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ETHICS OF STATE CONTROL OVER IMMIGRATION

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Border Control and Justice

Welfare State Policies and Immigration

One of the unavowed motivations — though not justification — behind the border control policies of developed democracies is not hard to see. If you admit an unrestricted immigration, the welfare schemes will get unstable since the social security expenses will almost necessarily increase as the immigrants flow into the state in question¹. The nationals will complain that the wealth of the state is stolen by *foreigners* and that the national *ethos* — emotional ties and mutual trust among nationals, belief in the value of liberal democracy², *etc.* — of the nation state, which motivationally supports the welfare state, will be undermined.

Thus, it will be instrumentally rational to exclude immigrants if the peoples in developed democracies want to keep their welfare state regimes intact, whereas we might not be able to morally vindicate the welfare state policies for the very reason that they require us (wrongfully) to exclude immigrants. There are two problems of justice here: freedom of movement and equality³.

Freedom of Movement

The border patrol agents of the U.S. are carrying rifles with them. They limit freedom of movement of Mexicans by their military force, but this seems to be an ethically dubious practice because freedom of movement seems to be one of the basic moral rights. For example, imprisonment will need no moral justification if freedom of movement is not a moral right.

True, we can justly imprison criminals and deprive the freedom of them for the reason that they violated or attempted to violate the moral rights of others, but what moral rights of the U.S. people are those Mexicans violating? Any border

¹ This will not happen if we don't provide any social security for admitted immigrants, but from a moral point of view, that will be out of the question. Of course, you can endorse libertarianism in order to *eliminate* the whole problem of welfare states, but I will set aside libertarianism here.

² This last point has come to be emphasised in the relevant literature in recent years. I will set aside the problem of the immigrants from non-liberal societies here, because the main problem will remain if the immigrants come from liberal democratic countries.

³ The arguments for open borders usually resort to these two ideas. See (Carens 2013, p. 233) for example.

control by a state necessarily limits freedom of movement by force and will be, without further justification, morally wrong.

Equality, Immigration and Nationalism

Aside from the problem of the freedom of movement, there is another problem of justice about state control over immigration. If we are born a citizen of affluent countries, we can enjoy the considerable level of benefit from the welfare state policies of those countries while we cannot if born a citizen of impoverished countries. As we have never voluntarily chosen which country to be born in, nationality and the difference in the benefit we receive in virtue of it seem essentially arbitrary from a moral perspective⁴. That is why nationality under the contemporary nation state system resembles the feudalistic statuses (*i.e.* nobility and peasantry). However we may interpret it, the moral and political ideal of equality cannot tolerate this kind of inequality among persons.

As almost all the advocates of welfare state regime will resort to the ideal of equality, it seems that they must commit to *open borders* policy since it is sure and clear that admission of immigrants promotes equality. The exclusive border control policy seems doubly unjustified. There are, of course, various ways to achieve distributive equality⁵. Affluent countries can offer international assistance for impoverished countries, but that will not render admission of immigrants unnecessary at all. Distributive justice requires us to take all possible means to discharge our perfect duty to redistribute. As open borders will threaten the welfare state (cf. Isbister 2000), the advocates need some still stronger moral justification outweighing the freedom of movement and equality in order to exclude immigrants.

In fact, if we are to be faithful to the ideal of equality and distribute our wealth *enough* among all the countries in the world to make it unnecessary for would-be immigrants to migrate and protect borders against foreigners, the welfare state regime as we know will be unsustainable. Suppose it costs \$100 a month to support a precarious person in affluent democracies while it costs \$1 to save the life of a precarious person in Central Africa. Is there any reason to prefer one person in affluent countries to a hundred persons in impoverished countries? If we really care about equality, it seems that we have little resource to waste for the former⁶.

Thus, if you are an egalitarian vindicating welfare states, you must endorse some kind of nationalism and consider it is not equality among *persons* but the equality among *co-nationals* or *compatriots* that is morally significant. To put it briefly,

4 Many egalitarians — Rawlsian and luck egalitarians — construe the import of equality as the moral requirement that any morally arbitrary facts including the conditions we are born into should not affect the prospects of the lives of persons. Charles Beitz advocates international distributive justice in this way (Beitz 1979, pp. 163f.). See also (Carens 2013, p. 228) for a case for open borders.

5 For example, Ayelet Shachar proposes “birthright privilege levy” for global redistribution (Shachar 2009, pp. 70ff.).

6 You may contend, however, that we have a moral duty and a moral right to care about people in our neighbourhood much more than mere strangers. I don’t think it is plausible that the proximity of a precarious person makes her a hundred times more important. Moreover, almost all our co-nationals or compatriots are simply strangers in this sense in the first place.

cosmopolitanism is incompatible with welfare states⁷.

Justification for Border Control: Various Positions

The various positions regarding the ethics of immigration control form a spectrum. *Open Borders* and *Statism* are at either end of it. The open borders view claims that no justification for denying admission is available and thus vindicates open borders. Statism claims each state and its citizens have a moral right to determine the way they control its state borders and exclude anyone as they wish.

Open Borders

I suppose the open borders view to be the default position because it is based on the two morally important considerations: freedom of movement and equality. If you find unattractive this view and the threat to welfare states that results from it, you must offer some moral justification and a view that is more attractive than open borders.

Statism

Statism is probably the most popular position among non-philosophers (cf. Pevnick 2011, p. 20). Sovereign states have sovereignty and sovereignty means that every sovereign state has a right fully to control the affairs within its borders. full stop.

Though this kind of attitude is pervasive, it is not moral justification at all. It is true that under the current sovereign state system the states *de facto* enjoy sovereignty and statism may be *descriptively* adequate, but what is at issue is whether such sovereignty can be morally justified or not, whether or not each state and its citizens have a moral right to a full control over its territory.

Refugees

I think it is not so controversial that the moral status of refugees is quite different from that of those who want to immigrate for other reasons. This difference, however, cannot be grasped by statism because, according to statism, sovereign states are utterly free to deny admission to anyone and consequently the difference is irrelevant regarding their right to exclude. Any state can take the conditions of refugees into consideration and give admission, but it will do no wrong to them even if it doesn't.

Christopher Wellman points out that international law — following the 1951 Convention Relating to the Status of Refugees — does not require countries to allow refugees to immigrate. However, it prohibits states from sending back them to any territory in which they would be threatened and requires them to offer asylum or allow refugees reasonable time to obtain admission to another country (Wellman 2011, pp. 123f.). Statism is incompatible with even this moderate requirement of

⁷ This is, of course, unsurprising. David Miller, who is a political philosopher and prominent British social democrat, has long defended nationalism along this line of thought.

international law.

Wellman himself proposes a weakened form of statism. States have a duty to offer asylum or allow a refugee reasonable time, but they have a full control over *membership* of the political community and need not necessarily welcome her as a member of them. This concession is natural and understandable, but I find it not without a problem. If all the states exercise their right to refuse membership, refugees will be sent around among those states and will never be able to resettle and live a stable decent life. If exercise of an alleged moral right by every party results in a morally undesirable outcome, that will be an evidence against the alleged right in question⁸.

Self-determination and its Limits

In spite of the above-mentioned problem, statism has its own intuitive appeal. According to statism, citizens are utterly free to construct their polity in any way that they like because it is a matter of self-determination of them. We must defer to it because we have a moral duty to respect their self-determined decision. This self-determination argument has, however, evident limitations.

Firstly, it is true we have a moral duty to respect the autonomy and self-determination of others, but this duty and the correlative right does not necessarily override other moral consideration. When someone's self-determination is just self-regarding, she may have something like Dworkin's "rights as trumps" over the self-determined matter. On the other hand, when it is other-regarding and conflicts with the rights of others, it is not always the case that autonomy can override those conflicting rights and one's autonomy might well defer to another's important right. In the contexts of border controls, as would-be immigrants have freedom of movement and claim for equality, the autonomy of the state in question cannot be warranted to override them. This self-determination argument cannot make the case for statism.

Secondly, statism needs a right to self-determination of citizens *as a group*. However, collective autonomy — a group's right to self-determination — seems quite a dubious concept because, as Charles Beitz observes, "states, unlike persons, lack the unity of consciousness and the rational will that constitute the identity of persons ... this lack of analogy leads to a lack of analogy on the matter of autonomy" (Beitz 1979, p. 81). You may contend collective autonomy of a group is reducible to individual autonomy of members, so that it is unproblematic. I will take up this response in the next section.

Association Theory

As we see above, the self-determination argument cannot ground statism, but it will have some force against the unconstrained open borders if the concept of collective autonomy can be made sense of. While there may be various ways to do this, the currently most promising move that I know is to fall back on freedom of association.

8 This "what if everyone does that?" argument is a form of (somewhat Kantian) universalisation argument.

Association theory explains the right to exclude outsiders in terms of freedom of association. According to association theory, any association has a moral right to decide whom to choose as its member and hence each state has the moral right to exclude outsiders from its membership. This theory makes it explicit that what is at issue is not entrance into a state but membership, as we saw in §2.2.1.

Problem of Nonvoluntary Association

If collective autonomy is reducible, we respect autonomy of individual members when we respect collective decision. Suppose a group — let G denote it — has majority rule as its decision procedure. When we defer to G 's collective decision concerning membership, do we really respect autonomy of dissenting minority? As far as G is a voluntary association this problem can be avoided because any member of G must have antecedently and freely consented to follow the collective decision made by the decision-rule of G ⁹. When G is forced to accept someone as a member, this coerced acceptance violates the decision rule of G and therefore violates every member's autonomy even if some members may happen to welcome her. However, what if G is involuntary? Citizens of any state are never a voluntary association in the first place. Don't we need the idea of *sui generis* irreducible collective autonomy after all?¹⁰

Associative Ownership

The problem is how to find a collective rights of *nonvoluntary* association which is reducible to individual rights. Fortunately, Ryan Pevnick offers such an instance, that is, *associative ownership* (Pevnick 2011, pp. 33ff.). A group G has a moral claim — ownership — for its collective accomplishments for the reason that those accomplishments are product of the labour and cooperation of the members, so that G has a moral claim over how to utilize them. G can be nonvoluntary here. Suppose some member of G was kidnapped and coerced to be a member. It is natural she should have a moral claim for G 's accomplishments since, if she didn't for the reason that she was a kidnapped member, that would be doubly unjust (kidnapping and forced labour!). G has a moral right to its accomplishments even when it is a nonvoluntary association. In a similar way, citizens of a state have ownership — or more accurately — jurisdiction over its polity. They have a moral right to construct their polity in any way they wish.

This manoeuvre is really ingenious, but it has a fatal flaw. Let S denote some state with closed borders. The present polity of S is a product of the accomplishments of the citizens of S and the past polity of S . If the latter is unjust, the citizens cannot acquire a moral right over the present polity. If states are morally unjust in the past, citizens cannot have the moral right to exclude at present. Thus, this associative

9 Christopher Wellman adopts this view. See (Wellman 2005) and (Wellman 2011).

10 Wellman doesn't provide any helpful explication about this point. He simply claims "[W]e have reasons to posit the basic value of group autonomy even if we know of no straight forward way to square it with value-individualism. ... The view I advocate here stops short of embracing value-collectivism because I do not claim that *group* is wronged when its self-determination is violated." (Wellman 2005, pp. 55f.)

ownership account presupposes the justness of closed borders in the past and hence begging the question against open borders.

Possibility of Nationalism?

If association theory fails, what should we do? Defiant defense of *sui generis* collective autonomy might be the best way. If the right to exclude is to be vindicated, you might as well accept the existence of irreducibly collective rights and argue for value collectivism.

Causal Exclusion and Individualism

Why should we have a doubt about the *sui generis* irreducible reality of group agents in the first place? I believe the argument for individualism will proceed roughly as follows:

1. Social phenomena are caused by actions of individuals, hence can be completely explained by reference to the individual agents.
2. Therefore, there is no causal work for irreducibly collective agents to do and they are explanatorily otiose.
3. Therefore, irreducibly collective agents don't exist. (2 & *Ockham's Razor*)

Fair enough. This is a variant of "causal exclusion" argument well-known in philosophy of mind. This argument, however, is known to be too strong:

1. Physical phenomena are caused by physical particles, hence can be completely explained by reference to the physical particles.
2. Therefore, there is no causal work for non-particle things to do and they are explanatorily otiose.
3. Therefore, nothing other than physical particles exists.

It is known this argument eliminates any causation other than microcausation, and consequently eliminates any special science (*e.g.* biology, psychology, social sciences...) and ordinary object (*e.g.* chair, glass, watch...) in general (cf. Baker 2007, pp. 104-110). It is true this argument renders irreducibly collective agents dubitable, but they are only as dubitable as individuals or ordinary objects, at least as far as this argument is concerned.

Individual as a Collective Agent

To reduce antipathy against collective agency, I will argue that individuals are collective agents. Think of yourself as a set of temporal slices: you at t_0 , you at t_1 , *etc.* Each slice has its own beliefs, desires, intentions and actions, so that it is an agent. The "you" you identified yourself with is a group of a enormous number of

agents coordinating and constructing "you". When you reflect upon your actions and yourself, however, you explain yourself not with those innumerable individual temporal slices but with "your" — collective — beliefs, desires, intentions and actions. Even when you think of one of the temporal slices of yourself, you will surely look at them in the context of the collective "you". Why a certain temporal slice has such and such beliefs or desires is intelligible only when you refer to "your" beliefs or desires. You are an irreducibly collective agent. Suppose you are just about to die and I am a mad and sinister scientist. I administer an evil medicine that prolongs your life for twenty four hours but makes you suffer badly. You are harmed without any of your temporal parts being harmed because they would be non-existent if I refrained from giving you the medicine. Thus, your interest cannot be reduced to those of your constituent parts. You may as well accept value collectivism if you think you would be harmed by the medicine in question.

Nation and Community as a Collective Agent?

Thus, if there is a group whose members' beliefs, desires and actions can be intelligible only when they are put in the context of it, the group in question can be considered a collective agent with its own autonomy (though whether such collective autonomy has any moral significance or not is another matter). If citizens of a state constitute such a group — nation or political community — its collective autonomy may justly prevent borders from being open¹¹.

Nationalists like David Miller and communitarians are on the right track after all, although I am personally skeptical of the actuality of the unity of their "nation" and "community" and believe that only such groups as a religious — probably quite fanatic — congregation can be group agents with genuine collective autonomy¹².

Concluding Remarks

If you are to advocate welfare state regimes, you must reject open borders and consequently, you must be a nationalist who believes in nations and their genuine collective autonomy. If you like to be an individualist or an cosmopolitan, you must give up the idea of welfare state. Which will you choose?

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¹¹ As we can see in the ethical particularism of David Miller, they render ethics particularised relative to a group an individual belongs to lest the beliefs, desires, intentions and actions of ethical persons should be explained without reference to the group.

¹² The only candidate of the legitimate states with closed borders that occurs to me is the Holy See and its Vatican City State.

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