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Immigration, welfare, and justice

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Migration is not a new phenomenon in world history, but it has never been so extensive as it is today. Modern technologies of communication make it possible for more people than ever before to imagine living in other societies, even distant societies. Modern technologies of transportation make movement much easier; indeed, it is technically possible to get anywhere in the world in a matter of days, if not hours. And for various reasons, people are on the move. As Michael Trebilcock points out in his essay (Chapter 11), more than 100 million people live outside the states in which they hold citizenship, 18 million of them refugees. More would move if they could.

These developments take on a particular urgency for the affluent liberal democratic states of the West, since resistance to immigration seems to be growing in all of them. In traditional countries of immigration like the United States and Canada, people express anxiety about losing control of the borders and anti-immigrant rhetoric is expressed in mainstream political parties.

In Europe, the situation is even more acute. Millions of people have settled in states other than their countries of origin. Despite the fact that no European country recruits immigrants any longer, more continue to arrive: as spouses and children of those already settled, as refugee claimants, or as entrants without formal authorization. The backlash against immigrants is much greater in Europe than in North America. The United Kingdom, France, and Germany have all seen both violent attacks on immigrants and the rise of political forces that make opposition to immigrants the central focus of their rhetoric and policy proposals.

At the same time, the European Community has established a right of free movement within Europe for citizens of the member states, thus dramatically illustrating that states can open their borders without abandoning most of their claims to sovereignty. The European policy draws attention to the economic advantages of the free movement of labor, at least under some circumstances, and raises questions about the claim that preservation of *national*

culture is the primary motivation for restrictive immigration policies in European countries.

While many immigrants manage to enter Western states, many more would like to come. What stops them, in no small measure, is force. Borders keep people out, ultimately because people with guns are prepared to enforce the boundaries. Are they right to do so?

I. The issues

The answer to that question depends on a number of factors. We have to consider different categories of potential immigrants, different reasons for admitting or excluding them, and different ways of admitting them. These things tend to be interconnected. One way to disaggregate the issues is to consider them under the following three headings: special claims, culture, and economics. I will try to identify some of the problems and questions that emerge under each of these headings.

A. *Special claims: refugees and families*

Refugees would appear to have especially strong claims to admission. In the extreme case, they are literally fleeing for their lives. In the face of such need, are we entitled even to ask whether admitting them will be good for us economically or culturally or in any other way, assuming that we are not literally overwhelmed? Yet who counts as a refugee? In deciding this, is the degree of need or the nature of the threat most crucial? The Geneva Convention defines a refugee as a person who, “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country.”¹ The definition and related practices of states draw a sharp distinction between political persecution and other threats to human well-being, privileging the former as grounds for admission to a state of which one is not a member. Yet some forms of economic or social dislocation (like famine or the breakdown of civil order) may generate more desperate needs than certain forms of persecution. Should we defend or criticize the conventional definition?

However refugees are defined, what are the responsibilities of different states for admitting them? Do these responsibilities vary according to political, economic, or cultural circumstances and, if so, how? These questions point, in part, to the issues discussed later under the headings of culture and economics.

Do states like the United States and Canada that have traditionally taken in large numbers of immigrants and thus have considerable experience with the social incorporation of people from diverse cultural backgrounds have an obligation to admit more refugees (proportionally) than a state like Japan, which has a long tradition of insularity and a very high degree of cultural homogeneity?

The problem of refugees raises questions not only about responsibilities for admission but also about responsibilities for financial support. Most refugees arrive first in a neighboring state, and since most come from the Third World, most of the states to which they flee are poor. If the refugees have any reasonable prospect of eventually returning home, it often makes sense for them to stay close to their home states and in social circumstances that are likely to be far less alien than they would be in a distant country. Yet it hardly seems fair that the states that take in the refugees should have to bear all or even most of the costs of maintaining them. They are not the cause of the refugees' plight (in most cases) and their own resources are extremely limited. How should the financial burden of caring for refugees be distributed?

However one defines fair shares with respect to admission and financial burdens, there is the further question of whether trade-offs between the two are morally permissible. Is it morally permissible for a state like Japan, seeking to preserve its homogeneous culture, to provide more financial assistance and take in fewer refugees than an initial distribution of fair shares would require?

Whether or not trade-offs are permitted, the question of our moral responsibilities for refugees will not end with the initial allocation of fair shares, because some states will not fulfill their responsibilities for admission or financial assistance or both. When they do not, should the responsible states admit more or pay more? To answer yes seems to create perverse incentives, rewarding responsibility with new burdens. To answer no seems to ignore the plight of the refugees who need a safe place as well as support. In addition, the claim that we have any responsibilities for refugees presupposes that the failures of other states (the refugee-producing ones) can create new responsibilities for us.

How should we deal with the practical problem of determining who is a refugee, whatever criteria are adopted? If immigration is otherwise highly restricted, many who do not fit the criteria are likely to claim that they do. Asylum claimants (people who arrive in a state and then assert that they are refugees) constitute the fastest-growing group of immigrants not only in Europe, where states leave few doors open otherwise, but also in North America, where immigration levels remain substantial. All Western states have adopted

strategies of “humane deterrence” designed to discourage asylum claimants, strategies that inevitably keep out people with well-founded claims as well as ones with weaker cases. Are such strategies morally appropriate?

Is there any category of people besides refugees (however defined) with a distinctive and compelling moral claim to admission? People with family ties to current members might constitute such a group. It is striking that even Germany, which formally declares itself not to be a country of immigration, has felt obliged to admit immediate family members (spouses and minor children) of people residing in Germany, even when these residents are not themselves citizens and were initially admitted as temporary guest workers. Indeed, Germany has granted resident status of some sort to more (nonrefugee) aliens since the termination of its guest-worker program than it did while the program was in effect, primarily because of the principle of family reunification.

Countries of immigration like the United States and Canada place even more weight on family reunification, extending the principle to more distant family members. In both countries, immigrants with family ties to existing citizens or residents make up well more than half of the nonrefugee immigrant intake.

Should family connections play such an important role in immigration policy? Is it morally permissible for different states to place different weights on family ties in deciding whom to admit and whom to exclude? If so, what is the range of permissible variation and on what grounds may states decide? How does giving priority to family ties affect the economic well-being or cultural identity of the population in the receiving country? Is it appropriate to take such effects into account?

These last two questions lead to the two most contested issues: the proper role of economics and culture in immigration policy.

B. Culture

What should be the connection, if any, between culture and immigration? May a state decide not to admit immigrants at all (apart, perhaps, from refugees and immediate relatives of current members) for the sake of preserving existing cultural patterns as much as possible?

If a state decides to admit immigrants, may it take culture into account in the selection process, either with the goal of maintaining the cultural community (or communities) or with the aim of increasing the likelihood of successful mutual adaptation between immigrants and the existing population? If culture may be considered a factor in selection, may it be used affirmatively, to include some potential immigrants rather than others on grounds of cultural affinity, or negatively, to exclude some potential immi-

grants on grounds of cultural difference, or both? If culture may be used as a legitimate criterion, on what basis may cultural commitments be attributed to potential immigrants? Are some factors morally problematic as cultural markers? What about race, ethnicity, religion, national origin, language?

These are not just hypothetical questions. The United States, Canada, Australia, Israel, Germany, Japan, and many other states have used these factors in the past or are using them today in deciding whom to admit and whom to exclude. Were they and are they right or wrong in doing so? Or sometimes right and sometimes wrong?

Are all states morally required to follow the same course with respect to the connection between culture and immigration? States vary widely with respect to the cultural homogeneity of their populations and with respect to patterns of cultural difference. Some states, like Germany and Sweden, have populations that are relatively homogeneous in terms of culture. Others, like Belgium and Switzerland, contain long-standing cultural divisions that may (or may not) be related to language, territory, religion, or other factors. Still others, like the United States, have a history of receiving new members from diverse cultural backgrounds. Canada has both long-standing internal cultural divisions and a history of receiving immigrants from diverse cultural backgrounds. Are such differences relevant to the question of what immigration policy a state should adopt?

Questions about the relationship between culture and immigration are not limited to issues about numbers and criteria of selection. There is the further question of what sorts of cultural adaptation, if any, may legitimately be expected of immigrants who have managed to gain entry, either as a formal condition affecting legal status, including access to citizenship, or as an informal norm affecting social integration. To what extent and in what ways may states legitimately expect immigrants (and their children) to conform to the dominant culture of the society they have entered? To what extent and in what ways may immigrants expect the states they have entered to respect their preexisting cultural identities and commitments, as well as their responsibility to pass on these identities and commitments to their children? Again, rules and practices vary widely from one state to another, with respect to both the formal requirements for citizenship and the norms about cultural conformity. What is the range of morally acceptable variation?

These questions about the relationship between culture and immigration ultimately drive us to deeper questions about the character of culture as a human good and its relationship with other human goods, about the nature and purpose of the state, and about alternative conceptions of citizenship and membership. Liberal democratic states are committed to individual freedom and autonomy and thus to the pluralism that inevitably follows from individuals' right to pursue their own conceptions of the good within broad limits.

What does this entail with respect to a liberal state's stance toward culture? May liberal democratic states pay attention to culture at all? If so, how and under what circumstances?

Different theorists have offered different responses to these questions. Rawls and Dworkin have argued that the commitment to individual autonomy requires liberal states to be neutral with respect to different conceptions of the human good and hence with respect to different cultures.² Habermas has emphasized that liberal democratic institutions themselves depend upon and presuppose certain cultural commitments. At the same time, Habermas has argued that the political culture of liberalism, which a liberal democratic state may legitimately protect and reproduce, can and should be sharply distinguished from any particular historical culture.³ By contrast, Kymlicka has argued that particular historical cultures provide the framework of choice that makes individual autonomy possible, so that if a community's culture is threatened it may be legitimate for the state to try to protect it. Kymlicka insists, however, that we should not assume an identification between the cultural community and the political community, that most modern states are culturally plural societies, that the endangered cultures are normally minority cultures, and that whatever steps are taken to preserve a particular culture must be compatible with liberalism's deep commitment to human equality.⁴ Finally, Walzer has contended that the production of a rich, complex, highly particularistic culture is an integral part and inevitable outcome of the project of collective self-determination that lies at the heart of the ideal of a liberal democratic state, so that the protection and promotion of its own specific historical culture is a legitimate aspiration for such a state.⁵

These different positions seem likely to have different implications for the use of cultural criteria in immigration policy, though the implications are not all obvious and may be contested.

C. Economics

Even if one takes the position that a concern for culture should be irrelevant to immigration policy, it does not follow that states should impose no limits on immigration. In traditional countries of immigration like the United States and Canada, debate over immigration policy often focuses on its economic effects.

The conventional assumption in such debates is that states are entitled to adopt whatever immigration policy they judge to be in their economic interest (within the constraints imposed by the claims of family members and refugees). On this view, if immigration increases unemployment or drives down wages or increases the tax burden associated with social entitlement programs, states may decide to reduce or even altogether prohibit discretionary

immigration (i.e., immigration of persons other than refugees and family members). By contrast, if immigration proves economically advantageous, say by increasing the national income or reducing the average tax burden, then that is generally taken to be a reason for accepting immigrants.

Even within the conventional assumption that immigration policy should be guided by the economic interests of those in the receiving country, there may be dispute over the weight to put on different interests. Immigration may create economic benefits for some current members and economic harms for others. Should we look only at the overall economic effect of immigration, or should we also consider its effects on particular subgroups or on the pattern of income distribution?

Should we focus only on the direct economic effects of immigration, or should we also try to take into account its indirect effects on policy and institutions through the participation of immigrants in politics and social life? Here the debate over the relevance of culture may reenter through the backdoor of economics. For example, if political support for social entitlement programs depends partly on feelings of identity and social solidarity that may erode with the arrival of a substantial number of people from diverse cultural origins, is that a legitimate argument for restricting immigration? How should we factor in the (inevitably) high degree of uncertainty about any such indirect effects?

Questions about selection criteria and the terms of admission and incorporation that were raised in the discussion of culture also come to the fore when the focus is on economics. Should we select immigrants on the basis of what they can contribute economically (e.g., on the basis of their education, skills, or nonhuman capital)? Should we let employers rather than government officials decide which immigrants are most likely to make a productive contribution?

What terms of admission should we impose? Every Western state provides long-term resident aliens with roughly the same range of social entitlements as citizens. (The principal exceptions are the right to vote and access to certain public jobs.) What conceptions of citizenship and membership underly this pattern? Workers present on temporary visas often do not enjoy the same sorts of entitlements (even though they are usually obliged to pay the taxes that fund these programs). Is the fact that this is a more beneficial economic arrangement from the perspective of the domestic population a sufficient argument for increasing the number of those admitted on a temporary rather than a permanent basis? Of course, the temporary workers will not come unless they find it advantageous to do so, but might there be something morally objectionable about the arrangement despite its (apparently) voluntary character? Does it respect the moral claims that the workers establish by living and working in a society? The answer to that may depend in part on

how the program is organized, but it is useful to recall that European states like Germany that created guest-worker programs could not bring themselves to send the workers home when economic conditions changed.

Even if the receiving states are willing to send temporary workers home, they may not be willing to go. Overstaying a temporary work permit is only one of the many ways that people remain in a country without the formal authorization of public officials. Some call such people “illegal immigrants,” emphasizing that they have stayed (or come) in violation of the laws governing immigration. Others call them “undocumented aliens” or perhaps “undocumented workers” to emphasize that they lack certain papers, certain formal permissions.

Whatever we call them, what do we think of their situation from a moral perspective? Should we regard their presence as a problem at all? They come (normally) not to rob or steal or kill but to work hard in order to make better lives for themselves and their families. On the other hand, they have bypassed the immigration queue in which others are waiting patiently (if there is such a queue in a given country). Does it strengthen their moral claim to stay if the authorities make little effort to find and expel them or to otherwise prevent them from working (e.g., through severe and strictly enforced employer sanctions)? Do their moral claims to stay grow stronger over time (independent of the behavior of the authorities), simply by virtue of their living and working in the society? What about the claims of their children who are being raised within the society and who are not personally responsible for their presence?

The past few paragraphs draw attention to the potential moral claims of immigrants or potential immigrants and may lead us to reexamine the assumption with which we started this section. Should we accept or criticize the conventional assumption that immigration policy should be based upon the economic interests of current members? How should the effects of immigration policy on immigrants themselves and on their countries of origin be taken into account, if at all? Whose interests count in the moral calculus? For example, if immigration greatly benefits the immigrants themselves while leaving those already in the receiving country largely unchanged, or perhaps slightly better or worse off, should that be an important consideration in immigration policy?

These questions inevitably link the issue of immigration to the problem of international distributive justice and to questions about the moral status of states as institutions for advancing the interests of particular populations. States exclude potential immigrants because current members, or at least enough politically effective current members, fear that immigration will have a negative impact on existing economic, cultural, political, and social arrangements. But are restrictions for such reasons a legitimate way of pro-

protecting the interests and identities of current members or an illegitimate way of maintaining privilege and parochialism? Or sometimes one and sometimes the other?

Does a commitment to the moral equality of all human beings require us to open our borders to all those whose needs and aspirations would lead them to come? Why shouldn't people be free to travel and settle wherever they want as long as they are peaceful and law-abiding?

Yet one might ask whether the appeal of open borders is an illusion, an epiphenomenal by-product of much deeper forms of injustice and inequality that are not caused by closed borders and would not be cured by opening them. Perhaps trade or aid or intervention would be a more efficient way to improve the conditions of people who will be tempted to migrate if their lot remains unchanged. If so, can such policies be defended as morally legitimate alternatives to the admission of immigrants? How open should states be? What moral room is there for variation in policies among different states, especially liberal democratic states?

As this long introductory interrogatory reveals, to address the topic of immigration we must ultimately reflect upon some of the most fundamental questions of moral and political theory. To what extent and in what ways is it morally legitimate for us to pursue our own interests, and to what extent and in what ways ought we to be concerned with the interests of others? What is the moral status of states in the modern world? What are the legitimate purposes and functions of a state, especially a liberal democratic state? How should we think about membership in a liberal democratic political community? What are the duties of members to one another, and what are their duties to nonmembers, especially to people seeking to join the community? Finally, what is the range of legitimate variation among liberal democratic states with respect to all of these questions?

These are the concerns addressed by the essays in this volume. The discussions overlap, converge, and diverge in many ways, and there are many points of agreement and disagreement. The overall effect of the volume is to provide an extended conversation about immigration viewed from a normative perspective. In the rest of this introduction, I want to provide a framework for listening to that conversation by drawing attention to some differences among the normative discourses employed in the essays and noting key points of agreement and disagreement.

II. The discourses of justice and welfare

The many different arguments advanced in the essays are based in part on different kinds of normative discourse. I do not seek to advocate one kind of normative discourse over another; rather I wish to clarify the ways in

which different arguments do or do not meet each other, so that it will be easier to see when differences reflect genuine disagreements and when they reflect different foci of concern.

Some of the essays focus on the question of what justice requires or permits with respect to immigration, while others, particularly those most informed by welfare economics, are concerned primarily with what immigration policy would be best or with what reasons exist for preferring one immigration policy to another. While justice and welfare are both normative considerations, there is an important difference between them, at least in the ways they are discussed here.

The language of justice is the language of ultimate moral judgement, of right and wrong. Justice establishes the morally legitimate parameters of public policy in three ways. It requires some actions, it prohibits others, and it establishes the moral permissibility of actions that are neither required nor prohibited.⁶

The language of welfare might be described as wider-ranging than the language of justice. On the one hand, it can be intimately linked with justice, as in theories that assert that justice requires the maximization of welfare (overall or on average), or the maximization of the welfare of the least well off,⁷ or even the provision of some minimum level of welfare to all. On the other hand, the language of welfare can be used in a way that suggests it is only one among other normative considerations to be taken into account in assessing the desirability of alternative policies. Describing a policy as suboptimal from the perspective of economic efficiency does not convey quite the same normative urgency about the need for change as does describing it as unjust. Indeed, if an argument treats welfare as one among other relevant normative considerations, it implicitly presupposes that the range of policy options under consideration is morally permissible from the perspective of justice.

To adapt the language of some contemporary moral discussions, we might say that the right (justice) establishes the framework within which we may consider competing conceptions of the good (of which welfare is one dimension). For welfare (in the second sense) to play a normative role in the assessment of immigration policy, then, we have to assume that liberal democratic principles of justice do not settle every question with respect to immigration policy but rather establish constraints that mark out the range of morally acceptable policies. Then welfare considerations can play an important role in helping us to choose among morally acceptable policies.

Five of the essays in this volume explicitly rely primarily upon the language of justice in their assessments of immigration. Jules Coleman and Sarah Harding (Chapter 2) begin with an extended survey of contemporary practices with respect to immigration in several Western liberal democratic