medium. I am suggesting, then, that bordered culture is not an arbitrary separation but the confines of a formative social experience that conveys justice to each succeeding generation. Citizens are brought up with, as Rawls writes, an “intimate and inexpressible knowledge” of their culture and I argue that this carries with it understandings of justice.  

At this point, the cultural tension in applying liberal commitments to immigration and asylum has become explicit. By Rawls’ account, a truly liberal society must be unbiased while simultaneously maintaining a concern for the moral capacities of individuals. But, as I have shown, these requirements have conflicting implications for immigration and asylum. In order to be unbiased, democratic states must develop an immigration policy that the most disadvantaged would-be immigrants and refugees could agree to. This would require that locals set aside concerns for their national culture as a biased—and therefore undemocratic—ideal. According to this view, a truly liberal immigration policy requires that foreigners be allowed the right to participate in the locals’ society as they please so long as their arrival would not threaten locals’ security. At the same time, however, democratic states should remain committed to the moral capacities of their citizens. Because citizens rely on their culture to express these capacities, a truly liberal immigration policy requires deliberate control over a society’s cultural composition even in cases where preserving culture would come at the cost of exclusion. The final section resolves this tension.

The Right to Asylum as the Limit of Political Possibility: Resolution and Conclusion

Where the veil of ignorance allows locals to understand borders as inherently biased against foreigners, and where the moral powers define citizens as free and equal members of a society reliant on a contained and coherent culture, Rawls’ idea of an overlapping consensus works as a model of political possibility. Here, the aim is to establish the limits of justice given the deep convictions of those at stake. In Rawls’ own words, the idea of an overlapping consensus is “introduced to make the idea of a well-ordered society more realistic and to adjust it to the historical and social conditions of democratic societies.”  

The idea being that individuals have “conflicting religious, philosophical, and moral views” and, yet, they affirm the same understanding of justice “from within different and opposing comprehensive doctrines, and so, in part at least, for different reasons.” This means that within a society, everyone can affirm

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26 Rawls, Justice as Fairness, 94.
27 Rawls, Justice as Fairness, 32.
28 Rawls, Justice as Fairness, 32.
the same liberties and equalities but they affirm these liberties and equalities for their own deeply-held reasons.

Democratıes, then, should aspire to “a free-standing view” of just relationships rather than a “workable compromise between known and existing political interests.”\textsuperscript{29} In the context of immigration and asylum, this means that what is aimed at is not that locals, having the power of the state behind them, forcibly exclude all but the immigrants they deem worthy or useful; nor is it that migrants and refugees, having overwhelmed border security with their numbers, force the locals to accept a demographic reality that they would not otherwise agree to. Instead, democracies should aspire to an understanding of justice that could be based on a fair and durable consensus between everyone affected.

For everyone affected by immigration policy—refugees escaping violence, migrants seeking better lives, locals hesitant about the effects of foreign influence—the idea of a free-standing consensus on what borders should mean will determine the justice that democracies should hope for. This is because refugees, migrants, and locals all have a stake in immigration—they all have deeply-held conceptions of value that border policies could favor or disfavor. So, by considering which border policies align with the deep convictions of everyone affected, we can determine the outer limit of what justice can ask of border policies. This will set the practical limit of what justice can be expected to achieve and, as a consequence, it will determine the kind of immigration policy that democracies should aspire to. In the remainder of this essay, I will move in parallel with the sections before: first, because removing bias would suggest a right to voluntary migration, I will consider whether an overlapping consensus can be achieved on this right; second, because the moral powers suggest a contained and cohesive culture, I will consider whether this would rule out an overlapping consensus on the right to asylum.

The Right to Voluntary Migration

Migrants pursuing work and a better life in another country, migrants pursuing a religious community established abroad, and migrants pursuing cultural opportunities in a distinctive foreign society all have well-defined reasons for supporting a right to move across open borders. Each migrant values something beyond their own frontiers and so they affirm the right to go out and get it. This distinguishes them from refugees. Where refugees move out of fear for their lives, migrants move in pursuit of a life that they want.\textsuperscript{30}

\textsuperscript{29} Rawls, \textit{Justice as Fairness}, 188.

\textsuperscript{30} Here, I have opted for a broader definition of refugee than the one offered in the 1951 UN Convention relating to the status of refugees (Geneva Convention) and the 1967 Protocol relating to the status of refugees. Where that agreement
Can Immigration be Truly Liberal?

But for locals who have an interest in keeping their country the way it is—like the Czechs and Slovaks mentioned earlier—a consensus on the right to voluntary migration is impossible. These locals cannot support the right to voluntary migration for their own reasons because they value their nation and its national culture in important ways. While many Central Europeans may not see their national culture with well-considered opinions about its boundaries, obligations, and history, they nonetheless have an “intimate and inexpressible knowledge” of it.\(^3^1\) For this reason, they quietly expect that, in their daily lives, they will encounter their national culture and they would experience some disappointment and loss at its sudden change. Locals, then, can break the overlapping consensus on the right to voluntary migration. Not only do they lack a reason to support it, they have reasons against supporting it.

The Right to Asylum

Evidently, refugees have a reason to support the right to asylum. As people threatened by instability in their country of origin, they have an immediate interest in the right to live in a safer and more stable country. However, locals too have a reason to support the right to asylum, even when they value their national cultures in important ways. This is because citizens of democratic societies have an interest in freedom from oppression—thought of here as freedom from intimidation, arbitrary imprisonment, physical harm, or the destruction of property. Citizens of democracies have an interest in this freedom because it is a prerequisite to those freedoms that pertain to the pursuit of meaning and value in a free society. After all, it is only because they are free from oppression that democratic citizens are free to maintain their beliefs, express themselves, and associate with others. It is, then, in light of these deeply-held sources of meaning and value—including the value they give to their own cultures—that they can support freedom from oppression because the freedom from oppression supports the liberties and rights that, in turn, allow them to pursue meaning and value in their own lives.

The right to asylum derives from freedom from oppression: it guarantees that, in cases of a well-founded fear, the effected individuals maintain the right to escape the circumstances that threaten them and to find protection in a safer country. So, because of locals’ commitment to the value and meaning in their lives, they can support freedom from oppression and agree to a right to asylum. There can be, then, an overlapping consensus on the right to asylum. But the right to asylum reaches the limit of

\(^{31}\) Rawls, *Justice as Fairness*, 94.
political possibility in a liberal ethics of immigration. Nothing more can be justified because nothing more can be hoped for. This produces, then, a coherent policy conclusion: liberal societies can only be true to their commitments if they give refugees of all cultures the right to asylum.
Can Immigration be Truly Liberal?

Works Cited
Errors in Judgement?