

Governing Least's Immigration Oversight

Dan Moller's *Governing Least* barely mentions immigration. But it should have, because of its strong implications for this hugely important issue. Applying Moller's approach, there is not only a moral presumption in favor of open borders, but a host of residual obligations that accompany even *justified* restrictions on immigration.

Recall that Moller's libertarianism highlights the effrontery of extra-libertarian moral demands:

Imagine calling a town hall meeting and delivering the following speech:

My dear assembled citizens: I know most of us are strangers, but of late I have fallen on hard times through no fault of my own, by sheer bad luck. My savings are low, and I don't have friends or family to help. Now as you know, I've previously asked for help from you as private citizens, as a matter of charity. But unfortunately that hasn't been sufficient. Thus, I'm here now to insist that you (yes you, Emma, and you, John) owe me assistance as a matter of justice. It is a deep violation if you don't work additional hours, take fewer vacations if need be, live in a smaller house, or send your kids to a worse school, in order to help me. Failing to do so is no less an injustice than failing to pay your debts.

Moreover, calling this an injustice means that it's not enough that you comply with your obligations by working on my behalf. No, I insist that you help me to force your fellow citizens to assist me. It doesn't matter if these others say to you that they need the money for their own purposes, that they prefer worthier causes, or if they're just hard-hearted and don't care. To the extent you care about justice, you must help me to force these others to assist me whether they wish to or not, since that is what is owed me in light of my recent bad luck.

Could you bring yourself to make this speech?

But *Governing Least* also gives this imaginary speech a libertarian foil:

Compare, then, a similar speech advancing a different substantive claim:

My dear assembled citizens: of late, some of you have been stealing my money. I'm here now to insist that you (yes you, Emma, and you, John) give it back. This means that you owe me thousands of dollars which you stole. It's a deep violation if you don't work additional hours, take fewer vacations if need be, live in a smaller house, or send your kids to a worse school, in order to pay me back what you stole. Failing to do so is no less an injustice than failing to pay your debts. Moreover, calling this an injustice means that it's not enough that you comply with your obligations by working on my behalf to repay me what you've stolen. No, I insist that you help me to force the thieves among you to pay restitution. It doesn't matter if these thieves say to you that they need the money for their own purposes, that they prefer worthier causes, or that they're just hard-hearted and don't care. To the extent you care about justice, you must help me to force these others to repay me what they stole.

No one is likely to be embarrassed by this variant. Even if we are shy and uncomfortable about confronting others in public speeches, there is nothing strange about the idea of giving such a speech, or about someone giving it. To the extent there is a problem with the first speech it lies not in its manner but its substance.

When a foreigner demands his right to work for a willing domestic employer or rent from a willing domestic landlord, it closely parallels the *second* speech. The only out is to appeal to the very “emergent moral powers of the state” that Moller decisively rejects:

Essentially, the issue is whether there are emergent moral powers of the state — permissions that the state enjoys that mere individuals do not. It is an important assumption in some of my arguments that we

can compare the actions of the state to the actions of individuals, and that objections to what individuals or groups of individuals do to us by way of infringing our rights can be objections to what the state does, assuming the circumstances and grounds of infringement are similar. I will assume, that is, that it makes sense to ask such questions as, “Could I and my friends break down your door and compel you to give us your money for reason X under circumstances Y?” and to draw conclusions about what the state may do. We can call this the non-emergence assumption.

Since it would be normally be morally wrong for my friends and I to exile someone for being born in a different country, it is also normally wrong for governments to do so. In other words, Moller’s work implies an open borders *presumption*. Furthermore, even if the consequences of immigration were sufficient to surmount this presumption, regulators must mind Moller’s residual obligations:

I propose the following non-exhaustive list of residual obligations for cases like Emergency:

Restitution: although I didn’t do wrong, I must repay the \$1,000 if possible, perhaps in reasonable installments.

Compensation: to the extent you are otherwise harmed by my actions, I should attempt to compensate you. For instance, if I smashed your windows getting in or forced you to incur some loss because you had to come home at short notice, I must compensate you at some reasonable rate.

Sympathy: it is incumbent on me to convey, if not an apology for my (permissible) actions, at least sympathy for the harm I have caused you. (“I’m very sorry I had to do that” would be the natural if slightly misleading phrase.) I cannot offer a Gallic shrug at your distress and announce, “I did nothing wrong— it’s your problem” as you survey the wreckage of your home. To do so would exhibit a serious character

flaw.

Responsibility: my obligations are not just backward looking, but forward looking. If I can reasonably foresee that some action of mine will put me in the position of facing an emergency that will then render it permissible to harm you, I must take responsibility to avoid such actions if possible. I should not think that I have less reason to take responsibility because I can avoid harms by transferring them to you instead. And failing to take responsibility weakens my claim to impose costs on others when the time comes.

So even when immigration regulations are morally justified responses to dire consequences, governments cannot legitimately restrict immigration *unless they also*:

- a. Pay restitution/compensation to innocents denied admission.
- b. Earnestly apologize to innocents denied admission.
- c. Scrupulously eschew policies that *give* immigration dire consequences. For example, governments *cannot* rightfully refuse immigration on the grounds that, “Our welfare state is so generous that you would be a big net fiscal burden.” Even if this is true, Moller’s framework places the blame on the governments that *create dangerously generous welfare states in the first place*. Once a government adopts these irresponsible policies, they have no right to “avoid harms by transferring them” to immigrants.

To repeat, I’m the one using Moller’s approach to morally assess immigration. He focuses almost entirely on the welfare state, mentioning immigration only in passing. To my mind, this is doubly unfortunate because...

First, the harm of the welfare state, though serious, is minor compared to the harm of immigration restriction. Denying billions of desperately poor people the right to move to opportunity is far worse than forcing hundreds of millions of fortunate people to “donate” a quarter of their income.

Second, it reinforces the false stereotype that libertarianism disregards the rights of the poor. When the U.S. government jails families for the “crime” of seeking asylum, an exclusive focus on the evils of programs like TANF and SNAP really does reveal a major moral blind spot. Since Moller reads abundant empirical research, moreover, he can’t easily plead ignorance of the facts.

Fortunately, Moller can remedy this situation... by writing a follow-up article on the ethics of immigration. He totally should.