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Joseph Carens

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Normative Claims and Empirical
Realities in Immigration**

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On the Relationship between Normative Claims and Empirical Realities in Immigration

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Abstract

What is and what ought to be the relationship between empirical research and normative analysis with respect to migration policies? The paper addresses this question from the perspective of political theory, asking about the place of empirical research in philosophical discussions of migration, and, for the most part, leaving to others questions about what role, if any, normative considerations do and should play in empirical research on migration. At the outset the paper also takes note of one important way in which empirical research can and should contribute to normative discussions of migration, quite apart from its role in contributing to political philosophy.

Keywords

Ethics of migration; migration studies; political theory; political philosophy

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What is and what ought to be the relationship between empirical research and normative analysis with respect to migration policies? I am a political theorist, and so I want to address this question from that intellectual perspective, asking about the place of empirical research in philosophical discussions of migration, and, for the most part, leaving to others questions about what role, if any, normative considerations do and should play in empirical research on migration. But I want to take note at the outset of one important way in which empirical research can and

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should contribute to normative discussions of migration, quite apart from its role in contributing to political philosophy.

Political theorists tend to focus on questions of principle. They make arguments about what ought to be done, usually (though not always) in contexts where there is some disagreement about what ought to be done. In many areas of public life, however, the most important intellectual task from a moral perspective is not to clarify what ought to be done but rather to bring into view the gap, and sometimes even the contradiction, between what is publicly announced as the normative principle or goal of some policy and how that policy actually works in practice.

Sometimes this gap/contradiction is relatively easy to see. For example, the Trump administration's policy of separating children from parents in families seeking asylum was clearly intended to discourage people from seeking asylum even though the putative justification of the policy appealed to the requirements of legal procedures.

Often, however, there are policies that seem more plausible on the surface. The gap/contradiction between the ostensible goal of the policy and the way it actually works in practice can only be seen when careful empirical research brings it to light. A lot of the empirical research on migration performs this important unmasking function. Think, for example, of some of the empirical work on how immigration detention works in practice and how far removed that is from the ostensible purposes of and justifications for detaining immigrants. I do not do this sort of critical empirical research myself, but I applaud it. I think it performs a crucial normative task (even though some of the people who do it do not like the language of normativity).

So, to my main task. To what extent and in what ways should political theorists use empirical claims and/or draw upon empirical research in their reflections on immigration?

My first inclination is simply to say, "That depends both on what questions the theorist is asking and on how the theorist chooses to address those questions." That undoubtedly sounds like a cop-out, but in some ways this initial answer draws attention to an important general point, a cautionary note about this sort of discussion.

When it comes to political theory, I'm a pluralist. There are many different ways to do political philosophy and many different ways to approach any given question, and they all – or almost all – have the potential to teach us something important. As I see it, political philosophy is ultimately concerned with the question of how we ought to live, individually and collectively. I think this is the sort of question for which

there is never a single right answer or a simple one. That is true even when one focuses only on one small aspect of this big question, as one does in discussing immigration. There can be right and wrong answers to particular questions about immigration, especially in the context of particular debates about particular issues, but there are many different ways to think about immigration as a general topic, and every one of those ways is bound to be limited, partial and incomplete. Indeed, the most illuminating accounts often cast the deepest shadows, making it hard to see aspects of a topic that do not fit within the intellectual framework and presuppositions of the illuminating account.

In this paper therefore, I'm not going to try to say how every political theorist ought to use empirical claims and/or draw upon empirical research in thinking about immigration. Instead, I'll just say something about how I have tried to do that in my own work and my reasons for taking my approach. I will also say something about my worries about the dangers of certain alternatives, including alternatives pursued by other political philosophers, and how I have tried to avoid those dangers. At the same time, however, I want readers to recognize, at least in the backs of their minds, that I am not offering universal guidelines for theorists. Other theorists may have good reasons for engaging with empirical research differently from the ways I have done so, or indeed, good reasons for not engaging with it at all.

Overall, the approach that I have taken is this. In thinking about immigration as a political theorist, I find it helpful to try to be aware of the ways in which my arguments presuppose certain background facts about social institutions and practices. I try to pay attention to the ways in which changes in those background facts would or would not affect my arguments. Some normative claims about immigration are more context-sensitive and more fact-sensitive than others, but there are few that are completely independent of an understanding of how things work in the world now or how things might plausibly work in the world under different conditions. So, I am aware that when I write about immigration I do rely upon empirical claims.

At the same time, like most political philosophers, I am not a skilled empirical researcher or deeply knowledgeable about empirical research. There are a few theorists who are also skilled at empirical research, like Veit Bader, who has contributed to this conversation, and Rainer Bauböck, who did not, but such scholars are few and far between. Political philosophers like me who read empirical research on immigration but who are not really competent to assess it critically ought to be cautious in the ways in which we use empirical research in our normative analyses. The biggest danger is cherry-picking, i.e., citing empirical research that we think

supports a position that we have arrived at on other grounds without considering whether these empirical findings are widely accepted, contested by other researchers, etc. But I would go further and say that there are good reasons to construct normative analyses in ways that make them as fact-*ins*sensitive as possible, at least with respect to empirical claims that are highly contested or highly vulnerable to new research findings.

Sometimes there may be a particular argument that just does rest ultimately on contestable claims about how things work in the world. So, to pursue that argument one must simply try to assess the empirical literature in as thorough and as fair-minded a way as one can. I think that an article on immigration and global poverty reduction by Kieran Oberman a few years ago (Oberman 2015) is an admirable example of this sort of responsible attention to the empirical literature, although Oberman's analysis in the second half of that article shows why empirical findings alone are rarely decisive in normative debates. But one can often construct normative arguments so that they reveal the relevance of empirical claims without actually making any (highly contestable) empirical claims oneself or at least without making such claims central to one's argument. That is in fact the way in which I tried to organize my own analysis in the book on the ethics of immigration that I published a few years ago. (Carens 2013)

In sum, my own aim is to steer between the Scylla of excessively abstract principles and the Charybdis of highly contestable empirical claims. My account so far has itself been pretty abstract, so let me steer away from Scylla a bit by providing some concrete examples of the ways in which the normative discussion of immigration in my recent book does and does not rely upon empirical claims and why I think that approach is justifiable.

Let's start with the issue of access to citizenship for immigrants and their descendants. In discussing this topic in my book, I simply presuppose certain familiar features of citizenship today and of the background social institutions and practices in which citizenship is situated. The current international order divides the world into different states and prescribes that every individual should have legal membership status in (at least) one state. This legal membership status is defined as nationality in international law, but so far as I know citizenship status and nationality status are identical in international law. (I might be missing some technicality here, but the two are certainly functionally equivalent.) Certain rights are attached to nationality in international law, most notably, the right not to be deported from a state in which one holds nationality status and the right to enter and live in that state if one is currently abroad. Nationals are also entitled to diplomatic assistance while abroad.

These facts about what citizenship entails today are just that – facts. I offer no argument about why things should be organized in this way. Indeed, there might be good reasons to think that the way in which the world is organized today is problematic from a normative perspective, but if you try to tackle the overall question of how the world ought to be organized, you may find that you do not spend much time discussing immigration. If you try to talk about everything at once, you wind up saying very little about anything. Empirical researchers have to find ways to limit the scope of any particular study, and so do normative theorists. To keep the focus on immigration, you have to accept certain background constraints, not in a fundamental way but for purposes of discussion. So, in my book I say explicitly that at the outset I will simply presuppose the existing international order and its institutional arrangements and conduct my normative analysis within those constraints. In the last few chapters of the book, I do move away from this a bit in considering the argument for open borders, but even there I limit my inquiry by keeping the presupposition of a world divided into relatively independent states rather than, for example, assessing the merits and demerits of world government.

Another (related) fact about citizenship today is that certain political rights are usually attached to citizenship. Within democratic states, holding citizenship status normally entitles an adult to participate in the democratic decisionmaking process by voting in national elections if they live within the state.² A few states (e.g., New Zealand) extend voting rights to residents who are not citizens. Nevertheless, the basic pattern is that you must be a citizen to vote. If New Zealand's practice were typical, normative discussions of access to citizenship might look quite different (although the legal consequences of citizenship apart from voting would still matter). Indeed, some people have argued that the right to vote should be detached from legal citizenship. There is nothing wrong in principle with pursuing that line of argument, but again no one can talk about everything at once. So, in my own discussion, I simply assumed this fact about the link between voting and citizenship as a background constraint in my normative analysis. In part because the right to vote is attached to citizenship, I argued, immigrants who have settled in a state (and, even more so, their descendants who are born and raised in the state) should have easy or even automatic access to citizenship. That follows from the way in which we understand the requirements of democratic legitimacy today. Notice that while my argument about

² I add the qualifier “normally” because some states disenfranchise people convicted of serious crimes while they are in prison and, in a few cases, even afterwards. This is a particularly serious problem from a democratic and egalitarian perspective in the United States. I add the qualifier “if they live within the state” because some states limit the voting rights of citizens living abroad, although many extend voting rights to them.

access to citizenship in democratic states today rests upon certain empirical claims about the rights attached to citizenship, the facts upon which my normative arguments rest are themselves not in dispute, even by people who might reject my interpretation of the normative requirements of democracy. In claiming that normally voting in national elections is attached to citizenship, I am making an empirical claim, but it is not a contested empirical claim or one that needs to draw upon scholarly empirical research on immigration in any significant way.

In sum, the way the modern world is organized affects the human interests at stake in access to citizenship and that in turn affects the normative arguments about who should have access. Conceptually, there is no reason in principle why the rights currently attached to nationality (and thus citizenship) could not be eliminated entirely or assigned on some other basis altogether. If this were the case, the normative discussion of access to citizenship might look quite different, because the interests at stake in access to citizenship would be quite different. But while my normative arguments thus rest on empirical claims about the way the world is organized, these are not contested empirical claims. I did not feel the need to cite any scholarly literature in identifying these features of citizenship in the modern world because they are so familiar and commonplace.

I have been citing examples of the ways in which my arguments about migration sometimes depend upon empirical claims but not upon empirical research. So, when do I draw upon empirical research and when do I try to avoid it?

One important kind of empirical research that I draw upon in my book is historical research into the evolution of practices and policies in the area of immigration. Let me mention a few examples of how I use historical research in my book, drawing attention at times to the way this use of history differs from what some other political philosophers do in their own analyses.

Take the issue of whether it is morally acceptable to transmit citizenship at birth to the children of current citizens, a legal practice normally described as *ius sanguinis*. Some people reject this practice in principle, arguing that it reflects a conception of the political community as something based on blood ties. My own view is a little different. I argue that the way birthright citizenship works in the modern world is unjust because it is intimately linked to the exclusion of immigrants and to a way of organizing the world that generates vast differences in one's life chances on the basis of birth. But I don't think it follows that birthright citizenship is inherently unjust or that it is inappropriate to think of human beings as born into communities of various sorts.

In my view, one can distinguish between morally defensible and morally indefensible practices of transmitting citizenship, while setting aside (for these purposes) more basic questions like whether the world should be divided into independent states and, if it is, whether those states should be able to control immigration. In that context (i.e., focussing on the question of transmission if one assumes the existence of states with the right to control immigration), I argue that it is morally appropriate to grant citizenship at birth (1) to the children of current citizens who are living in the territory where they are citizens, (2) to the children of citizens now living abroad so long as the citizen parents had previously lived in the country, and (3) to the children of immigrants who have settled in the country. One component of my overall argument draws upon historical research on the origins of *ius sanguinis*. Patrick Weil has shown that *ius sanguinis* emerged in France after the Revolution as a way of affirming a republican rather than monarchical or medieval conception of the polity. (Weil 2008) So, if Weil is right (and I think he is), the meaning of *ius sanguinis* depends upon context. There may be places where this way of transmitting citizenship draws upon an objectionable form of ethnic nationalism, but that is not an intrinsic characteristic of the practice. Thus, the historical research weakens a possible normative objection to the use of *ius sanguinis*.

Later in my discussion of dual citizenship, I draw upon the research of historians to show that in the past limitations on dual citizenship were closely tied to the subordination of women. When a child had parents of different nationalities, it was normally the father's nationality that was transmitted at birth, not the mother's. Recognizing this history does not prove that prohibitions on dual citizenship are wrong. After all, it is possible to construct gender neutral rules regarding the transmission of citizenship that still exclude dual citizenship. Nevertheless, this historical association tends to delegitimize restrictions on dual citizenship, making such restrictions appear at the least as less than benign and natural.

A third place in the book where I rely explicitly upon historical research is in my discussion of the rights of residents. At the beginning of the twentieth century, there were considerable differences between the legal rights of citizens and the legal rights of residents. Over the course of the century, these differences narrowed substantially. There are a few important differences that remain, but only a few. In the empirical literature on this topic, there is considerable disagreement about the causes of this evolution, but none that I can see about the evolution itself.

I think that some philosophers would probably say, "so what?" in response to this recitation of historical developments. The fact that something has happened provides no grounds for thinking that it ought to have happened. The fact that the

difference between the rights of citizens and residents has narrowed does not prove that it ought to have narrowed. Sometimes history moves in the wrong direction from a normative perspective. And so, one might argue, the historical evolution that I have described is irrelevant to the normative argument.

I understand that view, but I think it relies on too narrow an understanding of how we gain moral insights. In my opinion, the fact that the practice of so many democratic states has developed in this way matters. It's not a decisive consideration, and it plays no explicit role in the normative argument itself, but I do think it shifts the burden of proof somewhat. It makes it harder for anyone who wants to argue for creating a sharp difference between the rights of residents and the rights of citizens. And in fact, even in the current anti-immigrant climate, this feature of contemporary democratic practice has not drawn much critical attention. Here and there one hears complaints about immigrants relying disproportionately on social welfare programs provided by the state, but even in those cases, the argument is generally advanced as a reason for restricting the number of immigrants who are admitted rather than for radically reducing their rights. This is one of those cases where I think it is plausible to argue that the evolving practice reflects an implicit but now widely accepted, moral view, even if one does not think that the moral view was what caused the change.

One implication of this approach that may worry some, however, is that it implies a bit of a conservative bias. The approach seems to entail that if one wants to challenge existing arrangements (as I do at many points, especially in my discussions of refugees and open borders), then one should have a stronger case than if one simply accepts a status quo that makes intuitive moral sense to most people. I am not myself troubled by this implication so long as it is not exaggerated. I think that it is appropriate for those arguing for significant change to have stronger and more explicit reasons for their demands than those who want to keep things as they are. It is reasonable to ask that an argument for admitting many more refugees, and especially an argument for open borders, be stronger and more persuasive than an argument that defends the conventional view. I also think that my arguments for admitting more refugees and for opening borders satisfy that requirement.

The final example of reliance upon historical research that I want to cite concerns criteria for the selection and exclusion of immigrants. In my chapter on what I call "ordinary admissions," i.e., the kinds of choices states may make about admissions on the assumption that they have considerable discretion in this area, I examine the idea that democratic states should exclude potential immigrants who do not accept democratic norms and values. It is an idea that one hears a lot in the contemporary context, and I criticize the idea from a number of perspectives. One

important element in that criticism relies on the historical argument that we can clearly see today that previous attempts to screen immigrants on this sort of basis reflected unjustifiable religious and ethnic prejudices disguised as a concern for democratic institutions. There is a lot of good historical literature on the opposition to Catholic and Jewish immigration to the United States in the nineteenth century, much of it expressed in terms almost identical to the opposition to Muslim immigration that we hear today in both Europe and North America. The historical literature shows how unjustifiable that earlier opposition was, how often it was simply a form of religious prejudice. This negative historical experience and its similarity to what is going on today provide one reason among others for resisting efforts to use those sorts of screens today. Again, this is not a decisive consideration, but in my view, it adds weight to the principled reasons that we have for resisting this sort of discrimination.

The examples I have cited so far are ones in which I use historical research to supplement or support the basic argument I am making about some topic. In all of these cases, however, the historical component of my argument is not a decisive consideration. So, even if new historical evidence were to emerge that reversed the findings upon which I have drawn, that development would not fatally weaken the basic argument.

There are a few points in my book where I do rely fairly directly upon empirical claims based on research that others have done and where I would change my view of what was morally required if that research turned out to be fundamentally flawed. For example, in discussing dual citizenship, I identify some of the objections that have been posed to permitting dual citizenship and say that those who have studied the actual effects of dual citizenship have found that it does not have the negative consequences that its opponents fear. If subsequent research showed that dual citizenship was indeed creating significant conflicts of loyalty, allegiance, commitment, and emotional attachment, unfair inequalities of opportunity, or undue burdens on states or on dual citizens themselves, then I would have to modify my view of the desirability of dual citizenship, at least to some extent.

At a number of points in my book, I argue that often what matters most morally is how things work in practice rather than whether or not a policy fits well formally with what principle demands. The implications of that sort of argument for any particular issue clearly rest upon empirical claims about how things work, although the argument itself (i.e., that from a moral perspective what actually happens as the result of a policy is often more important than the validity of the principle that is offered to justify the policy) is not dependent upon empirical claims.

Here is one example of the way practice matters morally. In my view, requiring long settled immigrants to pass a test in order to obtain citizenship is wrong in principle, an impermissible means to the desirable goal of providing immigrants with the information and training they need to participate well in the democratic process. At the same time, if the tests people have to take in order to obtain citizenship are relatively easy to pass, can be taken more than once, and are free or very inexpensive, then requiring such tests for access to citizenship is not a serious problem in my view. I think that some states (e.g., Canada and the United States) have citizenship tests that meet this requirement of not being too demanding and others (e.g., the Netherlands) do not. That specific claim depends both upon empirical information about the particular cases (costs, failure rates, etc.) and upon the evaluative standard of what counts as excessively demanding. The latter is more a normative and interpretive question than an empirical one.

Some people might find the view that I have just articulated deeply objectionable. They might say that if citizenship tests are wrong in principle (as I claim they are), one should oppose them. But a word like “oppose” can conceal important distinctions about the reasons for action and relative priorities. I do think that it is appropriate in a philosophical work like my book which aims to tell the truth as I understand it to explain why citizenship tests are wrong in principle, but I also think that it is morally appropriate to pay attention to the relative importance of the harms caused by practices or rules that one regards as wrong in principle. In my view, it makes moral sense to concentrate one’s critical and political fire on rules and practices that are not only wrong in principle but that also cause significant harm. Moreover, if one is more likely to succeed in eliminating most of the harm with a policy approach that does not challenge the underlying principle directly, that may sometimes be a preferable approach. Whether this is appropriate in a particular case is the sort of question that requires judgment and appreciation of context.

Here is another example of that issue. In my view, as a matter of liberal democratic principle, children who have been raised in a society in which they were not born or did not acquire citizenship at birth should acquire citizenship automatically when they become adults. In contrast to this, under French policy, children born and raised in France have a legal right to acquire French citizenship at age 18, but they must consent to the acquisition of citizenship in order to receive it. So, there is a theoretical conflict between the principle I defend (automatic acquisition) and French policy (acquisition by consent).

As it turns out, what most affects the proportion of such children who become citizens is the default rule used to determine the interpretation of consent. Under some French governments, consent has been interpreted as the right to refuse. So, under that policy, children born and raised in France become French citizens automatically unless they refuse French citizenship. Their non-refusal is interpreted as consent. As an empirical matter, very few people entitled to French citizenship refuse it. So, while there is a formal conflict between the principle I defend and the French practice that I just described, I argue that the French practice is an acceptable policy, or, more precisely, not the sort of thing one should try to challenge because the way it works in practice leads to almost the same outcome as what I think is required as a matter of principle. By contrast, under other French governments, consent has been interpreted as requiring an affirmative expression of a desire to acquire French citizenship. At age 18, the person has to make a formal request for French citizenship in order to receive it. Under that policy, significant numbers of children born and raised in France do not become French citizens. I am highly critical of that policy.

In both these cases, my own assessment of the policy depends upon its consequences for the acquisition of citizenship because I think that all of these children should be French citizens. If the former policy led to many of these children failing to acquire citizenship, I would be highly critical of it, and if the latter policy did not lead to many children failing to acquire citizenship, I would be much less critical of it. What matters most from my perspective, therefore, at least in this case, is not whether a policy formally recognizes the moral principle that I want to defend but the extent to which it generates the outcomes required by that principle, and that is an empirical question.

These examples show that there are places in my normative discussion of immigration where the information provided by empirical research can play an important role in the conclusions one reaches about particular issues, but they also show some of the ways in which my arguments about principle are, to some extent, shielded from empirical challenges. There are other points at which I deliberately choose not to tie my argument too closely to empirical claims that I thought could be reasonably contested, even though, if the empirical claims are true, they strengthen my overall argument. Here are two examples.

In considering the question of whether or not irregular migrants should be granted legal authorization to stay in the states where they have settled, some people

have argued that they should be authorized to stay because the receiving state has actually covertly encouraged the migrants to arrive and settle while officially denying them entry. This covert approach appeases certain domestic constituencies, but it also renders the migrants more vulnerable to exploitation, which the critics argue is one of the intentions of this way of dealing with irregular migration. The critics argue that this covert approach to admissions is morally indefensible, and that, in pursuing it, the state has forfeited its moral claim to be entitled later to exclude these irregular migrants, even if it was originally entitled to regulate immigration. The state owes legal status to people whom it has covertly admitted and invited to stay.

I think that this is a good argument in principle, and that it applies to some cases or at least has applied to some cases in the past. I am not persuaded, however, that this description of what states are doing applies to every case in which we find irregular migrants present in a state or even that it applies today to some states, like the United States, where there is good evidence that it applied in the past.

In making the case for granting legal status to irregular migrants, I do not want to tie my own argument too tightly to a line of reasoning which seems to me to be constrained by contestable empirical claims about particular histories and which is thus potentially vulnerable to new empirical findings. My own argument is that the longer one stays in a state, the stronger one's moral claim to remain, regardless of the reasons why one arrived in the first place. In this argument, facts still matter to particular claims because the strength of one's claim depends upon the factual question of how long one has been present (at least up to some threshold), but the principle behind the argument (the longer one is present, the stronger is one's claim to remain) does not depend upon any empirical claims about what particular states have done at any given moment in time.

Here is a second example. In discussions of the contemporary refugee crisis, one sometimes encounters the argument that because the difficult circumstances that lead so many people to flee their home states are themselves the legacy of European colonialism, former colonial powers in Europe have a special moral responsibility to admit refugees. Again, I do not reject this argument, but I do try to avoid tying my own discussion of the responsibility of rich democratic states for refugees too tightly to it because the empirical claim is both contestable and limited in its reach. How many of the problems in the global south are rightly understood as the legacy of colonialism is highly contested. Beyond that, some European states were much more deeply involved in colonialism than others. It seems to me that it is preferable not to make the moral argument for admitting refugees depend heavily on this assertion of a causal connection when there are other arguments for admitting refugees that are

just as powerful or more powerful and that are not tightly tied to such a contestable claim.

In my book, therefore, I argue that the moral responsibility to admit refugees is overdetermined. There are two sorts of arguments – the humanitarian obligation to help those in desperate need and the obligation that emerges from participation in the state system itself to help those whom that system clearly fails to serve – that do not depend upon any sort of specific claim about the ongoing consequences of colonialism.

As I said, I do not reject the argument itself. On the contrary, I say that a third argument for admitting refugees is that one has a special responsibility to admit refugees when one's state is somehow responsible for their plight, as most Americans recognized in the wake of Vietnam. The argument about the legacy of colonialism can certainly be advanced under the rubric of this more general argument that a state that bears causal responsibility for the difficulties faced by a particular group of refugees has a stronger moral responsibility to assist and admit those refugees, but the more general argument does not depend upon the validity of the particular claim about colonialism, and that in turn makes the overall argument more robust.

Finally, let me offer a few words about the connections between empirical work and my argument for open borders. As some readers will know, I have long argued that justice ultimately requires open borders among all states, at least for the most part and with some modest qualifications. I do not present this argument as a policy proposal about what particular states ought to do here and now, either unilaterally or in combination, precisely because the open borders argument itself is not just an argument about the freedom to move from one place to another but also an argument about the sorts of social arrangements that best meet the requirements of respect for human moral equality. My view is that open borders would be one component of a just world order. I do not say that it is the only essential ingredient. There are many reasonable questions to ask about what the best way is to move in the direction of this broader goal of a just world. Even so, my argument for open borders remains relevant, and it is not entirely detached from empirical inquiry.

When I first made this argument, many years ago now, I often heard people say that it was impossible even to imagine open borders among sovereign states; that open borders would be incompatible with democratic self-determination; that open borders would inevitably disrupt social cohesion, undermining social welfare arrangements at the very least and in all likelihood generating social chaos; and so on.

I have offered a number of responses to these sorts of challenges over the years, but one of them is to appeal to the actual experience of the European Union. Here is a set of political communities that fought wars against each other for hundreds of years, with different antagonists at different times. Their populations speak different languages and have different histories and cultures. Many of the violent conflicts were rooted in differences of religious identity. Nevertheless, at least until recently, the states of the European Union had maintained a regime of open borders among themselves for decades without the disastrous consequences that people often asserted would inevitably follow from open borders between states.

De esse, posse. From the fact that something has actually happened, we can conclude that it is possible. Of course, the free movement regime within Europe is now under considerable strain, and people often point out, quite rightly, that the differences between the economic, social, and political regimes within the various EU states are small compared with the differences among other political communities in the world. These are fair and relevant observations, but from my perspective, they are reasons for investigating more carefully the empirical conditions under which freedom of movement among states works well, the conditions under which it gives rise to problems, and the reasons why it creates problems when it does. I suspect that most of those who declare global freedom to be impossible would be opposed to free movement even if it did not have the deleterious consequences that they project as its inevitable outcome. More careful empirical inquiry of the sort I have just mentioned might make it possible to distinguish what is inevitable from what can be done here and now.

This leads to two final points. First, as the discussion of open borders illustrates, lots of arguments about immigration (and many other topics) invoke claims about the consequences that will follow if one does or does not adopt a particular course of action. In other words, the arguments rest, or at least appear to rest, upon claims about *facts* about how the world works. But as I said at the outset, we know that one of the dangers that we all face in our reflections is that we would like to think that the world will work the way we want it to work and we are tempted to find evidence to support that view. As political theorists, we want facts (if not God) on our side, and so it is always tempting to claim that the facts are on our side.

One way to resist this temptation – and in the process to clarify just how fact-sensitive a particular normative claim is – is to assume the opposite of what we hope will be the truth, and then see whether that affects our sense of what is the right thing to do, of what justice requires and so on. Of course, factual questions are rarely binary in nature. So, it can be even more helpful to adopt a range of different assumptions

about what appear to be the key factual questions in order to see whether a different set of facts will lead to a different normative conclusion. If all of the participants in a debate were to take this approach, it might help to clarify the nature of the disagreement between them and the extent to which that disagreement might be affected by careful empirical inquiries.

Second, one occasionally hears the claim that political theory is intended to guide practice. That is certainly one of the goals of some sorts of political theory, but it is not the only possible legitimate goal for a normative inquiry. The goal of guiding practice should not be used as an excuse for foreclosing fundamental challenges to the status quo.

What it means to guide practice can be interpreted in different ways. At one end, it might mean that someone wants to give advice about how to act in the world in which we live today. Of course, that still leaves open the question of who is to be the recipient of this advice. What is appropriate advice for an office holder may be different from appropriate advice for an insurgent activist. Nevertheless, I take it to be a fundamental requirement of political ethics that when engaging in political action and making political choices, we should always (or almost always) take into account the risks, probabilities, and consequences both of what we are recommending and of the likely alternatives. In actual politics, it is almost never enough to focus only on the intrinsic merit of a particular course of action.

Giving advice about how to act in the here and now is not the only way to guide practice, however. In fact, focusing on the intrinsic merits of particular courses of action is precisely what I do in most of my book. There are occasional places where I draw attention to other considerations, as in my discussion of citizenship tests and French policies regarding the acquisition of citizenship. For the most part, however, I focus on the question of what principles should guide policy without spelling out what this implies concretely for particular times and places, precisely because these other considerations of risks, probabilities, and consequences vary in particular contexts and need to be taken into account in deciding what to do here and now. I think the approach I have taken is not just an exercise in philosophical reflection – although it is that – but also a way of guiding practice. It can be important to enter the fray, but it can be equally important to stand back from it in order to gain some perspective.

Let me repeat that I am not suggesting that every political theorist should adopt my approach. It would be entirely reasonable, in my view, for theorists to take giving advice as their primary aim and responsibility rather than exploring the implications

of principle. Theorists who take that sort of approach might frame their questions quite differently from mine. The key normative question might then be not ‘what is right in principle?’, but rather ‘what is the best we can realistically hope for under this particular set of circumstances?’ If one is interested in influencing public policy, it certainly makes sense to focus on the policies that are on the table (or at least on the side cupboard), not on ones that have no chance of adoption (regardless of why they are not feasible). And one may want to shape one’s criticisms to foster the best possible outcome rather than to draw attention to the ways in which the best possible in a given context falls far short of the best possible in principle. Focus on the latter may be demoralizing for those trying to work within the limits of the currently possible. I hope that articulating some of the requirements of an approach like this also reveals some of its limitations, however.

Some people insist that “ought implies can” and that whatever we advocate must be feasible. Not everyone accepts this constraint upon their theoretical reflection, but I do accept it as a constraint upon mine, so long as it is not interpreted too narrowly. One should recognize that “feasibility” can mean different things in different contexts, however. To say something is feasible with respect to immigration might mean that there is a policy or practice that has a good chance of becoming being passed into law in a particular time and place or it might mean that some idea about immigration could be adopted at some point in time given the right context and circumstances or it might mean something in between. There can be good intellectual reasons for adopting a very narrow conception of feasibility in some contexts, but there are also good intellectual reasons for adopting a very broad conception of feasibility in other contexts, and something in between in still other contexts. We are more likely to make progress in our reflections if we do not try to insist that everyone else should adopt a single conception of feasibility or a single model of what it means for theory to guide practice but rather try to understand what conception of feasibility or what relationship between theory and practice is being invoked, either explicitly or implicitly, in a particular discussion. We can then perhaps reflect upon the advantages and disadvantages of adopting that conception in the particular context in which the discussion is situated.

In my own reflections, I have deliberately and explicitly tried to vary the weight given to different understandings of feasibility. Sometimes I have offered reasons for accepting existing practices or modifying them only slightly. Those discussions fit well with the idea of the need to think about what to do here and now. But sometimes focusing on the question of what to do in the here and now has limitations as a way of guiding practice broadly understood. It can prevent us from even noticing the

deepest problems and the most profound injustices, precisely because they are so intractable, so little open to immediate political challenge. Sometimes simply bringing such constraints into view may be the best way of challenging them, the best way of guiding practice, and I have tried to do that as well.

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