

## Immigration and Border Control—Notes for Philosophy 162

We observe states controlling the movement of people across its borders. States decide whether or not would-be visitors may enter, and how long they may stay, and if they are permitted to take paid employment while they are staying. States set rules that fix the terms on which persons are permitted to immigrate into the territory under the jurisdiction of the state in question, and the terms on which immigrants may apply to become citizens.

**Enforcing rules regulating entry.** These practices prompt moral questions. One broad set of questions concerns what it is morally acceptable (and prudentially wise) for states to do to enforce the entry and exit rules they set. Irregular or illegal migration is a widespread phenomenon in prosperous nations today. In most countries, most people who become residents in violation of the legal rules enter legally and then fail to leave the country when their work permit or tourist stay permission expires. In the U.S. today, most people who are irregular residents enter the country in violation of the legal rules for entry. How should such people be treated?

Most of us would say that the legal protections accorded to citizens that protect basic human rights should also be extended to irregular residents. For example, if every person has a right not to be criminally assaulted, or robbed, or defrauded, then people who are irregular residents have these rights as well. Moreover, the state is duty-bound to protect the basic human rights of all persons on its territory, not just the rights of its citizens. From this starting point an argument develops to the conclusion that there should be a firewall, a strict separation, between border control and immigration law enforcement and ordinary law enforcement. The argument is that if illegal residents believe that if they go to the police to report a crime against them that has occurred, or go to the police to report criminal activity they have witnessed, the knowledge that they are unlawfully in the country will result in their deportation, then they will not report crimes committed against them or cooperate with police in criminal investigations. This would mean that their rights not to be victims of crimes are seriously eroded. The solution to this problem is to make it known to all residents of the country that criminal law enforcement and immigration control agencies do not communicate with each other, in the sense that a resident of the country who complains to the police that she has been victim of criminal activity will not then be checked as to her residency status, reported to border control, and deported if she is not a lawful resident. Some European nations have adopted this sort of firewall and some U.S. jurisdictions to varying degrees have done so as well. This firewall practice is controversial, because some would regard it as toleration and even encouragement of residing in the country against the legal rules regulating residence.

The same issue—firewall or not?—arises in other public policy areas. For example, if it is thought that all children residing on the territory of a country ought to be educated by the host country, regardless of the residency status of the parents, we get an argument for a public policy firewall. In this case, the suggested norm is that the state agencies responsible for operating public schools and making sure all children are educated at a good enough level should not communicate with border control agencies with a view to catching illegal residents and this firewall policy should be broadcast, made known to all, so no parent resident in the country would be reluctant to bring her children to public school for fear that public school enrollment would trigger deportation. Once again, this firewall policy is controversial, because some would see it as state provision of positive incentives for illegal conduct—continued illegal residency.

Firewall issues to the side, there are further issues regarding what practices a state may rightfully engage in, to prevent people from entering its territory in violation of the laws regulating entry. Nobody proposes shooting would-be immigrants seeking to cross the border illegally, but recent more aggressive monitoring by U.S. officials of regions of the U.S.-Mexico boundary near urban centers has led to more frequent attempts to cross the border in more remote and wild areas and deaths by exposure suffered by would-be crossers. On some views, this is an acceptable side effect of more rigorous policing of the border; on other views, it is a violation of a proportionality

requirement. (The argument here would be that the moral costs of this policy are excessive when compared with possible moral gains.)

**The moral basis for border control.** The reading by Michael Blake and Mathias Risse addresses a prior question. Under what conditions is it morally acceptable for states coercively to prevent people who want to enter a country from doing so? The recommended reading by Michael Walzer on “Membership” also takes up this question.

One possible position is the position Walzer briefly considers via the metaphor of the nation state as neighborhood. Within a country, there is generally no coercive restriction that blocks people who want to move into a neighborhood from doing so. If one can afford to purchase a home in the neighborhood, and does so, or if one rents a home or apartment, one may move in, without encountering interference by government. (Walzer mentions certain possible zoning regulations as exceptions to this generalization.) In a world of open borders, the whole world is a congeries of neighborhoods, and anyone is free to move into any neighborhood she chooses, provided she can find a residence.

Risse and Blake propose a justification of closed borders. If the state undertakes some morally worthy goal or task, and the goal or task requires closed borders, the state is morally entitled to enforce border control, provided the gains thereby achieved are sufficiently worthwhile. Possible worthy goals include establishing and maintaining the rule of law, good order that (for the most part) protects people’s basic moral rights that should be coercively enforced.

But it is not OK to do just anything to achieve a worthy goal? Are there moral constraints on the state’s use of coercion to prevent people from entering the territory the state controls? Walzer says that an aspect of the right of a national community to self-determination is the right of a national community to have a state and control territory, including access to the territory. But granting there is some such right, one might wonder what are its moral limits.

Risse and Blake find the answer in a natural right of ownership. Regardless of conventional arrangements in this or that country, they claim, each person born on earth has a basic natural right to equal ownership of the earth. This does not mean everyone has a right to an equal share of all of the property there is at the time one is born. Nor do they see Equal Ownership as requiring that each person who is born be allocated a per capita share of the world’s unimproved natural resources. Equal Ownership according to them is weaker than these interpretations would have it. Equal Ownership is the requirement that property regimes that are enforced by justifiable to each person who is born, justifiable in a way that respects each person’s status as equal co-owner. But what does that status amount to? They respond tentatively; it is to some extent a project we still have to work out, to develop and articulate the most plausible version of Equal Ownership. In their terminology, they interpret Equal Ownership as Common Ownership. But what’s that?

**Relative under-use and over-use of resources.** Their tentative proposal is that a state loses the right forcibly to prevent would-be immigrants from entering its territory to the degree that its common resources are relatively underused. They propose a measure  $V_S/P_S$  for each state  $S$ ; call this the utilization ratio. This is the ratio of the “value of the collectively owned resources on  $S$ ’s territory, including the biophysical conditions determining the usefulness of the territory for human purposes” (p. 12) to the number of people in  $S$ . If the utilization ratio for a particular state is greater than the average ratio for states, then the territory of that particular state is relatively underused and “the average person in that area uses a resource bundle of higher value than the average person in the average country” (p. 13). In this case, the state must admit new entrants, or at least “co-owners elsewhere have a pro tanto claim to immigration” (p. 13).

A few comments are in order to clarify what Risse and Blake are suggesting. In the simplest scenario, suppose the world initially consists of two countries, France and Germany, and the initial allocation of property/land between them is fair (equal). The Germans then work hard and

their economy booms. The French adopt a laid-back approach to life, and their economy does not boom. After 30 years (imagine the population in the two countries has remained constant, there have been no new births and no deaths) there are greater economic opportunities in Germany. In this scenario, the Germans have improved their resources, relative to the French, but if we subtract the value added by German labor and ingenuity, their resources should not show up as higher in value than the resources of the French, so their utilization ratios should be the same.

A second comment is that the value of common resources on a territory includes the values of resources that might be used but are not now being used. If Canada has a small population relative to its holdings of unimproved resources (the value of resources after subtracting value due to human improvement of natural resources broadly construed), then Canada has a high utilization ratio, whereas Japan, though richer and more prosperous, presumably would have a low utilization ratio.

Risse and Blake contrast their approach with one that takes the relevant question for the permissibility of immigration control to be overpopulation and underpopulation. They suppose the overpopulation approach asks a single question: "whether a territory can support more people" (p. 14). If it can, it must accept immigrants who want to enter; if it cannot, it may refuse entry. There is a question here as to how to understand "support." Be that as it may, say Blake and Risse, our suggested utilization ratio supposes the relevant question to be comparative: is your state sitting on resources that are underused by comparison with other states? Even if all states are overpopulated, in absolute terms, the Risse-Blake utilization ratio could still point a finger of responsibility at states where resources are comparatively underused.

Comment: The overpopulation issue calls attention to the fact that one can change whether one's state is obligated to take in would-be immigrants or not by affecting population size. Go back to the France and Germany example. Suppose that the Germans initiate state policies, social norms, or cultural practices that reduce the population over time, so the V/P ratio there gradually becomes more favorable, compared to the French policies, norms, and practices, which together result in increased population over time and hence increased pressure of population on natural resources, so France's V/P ratio becomes less favorable, smaller. If one holds the French and Germans and other peoples collectively responsible each for its degree of economic prosperity traceable to human effort and ingenuity, as Blake and Risse seem inclined to do, up to a point, collective responsibility for population size would seem apt for similar treatment.

Comment: One might under certain circumstances hold an individual responsible for being frugal or not, hard-working or not, making sensible procreative choices or not, but does it make sense morally to hold groups of people responsible for trends over extended time periods, trends that lie beyond the power to control of any single individual? Suppose I am born into imaginary Germany, after 1000 years of thrift, hard work, and population control, or imaginary France, after 1000 years of the opposite. It seems implausible to hold that whether I have a moral claim to be allowed to immigrate to a region of the world with greater economic opportunity of not should not be made to depend on the degree of sin and virtue of my ancestors compared to the degree of sin and virtue of other people's ancestors.

Blake and Risse make a concession to the point in the previous paragraph, at least in so far as causes of impacts in the numerator of the S/P ratio are concerned. They say, first, that if the Dutch by ingenuity and hard work create polder-dikes and sustain them, turning a wasteland below sea level nonresource into habitable land, this increase in the value of their country's resources should be subtracted from the V for their country. However, over long periods of time, one must reckon with the possibility that the original claims of those who work improvements in the natural resources "are *superseded* in time" (p. 19). As time passes, the probability increases that if the original improvers had not worked on the natural resources and boosted their value, some other people would have done so, so the current resources are no longer improved in value compared to what they would have been if the original improvers had not acted. Where does this leave us? Hanging. Blake and Risse say in conclusion of this discussion, "we are pointed to

some intermediate view on whose details we are not clear.” To some extent, the descendants of the Dutch, connected by culture to those Dutch people who originally built the system of dikes, are entitled to be the sole beneficiaries of the value added, and not required to share the value added with outsiders by allowing them entry as immigrants. But only to some extent.

They contrast their position with a view they call the immigration pressure view, and associate with Eric Cavallero. For a given country at a time there will be some who want to leave and some who want to enter and stay, consider the difference relative to population size. If more want to leave than enter and stay, the country is generating negative immigration pressure; if more want to enter and stay than leave, there is positive immigration pressure. The latter countries owe support to the former, which can be paid either by allowing immigration or improving conditions in the countries that generate negative immigration pressure (or some mix of the two responses) until immigration pressure is equalized worldwide, which means a kind of equal opportunity for all residents of the earth is achieved.—Blake and Risse reject this view because according to it, for example, under plausible assumptions, Japan, with few natural resources relative to its population, is by virtue of its prosperity morally required to take in immigrants (or pay compensation to the countries from which they would come), but according to the Blake and Risse utilization ratio, Japan is not underusing resources and does not have obligations to take in newcomers. (At least this is so modulo the extent of the concession they make in response to the ancient inheritance worry discussed in the previous paragraph.)

Blake and Risse note how their view would deal with a Walzerian argument of self-determination, urging that we in our national community have developed a unique culture, which we wish to preserve, and which admitting outsiders disinterested in our culture would erode or destroy. For example, suppose Argentina holds that our gaucho/cowboy heritage would be threatened if we admitted outsiders to our land, so we are not required to admit outsiders. According to Risse and Blake, such cultural preservation arguments are constrained by the underuse of resources issue. If Argentina has a high V/S, compared to the average of the nations in the world, then it must admit outsiders, even if gaucho culture suffers.

**Two critical comments.** First, it would seem that Blake and Risse ought to factor into their view, the needs and interests of future generations. Suppose we have obligations of stewardship, not to overuse nonrenewable resources that should be passed long to future people. Perhaps what we owe people is a package of technological know-how and available resources that gives each generation of future people, stretching into the indefinite future, roughly at least as good an opportunity for well-being, good quality of life, that we enjoyed. On this suggested view, the amount of resources we pass along can decline, provided this is offset by technological advances that make it possible to do more with fewer resources. (Or one might consider other possible norms that set obligations to future generations.) Whatever the obligations we have to future generations, it would seem they should have an impact on immigration requirements. For example, Canada might sensibly resist a demand to admit lots of outsiders by saying, “We are not selfishly using up the world’s natural resources (so our V/P is high); we are saving lots of them for future people. Our stronger moral obligation is to future not present people.” How should Blake and Risse respond?

Second comment: I don’t see why V/P is a crucial determinant of what a country may permissibly do, with respect to border control and restriction of entry. Since moral virtue and vice can’t be inherited, and we don’t inherit the sins (or the good deeds) of our ancestors, I do not see why the difference between unimproved resources and the value added by human improvement long past matters morally in setting duties to outsiders. One might instead say that the moral duties of a country to let in outsiders who would benefit from entry or to keep them out depends on the morally relevant costs and benefits that a candidate policy would impose on all affected people, compared with the costs and benefits alternate policies would impose. In this exercise we might give extra weight to achieving gains and avoiding benefits for people, the worse off they would otherwise be. One might insist on agent-neutral calculation of gains and losses for all affected people, insiders and outsiders alike, or might accept an agent-relative calculation giving extra

weight to fellow countrymen. The strength of the obligation to open one's doors to outsiders or close them depends on the net benefit to people (discounted by agent-relative partiality to the extent that is ok) that one or another policy one could choose would bring about. Or less aggressively, one might say the overall adjusted benefit and loss approach is another option to add to the mix of moral options, alternative views, that Blake and Risse consider.

Consider some hypothetical examples. Suppose the V/P of a nation is high, so according to Risse and Blake it must let in outsiders. But the country, let's say, is not prosperous, and now includes a large population of marginally employed and marginally employable people, all of whom would be made significantly worse off if outsiders, who are already well off, are allowed entry. Why suppose the utilization ratios constitute the sole factor that determines who owes what to whom by way of movement between countries? The V/P ratio of a country may make no discernible difference to the quality of life that a particular person or group of persons can expect to have in that country over her life course.

Here's another example: The V/P of a nation is low, so it has no obligation according to Risse and Blake to take in outsiders as immigrants. But the nation, let's say, is very prosperous (this is not ruled out by having a low V/P ratio), and the prosperity is concentrated in a small class of wealthy aristocratic landowners, who have inherited huge estates. The nation could simultaneously take in a large number of poor outsiders, who strongly want to join the society, and undertake land reform that divides the large landholdings among the newcomers, so we end up with a prosperous society of small property owners. Many factors might plausibly be held to make a difference to the advisability of such a scheme. But its feasibility and moral attractiveness surely make a difference to the moral claim of the outsiders to be allowed entry as immigrants. Again, the V/P ratios of the countries of the world look to be merely one factor (and not a particularly important factor) among many others that have a bearing on claims that these people have a right to immigrate somewhere to find a better life or that this particular nation has a special obligation to grant them entry. Or anyway that's how it looks to an advocate of a morally sensitive cost and benefit calculation approach.

**Walzer, the libertarian, Singer, and Blake-Risse: Contrasting stances on the morality of border control.** One might consider what weight, if any, some other factors Walzer considers in his "Membership" essay ought to have in a morally proper determination of border control policy. Walzer says, for example, that one has special duties to admit refugees, people who are stateless or fleeing from persecution. He adds that one has special duties to refugees with cultural affinities to one's nation—e.g., the U.S. would be under greater obligation to take in those who fought for US style democracy in their home country and lost the civil war than to those who fought for dictatorship in their home country and lost the civil war to democratic opponents. Walzer also supposes that a nation's immigration and entry policies should reflect its shared values. This is in keeping with his general approach, which says the institutions and practices of a society are just (morally right) just in case they are in accordance with the shared values of the people. Along this same line, Walzer holds that a country whose shared values commit it to democratic values can deny entry to would-be guest workers but cannot justly take in guest workers for long time periods without offering them full citizenship—otherwise the democratic society becomes a caste hierarchy. (Notice that the greater weighted net benefit approach, counting gains to badly off people more highly than gains to already well off people, would evaluate guest worker policies and their alternatives in a way very different from what Walzer proposes.)

Blake and Risse consider what might justify a state in claiming a moral right to prevent people from entering and settling on the territory over which the state has jurisdiction. Although they do not stress this point, it is clear that their discussion proceeds against a background of thought according to which people who enter a country and become productive contributors to its economy and long-term residents thereby are owed special moral consideration that would not be owed to outsiders. There are special ties, agent-relative duties, binding all who live together under a single coercive state regime. Walzer's view that guestworkers must be allowed to

become citizens in due course expresses one view of the special ties that immigration is deemed to establish.

On some views, the decision to allow a person to move freely across a state border does not trigger such special tie duties. For example, a Lockean libertarian position essentially holds that one has the moral right not to be harmed by others in certain ways (force, fraud, theft, extortion, etc.) and a companion right to act as one chooses so long as one does not harm others in the specified ways. One has the right to do whatever one pleases with whatever one legitimately owns, and (for reasons left to the side here) strong permanent private ownership rights in things can be fully justifiable. On such a view, if Arneson wants to cross a national border to work for Smith, the state has no moral right to prevent this transaction, voluntary on both sides. However, if Smith decides to stop employing Arneson, neither Smith nor anyone else in the nation has any special duties to alleviate Arneson's condition. As insider, a resident in the nation, Arneson has no claim to help from other members of the nation, any more than he would if he were an outsider living outside the nation's borders.

The contrast between the position of Walzer and that of Blake-Risse, on the one hand, and that of the libertarian on the other, is instructive. Like Singer, the libertarian believes that national borders do not affect what we morally owe to one another. According to Singer, we have strong duties to come to the aid of insiders and outsiders alike; according to the libertarian, we have no such duties to help either insiders or outsiders. The positions of Walzer and of Blake-Risse lie between these extremes. They believe we are bound by special agent-relative ties to people, the more closely we are socially connected to them, and residents of a territory living under a common state thereby acquire agent-relative duties to one another that go significantly beyond the mutual aid and forbearance we owe to strangers—to anyone and everyone, just in virtue of their humanity. Since immigration has these moral implications, according to Walzer and, in a somewhat different way, Blake and Risse, the citizens of a nation have some collective right of self-determination to decide who may immigrate and join their society. According to Blake and Risse, Common Ownership constrains this moral right but does not extinguish it.