



Universal and Qualified Rights to Immigration

By/Par

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Philosophers have not yet come to terms with the morality of immigration. We have developed relatively sophisticated accounts of distributive justice, political equality, electoral politics, and the like; even where we do not agree, we at least have a strong sense of what it is about which we disagree – the debates and positions are well-defined and sharply delineated. Immigration, in contrast, remains somewhat mysterious. There is, I think a good reason for this: the other debates discussed above assume a given set of political agents, and ask what political relationships ought to obtain between them. The topic of immigration, in contrast, requires us to abandon this assumption. Questions of immigration ask us not what duties exist between parties to a community, but who shall be allowed to form a part of that community in the first place. The fundamentally different nature of these questions has, I think, made progress in our analyses of immigration slow and difficult. We have a long history of asking what we owe to one another through our political institutions; we have only now begun to develop the tools needed to determine who shall be a party to those institutions themselves.

In this paper, I want to make a start towards these tools. I understand this task as part of the wider project of examining the possibility of political philosophy applying to global institutions, rather than simply to those of domestic political justice. I want to argue here in a negative way, by arguing against a conclusion many philosophers have found agreeable: that there exists a universal right to immigration.¹ I have previously defended the conclusion that no such right exists.² I want, here, to defend this conclusion in a new way, by dispelling some of the arguments given in favor of this purported right. I will begin by defining the contours of the right in question; give a brief précis of an argument to the effect

¹ This right is most forcefully defended by Joseph Carens in “Aliens and Citizens: The Case for Open Borders,” *Review of Politics* 49 (1987) 251-73.

² See Michael Blake, “Immigration,” in R. G. Frey and Christopher Heath Wellman, eds., *Companion to Applied Ethics* (Oxford: Blackwell, 2001).

that no such right exists; and then proceed to address three arguments, which might be introduced to defend such a right's existence.

To begin with, then: we must define what is meant by a universal right to immigration. I take such a right to imply that any individual who desires to emigrate her own sovereign political community and enter into another sovereign political community has the moral right to do so. I emphasize the sovereign nature of the political community not because sovereignty has any intrinsic moral importance – it has, on my account, importance only as a way of defining a form of political relationship – but because no other form of jurisdictional alteration constitutes immigration; we do not usually think of someone moving from Toronto to Vancouver as engaging in immigration. Two things are worth noting in this right, as I understand it. The first is that it constrains the permissible actions of both the state emigrated from and the state immigrated into; states may refuse neither entry nor exit, on the right as understood here. The second is that the right does not demand any particular showing on the part of the prospective immigrant. There is nothing that a would-be resident of a political community must establish as part of her claim to acquire membership; the fact that she desires entry is enough to preclude the state from excluding her.

The alternative to such a right, of course, would be a non-universal – or, as I shall say, qualified – right to immigration. It is worth noting how many forms of such a qualified right might be defended. Those who do not defend universal rights of immigration, after all, are not thereby compelled to defend the border practices of states as they exist today. All that is necessary for the universal right to immigration to be defeated is that there be something other than mere desire that must be given in support of a claimed right to entry. If there are any qualifications on the right to entry, then it no longer counts as universal in nature.

I will defend the idea of a qualified, rather than universal, right to immigration. I can only sketch my argument in the present context, but I believe a sketch will be sufficient to get the argument going. Immigration, on my analysis, represents not simply a change in physical location; it represents a change in political relationship. An individual who moves from one sovereign political community to another thereby acquires a relationship with another sovereign government, and therefore also a relationship with a new set of political citizens. Even if residency is distinguished from citizenship – as it often is in Western democracies – a new pattern of rights and duties is created upon entry into a new political community. The state, for instance, acquires a duty to protect the persons and properties of all residents within the community – a duty it does not extend to all persons around the world. The United States government, for instance, is obliged both legally and morally to protect individuals resident in America from crime and violence. It is not so obligated to protect the rights of individuals abroad. This is not to say that the United States government has no moral obligations to foreigners – it does, and it is their scope that is at issue in many current debates. It is only to say that acquiring residency and membership in a community creates its own set of moral obligations. A French citizen, resident in France, who is victimized by a French criminal, cannot seek redress in American courts. The reason for this is simple: the political relationship giving rise to the right to seek redress in these courts is not found in this case. Residency and citizenship create their own patterns of rights and obligations, and the universal right to immigration entails a universal right to acquire these rights and obligations.

Once understood in this way, I think the appeal of the universal right to immigration is significantly reduced. The reason for this, I think, is that we understand that entry into a political relationship such as this is something that is not best understood as itself an inherent right. There are, I think, many circumstances that would give rise to a legitimate demand to acquire such a relationship. The most central of these, I think, would be the failure of the current state of residency to provide the goods that legitimate government coercive force. Failed states, oppressive states, states which fail to provide adequate basic needs – all of these, I think, fail to provide the sorts of political relationship we think appropriate for individual moral agents. Under these circumstances, I suggest, the right of countries such as the United States to keep would-be immigrants out is severely restricted.³ Where a foreign government does not provide the political goods we think individuals deserve, other governments have an obligation to provide such goods themselves, through immigration and therefore through admission to a political relationship.

All this, however, describes only a qualified right to immigration. It may be weaker or stronger, depending upon how we are to understand the required goods needed to legitimize government coercion. But something must be shown for a given state to have an obligation to let a would-be immigrant enter. This means, in the end, that a reason has to be provided by the prospective immigrant; the fact of her desire is not enough. This means, further, that not all those who seek admission to a given state have a moral right to entry. The moral principles binding immigration policy will, I think, condemn current state policies as unduly harsh and insensitive to the needs of prospective immigrants; but admitting this is hardly the same as admitting a universal right to immigration. Some individuals may legitimately be refused.

To see this, we may imagine an individual who already has obtained those goods necessary to justify a government's action – however those goods are to be understood. Imagine a citizen of a wealthy democracy, whose society provides adequate protection for her civil liberties and her person. She is not subject to caste oppression, nor does she suffer from any form of political exclusion. Imagine, further, that she wants to leave this country and move to France. Does France have an obligation to admit her? I think it would be difficult to find any basis for asserting this obligation; she is seeking admission to a political relationship – to be protected by the laws of France, to join with other individuals in controlling the political future of France – and France would seem to have every right to refuse her admission to this relationship. Those who are not receiving such goods in their own nations may have some rights to receive them from the French. But the individual in question has no such basis for her demand; she simply wants to live in France. We have, I think, no strong reason to

³ This analysis, I should note, provides us with both a justification for and potential critical analysis of refugee law. Status as refugee or asylee represents, under current international law, a right against return to certain sorts of social and political circumstances. International law, however, reflects a contentious vision or what sorts of circumstances are those giving rise to this right; critical reflection might give us reason to think different sorts of justifying bases exist. I am grateful to an anonymous referee for pressing me on this point.

imagine the French as morally obliged to admit her to membership. They may accept, or refuse, as they see fit.

The precise contours of this picture need to be worked out; it is still unclear how we are to understand what sorts of things are sufficient to justify a demand for immigrant status. All we need to establish here, however, is that some showing is needed to justify the demand. Many individuals may have a right to immigration; so long as the picture painted here is accurate, however, the right is qualified, rather than universal.

The picture described, moreover, can help refute some of the more common arguments given in favor of the right to immigration. By emphasizing the fact that immigration is an alteration in political relationship, this image can help describe what has gone wrong in several key arguments. I will describe three such arguments: the argument from arbitrariness; the argument from equivalence; and the argument from coercion.

The argument from arbitrariness begins with the arbitrary nature of state borders. States are not natural creations; their borders are the result of human activities, frequently violence and illegal activities. Sovereignty is, indeed, often found against a backdrop of theft and imperialism. How, then, can a given state keep individuals born on the other side of the border from acquiring membership, given that the line in question is arbitrary to begin with?

This argument, I think, ignores the fact that what is created by arbitrary facts can nonetheless be morally relevant. The borders of the state are the borders of its legal and political jurisdiction; individuals within that jurisdiction are jointly responsible for the administration of political justice. This fact binds those individuals together into a group of people with a shared project; this shared relationship gives them unique obligations to one another. One way of recognizing this is with reference to political rights such as voting rights; those individuals who are subject to the coercive legal control of a given society have a moral right to have some say in the formulation of those laws. Those who are not so subject have no such equivalent right; I have, for instance, no moral right to vote in French elections, no matter how strongly I feel about what shape their laws ought to take. Similar things may be said about immigration. Those individuals born in France (say) have a right to continue to live in the political community of their birth; those who simply want to enter into it have no such equivalent right. The shared relationship of political community creates unique forms of obligation – and this fact persists no matter how arbitrary the border is within which this community is created. We have a shared obligation to overcome the legacy of imperialism and conquest; this obligation, however, should not make us believe that a universal right to immigration exists.

A second form of argument adapts this notion of moral arbitrariness, but uses a more specific notion of equivalence. We care about mobility domestically; a key political right is the right to move around within one's own country. Why, then, would we not care about it internationally? If there are reasons to value such a right within the state's borders, and if the state's borders are arbitrary, could we not therefore infer that we have reason to value mobility internationally as well?

This argument, I think, falls prey to similar considerations as the argument above. Mobility rights may be, I think, part of the package of rights legitimate states owe to their citizens; legitimate states do not presume the right to tell citizens which corners of the state are those in which they must live. But this is because those citizens are already in a political relationship with their government, and that government cannot claim to justly govern them while restricting their internal mobility. Just as the French government cannot call itself just while refusing to let the French vote, it cannot call itself justified while coercively resettling French citizens. But neither of these rights scales from the domestic to the international case. However much I may like France, I have no right to vote in French elections; and I have no universal right to move there. We value internal mobility and voting rights as part of the package of justifications for political coercion. We have no equivalent reason to extend these rights to individuals who are not part of the political community in question, but who merely seek to become so subject.

The final argument we may consider is the argument from coercion. This argument notes that borders have guards on them, and that these guards have guns; the borders of every wealthy state are defended with the use of deadly force. If we care about the justification of political coercion to individuals subject to that coercion, why do we not care similarly about the violence we direct against non-nationals? We have no moral right, the argument asserts, to use deadly force against harmless individuals seeking entry into our society; coercion must be justified, and no justification could be forthcoming for such violence against prospective immigrants.

This argument, I think, has some plausibility; at the very least, it is true that the coercive force of border security stands in need of justification. On the picture given here, I think, such justification may be obtained. We need only recall that immigration, on the account given here, is an alteration in political relationship; it means the acquisition of a new set of rights and duties – including duties on the part of the government admitting the immigrant. Imagine, further, that the individual in question has no specific claim to admission to immigrant status. May we use coercive force to keep this individual out? It seems simple, I think, to say yes – within certain limits. If individuals are seeking a good to which they have no moral right, then it is permissible to use certain sorts of force to exclude them. Imagine, for instance, that I have a large house, with a rather nice television; my family and I are gathered in front of it. You live next door, in a perfectly adequate house (however such things are to be defined) with a slightly smaller television. You want to come over and join my family to watch television. I could easily fit you into my extended family; the house is large enough that your presence wouldn't really bother me all that much. Am I obligated to admit you? I do not see why; you are not making a claim of need, or asserting a right I have reason to respect. You just want to join this somewhat arbitrary group of people gathered under my roof. It would be very nice of me to admit you, but I am under no obligation to do so. Whatever my obligations to my family members may be – and I take no position here about what they are – they do not extend to you. In particular, you have no claim to be in my family simply because you want to. Since you have no claim to entry, moreover, it seems legitimate for me to use some forms of coercive force to exclude you. I do not think that this permission extends to all forms of force; there may be some forms of violence I am not permitted to use, although I will not explore this here. I will say only that there does not

seem anything particularly wrong in justifying the use of coercive force in preventing people from obtaining relationships and benefits to which they are not entitled.

This last example, however, should show us what is deceptive about these academic examples. In our world, the goods at stake are not televisions; to adapt the hypothetical, we in the West live in a mansion, while our neighbors are living – and dying – in the street. What such individuals are owed, I think, is best understood as the absence of such circumstances; including, I think, the absence of repressive political institutions and certain forms of material deprivation. If this is true, then what we owe such individuals might be conceived of as a conditional: either assistance in developing such institutions in the country of origin, or admission to such institutions through immigration. I cannot say much with any great specificity as to how this picture would guide our moral deliberations regarding immigration. This picture would, however, likely give rise to a significant demand for immigration rights for such impoverished individuals, and would mandate radical revision of citizenship and immigration law as it currently stands. In this, the proponents of a universal right and I would agree. Our only point of contention, then, is whether the right to immigration is qualified or universal; and this point of contention, while philosophically important, should not obscure our shared conviction that our present norms of immigration are grossly unjustified. If what I have said here is right, then individuals have to make some sort of showing before they can be understood to have a right to emigrate; in a world as riven with injustice as our own, however, such a showing will not be difficult to make.