

Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty.
By Ryan Pevnick. (Cambridge University Press, 2011.)

Immigration and the Constraints of Justice proposes a normative framework for immigration policy that rejects realist accounts supporting unilateral border controls, cosmopolitan arguments for open borders, and liberal nationalist arguments for restricting immigration on the basis of shared identity. Pevnick articulates an “associative ownership view” in which members’ contributions to the maintenance of the state institutions makes them collective owners. As collective owners, members have a right to self-determination that provides a *prima facie* right to democratically set immigration policies, constrained by global and international justice.

After an introductory chapter that outlines the book’s major claims, Chapter 2 rebuts statism and describes and defends the associative ownership view. Chapter 3 develops Pevnick’s associative ownership view and attempts to establish its relevance to immigration. Chapter 4 criticizes rights-based arguments for open borders and argues that subsistence rights ground claims of the severely impoverished to immigrate. Chapter 5 argues that neither considerations of economic efficiency nor egalitarianism outweigh associated owners’ right to self-determination. Chapter 6 rejects the use of national identity or appeal to fears that immigrants will undermine the welfare state to restrict immigration.

Pevnick seeks a compromise between the claims of co-members to determine immigration policy and the demands of global justice, but his success is dubious. He rejects cosmopolitan views that people around the world deserve equal opportunity, but nonetheless holds that the claims of convention refugees and “economic refugees” outweigh collective owners’ right to self-determination (87). The moral right to subsistence grounds a legal right for the severely impoverished to migrate on par with refugees facing political persecution (91). Pevnick is vague on the force of this legal right and allows that it can be curtailed if admitting migrants imposes substantial costs (103). Nonetheless, affluent states have an obligation to admit significantly more impoverished immigrants.

In today’s world, this commits him to something close to open borders, limiting the practical relevance of his view. Indeed, many theorists agree that in a world without severe poverty, migration restrictions cease to be morally problematic. Pevnick could reply that he is merely articulating a theoretical point about the proper framework for immigration restriction. But in later chapters, he rejects competing grounds for restricting immigration such as the importance of sustaining cultural membership by pointing to their limited relevance given empirical assumptions (143).

More fundamentally, it is not clear in what sense members are collective owners of the state. Pevnick claims that when members contribute to the creation or maintenance of an institution, they acquire a *prima facie* ownership claim. In Pevnick’s view, this claim to ownership extends to non-voluntary, intergenerational associations such as states. He is aware that there are many types of ownership that confer different bundles of rights, but says little about the collective ownership of state institutions. Do some people own more of the state than others? Do destitute citizens forfeit their right to public goods? Do emigrants have a claim to compensation when they leave? Can individuals transfer their ownership rights to non-citizens? Pevnick does not give enough information to answer their questions.

Instead of giving a detailed account of the bundles of rights members possess in virtue of their collective ownership, Pevnick's analysis does not go beyond the appeal to intuitions. He discusses political theorists kidnapped and forced to produce lectures (37) to show that people can acquire property rights in non-voluntary associations; a boy who acquires a claim to an equal share of the family farm (37) to justify intergenerational property rights; a territory that voluntarily joins a wealthier state only to secede after receiving improved infrastructure (45) to show that contributions to public institutions and infrastructure entail a claim to ownership; farmers in a stateless world who acquire a claim to land through their labor (57) to establish territorial rights; and the Jewish Federation using member contributions to benefit the international Jewish community (109) to justify partiality toward compatriots.

Rather than supporting a systematic understanding of how members' claims to ownership might justify a right to exclude others, these examples lead us astray. For example, the political theorists' claim to their intellectual property does not tell us if a contribution to a non-voluntary association such as the state generates ownership claims. The acquisition of citizenship through *jus sanguinis* or *jus soli* is very different from the acquisition of a share in the family farm. Reflections on property rights in a mythological state of nature provide limited guidance for contemporary property regimes. Contributors to the Jewish Federation do not acquire a claim to ownership at all.

Even if Pevnick convinces us that we are collective owners of state institutions, it is not clear why ownership of public institutions allows us to exclude outsiders. His justification for exclusion is that control over migration is a necessary condition for members to enjoy the benefits of their public institutions (57, 60). But many of the goods supplied by political institutions are public goods: the presence of new people, at least below a high threshold, generally doesn't exclude members from the benefits of law enforcement, public roads, or the natural environment. Once people are in the territory, they can be taxed to contribute their fair share. Moreover, people who have not contributed sufficiently to public institutions can be excluded from unemployment insurance, pension plans, health care, schools, and similar institutions. Without more detail about the rights bundled in members' public ownership claim and how immigration undermines them, the rationale for exclusion remains unclear.

Despite these reservations about the associative ownership view, *Immigration and the Constraints of Justice* is an excellent introduction to recent mainstream debates in political theory on border controls. Pevnick knows the political theory literature well and usefully supplements it with empirical work. Pevnick makes noteworthy claims and arguments throughout that will challenge theorists working on migration.

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