



Faculty Research Working Papers Series

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Mathias Risse

John F. Kennedy School of Government – Harvard University

February 2008

RWP08-007

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Mathias Risse

John F. Kennedy School of Government, Harvard University

My goal here is twofold: First, I wish to make a plea for the relevance of moral considerations in debates about immigration. Too often, immigration debates are conducted solely from the standpoint of “what is good for us,” without regard for the justifiability of immigration policies to those excluded. Second, I wish to offer a standpoint that demonstrates why one should think of immigration as a moral problem that must be considered in the context of global justice. More specifically, I will argue that the earth belongs to humanity in common and that this matters for assessing immigration policy. The case I will be particularly interested in is immigration into the United States, where immigration policy continues to be a hotly debated topic. However, that discussion takes the form of a case study: the relevant considerations apply generally.¹

To give some initial grounding to the standpoint that the earth belongs to humanity in common, let us suppose that by some freak accident the population of the United States shrinks to two, but that these two can control access into the country through sophisticated electronic border-surveillance mechanisms. Suppose, too, that nothing changes in the rest of the world. I would argue (and I think most would agree) that under such conditions these two citizens should allow for immigration based on the

¹ This is the pen-ultimate version of a paper about to appear in *Ethics and International Affairs*. Some of the ideas presented here are developed at much greater length in “Migration, Territoriality, and Culture” (coauthored with Michael Blake), in *New Waves in Applied Ethics*, Jesper Ryberg, Thomas Petersen, and Clark Wolf, eds. (Ashgate Publishers, 2007); as well as in Michael Blake and Mathias Risse, “Is There a Human Right to Free Movement? Immigration and Original Ownership of the Earth” (forthcoming; available as Kennedy School of Government Faculty Research Working Paper Series RWP06-012).

fact that they are grossly underusing the territory under their control. If this is so, then it follows that what we do with the space we control must matter for assessing immigration policy. It further follows in particular that, given that by global standards the population of the United States is too small relative to the amount of space to which it claims exclusive control, illegal immigrants should be naturalized and more widespread immigration should be permitted.

Questions about immigration fundamentally challenge those who see themselves in the liberal camp. One hallmark of the liberal state is that it takes individual attitudes in many areas of life as given and rules them out only if they threaten the functionality of the state. When confronted with immigration, a liberal state may choose to develop a systematic approach, and thus come up with a view of what kind of people it wants to include or exclude, or it may choose not to develop such an approach. In the first case the liberal state passes judgment on people in terms of their fitness for membership. Any criterion used for inclusion also reflects a judgment on those who already live in the country, and will bring about change that is beneficial for some citizens and detrimental for others. In the second case, the liberal state has to live with the consequences of whatever alternative approach it develops.

Things become yet more complicated if one sees immigration in a global context. Immigration can plausibly be regarded as one way of satisfying duties toward the global poor—duties that many political leaders and citizens, as well as most contemporary philosophers, would acknowledge, at least in some form. Immigration—permanent or temporary—can serve this function partly because it allows some people access to

greener pastures, and partly because of the remittances sent back by the immigrants to their country of origin.

Once we think of immigration in a global context, we are led to ask more fundamental questions—namely, why it would be acceptable in the first place (especially to those thus excluded) that we draw an imaginary line in the dust or adopt the course of a river and think of that *as a border*. As Rousseau famously remarks at the opening of Part II of his *Second Discourse on Inequality*, “The first person who, having fenced off a lot of ground, took it into his head to say *this is mine* and found people simple enough to believe him, was the true founder of civil society.” Is it only because of such simplicity that states are accepted? Such thoughts leave us wondering about the legitimacy of a system of states *per se*.

THE MORAL QUESTIONS

We have now brought into focus one immense difficulty of discussing questions about immigration: it easily involves one in major moral questions. Thus, what one can sensibly say about questions that arise in the context of immigration policy turns on what parameters one considers fixed for the purposes of the debate. Discussions about immigration, more than most other political issues, easily become frustrating because people intuitively differ over how much political background structure should be kept fixed, and because it is often questionable at what stage one should say that a certain proposal is untenable because “ought implies can”—that is, there is no point in exploring a certain proposal because it is clearly not politically feasible.

Of course, in the realm of the political, what can be done depends largely on what one can convince or persuade others to approve. The limits of what is politically doable are themselves, at least to a large extent, shaped by political debate. The idea that a fence should be built along the U.S. border with Mexico clearly is not off limits, in the sense that the “ought implies can” restriction cannot be applied; indeed, the proposal has been discussed. What, then, about the idea that the United States should introduce mandatory identification cards that would include a sophisticated registration system, making it easier to track people? Or the idea that the number of border patrol officers should be increased by a factor of twenty? Or the idea that new immigrants should receive \$100,000 in start-up support because their ancestors, unlike those of longer-term citizens, have not had the opportunity to position themselves in the American economy? Or the idea that there should be no borders to begin with?

Depending on which of these ideas one considers feasible, debates about immigration look rather different, and in such debates people often talk past each other because of unarticulated disagreements precisely about what can be under consideration and what cannot. Difficulties of this sort confront us more fully when it comes to assessing illegal immigration. How should we think about illegal immigrants? First of all, are they actually doing something wrong? True, they are breaking the law, but, arguably, from a moral standpoint not all ways of breaking the law are to be condemned.

If one subscribes to the belief that there should be constraints on the sovereignty of any given state, it is no longer obvious that anything is morally wrong with illegal immigration per se. Specifically, if a country limits immigration in a manner that goes beyond what it is morally entitled to, illegal immigration is a legitimate response. One

important way in which sovereignty should be constrained emerges from the idea that humanity as a whole owns the earth and its resources in common—not, of course, all those things that in some sense are man-made, but the original resources of the earth. After all—and this is the intuitive argument for this standpoint—such resources are needed by all, and their existence is the accomplishment of no one. Indeed, much of the political philosophy of the seventeenth century was guided by the idea that the earth collectively belongs to humanity, a thought that mattered tremendously to European intellectuals of the time in assessing what sort of claims fledgling colonial powers could make to other parts of the world. Hugo Grotius’s *De Jure Belli ac Pacis* was written entirely from a standpoint of collective ownership, and related ideas were also central to Locke, Pufendorf, Selden, Filmer, and even Hobbes.

In addition to the question of immigration, an obvious topic that would benefit from revitalizing the standpoint of collective ownership is climate change. More generally, humankind now confronts numerous problems that are of global import, and that in fact affect the future of the planet itself. Revitalizing the standpoint of collective ownership could be beneficial to thinking about such problems. In the seventeenth century the motivation behind this approach was largely theological, taking as its point of departure the biblical dictum that God gave the earth to humankind in common. But as I hope to demonstrate here, the basic idea can be made plausible without reference to such theological foundations.

The point of thinking about the earth as collectively *owned* is not to establish human despotism over the rest of the earth, organic or inorganic, but to emphasize that all human beings, no matter when and where there were born, are in some sense

symmetrically located with regard to the earth's resources and cannot be arbitrarily excluded from them by accidents of space and time. There are different ways of interpreting this idea that humanity owns the earth in common. It might mean that everyone has a claim to an equal share of the planet's overall resources; or that a collective process is needed to satisfy each co-owner as far as any use of the resources is concerned; or that the earth as a whole is like the town commons of old, where each co-owner had a right of use within certain constraints. These different views are all interpretations or conceptions of a more generic view that I call *Egalitarian Ownership*, and I would argue that this is the most plausible view of the ownership of natural resources.

Libertarians like to belittle this view, and have asked whether, say, a nugget of gold found on the ocean floor then belongs to all of humanity, and precisely what that would mean for dividing up its value. But none of these different ways of spelling out *Egalitarian Ownership* applies ideas of collective ownership object by object. What matters is that each person has an equal share of the world's resources *overall*.

Perhaps people born into a given society should not be favored in terms of access to its achievements. Yet an argument for that view would differ from the one presented here, which is concerned only with the earth's natural conditions and resources. True, the distinction between what "is just there" and what has been shaped by humans has become blurred, given that humans have wrested land from the sea, natural gas from garbage deposits, and so forth. But by and large we understand well enough the idea of what exists without human interference. Formulating this general viewpoint of common ownership of the earth is rather straightforward, but much philosophical energy could and

would have to be spent to develop it more carefully. In particular, such energy would be required to determine why one of these conceptions of Egalitarian Ownership should be considered superior to the others, and precisely how we should delineate between the heaps of stuff that are collectively owned and those to which there are special entitlements.

This article is not the place to go into these challenges, but one implication of the best understanding of Egalitarian Ownership is that organized groups of people are justified in excluding others from the space they occupy *only if* that space is populated by sufficiently many people. Specifically, “sufficiently many people” describes when the number of people already occupying that space is proportionate to the value for human purposes of the resources thereby taken out of general use. For current purposes we can take as the reference point of these proportionality judgments the average population-to-space ratio across territorial states. If that ratio is smaller than the world average, it means that any given unit of resources is used by fewer people in that territorial state than the average unit of resources across the world; or, equivalently, it means that any given person in that territorial state has access to more resources than people on average do.

Yet while this, too, is a simple thought to formulate, it is surprisingly hard to spell out; for instance, one needs to wonder about exactly what counts as “use” in the relevant sense (surely not just what is in actual circulation but also, say, what is accessibly in the ground but not yet in circulation). After all, assessing what number of people would be proportionate to the value for human purposes of certain resources is not just a matter of population density, which assesses such proportionality in terms of the sheer size of a territory. Territories of the same size might differ significantly in terms of available

resources as well as soil quality, climatic conditions, and other influencing variables. In short, there is a host of biophysical factors that shapes the value of a territory for human purposes, as do current technological constraints.

Much of the empirical work needed to make the relevant valuing operation precise is currently unavailable. That, of course, does not mean that something like this cannot be done in a plausible manner, but so far there has simply not been sufficient interest in thinking about immigration and other questions from this standpoint. Nevertheless, one should not be too dismissive of this standpoint, and certainly not because we do not currently have all the empirical insights available to think it through conclusively.

BY THE NUMBERS

Again, the relevant measure of proportionate use is decidedly not population density, but for now let us use it anyway as only a very rough guide. Doing so makes it plausible to say that the United States is severely underusing its chunk of three-dimensional, commonly owned space. Germany has a population density of about 600 per square mile, as does the U.K.; for Japan it is 830, for the Netherlands 1,200, and for Bangladesh 2,600. In the United States overall it is 80 per square mile. Of course, population density varies by state, but only in Massachusetts, Rhode Island, and New Jersey does this number rise above 800, and in no state is it much above 1,100. In cities it is yet different: New York City has about 26,000 inhabitants per square mile, and eight other U.S. cities are above 7,500. London has about 11,000, Tokyo 33,000, and Paris 52,000 people per

square mile. In light of these numbers, it is amusing that in debates about immigration many Americans think that there are already too many people living in their country.

Of course, extensive policy changes would be needed to accommodate large numbers of new immigrants, but if one just looks at these numbers, one gets the impression that the United States is critically underusing the resources under its control. If this impression is correct, then there can be nothing much wrong with illegal immigration. It would then be a matter of domestic policy to set appropriate incentives so that the incoming population did not all settle in the same locations, such as in a few large cities. This might be similar to the incentives set by the Canadian government for people to settle in the more northern parts of the country. Notice that this standpoint does not argue in support of generally open borders. But what it does say is that as long as a country underuses its resources and refuses to permit more immigration in response, illegal immigration cannot be morally condemned.

One might argue that even though illegal immigration would not be morally wrong from the standpoint of common ownership of the earth, other considerations matter as well for its possible wrongness, the most obvious being that the laws of a morally acceptable state should be respected even when the state arguably goes astray. However, the usual reasons why a law ought to be obeyed simply qua law, and not necessarily because the law is morally supportable, only address those who are already members of the respective society. To those people one could say that perhaps their ongoing presence in a given country or their active participation in certain parts of its economic, social, or political life provides a tacit acceptance of the law of the land and gives them a reason to obey the law—even in cases where it does go morally astray.

Perhaps a kind of fair-play argument might be applied, or perhaps some of these people, like naturalized citizens, have even given explicit consent to abide by the laws. But none of this would give would-be illegal immigrants a reason not to break that particular law, and thus none of this would demonstrate to them that they are doing anything morally wrong—provided they merely wished to become regular participants in society and to abide by its laws from then on.

To speak of the United States specifically, one might also argue that the opposition to illegal immigration is based on commonly accepted notions of fairness—including the notion of due process—which loom large in the American psyche. For example, searches on Google using the keywords “wrong,” “illegal,” and “immigration” delivered a number of American websites on which the unfairness of illegal immigration was emphasized. Illegal immigration makes a mockery of those who abide by the rules, so this argument goes. To pardon illegal immigrants would be unfair because it lets them get away with their offense on the basis that they have succeeded thus far. This standpoint, however, presupposes that immigration is indeed a matter for the respective country alone to sort out, and that the “insiders” are entitled to determine how many and exactly who enters their country. But the argument offered here implies that this is not so. If would-be immigrants are being illegitimately excluded, one cannot complain that they are violating due process if they come anyway.

For those who enter the country illegally with the intention of remaining, common ownership of the earth also suggests a particular argument on their behalf that is inspired by a legal term: the notion of “adverse possession.” This term refers to the open occupation of a property (say a house) by people who do not own it, assuming that the

situation is known to and not challenged by the actual owner. If this situation persists for a stated period, civil law allows for the ownership to be transferred to the occupying party. Like the absent home owner, the United States underoccupies its claimed space, but it has also created an economic niche for illegal immigrants who know that, often enough, they will find employment, including employment in parts of the economy where illegal immigrants are especially welcome. Since, in addition, the United States falls short of what in principle it *could* do by way of enforcing its immigration law, we can plausibly say that a certain population moves into the country in a rather open manner, and in a manner known to the American society.

True, the immigration status of certain individuals will not be known to certain Americans involved with them, including officials, but in the aggregate, illegal immigration occurs in a manner and on a scale that can plausibly be said to be open and known to the American public and government. Illegal immigrants hold jobs, have driver's licenses, and participate in the life of society in many ways—again, all of this is known and little is done about it. Thus, while this situation does not have the civil law basis of “adverse possession,” clearly a moral form of adverse possession has taken hold.

CONCLUSION

One might object that, if one implements the political implications of this perspective on immigration, the state could no longer accomplish certain goals to whose realization legitimate states may well be committed. Such goals might include the preservation of a certain culture or its purity, a certain economic or technological standing (human and physical capital and know-how; a wage structure that can be preserved only by regulating

labor markets), or a political system (where, for example, modest inequality may depend on keeping the numbers of unskilled workers low). While often such arguments are based on little more than self-interest, we may reinterpret them in their most morally plausible lights as insisting that there is some independent value to realizing these goals.

Yet it is precisely concerns about the reach of such arguments that motivate inquiries into the implications of this standpoint in the first place. A culture shared only by two people occupying a vast territory (such as envisaged earlier) might be eminently worth preserving, but such occupancy would not count as appropriate use from the common-ownership standpoint. The burden of proof is on those who wish to overrule implications of the common-ownership standpoint by granting certain cultures more resources than proportionally they ought to have.

In sum, I have argued that moral considerations should influence immigration policies much more than they currently do. It would be wrong to dismiss this discussion as irrelevant to politics—that is, by suggesting that no one cares about this standpoint of common ownership. As I believe I have demonstrated, it is plausible to arrive naturally at this standpoint, and those engaged in the immigration debate, particularly in the United States, can, I believe, use it to promote attitudes that go beyond simply “what is best for us.” Everyday discourse about immigration is in need of reform, and inserting this moral perspective will go some way toward achieving that goal.