

Open Borders Without Open Access¹

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Introduction

What are libertarian open borders advocates even advocating for? Is it, as the title to Michael Huemer’s influential essay suggests, a *prima facie* “right to immigrate”?² Or is it, as the branding connotes, literal open borders, or a strong *prima facie* moral right to free movement across borders that entails a right to immigrate?³ In this paper, I peel apart the view that people have a strong moral right to freely cross international borders, or *open access*, from the view that non-citizens have a right to immigrate, which I will call *open residence*.⁴ As radical as open residence is, open access is even more extreme; so whether open borders ideology commits one to open access matters to its plausibility. At times it can seem that libertarian open borders advocates, by emphasizing our *prima facie* right to free movement, call for open access. Nonetheless, I suggest that libertarian open borders advocates should content themselves with mere open residence, even though open residence is compatible with tight border controls and even border walls—policies which they might (rightly or wrongly) object to for independent reasons.

¹ Thanks to Jonny Anomaly and Eric Chwang for help on the early drafts of this paper, and Mike Huemer for his comments at the 2019 Rocky Mountain Ethics Congress.

² Michael Huemer, “Is There a Right to Immigrate?” *Social Theory and Practice* 36.3 (2010): 429-461.

³ Inter alia, Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” *Review of Politics* 49 (1987): 251-73; Bas van der Vossen and Jason Brennan, *In Defense of Openness* (Oxford University Press, 2018); Christopher Freiman and Javier Hildago, “Liberalism or Immigration Restrictions, But Not Both,” *Journal of Ethics and Social Philosophy* 10.2 (2016); Bryan Caplan’s various work on the topic and the essays at <https://openborders.info/>.

⁴ The term “open residence” was suggested to me by Tom Metcalf.

Open access vs. open residence in open borders literature

The distinction between open access and open residence is a genuine one that, at times, even open borders advocates seem to acknowledge. Here is Huemer, early in his 2010 paper defending open borders:

Few would question the state’s right to exclude at least some potential migrants. For example, the state may deny entry to international terrorists or fugitives from the law. The interesting question concerns the vast majority of other potential immigrants—ordinary people who are simply seeking a new home and a better life. Does the state have the right to exclude these ordinary people?”⁵

So it is consistent with this foundational text of open borders philosophy for the state to deny entry to terrorists, criminals, and fugitives. There is, however, no way to detect and “deny entry” to terrorists, criminals, or fugitives other than to stop entrants at the border or some other place, such as at the international terminal of their departure airport.⁶ This means that open borders is compatible with border control. Thus, at least in this passage, Huemer seems to be arguing for open residence, not open access.⁷

Another open borders advocate, Chris Freiman, had this to say about open access in a recent interview:

It is important to keep in mind what exactly an advocate of open borders is arguing for. “Open borders” is a bit of a misnomer—it’s more “light borders” or “porous borders” or something like that. So it isn’t that there would be *no* checkpoints or *no* restrictions on immigration. [...] So I think most open borders folks would be happy saying that if you are a wanted violent criminal, that might exclude you from immigrating, [or also] if you have some particularly deadly contagious disease, and so forth. But other than that, ordinary peaceful migrants should be able to come to the United States.⁸ (videotaped interview; quotation marks and emphasis added)

⁵ Huemer 2010, p. 430.

⁶ Note “deny entry” must mean that these wanted criminals and terrorists are stopped at the border, and are not merely being deported after they immigrate.

⁷ In a later passage Huemer criticizes as coercive having “armed guards hired to patrol the borders...” (Huemer 2010, p. 434), but this may be charitably understood as wrong on the condition of restrictions on open residence, leaving Huemer uncommitted to the question of whether it is coercive to patrol borders *tout court*.

⁸ Chris Freiman, “Open Borders, Poverty, and Universal Basic Income.” Interview by Dave Rubin. *Rubin Report*, Jun 7, 2018. Available: <https://youtu.be/tNxATohmZpo>.

So it seems that some advocates of open borders appreciate the distinction between open access and open residence, and do not take themselves to be defending open access.

However, the student of open borders is justifiably confused by other passages about what open borders consists in. For instance, here is Freiman in another defense of open borders:

Before I go any further, I should clarify what I mean by “open borders.” A nation with an open border is not the same thing as a nation with *no* border. Rather, it is a nation with very few restrictions on entry. To illustrate, we might say that Arizona and California share an open border. Arizonans can enter California to live and work without government-imposed restrictions. Similarly, an open border between, say, the United States and Mexico reduces or eliminates restrictions on movement between the two nations.⁹ (emphasis in original)

Obviously, how we understand “very few restrictions on entry” in this passage matters quite a bit for our purposes. In any event, it appears to be legally conceivable under US law for California to ban a particular Arizonan from entry.¹⁰ And certainly California’s gun laws restrict what gun-toting Arizonans can legally carry into California, but there are no checkpoints to enforce any of these laws or policies, so the borders between these two states is “open access” as I mean it.

Freiman also favorably cites Bryan Caplan as making the international border/domestic border analogy, as Caplan and Vipul Naik do here:

Suppose you get laid off in Oklahoma. Local opportunities are sparse, so you find a job in California, rent a new place, and go. Voila, your move is done. You need not get permission from a government official or convince anybody that your presence is a net positive for California. That’s because the member states of the United States have open borders.¹¹

As we shall see, Huemer too at times, and also Brennan and Bas van der Vossen, seem to hold that we may no more restrict the movement of non-citizen entrants than we do for citizens domestically in equivalent circumstances.

⁹ Christopher Freiman, “A Defense of Open Borders,” *The Palgrave Handbook of Philosophy and Public Policy*, ed. David Boonin (New York: Palgrave, 2018): 161-62.

¹⁰ Brian Palmer, “Can States Exile People?”, *Slate*, January 24, 2013. Available: <https://slate.com/news-and-politics/2013/01/banishment-as-punishment-is-it-constitutional-for-states-to-exile-criminals.html>.

¹¹ Bryan Caplan and Vipul Naik, “A Radical Case for Open Borders,” in *The Economics of Immigration*, ed. Benjamin Powell (New York: Oxford University Press, 2015): 180.

Are libertarian open borders advocates committed to open access?

It can appear that libertarian open borders advocates are concerned primarily about freedom of movement, or at least consider the freedom of movement a sufficiently strong consideration to justify open borders policy. Consider this passage from Brennan and van der Vossen:

Jason lives in Northern Virginia, has a great job, but is getting tired of the traffic. Bas lives in North Carolina and has been telling Jason about how wonderful a place it is to live. Jason decides to move to North Carolina. This was not Bas's intention, and so he decides to prevent Jason from coming. When Jason tries to come anyway, Bas meets him on the road with his gun and threatens to shoot Jason unless he turns around. Again, the restriction is wrongful. Even though Jason had a wonderful life in Washington, DC, Bas still violates his rights when he prevents Jason from moving. Bas uses force to stop Jason from interacting with others who wish to interact with him. The point seems clear, then. The kinds of force and interference involved in limiting people's freedom of movement stands in need of justification. Unless Bas, Jim, or Donald have some very good reason for stopping Jason, Jane, or Marvin, they need to step aside and let him be on his way. By analogy, the same seems true for modern governments and immigrants.¹²

Another, less clear example comes from Freiman and Hildago:

Even philosophers who reject the view that people have rights to immigrate to other states acknowledge that people have human rights to freedom of movement within the borders of their states.¹³

The quote from Brennan and van der Vossen above refers in passing to Huemer's hypothetical of Starvin' Marvin—an impoverished worker banned from the labor marketplace by Sam—which at points seems meant to justify open access on the grounds of Marvin's right to free movement.

[I]ndividuals have a prima facie, negative right, not to be subjected to seriously harmful coercion. Sam's behavior in the scenario was, by stipulation, coercive—it involved a use or threat of physical force against Marvin, significantly restricting his freedom of action.¹⁴

And yet, as we have seen, Huemer and Freiman seem to allow for some border control.

¹² Brennan and van der Vossen, 25-26.

¹³ Christopher Freiman and Javier Hidalgo, "Liberalism or Immigration Restrictions, But Not Both," *Journal of Ethics and Social Policy* 10.2 (2016): 5. That said, Freiman and Hidalgo base their case for a right to freedom of movement rationale on other liberal rights, such as freedom of association, which makes it more difficult to charge them with resting their case for open borders on a right to move freely:

Restrictions on freedom of movement interfere with freedom of occupational choice and association. So immigration restrictions conflict with core liberal freedoms. If liberalism requires the protection of freedom of occupational choice and association, then liberalism and immigration restrictions are prima facie incompatible.
(6)

¹⁴ Huemer 2010, 432. For an earlier and similar exposition of this rationale for open borders, see Joseph Carens (1987).

I am not interested in accusing anyone of actually forwarding the argument that our right to free movement requires open access, since what matters is whether it is sound and whether the open borders position requires it. So I will conclude this section by articulating an argument an open-borders advocate might advance if they are motivated by a freedom-of-movement rationale:

The right a person has to move freely across intranational borders derives from a more fundamental right they have to free movement absent reasonable grounds for suspecting them of criminal intent or public threat or nuisance, etc. As this is a moral right, and as there is nothing morally unique about international borders, we similarly may not detain, interview, interrogate, or vet international border-crossers absent some special reason to do so. In short: entrants crossing international borders should be treated as Americans are when the latter travel about America.

Against open access

It would be unfortunate for the open borders position if it were committed to open access, or even just widely thought to be so committed. This is because, first, criminal conspiracies are easier to form and are more likely to succeed when criminals can easily retreat into countries where the laws are different or rule of law is weaker. Mexican drug cartels, for instance, wrestle with law enforcement for supremacy in many areas of northern Mexico, and even more porous borders with Mexico would make enforcing American laws and protecting people (of any nationality) on our side of the border even more difficult.

Of course, legalizing drugs and prostitution to eliminate the black market for drugs and sex services is a common libertarian answer to violence from these rackets. But if legalization of drugs and prostitution is practically necessary to make open access feasible, advocates of open access (if there are any) need to make that clear. And some merchandise, such ivory or rhinoceros horn and stolen goods, seem like things that even libertarians might want stopped at the border. Non-libertarians would also wish to keep out embargoed, untaxed, and counterfeited goods.

Another rebuttal to the crime objection to open access is that we must have more unanimity in the law, better rule of law, and less corruption internationally. But critics of open access will note

that different nations might not agree about what laws they wish to live under, and that it is at least morally questionable for more powerful receiving countries to impose political pressure on their neighbors to change their laws for the sake of open access. Moreover, the real-world possibility of increasing rule of law and lowering corruption in many neighboring states is very low. Indeed, their entrenched cultures of corruption and poor rule of law are major reasons those lands are not destination countries themselves.¹⁵

Terrorism is an even more serious threat under an open access regime. Weeks ago, Nicaraguan authorities arrested two Egyptians and two Iraqis with ISIS ties who were heading to the US.¹⁶ This spring, it was discovered that coordinated networks of ISIS terrorists are migrating into Europe with the intention of mowing down civilians, bombing pipelines, and attacking train stations.¹⁷ On open access, we can no more detain a convoy of men driving semi-trucks into the US than we can detain a convoy of Walmart truckers crossing the state line from Arkansas to Texas. Indeed, one wonders if groups of openly armed men may be detained at the border on the assumption that international borders be treated like intranational ones, given (what I take to be) the typical libertarian view about our moral right to transport guns across state lines. Terrorism is a major concern for most countries, but some—the United States among them—are particularly valued targets of would-be terrorists. Given how few terrorists it takes to destabilize a country, and the very real and constituted groups who would like to effect such damage on receiving countries, literal open borders in the sense of open access would be an irresponsible policy even by traditional

¹⁵ See e.g., Sanjeev Gupta et al, “Does Corruption Affect Income Inequality and Poverty,” *Economics and Governance* 3.1 (2002): 23-45. Of course, many causes contribute to global poverty, but these are important, if only proximate, ones.

¹⁶ Ismael Lopez, “Nicaragua Arrests Four Men Suspected of Ties to Islamic State,” *Reuters*, June 25, 2019. Available: <https://www.reuters.com/article/us-nicaragua-security-isis-idUSKCN1TQ345>.

¹⁷ Lizzie Dearden, “Isis Plot to Direct New Terror Attacks in Europe Uncovered After Group Loses Last Syrian Stronghold,” *The Independent*, Sunday 24, March 2019. Available: <https://www.independent.co.uk/news/world/middle-east/isis-caliphate-attack-europe-syria-defeated-future-next-a8837531.html>; Louise Callaghan, “Isis Plans to Copy Paris Atrocity with Fresh Wave of Carnage,” *Sunday Times* April 14, 2019. Available: <https://www.thetimes.co.uk/edition/news/isis-plans-to-copy-paris-atrocity-with-fresh-wave-of-carnage-qt6d0t82z>. The Center for Immigration Studies has some research on the question of immigration and terrorism: see their “National Security” subsection at <https://cis.org/Immigration-Topic/National-Security>.

libertarian standards, which usually acknowledge the state's responsibility to protect citizens from foreign threat.

Freiman raises the question of disease-carrying migrants in the quoted lines of his interview. Of course, this concern is particularly politically charged, since associating migrants with disease is often considered by pro-immigration activists as motivated by racism (and there is evidence that living in areas with more infectious disease, or even thinking about infectious disease, increases racial prejudice).¹⁸ However, a well-known part of Ellis Island history (and a part of that history which isn't considered too shameful—yet) is the processing and quarantining of immigrants sick with cholera, yellow fever, tuberculosis, and other serious diseases, a policy which required some border control.¹⁹ My less-than-exhaustive survey of the research on the question of infectious disease rates among migrants today suggests that the typical migrant coming into the US poses little concern, thanks to fairly good immunization coverage in Central and South America. African migrants pose more of an infectious disease threat: a recent large meta-analysis of studies on African migrants (most of whom go to Europe) urged “systematic screening” of African migrants after concluding that probably about 6% have syphilis, 10% hepatitis B, and 3% hepatitis C.²⁰ Ebola is also a concern: recall that just a few cases of Ebola in the US caused great expense and disruption in 2014, when a physician with Doctors without Borders returning from Guinea and a visiting Liberian national (who

¹⁸ Brian O'Shea et al., “Infectious Disease Prevalence, Not Race Exposure, Predicts Implicit and Explicit Racial Prejudice Across the USA,” *Social Psychological and Personality Science* (forthcoming). Available: <http://wrap.warwick.ac.uk/117576/1/WRAP-infectious-disease-prevalence-race-predicts-racial-2019.pdf>.

¹⁹ Center for Disease Control, “History of Quarantine,” accessed July 16, 2019. Available: <https://www.cdc.gov/quarantine/historyquarantine.html>.

²⁰ These are not the only diseases listed. A. Chernet et al., “Prevalence Rates of Six Selected Infectious Diseases Among African Migrants and Refugees: A Systematic Review and Meta-Analysis,” *European Journal of Clinical Microbiology and Infectious Disease* 37.4 (2018): 605-619. Available: <https://www.ncbi.nlm.nih.gov/pubmed/29080108>.

lied about his contact with Ebola) brought the disease here.²¹ Central Africa is currently suffering from another Ebola outbreak.²²

Finally, many who would cross into receiving countries have no particular business in their destination counties and no means of providing for themselves once there, and are sure to be burdens to the state, especially when we take into account their eventual healthcare needs and children's schooling. That migrants to Europe overwhelmingly make their way to the most generous European welfare states is ample evidence that welfare systems of receiving countries will be stressed past their breaking point and, in fact, some libertarian open borders advocates acknowledge as much, and support open borders partly on those grounds.²³ I think most would agree, however, that receiving countries and their citizens have an interest in not having their hospitals, schools, and social services burdened by migrants and their dependents who cannot provide for themselves, and that they have an interest in keeping their streets and public areas uncongested by homeless migrants living rough or in makeshift shacks—features of the landscape that depress commerce, tourism, and general livability.

These points are familiar to anyone who has filled out a visa application. Since many readers are Americans and Americans rarely have need for a visa, it might be worth mentioning that visa applications are meant to address the above worries. For instance, Americans applying for visas to many countries must explain their purpose in visiting, provide bank statements to demonstrate sufficient funds to take care of themselves, state where they will stay and who will take responsibility for them, and supply evidence of relevant immunizations. Requirements for entry into the US are similar or more stringent—they often require biometric information and an interview at a US

²¹ "Thomas Eric Duncan," *Wikipedia*, accessed July 18, 2019. Available: https://en.wikipedia.org/wiki/Thomas_Eric_Duncan.

²² Jacqueline Howard and David McKenzie, "Ebola Outbreak in Congo is a Public Health Emergency of International Concern, WHO Says," *CNN*, accessed July 17, 2018. Available: <https://www.cnn.com/2019/07/17/health/ebola-outbreak-who-emergency-africa-bn/index.html>.

²³ "Contraction of Welfare State," *Openborders blog*. Accessed July 25, 2019. Available: <https://openborders.info/contraction-of-welfare-state/>.

Embassy, for instance, and as of June 2, 2019, information about all applicants' social media accounts (the social media of all legal immigrants to the US has been subject to monitoring for some time).²⁴ Nonetheless, documents, especially medical and bank account information, are easily and often forged in developing countries, so a large amount of administrative inefficiency is built into the visa application process by design to discourage applicants.

To conclude this section, I don't assert that open access would be worse for a country than open residence: both policies, I suspect, would doom any popular target of mass migration.²⁵ However, I think most readers will agree that open access is much more obviously and immediately harmful to a receiving country than an open residence policy would be.

Open borders without open access: revisiting the marketplace analogy

Open borders advocates hold that unchecked migration would bring enormous benefits. Readers are told that the ethnic and cultural diversity will enrich our communities, arts, and cuisine. We are told that, although our least skilled workers might take a bit of hit, migrants will be spectacularly better off, and that unrestricted migration would increase global GDP by many trillions of dollars per annum.²⁶ Obviously, these predictions assume that the institutional effectiveness enjoyed in first world countries would be maintained under conditions of unrestricted migration, and (less obviously) minimize the social tumult caused by recent, comparatively small waves of mass migration into the US and especially Western Europe—tumult that has beleaguered intervening

²⁴ Sandra Garcia, "U.S. Requiring Social Media Information From Visa Applicants," *New York Times*, June 2, 2019. Available: <https://www.nytimes.com/2019/06/02/us/us-visa-application-social-media.html>.

²⁵ For a recent and short, perhaps less pessimistic but nonetheless restrictionist criticism of open borders, see Hrishikesh Joshi, "For (Some) Immigration Restrictions," forthcoming in *Ethics: Left and Right*, Bob Fischer ed., Oxford University Press. Other important defenses of restrictionism include David Miller, "Immigration: The Case for Limits," *Contemporary Debates in Applied Ethics*, Andrew Cohen and Christopher Heath Wellman, eds. Malden: Blackwell (2005): 193-206 and Christopher Heath Wellman, "Immigration and Freedom of Association," *Ethics* 119 (2008): 109-141.

²⁶ See, for a recent and comprehensive case, Chs. 2-4 of Brennan and van der Vossen. For a sobering brief against mass migration that gets at some deeper and more intractable concerns, see Garrett Jones, "Do Immigrants Import Their Economic Destiny?," *Economics blog*. Accessed July 23, 2019. Available: <http://economics.com/do-immigrants-import-their-economic-destiny-garrett-jones/>.

nations as well.²⁷ But suppose the rosy predictions of open borders advocates are correct: most if not all of these social and economic benefits would materialize with closed access but open residency. For one commonly misunderstood notion among critics of border control, and especially of physical barriers such as walls, is that that they are solely about separation and exclusion. Certainly they *can* be about these things: many people are unaware of the proliferation of fences and walls recently built in places like Israel and India, which have proven successful at stemming the tides of migrants and terrorists.²⁸ But walls and fences also serve to facilitate orderly and secure movement across borders, just as barriers forcing us through security at nightclubs, stadiums, and airports do. Historically, city walls and walls at the limits of civilizations, such as Roman walls in Africa and Britain, were usually not built to defend anyone from invasion or keep ordinary people from passing through, but rather to provide agrarian peoples protection from mounted raiders and to control and tax commerce.²⁹ Critics of “controlled access” policies would need to explain why the same cannot be true today.

The consequentialist argument isn’t, however, particularly libertarian, and I am interested especially in libertarian open borders rationales in this essay. Can libertarian open borders advocates consistently be for open residence but controlled access? Libertarian open borders advocates may of course hold, given the considerations cited above and the way things stand now in the world, that the prima facie wrongness of restricting someone’s freedom of movement happens to be outweighed in the case of access, but happens *not* to be outweighed by various considerations (undiscussed here) against open residence. That might be true. However, conceding that our

²⁷ For one recent discussion among many than can be found about the migrant crossings in Italy, Greece, Eastern Europe, and elsewhere, see Adrian Blanco, “Unauthorized Immigrants Face Public Backlash In Mexico, *Washington Post* July 16, 2019. Available: https://www.washingtonpost.com/world/the_americas/unauthorized-immigrants-face-public-backlash-in-mexico-survey-finds/2019/07/16/f7fc5d12-a75e-11e9-a3a6-ab670962db05_story.html?utm_term=.71f6f5b44df8.

²⁸ Kim Hjelmgard, “From 7 to 77: There’s Been an Explosion in Building Border Walls since World War II, *USA Today*, May 24, 2018. Available: <https://www.usatoday.com/story/news/world/2018/05/24/border-walls-berlin-wall-donald-trump-wall/553250002/>.

²⁹ David Frye, *Walls: A History of Civilization in Blood and Brick* (New York: Scribner, 2018).

freedom of movement allows, in real life circumstances, tight border control with detentions, vetting, and so forth would appear to denature the view given its animating analogy to the free travel we enjoy in many (say) Western countries. Invocations of free movement, and comparisons to intrastate travel, appear to do no work whatsoever if we conclude that controlled borders—indeed, apparently *even more controlled borders than we currently have*—are permissible and commonsensical. Thus, it would be interesting to see if other libertarian-sounding considerations can weigh in favor open residence, but not open access.

When I consider Huemer’s case of Starvin? Marvin, it seems that the moral heft of Marvin’s claim to *physical* entry into the marketplace is not his freedom of movement per se, but his prima facie right to sell his labor or wares, especially given his need.^{30,31} Conceiving of the market as a physical space, the Marvin thought experiment does not justify Marvin’s arrival to enjoy the benefits of the market’s air conditioning, or even its security, and thus nothing in the Marvin case would oblige us to accept refugees/asylum-seekers *qua* refugees/asylum-seekers, or even people of means who merely prefer a change in scenery, who would be analogous to loiterers.³² Moreover, if we are going to analogize national territory to a marketplace (an analogy I must add, for the sake of conscience, I’d resist in the strongest terms), then we should bear in mind that, except for open-air markets, all marketplaces have entryways and hours of operation. Some, in high-crime areas, have metal detectors or security guards at the doors. Many have “no shirt, no shoes, no service” policies.

³⁰ Jason Brennan similarly describes the Marvin case to be about Sam’s preventing Marvin’s “trade with a willing partner” at 3:30ff of “Lecture 9: Immigration Rights” *Libertarianism.org*, <https://www.libertarianism.org/guides/lectures/immigration-rights>.

³¹ Wellman 2008, pp. 130ff notes that libertarian open borders advocacy rests on “property rights” and “freedom of movement” rationales, and argues against both justifying open borders. Wellman also observed something that I cannot discuss in the essay, which is that the assumption that private firms and individuals have a right to invite whom they please to better transact with them more-or-less assumes anarchism. In light of Huemer’s wishes to avoid controversial theoretical commitments in his essay (2010, pp. 430-31), whether Wellman’s point is correct is worth considering.

³² In fact, nothing in the Marvin case would justify Marvin’s entry into the market if the “market” (in the non-material sense of mere opportunity to trade) were to come to Marvin—if, say, someone inside the market went to Marvin and traded with him in his homeland: a matter which would raise the question of free trade perhaps, but not unrestricted migration.

In fact, given the freedom to do so, marketplaces can be extremely picky about whom they let in. As is widely noted in discussion on this topic, a marketplace analogy might justify banning kinds of people from entry whom the marketplace-state finds to be overall bad for its image, business, or working environment. Restaurants are marketplaces of sorts, and many upscale ones have dress codes. On NYC's Fifth Avenue and Beverly Hills' Rodeo Drive, stores selling haute couture can be found in which customers must be "buzzed in" by employees in an effort to keep out the riff raff. I am too working-class to be familiar with golf clubs, but I know a dive bar in Ohio which, wishing to exclude black customers, became a "private club" that handed out keycards rather promiscuously to whites. In many shops in depressed areas owners post signs boldly (and probably falsely) declaring their legal right to refuse service to anyone. So it seems to me that, on a libertarian rationale that analogizes a nation to a marketplace, or wishes national borders to be treated like the entrances to marketplaces, there is an embarrassment of flexibility when it comes to restricting access, and even restricting residence.

Noting that the US as a marketplace would be more like a mall—a marketplace of coordinating private individuals and firms—does little to justify open access. "Mall of America," just like the actual Mall of America, may demand those interested in trading with its merchants to enter through the doors in an orderly manner and be dressed appropriately. It may, perhaps with the aid of facial recognition, bar people at the door who have been banned from the premises. It might turn away unaccompanied teens or people with sidearms. And some of these restrictions seem morally permissible, even if some merchants in Mall of America would be happy to serve such potential customers.³³

³³ Malls may have the right to get between their merchants and some potential customers—obviously. Sam may not be so positioned. Why? Plausibly, the Starvin' Marvin thought experiment tacitly relies upon anarchist assumptions about Sam's authority vis-à-vis the market's merchants. See fn. 31.

Entrants vs residents: *who* to ban and *where* to ban

Suppose we shot dead all and only those attempted entrants who didn't take a ticket and wait their turn, and the wait for their turn took weeks. This policy would be patently open residence, since it would allow in even migrants waving ISIS flags or oozing bubonic plague from necrotic pustules. It would also seem not to be open access, since movement across the border would be highly controlled and travel would be delayed by quite a bit. Nonetheless, note that this particular controlled-access policy turns no one away at the border in the sense of telling them they're not allowed in. So let's distinguish between two sorts of controlled-access policy: ones that merely *manage* entrants at the border, but don't turn any away, and ones that *discriminate* at the border by turning at least some type of entrant away. This distinction between "managed" and "discriminating" access policies is interesting since even open borders advocates think we may turn away likely terrorists, criminals, and the dangerously contagious at the border. And *that* matters because it exposes them to an important objection they level at restrictionists.

Restrictionists are sometimes criticized by open borders advocates for excluding people of a certain sort—Muslims, the unemployable, the low-skilled, etc.—but not imposing similar treatment on residents or citizens of the same sort. For instance, Jason Brennan considers bans on groups with worse reputations for criminality.

[Such restrictionist arguments] treat native-born citizens and people born elsewhere differently. No one would make the argument that I, by being male, am statistically more likely to commit crime than the women in here, therefore by virtue of that we should kick me out.³⁴

Restrictionists, especially of the non-libertarian sort, might have good answers to this objection. However, open borders advocates who support any sort of discriminatory access must also confront this objection. Would Freiman, who presumably wants to keep out Ebola victims, also be in favor of exiling residents or citizens with Ebola? Even excluding terrorists raises problems for open borders

³⁴ Brennan, "Lecture 9..." 6:20ff.

advocates, if they accept equal rights for immigrants and residents or even citizens. Imagine homeland security concludes that Jack is a terrorist by proofs *even you* would take to be conclusive. May homeland security instruct border control to turn Jack away, without the same due process owed to a citizen? For after all, even terroristic citizens shouldn't be exiled without trial, most would agree. Thus, any open borders advocate conceding to *any* "discriminating access" policy, no matter how commonsensical, must accept either that 1) we must create an extraordinarily robust and expensive border bureaucracy that recognizes a lot more migrant rights to due process and medical care, or 2) that residents and especially citizens have stronger moral rights regarding access and residence than do migrants.

Conclusion

Along with separating the question of open access from the question of open residence, I have also suggested³⁵ we distinguish between open borders rationales. The consequentialist advantages open borders advocates foresee are achievable with controlled access and open residence. The argument from free movement inclines to being too strong, since it seems designed to justify levels of access that appear reckless, even to open borders advocates themselves (in some moods, at least). A third rationale, based upon an argument that compares nations to marketplaces, is flexible enough to allow controlled access. Indeed, it is too weak to justify *open residence* since, absent additional constraints, marketplaces can be quite picky indeed about whom they let in. Of course, those additional constraints on marketplaces might be easy enough to justify, so I do not wish (at present) to frame my discussion as a dilemma for open borders. For now, it is enough to observe that it's better to have an overly weak guiding analogy (the marketplace), which can be supplemented, than

³⁵ Again, see Wellman 2008 (see fn. 31). Wellman claims the two libertarian rationales for open borders are one based on a right to free movement and another based on property rights. Given the way the literature has moved since 2008, it might be better to say the second motivation is really about freedom of association or more specifically freedom to trade.

an overly strong one (the free movement most westerners enjoy with our borders) that has to be watered down. Finally, although the distinction between open access and open residence is real, in practice some controlled access entails controlled residence, and this fact subjects any commonsense open borders advocate to some of the same puzzles regarding unequal treatment of entrants/non-citizens and residents/citizens which are raised as objections for the restrictionist.