Editorial

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The Ethics of Immigration in a Non-Ideal World: Introduction

The philosophical debate about the ethics of immigration is often conducted within the parameters of ideal theory. One focal question in this debate is whether states are morally justified in restricting immigration, and this question is typically addressed under the idealized assumption of a fully just world in which there are no limits to the feasibility of ideally just policies and no issues of non-compliance.

Would an ideal world be a world of open borders, where each individual enjoyed international freedom of movement (Carens 1987, 2013, ch. 11; Oberman 2016)? Would it be a world consisting of distinct national communities, each with a right to control immigration in order to protect and shape their national culture (Kymlicka 2001; Miller 2005, 2016)? Or would states ideally look like clubs, which have a right to reject potential newcomers irrespective of whether or not current members share a sense of national belonging (Wellman 2008, 2011)?

These questions are of course important in their own right. But whatever our responses to them are, they may end up giving us relatively little guidance in addressing some of the most pressing ethical issues regarding immigration in the real world. In an ideal world, there would be no refugees, let alone states that do not do their fair share in accommodating them. There would be no racist political movements. Political agents would never be forced to choose a lesser evil. Presumably, nobody would risk their lives in order to get to Europe or North America, and there would be no irregular migrants (though we might disagree whether this is because restrictions on immigration would be respected or because they would not exist in the first place).

In other words, there is a considerable gap between the questions addressed by the ideal part of the ethics of immigration and the issues that arise in the non-

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ideal world we actually inhabit. This special issue takes up the challenge of bridging this gap and explores some of the ways in which the non-ideal conditions of the real world should inform our judgements about justice in the realm of immigration.

Non-ideal circumstances come in different varieties, and there is a debate about how best to categorize them in general (Simmons 2010; Valentini 2012). For the applied context we are concerned with here, we may distinguish between two general types of issues: problems of non-compliance and problems of feasibility.

Problems of non-compliance are at the core of John Rawls' original use of the term 'nonideal theory' (Rawls 1971, pp. 8f., 245f.) They arise when some (individual or collective) agents do not comply with the demands of justice. Such situations raise a number of difficult moral questions. First, there is the issue of a purported duty to 'take up the slack' if others fail to do their part in a morally required collective endeavour (Murphy 2000; Miller 2013; Karnein 2014). Whether there is such a duty matters in the ethics of immigration, for instance with regard to states' obligations towards refugees: Does an individual state have a duty to admit more refugees if other states fail to take in their 'fair share' (Kuosmanen 2012; Miller 2016, chs. 5, 9)?

A second important problem regarding non-compliance concerns the treatment of defectors themselves. Irregular immigrants may be seen as a case of application, at least if the legal restrictions on immigration they violate are assumed to be justifiable. Under this assumption, irregular migrants commit a straightforward wrong by entering or staying in a territory without permission, and the question is whether and how their non-compliance should be sanctioned, and whether there might be a case for legalizing their stay in the long run despite the wrong they committed (Carens 2013, ch. 7).

However, it is debatable whether the breach of existing restrictions on immigration is really a straightforward moral wrong, for the relevant laws may themselves be unjust. Under such circumstances, the most salient form of non-compliance would be the state's failure to comply with the demands of justice. In this case, a third issue arises: the question of whether there is a duty to obey unjust legal rules. While the bindingness of unjust laws has been discussed prominently especially with reference to civil disobedience (Rawls 1971, §§ 53, 55, 57), it has not yet been debated comprehensively in the context of immigration (for an exception, see Hidalgo 2015).

Fourth, non-compliance may enter the moral picture as background injustice. That is, wrongs from outside the realm of immigration policy, committed either by the country of destination or a third party, may impact the way states ought to deal with would-be immigrants. For instance, if states have a moral

right to exclude in ideal theory, does this right hold vis-à-vis immigrants from former colonies (Amighetti and Nuti 2016)? What are our duties of admission towards those whose human rights are not protected effectively by their countries of origin? Should they all be recognized as refugees (Shacknove 1985), or should we hold on to a conception that considers persecution a necessary condition of refugeehood (Price 2009; Cherem 2016)?

A second general set of problems in non-ideal theory arises from the fact that not everything we may wish for in the domain of immigration policy will turn out to be (politically) feasible. This triggers the question of whether and how feasibility constraints should influence our theorizing about the ethics of immigration (Carens 1996).

There are at least three distinct issues to consider here. First, one might think that some demands should be disqualified entirely as demands of justice because their realization is entirely infeasible. This is of course a prominent charge against open borders positions in the public debate. Second, even if a demand stands as a genuine demand of justice in ideal theory, it may not be directly applicable to an individual agent under non-ideal circumstances. For instance, if a right to international freedom of movement is justified in ideal theory, does this imply that an individual politician is under a duty to lobby for the recognition of this right, even if she has no chance of succeeding and will likely lose her seat in parliament if she tries? If not, what exactly are the practical implications of a moral right to international freedom of movement? Third, a proposal that is feasible individually may not be feasible jointly with other justified demands, and this raises difficult questions about how to prioritize different claims of justice. For example, some authors have argued that substantial immigration will undermine social trust among citizens and thus make a strong welfare state infeasible (Miller 2016, pp. 9–11, 64f.). Does this make for a convincing case for restricting international freedom of movement?

This last example also illustrates an important caveat about our mapping of different kinds of non-idealness: What is considered a feasibility constraint by some may be seen as an instance of non-compliance by others. For instance, Ryan Pevnick has argued that, if citizens are indeed unwilling to uphold redistributive programmes in the face of increasing cultural heterogeneity, this may be a case of objectionable 'threat-mongering' (Pevnick 2011, p. 160) rather than a hard fact that should enter our normative thinking as an exogenous variable. On his view, individual reactions to immigration should themselves be subject to moral evaluation. David Miller, by contrast, stresses that 'simply telling people that they should be less prejudiced and more trusting of strangers' is not an option if we are to adopt a 'political approach' to immigration (Miller 2016, p. 18).

This is but one example for the more general fact that there is not only a wide range of competing views about substantial questions on justice in immigration, but also considerable disagreement about basic questions of methodology. This fact is reflected by the variety of both methodological approaches and substantial positions in this special issue.

David Owen addresses the pertinent problem of non-compliance in refugee protection. He considers whether states have a duty to accommodate more than their 'fair share' of international refugees if other states fail to do their part in protecting the persecuted. As he notes, duties towards refugees are always duties to 'take up the slack' in some sense: If all states complied with their duty to protect their own citizens' human rights, there would be no refugees. Nevertheless, Owen argues, duties towards refugees are genuine duties of justice. They oblige states to effectively remedy an injustice. If effective remedy cannot be realized via a fair scheme of burden sharing, justice demands that a state does more than it would ideally have to.

Javier Hidalgo's contribution is also concerned with non-compliance, though he focuses on the duties of individuals in the face of unjust laws. He considers the obligations of citizens in cases where a state unjustly restricts immigration and some immigrants, in turn, do not comply with these unjust laws and reside in the country illegally. Hidalgo argues that, in such a situation, individual citizens have a moral duty to disobey legal rules that prohibit them from interacting with irregular immigrants.

Linda Bosniak addresses irregular migration as well, but focuses on institutions rather than individual conduct, and starts from different normative premises. Granting that states may restrict immigration in general, she offers a typology of arguments in favour of regularization. 'Supersession arguments', which claim that the initial wrong of unauthorized immigration is outweighed by a change in circumstances, are still the most common according to Bosniak. However, they are not necessarily the most promising, let alone the only way to argue for regularization. The alternatives she considers include 'contemporaneous override arguments' that turn on an excuse or justification for unauthorized immigration, and 'corrective override arguments' that point to background injustices in the relation between sending and receiving countries.

While the first three articles in this special issue focus on problems of non-compliance, *Julian Müller's* contribution shifts the attention to questions of feasibility. He identifies four feasibility constraints that normative proposals have to pass in order to be attractive from the perspective of non-ideal theory. He then uses these constraints to compare the lifting of immigration restrictions to other potential measures to address global poverty. While liberalizing immigration may be more feasible than the establishment of redistributive programmes on a global

level, he argues that an open borders policy still fails to meet the relevant feasibility tests. He proposes the establishment of charter cities as a solution that better aligns the demands of morality with considerations of feasibility.

In his partial defence of Michael Blake's (2013) 'jurisdictional theory of immigration', *Henning Hahn* also draws on considerations of feasibility. According to Blake, states may exclude would-be immigrants because current citizens have a right not to be burdened with new human rights obligations against their will. Hahn defends this theory against cosmopolitan critics by drawing on a political conception of human rights that takes issues of feasibility seriously. At the same time, he argues that this understanding of human rights implies limitations to the right to exclude that Blake himself does not accept. In Hahn's view, states have a duty to issue hospitable visa regulations and are required to admit not only the politically persecuted but also those who migrate due to other human rights violations, including the violation of socio-economic rights.

Oliviero Angeli's contribution addresses a topic that is often overlooked in the debate about the ethics of migration: the right not to migrate. Angeli argues that, while there is a strong interest in international freedom of movement, there is an even stronger interest in not having to leave one's country of residence against one's will. The right to stay, in his view, is not only violated by expulsion and deportation, but also by 'emigration pressures', which he describes as a form of structural injustice. In cases of conflict, the right to stay is more resistant to trade-offs than the right to international freedom of movement, and states may levy a special entry fee on well-off immigrants in order to better protect current residents against emigration pressures.

Last but not least, *Zoltan Miklosi* considers another potential clash between different justified normative demands. Cosmopolitans typically accept a presumption in favour of open borders. At the same time, they are committed to encompassing cosmopolitan reforms in the long run. Thomas Christiano (2008) has argued that cosmopolitans may have to accept restrictions on immigration in the short run, because the feasibility of a cosmopolitan order hinges on the existence of well-functioning democratic states in a transitional period, which might be endangered by large-scale immigration. Miklosi challenges both the empirical and the normative premises of this argument, and argues that it is all but clear that the claims of poor admission-seekers in the present are outweighed by the claims of the worst-off in the distant future.

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