

Review: *Immigration and Freedom* by Chandran Kukathas

Immigration control impacts citizens. It impacts who citizens can hire, who they can marry, and whether they are stopped, searched, and told to show IDs because they don't look, talk, or act like they belong. It is citizens who are forced to pay billions of dollars in taxes to build more detention centres, citizens who are forced to give up land to build more border walls, and – in the case of college professors – citizens who are forced to tell immigration authorities if their students on visas haven't shown up to class.

Given the above effects of immigration controls, a question arises as to whether such controls are justified. This is the topic of Chandran Kukathas's book, which moves beyond a focus on the harms and indignities that non-citizens face: it is citizens, as much as migrants, whose freedom is undermined when states decide who can enter, who can stay, and who can live with "ease" (p. 233) inside the state's territories. This undermining of citizens' freedoms, argues Kukathas, is unjustified.

In defending these claims, the following argument can be inferred throughout the book:

1. Immigration control undermines freedom for citizens.
2. Justifications for undermining freedom of citizens via immigration control fail.
3. If a policy undermines freedom for citizens without a justification, the policy ought to be abandoned.
4. Therefore, immigration control ought to be abandoned.

Let us address each of these claims in turn.

1. Immigration control undermines freedom for citizens.

Kukathas presents extensive data demonstrating that immigration control undermines freedom not just at the border, but via direct and indirect mechanisms. Indirect mechanisms include, for example, minimum wage laws which prevent employers from hiring migrants willing to work for less (p. 32), while direct mechanisms include everything from detaining migrants to demanding that South Asian women arriving in the UK on fiancée visas undergo "virginity tests" to prove they are unmarried – a practice that continued into the 1980s (p. 119). Importantly, Kukathas makes the radical claim that *restricting immigration effects freedom of insiders as much as outsiders*. For, when restrictions limit what migrants can do, it limits what citizens can do and which people they can interact with. For example, when migrants are

blocked from working, employers are blocked from hiring them, facing fines or even imprisonment if hiring individuals without necessary documentation (p. 53-55).

The claim that immigration restrictions limit freedom for citizens as much as for migrants is radical. It is also never quite fully defended in the book. In particular, the book overlooks the role of harm. While harm does not necessarily correlate with undermining of freedom, it does when it comes in the form of a threat. If X threatens to lethally harm Y if she acts a given way, but only threatens to fine Z if she acts this way, then Y faces greater coercion compared to Z. Assuming that greater coercion leads to a greater reduction in freedom, then the greater threat of harm faced by Y leads to less freedom for Y as compared to Z. When a migrant is told they will face deportation to life-threatening poverty if they enter a country and work, while the citizen they work for will face only a fine or imprisonment, then assuming life-threatening deportation is more harmful than a fine or imprisonment, the migrant faces less freedom than the citizen. Given that immigration restrictions generally entail not only detention and deportation of migrants, but increasingly lethal and injurious force – force rarely inflicted on citizens – it seems that migrants generally experience less freedom than citizens.

There is a related reason to suppose that immigration controls curtail the freedom of migrants far more than that of citizens, at least in wealthy states. As Kukathas himself notes towards the end of the book, one is freer the greater range of valuable opportunities one has (p. 242-244). The majority of those who seek to migrate come from lower-income countries with considerably fewer opportunities than those held by most citizens of wealthy states. If an individual is forced to live in a low-income country with constrained options, this individual's freedom is more curtailed than that of a citizen who cannot hire, marry, befriend, trade with, or speak with this individual.

Kukathas somewhat addresses the above when describing how freedom can be curtailed not only by denying certain options, but by limiting citizens' ability to think about and question policies of the state. When citizens live in a country where detaining migrants is normal, and where citizens are regularly forced to engage in surveillance against migrants – as when professors are required report their tardy students to immigration authorities – they become numb to both their own loss of liberty, and the loss of liberty in the world at large (p. 251). They don't question policies and call for change because their minds cannot comprehend a different sort of world. This diminished psychological freedom is pervasive amongst citizens of wealthy countries.

The question, though, is whether this diminished psychological freedom is on-par with the diminished freedom faced by migrants. When citizens struggle to question policies of placing children in cells and shoving migrants onto flights – when they are numb to these policies – they still hold more freedom than the children in cells and the migrants on flights.

Though Kukathas does not quite demonstrate that citizens of wealthy states face the same curtailing of freedom as those faced by most migrants, he still demonstrates that citizens' freedoms are considerably curtailed; citizens speaking Spanish in the US are regularly asked to show ID and regularly arrested at higher rates than non-Spanish-speaking citizens; citizens in the UK who run firms can face bankruptcy when unable to hire workers from abroad; and citizens everywhere who wish to marry a given migrant without a visa can face a life without the person they love (p. 5, 54, 66-67). If these restrictions are significant, a question arises as to whether they are justified. Kukathas presents compelling reasons to think they are not.

2. Common justifications for limiting freedom via immigration control fail

Kukathas rejects common justifications for limiting freedom via immigration control. One common justification is that immigration control can reduce the supply of labour by decreasing competition from migrant workers, which can help very poor citizens who need jobs. He rejects this justification on the following three grounds.

- a. When firms hire migrants, they can increase their capital, reinvesting this in a manner that can increase jobs in the future (p. 148).
- b. By allowing firms to hire migrants, the firms are financially more robust from increased productivity, withstanding recessions in the future, and so job cuts in the future (p. 148).
- c. Even if citizen workers sometimes would rather benefit today than in the future – for example, sometimes workers are more likely to work this year if there are fewer migrants, and a job this year can mean greater short-term consumption – Kukathas claims there is “no obvious way” to identify the balance between current consumption for citizens and future investments which can improve future consumption (p. 148 and 165).

The above claims are backed with data, and Kukathas is correct that there is no obvious way to identify the balance to be struck between current and future consumption. However, there are non-obvious ways to do so. In particular, there is likely some discount rate for future consumption. This is an assumption widely held in economics, and there are sophisticated

defences of the claim that current generations and people are justified in prioritising commodities in the present over commodities in the future (e.g. John Broome, "Discounting the Future," *Philosophy and Public Affairs* 23 [1994]: 128-156). If so, citizens may be justified in prioritising the resources they enjoy today over the resources they might gain if immigration controls were discontinued. For example, if limiting the number of migrant workers is necessary for poorer citizens to access a broader range of nutrients and leisure time this year, the restrictions may be justified even if leading to reductions in these goods in a decade.

The above reservations about Kukathas's argument are consistent with the claim that especially freedom-undermining restrictions - deporting migrants, enslaving them in detention centres, and using physical violence to stop migrants from working - could all be wrong (p. 163). Even if they are wrong, less-extreme immigration controls could be acceptable to increase short-term consumption, up until the restrictions of freedom for both migrants and citizens are great enough that they lack proportionality. Indeed, Kukathas himself expertly demonstrates that immigration control comes in degrees, such that laws to restrict immigration not only include the very restricting - as when migrants are shot at the border - but those which are only somewhat restricting (pp. 33-40).

Somewhat restricting laws include, as noted above, minimum wage laws. While minimum wage is only mentioned fleetingly in the book, it can limit the number of migrants citizens can afford to hire. If restricting freedom via minimum wage laws are justified when they protect poorer citizens' short-term urgent needs, then other policies which restrict immigration may be justified as well, such as requiring potential migrants to wait a limited number of years before obtaining a visa.

Consider, now, another potential justification raised in the book: restricting immigration improves environmental outcomes. If fewer individuals can migrate, fewer will earn incomes to buy more cars, houses, food, and flights, potentially slowing down global warming. Kukathas dismisses this justification: unless citizens in wealthy countries reduce their own consumption, they cannot be justified in pre-venting individuals in low-income countries from increasing their consumption by moving to wealthier countries. Moreover, Kukathas notes that migrants moving to wealthier countries tend to have fewer children, such that increases in consumption amongst such migrants would be offset by a reduction in the total number of consumers born (pp. 153-155).

The above responses, in contrast to the rest of the book, are somewhat weak on data. No data is provided to demonstrate that reductions in birth-rates amongst those moving from

poorer countries would make up for increases in consumption. Moreover, even if it would be hypocritical for citizens to restrict the freedom of others to consume if they were unwilling to reduce consumption themselves, hypocritical actions can be justified. It may be hypocritical to assault another person and then stop others from committing assault, but stopping others from committing assault is still generally right. Citizens may be acting wrongly in continuing their current levels of consumption while denying those in poorer countries the ability to move and improve their lives, but they could still be justified in limiting migration for environmental reasons. This is especially true if – once again – freedom is only somewhat limited, as with minimum wage laws or requiring that individuals wait a limited number of years before accessing a visa to migrate.

Perhaps Kukathas feels that, even if immigration control which only subtly undermined freedom could be justified, in practice immigration control nearly always leads to substantial undermining of freedom. Whenever states restrict who can enter and remain, they instigate lethal and injurious forms of torture, as when European states send funds to Libya to place migrants in detention centres with regular beatings. Subtle forms of control just don't cut it; citizens and migrants just circumvent these controls, and so authorities instigate more severe constraints against migrants and citizens refusing to comply (p. 71). It is these severe constraints that cannot be justified by appealing to citizens' immediate needs or global warming.

This interpretation of the second premise is more plausible, but – and here I think Kukathas would agree – it is not inconceivable that one day states will continue immigration control while substantially increasing freedom. Kukathas himself notes that states rarely engage in violence when controlling trade: globally, only 2% of all cargo crossing into state territories are even inspected by customs. This is because any further disruption would cause too much distress; citizens are just too dependent on trade, even if many grumble about competition from foreign firms (p. 98). If citizens became even more dependent on immigration, then even if many would still grumble about competition from immigrants, perhaps they would accept checking fewer than 2% of all migrants' passports.

Regardless of how likely this is in the future, we can at least conclude that it is difficult to defend the violent immigration controls of today by appealing to common justifications that Kukathas expertly rejects.

3. If a policy undermines freedom without a justification, it ought to be abandoned.

This brings us to the next premise: if a policy undermines freedom for citizens without a justification, the policy ought to be abandoned.

This premise is never made explicit in the book. However, Kukathas mentions proponents of states' right to exclude who might reject this premise, and thus the argument as a whole. In particular, he notes that some view states like families or associations. Families and associations have a right to decide who can join, even when their decisions don't have a particular good justification. States similarly have a right to decide who they admit, even when lacking a good justification. Or, put another way: just like you can tell someone to get out of your house without a good justification – it's your home! – citizens can tell newly-arrived migrants to leave without any reason at all. Kukathas rejects this reasoning. If states really are like associations, they are very large associations, and the larger the association, the less justified it is for some members to block others from inviting new members in. This is true even for large and extended families; while two parents might have a right to decide if they adopt a child, with either parent having a veto, it is not clear that a grandmother should have a say, and "uncle Fester's views are perhaps best ignored" (p. 186). Just as an uncle has no right to limit their niece's ability to admit new members into her nuclear family, even if this impacts the makeup of the extended family as a whole, citizens have no right to limit their co-citizens' ability to admit new migrants into their social, familial, and economic circles, even if this impacts the state's population as a whole.

4. Conclusion

If citizens ought not curtail the freedom of other citizens without good justifications, and today's curtailing of freedoms via immigration policies lack such justifications, then today's immigration policies should be discontinued. This exact conclusion is never quite spelled out in the book, and for good reason: Kukathas wishes to primarily focus on making citizens of wealthy countries aware of the freedoms they are personally denied in today's policies, moving beyond the view that immigration control only wrongs others; you, reader, are probably wronged. If this is the case, all should think carefully about whether the freedoms lost are worth the benefits gained, and whether there are any benefits at all. The book therefore provides the tools and data to be wary of the surveillance, taxes, walls, and detention centres that are instituted when determining which migrants belong and with whom citizens can associate.

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