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Author(s)	Boylan, Michael
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Note	<p>Author Meets the Critics: Michael Boylan ' s Morality and Global Justice Introductory Note</p> <p>The following exchange occurred at 21st Annual meeting of the Association for Professional and Practical Ethics held on March 1-4, 2012, in Cincinnati, Ohio. The session was an author meets critics session on Boylan's 2011 book published by Westview Press, Boulder, Colorado. The topic of the discussion is a controversial treatment of immigration by Boylan in his chapter on immigration.</p> <p>The critics were: Gabriel Palmer-Fernandez and Julie E. Kirsch, who provide critical assessments of Boylan ' s claims. Boylan then offers a reply to their arguments.</p>
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International Immigration: A Reply to Gabriel Palmer-Fernandez and Julie Kirsch

Michael Boylan

Marymount University

Among the various issues in Global Justice that I address in *Morality and Global Justice: Justifications and Applications* (2011-a), international immigration is one of the most important. Gabriel Palmer-Fernandez and Julie Kirsch have written sensitive queries about my position that I will address in order¹.

Gabriel Palmer-Fernandez

Palmer-Fernandez begins his essay with a survey of my recent book, *A Just Society* (2004) and the critical volume of essays that followed edited by John-Stewart Gordon, *Morality and Justice: Reading Boylan's A Just Society* (2009). At that time Palmer-Fernandez called for a more cosmopolitan version of my theory of justice since my essential formula for determining a rights claim derived not from someone's living in a particular state, but upon the nested hierarchy of goods that anyone might claim to commit purposive action in order to attain his or her vision of the good. Since the argument is based upon the species *homo sapiens*, it made little sense to demarcate national borders.

I both agree and disagree to this. I agree that the argument put forth is not dependent upon national borders. As far as the claims right to the basic goods of agency, it is irrelevant where one lives. National boundaries are superfluous.

Where I disagree (then as now) is that national perspectives are practically important because most public policy is created and executed within the confines of states. Thus, it is critical that we have one practical perspective that encapsulates the national perspective as well as one that takes the larger, theoretical perspective of cosmopolitanism that is set as an aspirational goal for all the nation states of the world to work towards.

What I like most about Palmer-Fernandez's article is his discussion of the push-pull dynamics of immigration. Palmer-Fernandez is correct that I concentrated upon the push dynamic (people moving out of a country). I agree with Palmer-Fernandez that the pull dynamic (people moving toward a particular country) is also important. I really do not address this dynamic in Boylan (2011-a). I

probably should have. Here are my thoughts now.

First, it may be the case that there is a differential pull among the G-20 nations (the wealthiest twenty countries in the world). If it is the case, as Kirsch suggests, that the United States has the greatest pull among immigrants, then something must be done to address this situation. Even though the United States is the wealthiest country in the world, it cannot assume *all* the world's immigrants. They must be proportionally divided among the G-20 according to these countries' ability to assume these individuals. Such a stance amounts to the "ought implies can" argument. One cannot demand a duty that it is impossible to fill without making the host country as poor as the country that has been left behind. There needs to be some sort of progressive sharing of the burdens based upon the same sort of principle as national progressive taxation.

It is important to think about the pull factor because one would seek to meet the wishes of as many immigrants as possible in the choice of their new homeland. I would envision some sort of lottery system in cases where there is a severe imbalance in the pull factor towards one or a few countries only. The lottery system would ensure that each receiving country would get a random number of immigrants who might, because of their education and professional accomplishments make an immediate positive contribution to the host country and a random number of immigrants who at first may be a net drain upon social programs in the host country.

Second, we should consider the push factor as the most important part of the pair. This is because the "push" factor allows people to leave where they are living because of various reasons such as war, famine, natural disaster, and political/economic oppression. Many times this push will only be to another part of the nation. This is intra-national immigration. This right to intra-nationally migrate has been often denied as the new region of the country does not want to construct camps where refugees might live for years. Though it may be uncomfortable, such migration should always be permitted. I argue that without such an opportunity to migrate intra-nationally, large numbers of individuals will suffer a loss of level-one basic goods of agency.²

² The Table of Embeddedness—From Boylan 2011

These are essential goods that everyone on earth can legitimately claim and that everyone else has a duty to provide.

Then there is the issue of international migration. Again, from the *push* perspective, everyone on earth has the right to leave his or her country. However, there may be limitations on the *pull* perspective as mentioned

BASIC GOODS

Level One: *Most Deeply Embedded* (That which is absolutely necessary for Human Action): Food, Clean Water, Sanitation, Clothing, Shelter, Protection from Unwarranted bodily harm (including basic healthcare).

Level Two: *Deeply Embedded* (That which is necessary for effective basic action within any given society)

- Literacy in the language of the country
- Basic mathematical skills
- Other fundamental skills necessary to be an effective agent in that country, e.g., in the United States some computer literacy is necessary
- Some familiarity with the culture and history of the country in which one lives.
- The assurance that those you interact with are not lying to promote their own interests.
- The assurance that those you interact with will recognize your human dignity (as per above) and not exploit you as a means only.
- Basic human rights such as those listed in the U.S. Bill of Rights and the United Nations Universal Declaration of Human Rights

SECONDARY GOODS

Level One: *Life Enhancing*, Medium to High-Medium on Embeddedness

- Basic Societal Respect
- Equal Opportunity to Compete for the Prudential Goods of Society
- Ability to pursue a life plan according to the Personal Worldview Imperative
- Ability to participate equally as an agent in the Shared Community Worldview Imperative

Level Two: *Useful*, Medium to low Medium Embeddedness

- Ability to utilize one's real and portable property in the manner she chooses
- Ability to gain from and exploit the consequences of one's labor regardless of starting point
- Ability to pursue goods that are generally owned by most citizens, e.g., in the United States today a telephone, television, and automobile would fit into this class.

Level Three: *Luxurious*, Low Embeddedness

- Ability to pursue goods that are pleasant even though they are far removed from action and from the expectations of most citizens within a given country, e.g., in the United States today a European Vacation would fit into this class
- Ability to exert one's will so that she might extract a disproportionate share of society's resources for her own use.

above. I conceive of national borders being open from the *push* perspective. Each person on earth should be allowed to walk away from their country due to *any* reason whatsoever that they consider important. It is a level-one secondary good to be able to live one's life according to an autonomously derived life plan (when understood in the context of *leaving a country*). If the reasons for leaving are due to a lack of food, clean water, sanitation, fear from violence, or lack of health care, then a level-one basic good is involved. The *pull* perspective will have to be shared in some random manner (since all people count as one in the seeking of scarce resources about which there are *prima facie* moral claims).

Palmer-Fernandez's second principal point is on the double harm that immigrants face in the United States (for example). Not only is there the harm of being moved away from their culture and community but in the host country there is an additional harm of being the victims of discrimination. I certainly agree with Palmer-Fernandez on this point. I did not address these harms in my immigration chapter, but I did mention some of these harms in my chapters on poverty, globalization, and on race, gender, and sexual orientation.

The only way around the "double harm" problem is to eliminate the "two-minds" attitude towards immigrants. When the country decides to allow immigrants into the country they should get over a feeling of resentment against these immigrants. It is this feeling of resentment that is behind the second-level of discrimination once they reach the borders of their destination country. When there is a political will that has been expressed, then it is unpatriotic for citizens of a nation to further marginalize immigrants, but sadly in the United States this has been the tradition even when we had legally open borders.³

My last reflection on Palmer-Fernandez's essay concerns his point about investment in foreign countries increasing the *pull* effect in immigration. I have not studied this issue in detail, but when I was a fellow at The Center for American Progress in Washington, D.C. (a public policy think tank), most of us on the economics team accepted Amartya Sen's notion that first-world money that developed third-world nations in a comprehensive way was a positive move toward autonomy and capability within the recipient nation (Sen 2000). It could be the case that both positions are correct: development resources help the recipient nation but they may also breed a *pull effect* upon the citizens of that nation.

In the end, I am happy for the comments of Gabriel Palmer-Fernandez on immigration. They have helped me

³ For different takes on discrimination on immigration in America even when we had open borders (and shortly thereafter) see: (Laskin 2010),(Molina 2006), (Chang 2004), and (Brodtkon 1998).

¹ This interaction occurred at the Association for Practical and Professional Ethics, 2 March 2012.

to further clarify my position—especially regarding the push-pull dynamics of the migration of peoples in the world.

Julie Kirsch

Julie Kirsch offers a practical response that looks to the consequences of the quasi-open borders approach that I advocate. The thrust of this response concerns the consequences of large scale migration to a particular country (in this case the general stand-in is The United States). What would the native citizenry think of new large scale migration?

First, I need to say again that my quasi-open borders approach features two elements: (a) the right to leave an area within one's country to go to another area within one's country or to another country, and (b) the right to enter one's top choice country. These are separate issues. As I have said above, I believe that the right to (a) is absolute. It can flow from a lack of a basic good of agency according to the Table of Embeddedness. The rights claim of (b) is leading the sort of life that one wishes to lead according to an autonomous life plan that is a first-level secondary good. Since secondary goods are trumped by basic goods, the resulting public policy would be an *absolute right* for people to leave the location where they live for whatever reason to another location within their own country or to another country. However, the second rights claim, to go to the country of one's choice, is not an absolute right but is a *prima facie* right that can be overridden by others' equal claim and by the host country having the resources to accommodate the new influx of people. Since this second claims right is *prima facie*, in cases of there being too many people who choose the *same country*—for example The United States—then the only mechanism that could fairly adjudicate equal rights claims would be a random distribution system such as a lottery. This system would take into account second, third, fourth choices, etc. These would act as nested alternate choices, respectively. Thus, for example, if Country A was getting 65% of the 1st choice requests and could only accommodate 30% of this applicant pool, then for the remainder in the applicant pool (35%), they would be set into their second and third choices respectively. This sort of nested lottery is often administered in U.S. colleges for dormitory rooms and for course selections. By employing a nested lottery, the burden of taking in low-skilled immigrants who will need public welfare assistance and job training education would be carried proportionally by the ability to sustain a flow of immigration without significantly reducing the standard of living in the host country. Under this progressive framework, the wealthiest nations of the world would take in most of the immigrants according to their ability to take in immigrants who will need

substantial public financial investment in order to make it.

But there is always another class of immigrants: those of high education and professional accomplishments. This creates a different dynamic. For example, what if India sends 10,000 nursing students to the United States to go through four years study to become masters-level nurses with highly developed skills? What if after they have completed their education they wished to stay in the United States and enjoy a higher standard of living than they did in India? This is a real problem that I have confronted first-hand in the annual Faculty Ethics Seminar that I have delivered to college faculty since 1996.⁴ In 2002 I had a member of the seminar who was on the National Council of State Boards of Nursing. She brought this particular problem to my attention. Many countries who pay for the education of their professionals in and out of the medical field feel that they have paid for a resource. These countries feel cheated if that individual immediately turns around and goes elsewhere. So how are we to think of this?

I believe that the model that the U.S. military uses for training professionals offers a good template for these foreign-trained workers. If the U.S. military pays for an individual's law school (three years) or medical school (four years plus residency), then said individual has a requirement to serve in the military for the same number of years (three or four years, respectively). Such a covenant would have to be multi-national (either through the U.N. or through a multi-national treaty) for it to work. But such a treaty could go a long way towards eliminating the brain drain from developing world to developed world—at least for a time.

Another important point that Kirsch raises is whether the new influx of immigrants into the United States (that would surely result from the policies that I advocate) would hurt our 'native born' low income workers. This is a significant problem. It has often been the case throughout world history (post-Industrial Revolution) that a great influx of workers at the lower end of the economic spectrum creates a bulge in labor supply. Assuming constant labor demand, this would seem to insure that wages, benefits, and working conditions would decrease. Under such a scenario, it might seem like the perfect storm where the native born are worse off and the immigrants become the object of possible violence.

There are several sorts of responses that can be made to this possible outcome. First, it is not necessarily clear that labor demand under such a scenario *would* be flat. This is because, of the opportunity investment that manufacturing might have under such a scenario. It is

⁴ Some details of the seminar can be found in my co-authored book: (Boylan and Donahue 2003).

my conjecture that it can be the case that a rising labor population with certain marketable skills attracts new investment (particularly in developed nations, Peri 2010). If this held true in the United States or other such *rich magnet countries* (the pull factor), then the cosmopolitan perspective would correctly shift manufacturing from the recipient nations to the richer nations. This would give an incentive to businesses operating within the poorer countries to raise wages at home and improve working conditions in order to stop the flow of immigrants to developed target countries. This, in turn, would put a damper upon immigration.

Such a scenario described above can be termed "business follows labor model." As the labor force around the world becomes more educated I believe that this dynamic will become stronger rather than weaker. It is one of the positive senses of globalization (which must occur within the constraints that I set out in Chapter 11).

A second constraint upon the perfect storm described above would be labor unions. If governments among the developed world would work to insure that labor laws remain intact and that it is not too difficult to obtain signatures for new unions to be certified, then the force of collective bargaining can begin operating to stop employers from exploiting what would seem to be a decrease in labor's power to negotiate given the influx of new labor in the market. Together with the dynamics of the *business follows labor model* described above labor unions will modify the harsh consequences that Kirsch fears.

These two constraints against labor exploitation also work save the environment. Kirsch predicts that if business gets the upper hand in its negotiation with labor and with society in general, that they might be able to roll back environmental protection laws and act as they please for the highest possible profit. However if my conjecture about the force of the business follows labor model and the active public support of unions is correct, then environmental degradation would fit into the same category as wages and working conditions and be protected by the dynamic I describe.

If what I have argued for here is correct, then my proposals will be free from the possible deleterious consequential downsides and the "self-interest" objection. Kirsch has challenged me to add some more detail on my immigration policies. First they will retain

their strength: autonomy for individuals and groups of individuals absolutely to be able to move from place-to-place within one country and to leave their country all together if situations warrant. Second, the ability to move into the country of their choice will be conditional upon host countries being able to accept as many immigrants as possible subject to "ought implies can." In situations in which immigrants overwhelmingly want to go to a few countries *only*, then some sharing must go on among the G-20 with a lottery system to determine the fate of individual applicants.

I believe that my proposals on immigration offer an advantage over the status quo. This advantage stems from the lens of analysis changing from the single nationalist perspective to a cosmopolitan perspective that seeks to protect as many moral claims as possible as we implement distributive justice throughout the world.

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