

Peter W. Higgins, *Immigration Justice* (Edinburgh: Edinburgh University Press, 2013), ISBN 978-0-7486-7026-0, viii + 272 pp.

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Immigration Justice is an important addition to the burgeoning philosophical literature on the ethics of immigration. Peter Higgins offers a closely argued analysis of the standard positions in the open borders debate, and defends a new moral principle for evaluating immigrant admissions policies. The principle, which he calls the Priority of Disadvantage Principle, or PDP, maintains that an immigrant admissions policy is unjust if it avoidably harms a social group that is already unjustly disadvantaged. Higgins is particularly concerned with the ways in which instances of so-called “brain drain”—immigration by wealthy, educated, or skilled people in the Global South to wealthy countries in the Global North—harm members of disadvantaged groups in the Global South. From the perspective of the PDP, admissions policies that promote such migration are unjust.

Immigration Justice provides a welcome antidote to the ideal theoretical perspectives that dominate the philosophical debates on immigration. These debates center on the question of whether states have a general moral right to restrict immigration, to which commentators typically defend one of two answers: either states have a (relatively unrestricted) right to exclude prospective immigrants, or they must open their borders to (nearly all) immigrants who wish to enter. Although instructive in the abstract, the standard arguments in this “open borders” debate tend to ignore the real-life, empirical context in which immigration takes place. As a result, they obscure the ways in which morally salient background conditions, such as global distributions of wealth and legacies of colonialism, bear on questions of immigration justice. By developing a principle that is sensitive to these empirical conditions, as well as to the fact that immigration policy tends to affect individuals by virtue of their group membership, Higgins productively reframes the standard philosophical debates on immigration and develops an innovative nonideal approach to immigration justice. Even readers who ultimately reject the PDP, such as myself, as I will explain below, have much to learn from the book.

Immigration Justice consists of six chapters. Chapter 1 provides an overview of the salient legal and empirical aspects of contemporary migration, and establishes immigration policy as an important concern of political philosophy. Chapters 2 and 3 challenge the main nationalist and cosmopolitan proposals for immigration policy offered in the open borders

debate, paving the way for Higgins's explication and defense of the PDP in chapters 4 and 5. Chapter 6 considers the practical implications of the PDP by examining its consequences for several of the exclusion and admission criteria commonly adopted by wealthy states. Although my critical remarks pertain primarily to Higgins's account of the PDP, I will begin by summarizing his criticisms of the main philosophical approaches to immigration policy at play in the open borders debate.

Chapter 2 focuses on prominent prescriptive nationalist proposals for regulating immigration, which maintain that states have a right to regulate immigration in accordance with national priorities. (Higgins considers and rejects prescriptive nationalism in principle in chapter 5.) Prescriptive nationalists, such as Michael Walzer, David Miller, and Stephen Macedo, typically argue that states can legitimately restrict immigration as necessary to protect either a distinctive cultural or national identity shared among citizens (Walzer and Miller) or the economic interests of current citizens (Macedo). The problem with such arguments, Higgins contends, is that they tend to rely on dubious empirical predictions about the effects of immigration on receiving societies. Moreover, even those arguments that avoid such predictions typically presuppose problematic sociological claims, such as the common nationalist assumption that cultural or national groups are coextensive with states. However, Higgins argues, nearly every state contains many distinct cultural or national groups, and these communities often extend beyond the territorial boundaries of particular states. Thus, prescriptive nationalist proposals at most establish the right of cultural or national groups to establish informal membership restrictions, not the right of states to regulate immigration. Many prescriptive nationalist arguments also presuppose problematic moral claims, in Higgins's view, namely, that obligations to foreigners are a matter of charity or humanitarianism rather than justice.

Chapter 3 takes issue with the main cosmopolitan proposals regarding immigration policy. These views maintain that "states may not favor the interests of citizens over those of foreigners in the selection of immigration policies. From a cosmopolitan perspective, a person's nationality is morally irrelevant in itself" (59). Many cosmopolitan philosophers, most notably Joseph Carens and Phillip Cole, contend that a commitment to the moral equality of persons requires liberal states to maintain open borders. Other cosmopolitans, including Michael Blake, Mathias Risse, and myself, acknowledge that states have a presumptive right to restrict immigration, but insist that moral equality grants some prospective immigrants strong moral claims to admission that override the general right to exclude. In addition to raising specific objections to each of the many arguments offered for these positions, Higgins contends that cosmopoli-

tan approaches share a common flaw: they rely on “faulty empirical assumptions about the global economic order and prospective migrants ... [that] in combination with the cosmopolitan principles of political morality applied to them, have resulted in policy proposals that would avoidably harm members of social groups that are already unjustly disadvantaged” (108). Most commonly, open borders policies can create a “brain drain,” in which well educated and highly skilled workers in the Global South migrate to wealthy countries in the Global North, benefiting the latter at significant cost to poor residents of the former. Thus, although Higgins endorses cosmopolitanism in principle, he rejects the main cosmopolitan positions in the open borders debate.

Chapter 4 provides a detailed explication of the PDP, which, as mentioned above, maintains that an immigrant admissions policy is unjust if it avoidably harms a social group that is already unjustly disadvantaged. Appropriately, the chapter is organized around four questions: What is a social group? Under what conditions is a social group disadvantaged? When is group disadvantage unjust? When does an immigration policy cause avoidable harm?

Higgins explains his conception of a social group by contrasting social groups with social aggregates. A social aggregate is a grouping of individuals who share one or more common attributes, such as eye color, and are differentiated from others as such. A social group, on the other hand, is not constituted by shared attributes, but rather by a common relation to social institutions, which affect members’ actions, choices, and opportunities in similar ways. Specifically, a social group is a “collection of individuals who face common constraints that are structured by social institutions” (112). Sharing a particular relation to social institutions is both a necessary and a sufficient condition for social group membership on Higgins’s account. Members need not self-identify as members of the group, nor must they share a common culture or way of life. Common social groups include women, communities of color, disabled people, the working class, gays and lesbians, and noncitizen residents.

Higgins maintains that a social group is *disadvantaged* if its members (on average) lack significant human capabilities relative to the members (on average) of the corollary privileged group. Group disadvantage is *unjust* if membership in the group is nonvoluntary; that is, if members are assigned to the group. It follows, then, that a given set of structural constraints is unjust if it imposes capabilities deficits upon members of a nonvoluntary group, relative to the members of the corollary privileged group. Higgins contends that such nonvoluntary group disadvantage is unjust, by its nature, because it is neither avoidable nor deserved. In his words:

An individual is assigned to a non-voluntary social group either through the default assumptions of others or by the response of social institutions to some fact about her. Thus, for members of disadvantaged social groups that are non-voluntary, their disadvantage is neither deserved (given the liberal commitment to the moral equality of individuals) nor avoidable (by any reasonable standard). (131)

Finally, Higgins explains that an immigration policy harms a disadvantaged social group “if there is a mutually exclusive immigration policy under which [members of] that group would be better off” in terms of capabilities (139). Ideally, immigration policies will not harm any unjustly disadvantaged groups. However, since most national societies contain many unjustly disadvantaged social groups, there will likely be cases in which any given immigration policy would harm members of one of these groups, while all relevant alternatives would harm those of another. In such cases, priority should be given to the group that is worst off in terms of capabilities.

Although Higgins draws upon cosmopolitan and feminist intuitions to motivate the PDP throughout the preceding chapters, he presents his primary defense of the principle in chapter 5. Having rejected the standard proposals for immigration policy offered in the open borders debate in chapters 2 and 3, he argues that the PDP is the most plausible principle of immigration justice. His argument, which proceeds by way of process of elimination, can be reconstructed as follows:

1. Contra the moral sovereignty of states view, defended in various ways by Michael Walzer, Christopher Wellman, and Ryan Pevnick, immigrant admissions policies are constrained by moral principles.
2. Two moral principles could govern admissions policies: prescriptive nationalism or cosmopolitanism.
3. Prescriptive nationalist principles are inappropriate for this task.
4. Thus, cosmopolitan principles should govern admissions policies.
5. Three types of cosmopolitan principles could govern admissions policies: rights, aggregate consequentialism, and distributive justice.
6. Rights and aggregate consequentialism are inappropriate for this task.
7. Thus, distributive principles should govern admissions policies.
8. The PDP is the most appropriate distributive principle for governing admissions policies.
9. Therefore, the PDP should govern admissions policies.

The PDP is a universal moral principle that applies to the immigrant admissions policies of all liberal states. However, it yields different policy prescriptions for different states, based on empirical differences between them. Chapter 6 discusses the PDP’s policy implications for wealthy countries. Several resulting policy prescriptions are especially

notable. First, the PDP generally prohibits affluent states from excluding poor prospective immigrants. Poverty and financial need are highly suspect grounds for exclusion, according to Higgins, because denial of admission harms poor prospective immigrants, who constitute an unjustly disadvantaged social group. The PDP is not alone in requiring states to admit their share of the global poor; even many prescriptive nationalists endorse this position. However, the PDP also permits wealthy states to adopt certain exclusion criteria that many philosophers reject. For instance, contra cosmopolitans, the principle permits states to exclude culturally dissimilar prospective migrants provided these migrants do not constitute an unjustly disadvantaged social group. Perhaps even more controversially, the PDP requires wealthy countries in the Global North to exclude wealthy, educated, or skilled people, such as doctors and nurses, who wish to emigrate from countries in the Global South. Family reunification policies are also presumptively impermissible from the perspective of the PDP. Since family reunification typically favors people who are privileged enough to make a transnational move, “the migration of people from relatively poor to relatively wealthy countries on the basis of family reunification may thus contribute indirectly to ‘human capital flight’, or brain drain” (216).

I suspect many readers will reject the PDP on the basis of these latter exclusions, and I am sympathetic to these concerns. However, I would not be convinced that the PDP is the best principle for evaluating immigrant admissions policy even in absence of these problematic policy implications, because I believe Higgins’s defense of the principle is subject to a significant objection: given the structure of his argument, he must prove that the PDP is superior to every rival admissions-guiding principle, yet he ignores an important competing principle. Specifically, in the second stage of the defense, comprised of premises 2-4 above, Higgins argues that immigrant admissions policies should be governed by cosmopolitan principles because the only alternative principles, prescriptive nationalist principles, are ill-suited for this task. Higgins offers several plausible arguments against prescriptive nationalist moral principles. They do not entail that cosmopolitan principles should govern admissions policies, however, because prescriptive nationalism and cosmopolitanism, as he construes them, are not the only available admissions-guiding principles.

To explain this objection, it will be helpful to take a closer look at Higgins’s first argument against prescriptive nationalism, which he calls the “arbitrariness” argument. In developing this argument, Higgins explains that many nationalists are committed to what he calls moral particularism, which maintains that “affiliations among particular groups of

human beings generate special moral obligations for members of those groups to each other that override general obligations to humanity as such" (178). (I would refer to this view as "moral partialism," but I will use Higgins's language here.) The problem for nationalists, as he sees it, is that since nationality is just one of many possible human groupings, it is necessary to establish why nationality is a morally significant category. However, whatever reasons one might give for the special moral status of national groups will be even stronger when applied to tighter groupings, such as local communities or families. It follows, Higgins concludes, that arguments for prescriptive nationalism are self-defeating.

One might be tempted to suggest that non-nationalist forms of moral particularism may also yield admissions-guiding principles, and thus that premise 2 is false. However, Higgins denies that non-nationalist particularism has meaningful implications for immigration policy. As he sees it,

[non-nationalist] moral particularism is applicable to the evaluation of the informal norms (including the membership norms) of small communities in which the sorts of relationships that particularists cite as morally significant obtain. However, the state necessarily acts in a (non-particularist) context in which the principle of moral particularism is irrelevant. (178)

But this conclusion is too hasty. There are many non-nationalist forms of moral particularism, and at least one, relational egalitarianism, may indeed have important moral implications for immigrant admissions policy. Relational egalitarianism maintains that certain types of social relations generate special moral obligations among participants, over and above those owed to all persons in virtue of their shared humanity. We often think of social relations as more or less intimate relationships among individuals, but relational egalitarians are primarily concerned with the relations that exist among occupants of various social positions. For instance, citizens stand in special relations to their fellow citizens, factory workers stand in particular relations to their employers, and consumers stand in specific relations to workers. These social relations are structural in the sense that they are shaped by social, economic, and political institutions, rules, and practices, and are mediated by social categories such as gender, class, race, and nationality. As such, social relations both constrain and enable the opportunities available to individuals, and thus have a substantial impact on their life prospects.

Relational egalitarians, such as Elizabeth Anderson and Samuel Scheffler, are typically concerned with the demands of relational equality within a democratic state. In this context, the ideal generates both positive and negative moral claims. Positively, relational equality demands that persons are entitled to the capabilities or goods necessary for functioning as equal citizens. Negatively, the ideal requires eliminating oppressive rela-

tionships—that is, forms of structural social relations in which some people are able to dominate, exploit, marginalize, demean, or inflict violence on others. These forms of oppression often impose harms on people who are subject to them, while systematically constraining their choices and opportunities. They are embedded in the structural features of major economic, political, and cultural institutions, along with the unquestioned norms that shape ordinary interactions.

While relational egalitarians typically focus on the obligations that arise within a democratic state, most acknowledge that transnational social relations also generate special moral obligations among participants. For instance, Anderson argues that transnational economies are subject to relational egalitarian demands.¹ Minimally, in this context, relational equality requires eliminating oppressive structural relations within a transnational division of labor. Most obviously, this ideal condemns social relations that render workers vulnerable to exploitation, domination, or violence by employers, such as those typical in sweatshop manufacturing. Importantly for my purposes, the ideal of relational equality also has meaningful implications for immigrant admissions policy. Specifically, it implies that an admissions policy is unjust if it contributes to oppressive transnational structural relations. For instance, in the context of free trade agreements that enable corporations to move production to countries with lax labor standards, immigration restrictions contribute to the oppression of workers by preventing labor migration. Such a relational egalitarian immigrant admissions principle shares many of the same methodological and moral commitments as the PDP, but it need not condone cultural exclusions or prohibit family reunification policies.

While it is not possible to defend a relational egalitarian admissions principle here, this objection to Higgins's defense of the PDP does not depend on my ability to do so. Since his argument hinges on the claim that prescriptive nationalism and cosmopolitanism, as he construes them, are the only two principles that could govern immigrant admissions, I need only establish that an additional admissions-guiding principle is available. It is now up to Higgins to show that the PDP is the more adequate principle. Until then, I would like to close by reaffirming my praise for *Immigration Justice*. By developing an empirically informed, nonideal approach to immigrant admissions, Higgins has enhanced our understanding of the moral considerations at play in admissions policy decisions and made a significant contribution to the philosophical literature on immigration.

¹Elizabeth S. Anderson, "What is the Point of Equality?" *Ethics* 109 (1999): 287-337, p. 321 n. 78.

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