

INTERNATIONAL MIGRATION ISSUES

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Summary

Even though the imposition of restrictions on the transnational movement of people is a common practice of national polities, defensible normative principles governing that practice are extremely difficult to define. Clear cases stand out in which denying admission is morally repugnant, such as refusing to accommodate victims of expulsion or denying asylum to political refugees. Migration is politically most contested, however, where it concerns a matter of distributive justice, namely the desire of persons from less-well-to-do regions to improve their economic position by moving to a more affluent society. From a global standpoint, denying them opportunity to become fully cooperating members of those societies is unfair.

At the same time, it is obvious that the influx of migrants may have adverse effects on that part of the population of the receiving country that, by standards of domestic social justice, is already worse off than other parts of the population. The problem arises, therefore, whether restrictions on the free movement of people can be defended by pointing to the adverse impact on the domestic system of social justice, even though, in absolute terms, the compatriots adversely affected would still be considerably better off than potential migrants if they had to endure the socioeconomic effects engendered by migration. The article explores the questions of whether it is defensible to restrict migration on the ground of ascribing priority to the realization of social justice among compatriots. It will be argued that the force of an appeal to national identity hinges critically on the readiness of wealthy nation-states to devote their energies to the relief

of suffering abroad or to the establishment of international economic cooperation on fair terms.

1. Two Limiting Cases

Should people be allowed to move on this globe from one place to another as they please? Or is it reasonable and just that countries impose more or less severe restrictions? There is a whole spectrum of possible answers to these questions. The spectrum is marked by two limiting positions. It is useful to recount them here.

The first position may be called “libertarian.” According to the libertarian position, restrictions on the free movement of people run foul of the principle that the transfer of goods, services, or labor ought to take place on a voluntary basis. Deviations from that principle result in a misallocation of resources. It follows that, from a libertarian perspective, distributions are to be brought about through contractual dealings. Existing boundaries between societies give rise to transaction costs. Opening up one’s borders would be a means of avoiding those. If the rule of voluntary transfers were thus respected, people would get what they wanted. In addition, the distribution of resources would be efficient. It follows that what is generally taken to be a sound principle for the efficient allocation of goods and capital on a global scale, namely, minimizing government interference with freedom of movement, should also be the valid rule governing the migration of people. Where people are on this globe, and with what prospects, ought to be determined by the laws of supply and demand. If a demand for cheap labor should arise, then everyone ought to have an equal chance to offer their labor in an open market regardless of their country of origin or present location.

The second position may be referred to as the “associative” view. According to this view, societies are very much like clubs. Apart from obligations of mutual aid, laying down the admission policy is left to those who are already members. Rules of membership may be agreed upon and modified by the members at will. Their preferences count. Otherwise communities would not be able to preserve and transmit their character, that is, the special sense attributed by the members to their own common life (and not to that of others). The question of who is to be admitted to society as a new citizen or granted the status of resident alien is therefore to be decided by the insiders alone. What the “ins” conceivably owe to “outs” from a moral point of view amounts to a trivial side constraint, namely, that shelter must not be denied to the victims of religious or political persecution. In principle, however, membership is not conceived of as a matter of morality. Rather it is a matter of self-determination. Communities may decide to drop certain groups from their preference schedule for any reason or, indeed, even for no reason at all.

There is no need to rehearse the reasons why neither of the limiting positions is convincing. The libertarian view is utterly insensitive to questions of citizenship and social cohesion. Ignoring the social consequences of unhampered migration, it fails to connect with a world rife with ethnic conflict, with tensions arising in the relations between the established population and incoming strangers. What is more, it fails to reckon with instances of collective irrationality. It may well be the case that regions are subject to economic decline owing to the “congestion” caused by rapid migration, as

Brian Barry puts it in *Free Movement: Ethical Issues in the Transnational Migration of People and Money*. In addition, the inability of the libertarian view to account for the social meaning of “citizenship” is notorious. Loyalty and belonging have no place in a world in which the transfer of human resources is conditioned by supply and demand. On the other hand, the associative position is decidedly unfair. The question of whether it is permissible to treat societies as if they were clubs is of greatest moral significance. Rules of admission and membership cannot be neutralized by means of an appeal to societal self-determination. The policy of not extending help to foreigners who are in need, for example, may well grow out of collective self-determination; it does not, however, constitute a reason that might be adduced in defense of such policy. The blameworthiness of an agent is not mitigated where what is wrong is done deliberately. Thus, conceiving of societies as clubs can be defended only if the existence of clubs, with their own discretionary admission policies, is of equal value to all persons concerned. Clearly, evaluations turn out to be asymmetrical, depending on whether one adopts the perspective of the “ins,” wholly content, or that of the “outs,” who are desperate. It is this asymmetry that is left out of account by the associative position.

2. The Basic Constellation

In light of the foregoing, it may come as no surprise to learn that reasonable approaches to immigration policy are drawn to a “middle ground.” Marking out such ground, however, is not an easy task. The source of the difficulty goes back to the fact that where migration has become a recurring and nagging problem of social policy, it is linked to a specific constellation. That is, where migration is not treated as an exceptional feature of international affairs, it is associated with the continuing existence of gross inequalities of social wealth. Although cultural differences between areas or regions matter a great deal to people, many nonetheless decide to move from one society to another—they do, at any rate, when at least one of the societies in question is considerably better off than the other (and this may not only be a matter of material wealth, but may also pertain to the enjoyment of liberties, security, and other conditions of well-being). Migrants from comparatively less well-to-do regions wish to partake of the affluence enjoyed by others, namely, by becoming, even if only for a certain period of time, fully cooperating members of a relatively wealthy society. Admitting migrants on an unlimited scale, however, threatens to upset the economic and social fabric of the receiving country. The receiving state may wish, therefore, to install gate-keeping devices.

Characterizing the core of the difficulty in this way, the focus of the libertarian position on unhampered voluntary transfers is transcended and elevated to a *global point of view*, from which the coexistence of separate societies may appear to be problematic, notes Jones in *Global Justice: Defending Cosmopolitanism*. Similarly, the narrow associative focus on what those who are already members want in order to preserve their collective identity is widened into a *domestic point of view*, says Miller in *On Nationality*, by taking into account the *reasons* for which members of a national polity may legitimately restrict immigration. By tracing libertarian commitments back to a global perspective, and by widening associative voluntarism such as to take into account the merits of favoritism (and its limits), both can be re-framed from the perspective of social justice. From that point of view it can be seen that the libertarian and the associative view are

merely extreme, and flawed, expressions of a global and a domestic perspective on social justice.

3. Why Distributive Justice?

Taking gross inequalities of social wealth to figure prominently among the elements of the basic constellation is not to deny that the sudden influx of great masses of people from a neighboring country—as is often the case in the event of civil war, religious persecution, or ethnic cleansing—may cause grave problems of social and fiscal policy for the host country, regardless of whether the country is considered wealthy. It also cannot be denied that instances of forced migration or expulsion are mere happenstance. Speaking pessimistically, one may even be inclined to say that ethnic cleansing in the twentieth century became a commonplace means of nationalist politics. Pessimism aside, however, it may be reasonably assumed that migrants, once calamities are over, are likely to return to the place from which they had been expelled unless the livelihood at home is a great deal worse than they can expect from staying in the country offering them safe haven. Under these conditions, however, the situation is similar to what has been described here as the basic constellation. Thus, even in cases in which a temporary safe haven was granted—as, for example, in the case of Austria vis-à-vis persecution suffered by Bosnians and Kosovo-Albanians—the circumstances may in the end be on a par with the basic constellation. Ordinarily, however, this constellation manifests itself in the relationship between the wealthy nation-states of Western Europe and North America and persons coming from far less well-off or even destitute regions.

The basic constellation does not sit comfortably with our more settled moral beliefs. Migration would not pose such a problem if it were not for its adverse effects on the opportunities and well-being of others—typically, the worse-off or worst-off insiders. It goes without saying that such effects are of a different nature, ranging from diminishing job opportunities, decreasing quality of life all the way to the loss of the “ontological security” provided by the continuous reproduction of a common culture, that is to say, the fabric of mutual expectations underlying the public and private ways of life. Cultural deprivation is one of the major issues raised in that process. It is a threat both to migrants and to nationals, but it is, regrettably, not perceived to be a common problem. In the process of migration, traditional cultural contexts become magnified, for such contexts are an indispensable condition for embarking on projects said to be “valuable” and for committing oneself to the pursuit of meaningful ends. The reproduction of culture supplies the grammar and symbols that enable us to give expression to what is significant and value-“able” in our lives. In a cultural context individuals can *discover* what matters to them. At the same time, the evaluative fact is that what matters to one individual is comprehensible to others. A common culture gives others the wherewithal to understand what lends meaning to life, even if the life in question is not their own. Having social regard for our projects and commitments is indispensable if we are to do what we do with the awareness that makes sense. If that source of support were absent, we would scarcely have reason to believe that our plans are worth carrying out at all. In other words, self-respect would be lacking. Migration threatens to upset cultural traditions and it is for this reason that it goes to the heart of what gives meaning, direction, and pride to our lives. The matter should not be taken lightly.

Viewed against this background, unrestricted migration appears to conflict with concern for the well-being of others, a concern that is believed *due* to the compatriots from a domestic point of view. Such a concern is a matter of justice. Still, keeping at bay people who wish simply to improve their lot appears to be unfair from a global point of view. In short, migration issues are most pressing when they intimately connect with a conflict between our beliefs about domestic and global distributive justice.

This is not to say that political refugees have a lesser claim to assistance than the poor. On the contrary, it is more difficult to argue the case against granting political asylum than it is to argue the case, in economic terms, against unrestricted movement. Where political persecution is concerned, our moral beliefs stand firmly in support of the victim. This is less so, however, in the constellation that is of interest here. There are other sound reasons for restricting migration, such as national security, but those matters are not the focus in this article.

To avoid misunderstanding, however, it ought to be clear that even though migration issues are closely related to issues of international distributive justice, it would be a mistake to suppose that migration could serve as a sweeping problem solver. That, it is not, notes Bauböck in *Transnational Citizenship: Membership and Rights in International Migration*. At the same time, its significance from the standpoint of individual lives should not be underrated. Having, or failing to have, the opportunity to move to a wealthier region may make all the difference to the person in question (see *Justice Essentials* and *Economic Justice*).

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Bibliography

Barry B. and Goodin R.E., eds. (1992). *Free Movement. Ethical Issues in the Transnational Migration of People and Money*, 300 pp. University Park: Pennsylvania State University Press. [A pioneering work with several perspectives on migration issues.]

Bauböck R. (1994). *Transnational Citizenship. Membership and Rights in International Migration*, 348 pp. Aldershot, U.K.: Edward Elgar. [A groundbreaking study on the impact of migration on the structures of membership to society.]

Gibney M., ed. (1988). *Open Borders? Closed Societies? The Ethical and Political Issues*, 199 pp. New York: Greenwood Press. [Gives an overview of the relevant positions.]

Jones C. (1999). *Global Justice. Defending Cosmopolitanism*, 249 pp. Oxford: Oxford University Press. [A strong defense of a global approach to social justice.]

Miller D. (1995). *On Nationality*, 210 pp. Oxford: Oxford University Press. [An elaborate defense of the nation-state qua locale for the realization of social justice.]

Pogge T.W. (1989). *Realizing Rawls*, 296 pp. Ithaca: Cornell University Press. [A very important account of global distributive justice.]

Richmond A.H. (1994). *Global Apartheid. Refugees, Racism, and the New World Order*, 327 pp. Oxford: Oxford University Press. [An account of the present problems of global distributive justice.]

Scheffler S. (1997). Relationships and responsibilities. *Philosophy and Public Affairs* **26**, 189–209. [A thorough analysis of special obligations.]

Somek A. (1998). National solidarity, global impartiality, and the performance of philosophical theory. the example of migration policy. *Ratio Juris* **11**, 103–125. [A more thorough exposition of the position sketched in Section 5.]

Tamir Y. (1993). *Liberal Nationalism*, 194 pp. Princeton, N.J.: Princeton University Press. [A defense of the nation-state from the perspective of political liberalism.]

Biographical Sketch

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