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PHILOSOPHY OF RACE AND THE ETHICS OF IMMIGRATION

José Jorge Mendoza

Introduction

In recent years, moral and political philosophers have shown a growing interest in the ethics of immigration. This interest has produced a substantial literature that looks at whether a state's right to control immigration can be outweighed by any moral obligations it might have to open its borders. Yet, despite the fact that many of today's liberal democratic states have at some point employed race-based immigration restrictions and currently employ what some consider racist immigration enforcement practices, this literature has only superficially dealt with issues of race and racism.

Philosophers who specialize in issues of race and racism have also demonstrated a growing interest in immigration. These philosophers, however, have been more concerned with showing how race-neutral immigration policies can nonetheless generate discriminatory outcomes. In doing so they have developed a variety of interesting and competing strategies for how to think about and condemn this kind of discrimination. Yet, despite all the work that's been done on immigration from a philosophy of race perspective, its implications for an ethics of immigration have largely been underdeveloped.

This chapter is therefore an attempt to do two things. First, provide a general overview of the philosophical literature on immigration from both an ethics of immigration and philosophy of race perspective. Second, make a case that putting these two literatures into conversation would be fruitful. In particular, that it could provide an underappreciated argument for limiting the discretion states are normally thought to enjoy with respect to immigration.

Discrimination and the Ethics of Immigration

The literature on the ethics of immigration can largely be broken down into two camps: those that favor a state's presumptive right to exclude immigrants (Walzer 1983; Miller 2005, 2008) and those who oppose this right by appealing to principles of universal equality and/or individual freedom (Cole 2000; Carens 2013). This section will primarily focus on the former—those who support a state's presumptive right to control

immigration—because this position has had the hardest time in dealing with racism in immigration policy. This is not to say that there are not some who believe that the open borders position also suffers from a similar difficulty—that opening borders might exacerbate inequalities among racial groups (Higgins 2013)—but such a view seems to misunderstand how immigration policy can be the source of racism (Mendoza 2015b). A state’s immigration policy is the source of racism to the degree that it uses race to deny persons entry, favors them for admission at the expense of others, or uses it to determine when, where, how, and to what degree immigration laws get enforced. A world with open borders (i.e., a world where everyone has the *right* and not merely a *privilege* to be present) might not be a world without racism, but it would be a world where immigration policy is not one of its sources.

If we limit our discussion to proponents of a state’s presumptive right to control immigration, then the place to start is with the second chapter of Michael Walzer’s *Spheres of Justice*. In that chapter, Walzer provides a compelling argument that: “Across a considerable range of the decisions that are made, states are simply free to take in strangers (or not). . . . Admission and exclusion are at the core of communal independence” (Walzer 1983: 61). In other words, a state’s ability to control its borders (e.g., immigration) is essential to its claim to be self-determined. Assuming that states have a right to be self-determined, it naturally follows that they ought to have the right to control immigration.

Walzer is clear that this right is only presumptive, meaning that it can be defeated in extreme cases such as when “needy outsiders whose claims [in justice] cannot be met by yielding territory or exporting wealth [and] can be met only by taking [them] in” (Walzer 1983: 48). Walzer is also clear, however, that his account does not morally or politically prohibited states from adopting discriminatory (e.g., racist or sexist) immigration policies. Walzer recognizes this difficulty and even concedes that on his account some modified version of the notorious “White Australia Policy”—a 70-year policy that favored northern European immigrants while discouraging or preventing the immigration of non-whites into Australia—would be permissible (Walzer 1983: 46–47).

In the United States, a similar justification was used to defend some of the country’s most disconcerting immigration policies. For example, when the Supreme Court upheld the constitutionality of the Chinese Exclusion Act, it did so by stating that:

the United States, through the action of the legislative department, can exclude [non-citizens] from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude [non-citizens] it would be to that extent subject to the control of another power.

(*Chae Chan Ping v. United States*)

In this case, the Supreme Court justified a racist immigration policy through a line of reasoning that mirrors Walzer’s: independent states have a right to exclude non-citizens and it is morally and politically irrelevant (so long as the non-citizens in question are not refugees) on what grounds, including racist grounds, they base their criteria for exclusion.

Most philosophers, even those who are sympathetic to the idea that states have a presumptive right to control immigration, are uncomfortable with this implication in

Walzer's account. Yet coming up with a way to avoid it while also consistently defending a state's right to exclude non-citizens has proven difficult. David Miller, for example, has tried to temper his own nationalist position by proposing that characteristics such as race, ethnicity, sex, and gender should not be used as criteria for exclusion because "[for immigrants to] be told that they belong to the wrong race, or sex (or have hair of the wrong color) is insulting, given that these features do not connect to anything of real significance to the society they want to join" (Miller 2005: 204).

While this is a laudable attempt to resolve the problem, many people have found it unsatisfying. For example, Christopher Heath Wellman has responded to Miller by stating:

as much as I abhor racism, I believe that racist individuals cannot permissibly be forced to marry someone outside of their race . . . [therefore] why does [a state's presumptive right to control immigration] not similarly entitle racist citizens to exclude immigrants based upon race.

(Wellman 2008: 138)

In other words, if a state has a right to exclude potential immigrants, why should it matter that non-citizens are insulted by the criteria a state chooses to use? We do not, for example, think that a person has a duty to marry someone simply because declining their marriage proposal would be insulting.

In response to this, Michael Blake has presented an interesting and original alternative. Blake argues that "In all cases in which there are national or ethnic minorities . . . to restrict immigration for national or ethnic reasons is to make some citizens politically inferior to others" (Blake 2003: 232–233). In other words, discriminatory immigration policies should be rejected not because they are insulting to non-citizens, but because discriminatory policies can undermine the social and civic standing of citizens who happen to share the race, ethnicity, religion, sex, or gender that is being excluded (i.e., it is a violation of political equality).

Philosophers who endorse a state's presumptive right to control immigration, such as Wellman, have now come to adopt some version of Blake's argument. Wellman, for example, writes that: "whether or not we are sympathetic to the idea of a state designed especially to serve a specific racial, ethnic, or religious constituency, such a state is not exempt from the requirement to treat all its subjects as equal citizens" (Wellman 2008: 141). And even Walzer would seem amenable to this idea, as he has stated that "no community can be half-metic, half-citizen and claim that its admissions policies are acts of self-determination or that its politics is democratic" (Walzer 1983: 62). Philosophers who support a state's presumptive right to control immigration therefore believe they have found an agreeable solution to their problem with discriminatory immigration policies. So long as the criteria for admissions and exclusions are neutral with regard to such factors as race, ethnicity, religion, sex, and gender, a state can maintain its discretionary control over immigration without generating discriminatory outcomes.

This is not an unreasonable conclusion, but if critical race theory has taught us anything it's that laws that might appear neutral on the surface can nonetheless generate racist outcomes (Delgado and Stefancic 2012). The easiest and least controversial example are the laws that undergirded Jim Crow segregation. On the surface, these laws claimed to respect the equality of citizens, yet in their implementation they degraded

the civic standing of a particular racial group (i.e., African Americans) to a point where members of that racial group could no longer be considered equal citizens. This insight from critical race theory presents a potential difficulty for proponents of a state's right to control immigration: what reason do we have for believing that something analogous will not take place with respect to immigration policy? A state's immigration policy might appear neutral on the surface, thereby satisfying Blake's constraints, but in its implementation it might nonetheless generate discriminatory outcomes.

In this regard, the history of US immigration policy is again insightful. As already mentioned, the United States once had an explicitly racist immigration policy that it justified on grounds of self-determination. This policy, however, came to an end in 1965 when the United States repealed the racist elements of its prior policy and instead adopted a race-neutral immigration policy. This was done not because the prior racist policy was insulting to foreigners, but because it negatively impacted the civic standing of citizens of non-northern European ancestry (Roediger 2006). In short, the history of US immigration policy closely follows the trajectory in the ethics of immigration that took us from Walzer to Blake.

Therefore, if neutrality were enough to preclude an immigration policy from having discriminatory outcomes, this should have been borne out in post-1965 US society. Instead, the implementation of a neutral immigration policy had the effect of eroding the civic standing of Latino/as and Middle Eastern Americans. For example, after 1965 immigration enforcement agents began to use "Mexican appearance" as a basis for stopping and interrogating persons over their immigration status. This practice was so endemic that by the mid-1970s it was challenged twice in the Supreme Court. In both cases, however, the court ruled that "Mexican appearance" was not necessarily a racial demarcation and that its use was justifiable given the sudden increase in undocumented immigrants from Mexico (*United States v. Brignoni-Ponce*; *United States v. Martinez-Fuerte*).

More recently, the United States has adopted an internal enforcement strategy known as "attrition through enforcement." This strategy aims to reduce the number of undocumented immigrants living in the United States by employing harsh domestic policies that makes life so difficult for undocumented immigrants that they begin to "self-deport" (Vaughan 2006). Following this strategy, various laws have been passed at both the state (Schuck 1995; State of Arizona Senate) and national level (1996 Illegal Immigration Reform & Immigrant Responsibility Act; 1996 Personal Responsibility and Work Opportunity Reconciliation Act) that deny undocumented immigrants access to social services, driver's licenses, and in-state college tuition, while at the same time deputizing local police to perform immigration enforcement duties and compelling employers to use various verification methods to insure the legal status of their employees.

Stopping and interrogating people based on a "Mexican appearance" and deploying strategies such as "attrition through enforcement" might make the implementation of US immigration policy better and more efficient, but it has the consequence of disproportionately affecting the civic standing of Latino/a citizens. More than any other segment of the citizenry, Latino/a citizens have been ensnared or have had their lives made difficult by this kind of enforcement (Lovato 2008; Sánchez 2011; Mendoza 2014). In this respect, the implementation of immigration policy fails to give Latino/a citizens equal consideration, even though the policy is on its face neutral.

Another community that has been disproportionately affected by recent US immigration policies has been the Middle Eastern and South Asian American community. Shortly after the 9/11 attacks on the World Trade Center, US immigration policy underwent a drastic change. Seeing as all 19 terrorist hijackers were (a) foreign nationals who had entered the United States legally and (b) were connected to a radical Islamic terrorist group (i.e., al-Qaeda), the US government made immigration enforcement a central component of its revamped national security strategy. Under the auspices of national security, the United States passed various measures aimed at helping agents identify immigrants who might be linked with or sympathetic to radical Islamic terrorist groups. The result is that citizens of Middle Eastern or South Asian descent—or of the Islamic faith in general—have been disproportionately targeted by these changes (e.g., increased warrantless surveillance and stricter requirements for reentry), even though these changes in law are technically supposed to be non-racist (Kayyali 2006).

Philosophers working on the ethics of immigration have had little to say about this kind of discrimination. In part this has been because the discrimination described has more to do with the enforcement of immigration policy than with the actual criteria used for determining admissions and exclusions. In other words, they believe that simply showing that a state fails to enforce its immigration policy in a fair or just manner tells us nothing about whether a state does or does not have the right to control immigration (Mendoza 2015a). Still, the kind of discrimination that arises from the implementation of neutral immigration policies should not be ignored. In this respect, philosophers of race have done a tremendous job. I therefore turn to this literature in the following section with the aim of accomplishing two things. First, to outline the debate over immigration that has taken place within this literature. Second, to suggest that it offers an insight that philosophers working on the ethics of immigration have overlooked; that immigration justice should have some connection to enforcement, and that in making this connection we will find an underappreciated basis for circumventing the discretion states are normally thought to enjoy over immigration.

Immigration and the Philosophy of Race

While moral and political philosophers have come to the issue of immigration in an attempt to resolve the tension between liberal principles and democratic self-determination (Benhabib 2004), philosophers of race have come to this issue in an attempt to account for the kind of discrimination that particular groups, such as Latino/as and Middle Eastern and South Asian Americans, have encountered in so-called post-racial societies (Taylor 2013: 181–204). This section provides an overview of the latter, arguing that philosophers of race have typically employed one of two competing strategies in accounting for this kind of “post-racial” discrimination. One strategy has been to expand or redefine our shared conception of race so that this discrimination can be classified as a kind of racism. The second strategy has been to classify this discrimination as something other than racism (e.g., xenophobia) and argue that condemnations of it should be on par with condemnations of racism. This section concludes by suggesting that, despite their apparent differences, philosophers of race have located a source of this discrimination in the discretionary enforcement states are allowed to have over immigration. Thereby suggesting that the enforcement of immigration policy should

matter to an ethics of immigration and that philosophy of race offers some unexplored reasons as to why the discretion states have over immigration should be circumvented.

It seems fair to say that Latino/as and Middle Eastern and South Asian Americans suffer from a particular form of discrimination in the United States. The question, however, is whether this discrimination counts as a form of racism. The answer to this question depends heavily on how one answers a prior question: do Latino/as and Middle Eastern and South Asian Americans count as racial groups in the proper sense of the term “race”? Some might argue that Latino/as and Middle Eastern and South Asian Americans clearly constitute ethnic groups, but it’s not clear that they therefore constitute racial groups. Ethnic groups and racial groups, after all, are not necessarily the same. This is clear from the fact that people can belong to different racial groups (e.g., White, Black, Native American, or Asian), while nonetheless belonging to the same ethnic group (e.g., Latino/as). If this is the case, then it seems like a mistake to condemn the kind of discrimination faced by Latino/as and Middle Eastern and South Asian Americans as racist. But if it’s not condemnable as racism, then is this kind of discrimination weighty enough to override a state’s right to control immigration?

One way to answer this concern is to say that this discrimination is a form of racism. In order to do that, however, there needs to be some kind of account that can explain why or how our shared conception of race should be expanded or redefined so as to include groups such as Latino/as and Middle Eastern and South Asian Americans. In *Towards a Political Philosophy of Race*, Falguni Sheth provides such an account. According to Sheth, it is inaccurate to think of race in strictly biological, cultural, or even socially constructed terms. On her account, races are made up of those segments of the polity whose beliefs, values, and behaviors are perceived as a threat to the authority of the sovereign, what she terms the “unruly,” and who are at the same time vulnerable to sovereign power.

By defining race in this broad way—as a perceived threat to sovereignty that is nonetheless vulnerable to it—Sheth is suggesting we expand our shared conception of race. Our current conception of race, she argues, is only the product of a more complicated process, and by failing to pay attention to this process we have missed what is really essential to racial formation (Sheth 2009). The larger argument that Sheth is concerned with making is that racism is inherent to all liberal political projects. Whether Sheth is correct about this or not is irrelevant for our purpose. What is important is her claim that we should expand our notion of race in order to better and more accurately capture the wrong that transpires when a state uses its discretionary power to coercively enforce immigration policy.

The payoff in adopting an account like Sheth’s is clear; it lets us condemn the current treatment of Latino/a and Middle Eastern and South Asian Americans as kind of racism. It also hints at a possible solution to this treatment by suggesting that if the combination of misrecognition (e.g., viewing Middle Eastern and South Asian Americans as “unruly”) with the unchecked coercive use of state power (e.g., making Middle Eastern and South Asian Americans vulnerable through the discretionary enforcement of immigration laws) are the source of this racism, then we should find ways to check these powers and be suspicious of any attempt to regard vulnerable groups as threats to national security.

A problem for such an account, however, is that there are many exceptions to it. For example, during a period that is now commonly referred to as the Quasi-war with France, President John Adams signed into law a set of bills that have collectively come

to be known as the Alien and Sedition Acts. These bills were aimed at rooting out the “Jacobin threat,” which French immigrants were believed to pose. Among other things, these Acts allowed the president to imprison or deport any non-citizen who was considered “dangerous” or a citizen of a hostile nation and made any speech critical of the US government into a punishable offense. Even though these Acts were supposed to target a people of a particular nationality, their real aim was to enhance the powers of the federal government at the expense of basic liberties. As Thomas Jefferson astutely pointed out at the time: “the friendless alien has indeed been selected as the safest subject of a first experiment: but the citizen will soon follow, or rather has already followed; for, already has a Sedition Act marked him as its prey” (Jefferson 2015: 553–554).

Similarly, at the turn of the twentieth century various immigration laws were passed that banned or called for the deportation of communists and anarchists. In part these laws received a lot of public support because an anarchist had been responsible for assassinating President William McKinley in 1901. These laws were challenged in the courts, but ultimately the Supreme Court justified them and even allowed for the indefinite detention of communist or anarchist immigrants because these were matters of immigration (where the federal government is believed to have complete discretionary control) and because these immigrants posed a threat to national security (*United States ex rel. Turner v. Williams*).

These two scenarios, the French “Jacobins” and the communist/anarchists, present a problem for Sheth’s account. They are both examples of how sovereign power is consolidated by scapegoating a particular vulnerable segment of the population, which is made to appear as a threat to national security. In other words, they both fit her definition of a vulnerable and *unruly* segment of the polity. Therefore, if Sheth’s account were correct, French “Jacobins” and communist/anarchists would not just count as national or ideological groups, but should also be considered racial groups. Such a conclusion, however, seems bizarre and it’s unclear whether or not Sheth would endorse it given that these are not examples she chooses to focus on.

When faced with this objection there are two ways to proceed; either double down on the project of expanding/redefining the notion of race or abandon this approach and look for another way to condemn this kind of discrimination. In *Biopolitics of Race*, Sokthan Yeng takes the doubling-down approach. Yeng, like Sheth, adopts a Foucauldian notion of “state racism.” The notable difference between the two accounts, however, is that Yeng’s conception of race is explicitly much broader. For Yeng a social group becomes a “race” when the group is deemed unhealthy and therefore a threat to the life of the nation. On this account, states no longer need to deploy explicitly racist policies to get the kind of immigration they want. Instead states employ a kind of racism where immigrants are excluded or deported on grounds that they are a threat to the nation’s life. This allows states to continue excluding or placing more enforcement on groups they find socially undesirable while at the same time avoiding the charge of racism.

On this account, Latino/as constitute a race because they are seen as a drain on public resources—in particular on healthcare services—and therefore a threat to the welfare of the nation. Similarly, people of Middle Eastern and South Asian descent constitute a race because Islam (i.e., the religion they are most closely identified with) is considered a threat to Western civilization and in particular the United States. Increased restrictions and enforcement on these groups is therefore not condemned as racist because they are said to be pursuant of worthwhile and racially neutral objectives.

The advantage of adopting an account like Yeng's is similar to adopting Sheth's; it explains why the discrimination faced by Latino/as and Middle Eastern and South Asian Americans is racist even though it results from the implementation of race-neutral immigration policies. Yeng's account, however, has the added advantage of being able to avoid the objection leveled against Sheth—of avoiding similarly situated social groups (e.g., Jacobins and communist/anarchists) from counting as races. Yeng avoids this difficulty by embracing it. For her, these and other similarly situated groups should be considered races, in that

classifications of race are expanding because state racism emphasizes the need to reject or problematize any group, which threatens the health of the nation . . . This line of thinking allows disparate individuals to be organized into races through a wide variety of identifying markers such as their religious affiliation, sexual orientation, or gender.

(Yeng 2013: 10)

In short, not only is there no problem on her account with Jacobins, communists, and anarchists constituting races, but any group that is perceived as a threat to the health of the nation can come to constitute a race.

There are two obvious problems with such an account. The first is the pragmatic concern that expanding the concept of race might not so much help to legitimate other less recognized forms of discrimination as much as it might take away from the seriousness of racism. Second, while the difference between racism and ethnic discrimination can at times be almost negligible, it seems like a stretch to say that there is no fundamental difference between racism, sexism, or homophobia. In fact, even the work on intersectionality, which tries to bring these different forms of oppression and discrimination together, rests on the assumption that there is some notable difference between them.

If these concerns outweigh the benefits that expanding/redefining race and racism might have to offer, then an alternative approach could be to put less emphasis on trying to make this kind of discrimination fit traditional models of racism and instead highlight its uniqueness while nonetheless arguing that it should be as condemnable as racism. In a series of articles, Ron Sundstrom and David Kim have exemplified this alternative strategy. They have argued that the discrimination suffered by Latino/as and Middle Eastern Americans is best understood as xenophobia. According to them, xenophobia is a form of "civic ostracism" which can be described as:

a subjective belief or affect, usually from the perspective of an individual who is in their imagination, fully rooted in the nation, that some other person or group cannot be a part of that nation. These strangers cannot be authentic participants of the cultural, linguistic, or religious traditions of the nation they inhabit; they do not derive from soil of the nation's land or the blood of its people.

(Sundstrom 2013: 71)

Because xenophobic projects are distinct from racist projects, and in fact are sometimes celebrated as a common national cause that brings different racial groups together, these projects are not always seen as objectionable. According to Sundstrom and Kim, this

is how the implementation of race-neutral immigration policies nonetheless generates discriminatory outcomes for Latino/as and Middle Eastern and South Asian Americans.

Sundstrom and Kim defend their position by first raising two objections to the earlier strategy of expanding/redefining the concept of race. First, they worry that expanding/redefining race would lead to a homogenized (i.e., monistic) conception of racism. According to Sundstrom and Kim, a homogenized conception of racism is problematic in that combating racism requires an understanding of its particular context (i.e., where and how it is situated). For example, combating racism in the United States would require understanding the history of slavery and how race has been mostly defined through a black/white binary, while combating racism in a place like Mexico would require understanding the history of Spanish colonialism and the triangulated relationship between Europeans, Native Americans, and Africans. Monistic conceptions of racism, on the other hand, try to simplify and over-generalize these complicated forms of racism and in so doing overlook the fine-grained differences that distinguish particular forms of racism. For this reason, Sundstrom and Kim instead advocate for what they call a pluralistic account of racism.

Sundstrom and Kim's second objection to the earlier strategy is that a homogenized account of racism tends to subsume and obscure important concepts such as xenophobia and nativism. So even though some expansive notions of racism, such as Sheth's and Yeng's, might claim to account for the harms and injustices usually associated with xenophobia and nativism, Sundstrom and Kim believe that these expansive notions actually help to "shelter" rather than combat these forms of discrimination. So even though racism and xenophobia might at times overlap and historically have tended to come together, for Sundstrom and Kim there are important differences between these two concepts.

Civic outsiders are not necessarily racial outsiders. Although most racial outsiders were deemed ipso facto to be civic outsiders, this convergence does not hold up. In the United States, for example, Native Americans and African Americans were explicitly not included in the nation. Over time, however, those groups, among others, were granted, under paternalistic and dominating conditions, a degree of civic insider status. This insider status was, of course, limited, exploitative, and degrading . . . We do not mean to make too much of this civic insider status, but to be inside is not to be outside.

(Sundstrom and Kim 2014: 34)

Understanding this difference, Sundstrom and Kim believe, allows us to see why people of color, who otherwise are conscious of the racism within their society, are nonetheless susceptible to nativist rhetoric.

The two strategies outlined so far have been presented as diametrically opposed. This was done in order to accentuate their differences and also highlight what is at stake in choosing to classify a particular kind of discrimination as either racial or xenophobic. This is not to say, however, that there are not various positions that fall somewhere in between. For example, Grant J. Silva and George N. Furlas have each staked out interesting positions that straddle these two strategies. Both of them share the worries expressed by Sundstrom and Kim—that expanding the concept of race in ways that theorists such as Sheth and Yeng suggest might dilute (rather than improve) our

understanding of racism—but they also worry that the concept of xenophobia is not rich enough to capture the kind of discrimination suffered by Latino/as and Middle Eastern and South Asian Americans.

While their accounts differ in emphasis, Silva and Furlas are both in agreement—drawing from the work of Frantz Fanon and Edward Said, respectively—that modern racism finds its roots in Western colonialism and orientalism. They also note that Western colonialism and orientalism has largely shaped the patterns and official policies of migration in most (if not all) Western countries. Therefore, they conclude (*pace* Sundstrom and Kim) that racism or at least some version of white supremacy undergirds the “perpetual foreigner” experience that Latino/as and Middle Eastern and South Asian Americans are forced to undergo in places like the United States (Furlas 2015; Silva 2015).

As for my own sympathies, they are much closer to Sundstrom and Kim’s position (Mendoza 2010, 2014), but by no means do I think they are the final word. In fact, the purpose of this overview has been not so much to settle the issue once and for all, but to show how despite apparent differences there are some fundamental points of agreement. First and foremost, there is a near consensus that certain communities (regardless of whether we want to think of them in racial, ethnic, or national terms) are disproportionately targeted by the surveying, interrogation, apprehension, and detainment that goes along with the enforcement of a state’s immigration policy, even when that policy is supposed to be neutral. Second, that when this happens citizens who belong to these communities are not only not receiving equal treatment by the state, but also come to be socially and civically ostracized. While these points of agreement might not seem like much, when brought to bear on an ethics of immigration they raise an underappreciated difficulty for proponents of a state’s right to control immigration. These points suggest that the enforcement of immigration policy does make a difference in determining how much discretion a state should have in matters of immigration and that the discretion it has should be minimal.

This conclusion is derived from the following argument. If immigration enforcement can generate the same kind of deleterious effects on the status of citizens as discriminatory admissions and exclusions criteria, then it stands to reason that supporters of a state’s presumptive right to control immigration should have something to say about this potentially adverse consequence. The most obvious way to account for it would be to expand Blake’s argument into matters of enforcement. If we recall, Blake’s argument precluded the use of discriminatory criteria for the sake of political equality, but so long as this was the case a state could maintain discretionary control over immigration. Given the parallel between the two potential harms, why would Blake’s argument not lead to a similar outcome with respect to immigration enforcement?

The reason it will not have a similar outcome is that enforcement is far less malleable than admissions and exclusions criteria. What made Blake’s original argument so attractive was that it never compromised a state’s discretionary right to disassociate itself from non-citizens. This, however, is not possible with respect to immigration enforcement. Enforcing immigration policy requires that a state disaggregate non-citizens (specifically undocumented immigrants) from citizens in a society where they are deeply intertwined.

What philosophers of race have shown us—in various and at times conflicting ways—is that disentangling these two groups can lead to certain communities of citizens (e.g.,

Latino/as and Middle Eastern and South Asian Americans) not having their rights as citizens properly respected. In an effort to avoid this outcome, legitimate states need to make sure that immigration enforcement meets at least two standards. First, enforcement should not single out any particular community, but make sure the burdens of enforcement are shared equally among all citizens. Second, because some intrusions by the state are in themselves excessive, even if they are shared by all citizens (e.g., warrantless surveillance, random interrogations into one's legal status and indefinite detention), certain protections need to be in place to shield citizens from these potential excesses.

In short, if something like Blake's argument is applied to immigration enforcement, it seems that something like these two standards (e.g., equality of burdens and universal protections) would be implied. This might not present much of a problem for Blake, as he believes that a state's right to control immigration can at times be outweighed by other considerations (Blake 2012), but it does pose a problem for those who don't. These two standards form a canopy that not only protects the equal rights of citizens, but also protects non-citizens (including undocumented immigrants) from a state's enforcement apparatus. In short, one of the consequences of a state respecting the political equality of citizens in matters of enforcement is that its control over immigration becomes less discretionary and more circumscribed (Mendoza 2014: 76–79).

Conclusion

To be clear, the position I advance in this chapter is not that philosophers who defend a state's presumptive right to control immigration are somehow racist or xenophobic. This chapter is meant to be an invitation to moral and political philosophers who are concerned with the issue of immigration to engage with more of the work being done in philosophy of race. It is also meant as an invitation to philosophers of race to apply their insights into the nature of discrimination toward an ethics of immigration and see what implications this might have. The route I have suggested for doing something like this is to argue that regardless of whether one wants to call it racism, xenophobia, or something else, the potential for discrimination that arises from immigration enforcement is weighty enough that an ethics of immigration should take it into account and that it justifies circumventing the discretion states are normally thought to enjoy with regard to immigration.

Further Readings

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- Bonilla-Silva, E. (2014) *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America*, Lanham: Rowman & Littlefield. This book provides an account of "color-blind racism" in the contemporary United States and argues that the conventional bi-racial structure of the United States is being replaced with a tri-racial structure. In this tri-racial structure, certain immigrant groups will be given "honorary white" status and in this capacity serve as a third racial group that buffers whites from blacks.
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