

chapter 5 because I discussed elsewhere an earlier version of this chapter (see Danny Priel, “Evaluating Descriptive Jurisprudence,” *American Journal of Jurisprudence* 52 [2007]: 139–58). I will only add a few comments on Marmor’s views on jurisprudential methodology as they appear in other parts of the book. Marmor says that legal philosophers “interpret [legal] actions and events in a certain way” (15), or in another formulation that “the philosophical question about the nature of law is one about scheme of interpretation” (34). Marmor then admits that “the very nature of an interpretation is such that it necessarily involves evaluative considerations” (99). Put together, this implies that jurisprudence is evaluative. Furthermore, Marmor himself says that the question of the nature of law is “a question about the collective meaning and self-understanding of a complex social reality” (34). I doubt even this sort of inquiry could be “descriptive,” but the greater worry is whether philosophical method, or at least the kind favored by Marmor, could be of much value in addressing such questions. For Marmor’s project sounds like the sort of inquiry that will call for a sociologist or historian of law; only they will bring to it a wealth of empirical evidence that is absent from most contemporary jurisprudential work on the nature of law. Worse, if, plausibly, the “collective meaning and self-understanding” of contemporary Americans (assuming there is such a thing) is different from that of contemporary Chinese, let alone ancient Romans, the philosophical project Marmor envisages—describing the nature of law in general—looks doomed from the start.

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Pevnick, Ryan. *Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty*. Cambridge: Cambridge University Press, 2011. Pp. 210. \$82.00 (cloth).

Ryan Pevnick’s book is a notable contribution to current debates on the ethics of immigration policy. These debates are centrally concerned with the question of whether and to what extent admissions decisions are constrained by considerations of justice. Three main positions dominate the theoretical terrain: statism, open borders, and liberal nationalism. Advocates of statism maintain that state sovereignty is unlimited and thus that citizens are free to choose whatever immigration policy furthers the national interest without regard to the interests of foreigners. Proponents of open borders argue that considerations of justice, specifically a commitment to the moral equality of all persons, requires liberal states to maintain open borders. Liberal nationalists contend that a shared identity among citizens is a necessary precondition of the realization of important liberal values, such as autonomy or social justice, and thus that states can legitimately restrict immigration as necessary to protect the national identity.

Pevnick rejects these standard views and develops a unique middle-ground position, which he calls the associative ownership view. Like many moderate positions on immigration, the associative ownership view maintains that the right

to political self-determination includes a right to restrict immigration. However, Pevnick departs from these views by offering a novel justification of the right to self-determination. In his view, the right to self-determination is grounded in the special relationship between citizens and their institutions. Citizens contribute to the creation and maintenance of state institutions in numerous ways—through their labor and tax payments and by obeying the law—and as a result of these efforts, they may claim ownership over state institutions and the benefits that flow from them. Ownership supplies citizens with a right to make future decisions about the shape of their institutions; that is, ownership claims justify a right to self-determination. The right to self-determination includes a right to decide who will have access to state institutions and the benefits they produce, and thus, states have a right to restrict immigration.

The right to self-determination gives states considerable discretion over immigration policies. However, by rejecting statism, Pevnick commits his view to a limited notion of state sovereignty: ownership claims justify a *prima facie* right to self-determination, but consideration of justice imposes constraints on the range of immigration policies states can legitimately adopt. Specifically, immigration policies must treat foreigners as moral equals. This requires states to consider the fundamental interests of foreigners—and the moral claims that arise from them—when formulating policies that affect them. In some cases, the moral claims of would-be immigrants will outweigh considerations of ownership, and in such cases, granting membership to these immigrants will be the only way to treat them as equals. For instance, asylum-seekers have weighty moral claims to admission (and eventually to citizenship, if conditions persist in their home countries) because their basic interests in safety, subsistence, and freedom are at stake. Children of undocumented immigrants also have weighty claims to citizenship since “through no fault of their own, they were born into the country, and their life chances depend on the status and treatment granted to them” (40). In both cases, the moral claims of would-be immigrants clearly outweigh the ownership claims of citizens. Thus, justice requires states to extend membership to asylum-seekers and the children of undocumented immigrants.

Thus far associative ownership appears to yield fairly routine prescriptions for immigrant admissions policies. However, more extensive policy implications come to light in the course of Pevnick’s refutation of the open borders position. One important argument for open borders maintains that individuals have a basic moral right to freedom of movement, which includes a right to travel across state borders. Immigration restrictions prevent individuals from exercising this right. Thus, the argument concludes, states must maintain open borders.

Pevnick denies that free international movement is a basic moral right. To qualify as a moral right, he argues, a claim must protect an interest “that is of crucial importance to human well-being” (82). Individuals need some range of free movement in order to fulfill their fundamental interest in living an autonomous life. However, the ability to move freely within a state is generally sufficient to protect this interest because individuals usually have access to a sufficient set of options within their own country. Although Pevnick denies that there is a moral right to free international movement, he contends that individuals should be granted a legal right to travel across state borders in limited cases, specifically, when the recognition of this legal right is instrumentally necessary for the pro-

tection of a basic moral right. For instance, some migrants are forced to flee their home countries because their basic moral rights to adequate nutrition, shelter, and medical care are not being protected by their own governments. In such cases, these migrants should be granted a legal right to move to a country where their subsistence rights can be met. The legal right to free international movement outweighs the ownership claims of citizens. Thus, in addition to the children of undocumented immigrants and asylum-seekers, traditionally defined as individuals fleeing from political persecution, Pevnick argues that states must grant admission to economic refugees.

Additional policy prescriptions follow from Pevnick's refutation of a second prominent argument for open borders. According to this argument, justice requires that variations in people's life prospects should be attributable to their choices and not to differences in their unchosen circumstances. Since one's place of birth is a matter of chance, it follows that the inequalities in life prospects between affluent and poor societies cannot be justified. Borders maintain these inequalities by preventing would-be migrants from accessing the goods and opportunities available in affluent societies. Thus, justice requires states to maintain open borders.

Pevnick rejects the argument's central premise that all inequalities arising from unchosen circumstances are unjust. This claim implies that even those inequalities in life prospects occurring between societies that are completely isolated from one another are objectionable; however, Pevnick argues that considerations of justice apply only within social contexts. In his words, "inequalities become injustices when they are experienced in certain contexts, have certain histories, or interfere with certain relationships" (124). Pevnick identifies four main kinds of cases in which inequalities in life prospects are properly considered unjust. These include cases in which (a) one group falls below some minimal standard of decent living while another enjoys an excess of wealth, (b) inequalities are a direct result of the past illegitimate actions of a better-off group, (c) groups share a close relationship in which inequalities threaten to undermine fair interaction among them, and (d) inequalities result from the unfair distribution of benefits or burdens within a self-supporting scheme of social cooperation.

Pevnick contends that states can fulfill their duties to eliminate these objectionable inequalities without adopting a policy of open borders. However, he acknowledges that these injustices generate weighty moral claims to admission in some cases. Most obviously, would-be immigrants who are unable to meet their basic subsistence needs in their own countries have strong claims to admission to wealthy societies. And while Pevnick does not explicitly argue that the remaining cases of inequality generate moral claims to admission, he does not rule out this possibility. Thus, for example, if immigration were a suitable means for rectifying inequalities arising from a state's past illegitimate actions, then the victims of such injustices would also have weighty claims to admission. States that have used their political influence to impose unfair international trade policies on less powerful states may also owe admission to those would-be immigrants who have been harmed by these policies.

Like most middle-ground positions on immigration, the associative ownership view assigns strong claims to admission to certain groups of would-be immigrants. However, Pevnick departs from other views by arguing that the strength of admissions claims is a function not only of vulnerability to political persecution but

also of the importance of the human interests at stake and the nature of current and historical relationships between would-be immigrants and receiving societies. Thus, his view suggests that as the processes of globalization continue to deepen global inequalities and strengthen transnational relationships, the number of would-be immigrants with weighty moral claims to admission will likely also increase. These are important insights, perhaps the most valuable in the book. However, like other moderate positions, the associative ownership view is only as compelling as its case for the *prima facie* right to self-determination—and this is where Pevnick's account encounters the greatest difficulty.

As we have seen, the associative ownership view maintains that citizens have ownership claims over state institutions and that these claims justify a *prima facie* right to self-determination, including a right to restrict immigration. In defense of this view, Pevnick appeals to intuitions about the self-determination of voluntary associations, such as congregations, business partnerships, and student organizations. It is widely assumed that these associations are entitled to some degree of control over their future policies, including those governing membership—that is, that they have a *prima facie* right to self-determination. Pevnick believes that the most intuitively plausible justification for this assumption lies in the ownership claims of members. Specifically, since members contribute their time, labor, and money to collective projects, “it seems intuitive to say that members can claim an ownership stake in these programs that supplies them with a *prima facie* claim to make future decisions regarding the shape of such programs” (33). Pevnick believes that the same considerations justify a parallel right to self-determination for political communities. Like members of voluntary associations, citizens contribute to the creation and maintenance of state institutions in numerous ways. Thus, it seems intuitive to say that citizens establish ownership claims over these institutions and that these claims supply citizens with a *prima facie* right to self-determination, including a right to restrict immigration.

As this summary suggests, Pevnick's defense of the associative ownership view rests largely on putative intuitions about collective ownership and self-determination. However, while these intuitions may be sufficient to motivate his view, they provide little guidance concerning the difficult questions it raises. For instance, any labor-based account of collective ownership must provide a means for determining precisely how much labor an individual must contribute in order to have a legitimate collective ownership claim, and there are no shared intuitions regarding this issue. Equally daunting are questions regarding the nature of the right to self-determination supplied by collective ownership claims. In particular, although Pevnick correctly assumes that an adequate account of political self-determination must justify a right to democratic self-determination, it is unclear that the associative ownership view yields this specific right. As we have seen, Pevnick contends that the same considerations that justify the right to self-determination of voluntary associations also justify a parallel right to political self-determination. The voluntary associations to which he appeals typically make decisions in a variety of ways. For instance, student organizations tend to make decisions democratically, congregations are often organized hierarchically, and business partners usually allocate decision-making power on the basis of ownership share. This implies that the collective ownership claims of members supply a right to self-determination that is consistent with a range

of decision-making procedures. How, then, do the collective ownership claims of citizens justify a specific right to democratic self-determination? The fact of collective ownership alone cannot entail a right to democratic self-determination because, as we have seen, the ownership claims of voluntary associations are consistent with a range of decision-making procedures. And while our intuitions about collective ownership may suggest that owners are entitled to some say in decisions regarding their collective property, they do not necessarily imply that owners are entitled to an equal say in these decisions. Of course, Pevnick could argue that ownership claims over state institutions are distinctive and thus supply citizens with a specific right to democratic self-determination. However, this would seem to beg the question regarding how this right is justified.

Additional concerns arise regarding the relationship between labor, collective ownership, and self-determination. To elucidate these concerns, it will be necessary to explain Pevnick's position on undocumented immigration, which he develops in the final chapter of his book. Pevnick characterizes US policy debates on undocumented immigration as dominated by two positions: integrationism, which maintains that long-term undocumented immigrants are entitled to citizenship, and restrictionism, which advocates policies designed to prevent undocumented immigration, such as enhanced border security programs. He ultimately rejects both of these positions in favor of a substantial guest worker program. However, his rejection of integrationism is of particular interest here.

Integrationists contend that participating in a society over time, understood as living, working, and raising a family in it, entitles residents to formal membership in that society. Thus, they argue, since long-term undocumented immigrants live, work, and raise families in receiving societies, they too possess a right to citizenship. The associative ownership view initially appears to be consistent with the integrationist position. As we know, it maintains that citizens establish ownership claims over state institutions by contributing to the maintenance of these institutions through their labor and tax payments and that these ownership claims supply citizens with a right to self-determination. Since undocumented immigrants also help to maintain public institutions by working and paying taxes, it seems that they too are entitled to an ownership stake in these institutions, along with the right to political self-determination that it supplies. Moreover, since the right to political self-determination is regarded as a right of citizenship, it appears that the ownership claims of undocumented immigrants also supply them with a right to citizenship. However, Pevnick insists that undocumented immigrants have no right to citizenship because "by entering the country illicitly such individuals took their place in the community without the consent of the citizenry" (164). He acknowledges that undocumented immigrants contribute to the maintenance of public institutions through their tax payments, but he contends that citizens have no obligation "to pass ownership of their institutions to illegal immigrants" unless they have consented to their inclusion (165).

The idea that the consent of the citizenry is a necessary condition of admission to citizenship is consistent with prevailing intuitions about undocumented immigration. However, Pevnick's response raises some additional worries about the associative ownership view. One obvious concern is that Pevnick merely asserts this consent condition without argument. Another is that his claim that the consent of the citizenry is a necessary condition for the possession of an ownership stake in

state institutions appears to commit him to a circular view. As we have seen, Pevnick initially argues that the labor and tax payments of individuals (citizens) entitle them to collective ownership claims over state institutions, and he asserts here that the consent of citizenry is necessary for individuals (undocumented immigrants) to have legitimate ownership claims. However, if consent of the citizenry, rather than the labor and tax payments of individuals, entitles individuals to ownership claims over public institutions, and these ownership claims supply a right to self-determination, then the associative ownership view appears to be circular in the following sense: the consent of the citizenry establishes a right to self-determination, which in turn supplies citizens with the right to consent.

As these concerns suggest, *Immigration and the Constraints of Justice* leaves unanswered several important questions about collective ownership, political self-determination, and citizenship. However, this should not dissuade readers from engaging with this book, particularly with its independent argument arguments against the statist, open borders, and liberal nationalist positions, which offer novel and penetrating critiques of these standard views.

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Shafer-Landau, Russ, ed. *Oxford Studies in Metaethics*. Vol. 6.
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Oxford Studies in Metaethics is an annual publication featuring cutting-edge work on the foundations of ethics and normativity. Volume 6, like the previous volumes in the series, contains high-quality papers both by established figures and younger researchers in contemporary metaethics. Each paper deserves extended discussion. But, since this review must be brief, I will focus only on a few points of a few of the papers. I will close with a brief description of the contents of the remaining contributions.

The volume begins with an impressive pair of papers on the viability of quasi-realism—one a formidable critique by Sharon Street, well known for her evolutionary arguments against normative realism, the other a reply by Allan Gibbard, one of quasi-realism's most prominent proponents. Quasi-realism involves a commitment to (a) certain characteristically realist claims—for example, that normative facts hold independently of the states of mind of the creatures they apply to (“the mind-independence thesis”), and (b) an expressivist semantics for normative language. By giving an expressivist interpretation of (e.g.) the mind-independence thesis, the quasi-realist attempts to capture certain realist intuitions without any unseemly metaphysical and epistemological baggage. (I will follow Street's and Gibbard's terminology in treating “realist” views as committed to the mind-independence thesis.)

Though many have challenged quasi-realism's expressivist component, Sharon Street takes a different tack in her “Mind-Independence without the Mystery: Why Quasi-Realists Can't Have It Both Ways.” Street argues that the quasi-realist should reject her commitment to the mind-independence thesis

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