

SINGAPORE SYMPOSIUM IN LEGAL THEORY

The Relational Microfoundations of the Right to Coercively Control Your Own Borders: Solving Two Puzzles for the Immigration Restrictionist

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ABSTRACT

Immigration restrictionists—those who claim that a state has a right to coercively enforce their borders and exclude would-be immigrants—have usually tried to defend their view by appealing to a nation's legitimate claims to 'protect their culture' or the negative consequences of immigration to the host nation. Recently, however, some restrictionists—Christopher Wellman and Michael Blake—have grounded a qualified right to exclude on more fundamental rights not to be subject to unilateral alterations in one's important relationships. Wellman argues that a right to association must include a right to disassociate, which is violated when an immigrant enters in political association with citizens of the host nation against their will. Blake argues that entering into another political jurisdiction without the consent of members of that jurisdiction unfairly and unilaterally imposes significant constraints on their freedom.

I show that these 'associationist' accounts of immigration are subject to two important objections that combine to form a dilemma. The first objection is generated by the notion of birthright-inherited citizenships. That is, while it may be true that a would-be immigrant is attempting to unilaterally change her political relationship with me, the same is also true of a fellow citizen who has children. After all, granting that child an inherited citizenship means that I have no choice but to associate with them. So, the associationist view seems to have the unpalatable implication that states can restrict procreation. Second, these associationist views have problems with refugees, or those individuals who seem to have a well-founded claim to be granted entry to the country on the basis of oppression. Associationists respond to the issue of refugees by arguing that the right to exclude is overridden by the more urgent interests of the oppressed refugee, but they provide no basis for determining what level of injustice is needed to overcome the right to exclude.

These objections are connected. I begin by presenting an associationist account—based on a domination-oriented relational egalitarianism—that can show why the right to exclude applies to would-be immigrants but not to the children of those already subject to the jurisdiction of the state (including undocumented immigrants). Namely, citizens of the host country have an unmediated relationship with their own state while the immigrant's interactions with the host country—insofar as she is already a citizen of a legitimate state—are mediated by a powerful advocate: her origin state. Yet, this response to the inherited citizenship worry comes at an important price. Namely, it only applies to immigrants who are already citizens of a legitimate state. This motivates a much broader understanding of refugee status than current law. That is, it is impermissible to exclude any citizen of an illegitimate state; all of whom should be granted refugee status. I then go on to temper and qualify this radical conclusion and respond to some important objections.

ABOUT THE SPEAKER



Patrick Taylor Smith an assistant professor in the Department of Political Science and Global Studies at the National University of Singapore. He works primarily in global and intergenerational justice in the context of climate change and geoengineering. He is currently writing a book developing a non-ideal theory of just revolution as well as an article applying that account of revolution to potential SRM interventions by the developing world. He has published articles in such journals as *Transnational Legal Theory*, *Philosophy and Public Issues*, and the *Journal of Applied Philosophy* as well as several book chapters and reviews.

Participation is By Invitation Only

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