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## *Book Review*



Christopher Bertram, *Do States Have the Right to Exclude Immigrants?* (Cambridge and Medford, MA: Polity, 2018), 140 pages. ISBN: 9781509521968 (pbk.). Paperback/Hardcover: \$12.95/\$45.00.

Academic interest in the question what justice requires globally has intensified in the last twenty years or so, and the issue of migration has increasingly become the focal point of those concerned with the limitations that the current practices of sovereign states put on the freedoms and opportunities of people everywhere. In *Do States Have the Right to Exclude Immigrants?*, Christopher Bertram provides an introduction to these debates while at the same time forcefully developing distinctive takes on the matters under discussion. Bertram unambiguously sides with those who believe that states have no principal right to unilaterally regulate the flow of outsiders migrating onto their territory. Stepping outside the scholarly liberal mainstream on this issue, he proposes to approach immigration ethics from a thoroughly Kantian perspective: Bertram endorses Kant's conviction that just relations between agents only obtain when purported duties generated by right claims are *impartially justifiable*, applying this perspective to the moral status of the state's factual prerogative to exclude outsiders. While the application of Kantian thought to this matter is not entirely unheard of (see Lea Ypi, A Permissive Theory of Territorial Rights, *European Journal of Philosophy*, 22(2), 2014, pp. 288–312), Bertram's book delivers a distinctive and original contribution to the state of the field by providing, first, an elucidation of the ideal principles a Kantian omnilateralism would purportedly lead to, and, second, moral action-guidance for individuals and states in a world far removed from ideal conditions. I will discuss his prescriptions for the ideal and non-ideal plains in turn.

Arguing that the simplicity of the current legal and political prerogative of states to regulate immigration unilaterally cannot accommodate the manifold empirical and moral complexities that provoke and underlie processes of migration, Bertram vividly explores the many kinds of harmful consequences

that the practical exercise of such unilateral authority has on vulnerable persons. To rectify such injustices, the book's central argument proposes a migratory regime which aims to incorporate the interests of migrants (indeed of all those who have relevant stakes in the matter), asserting the Kantian thought that just relations between agents only obtain when purported duties generated by right claims are impartially justifiable. This thought precludes the legitimacy of authoritative unilateralism when competing right-claims are at stake. Given that the relationship between states and would-be migrants is explicitly one in which authoritative claims of rights and duties are made, Bertram asserts that rules for its regulation must be justifiable to everyone. To arrive at such rules, he uses a familiar heuristic: choice from behind a truly universal Rawlsian veil of ignorance. Such choosers, deprived of knowledge of their particular circumstances and affiliations, would not rationally choose the principle of unilateral state authority in matters of migration. They could only rationally choose "a regime with a presumption in favour in free movement, where any restrictions on free movement have to be justifiable according to criteria acceptable to everyone and where there is a representative set of institutions to interpret such principles and adjudicate disputes" (p. 60), since both discretionary state control and fully open borders constitute a strong threat to people's vital interests. Bertram imagines such a regime as a convention authored by a range of different actors with expertise of and/or stakes in migratory matters, providing authorization for an international agency with executive power to adjudicate on contested cases.

I have great sympathy for Bertram's application of Kantian thought, but his argument could have been strengthened further. One concern that Bertram omits is that there is also a distinctly Kantian argument *for* the state's unilateral right to exclude. This argument principally holds that a state's right to restrict external encroachment on its territory is necessary for it to properly exist in the first place. The original wrongness of a state's unilateral, coercive imposition on a would-be migrant grounds a foreigner's *right to hospitality*, but extending this right to full settlement jeopardizes the imperative of maintaining smooth-running states as guarantors of right. To be sure, this argument need not defeat Bertram's claims, but it would have elevated Bertram's own case to acknowledge and refute it. Secondly, I believe that Bertram's argument would have benefited by tackling obvious statist critiques head-on. Statists may well point out that the establishment of Bertram's presumably *genuinely coercive* supranational agency would almost certainly undermine much of the state's authority and regulative power. The locus of coordinative capacity could then be argued to be in danger of shifting towards previously unknown political structures. This potential poses a plurality of questions regarding the

ways through which fundamental values such as justice, equality, and freedom should and can be realised in alternative political make-ups, and the extent to which the weakening of the state is desirable in view of its principal suitability to realize such values at least internally. Again, I doubt that this line of argument will ultimately be convincing enough to dismiss Bertram's enterprise, but this remains an open question and warrants future work.

Let me now turn to Bertram's prescriptions regarding states' and individuals' duties in non-ideal circumstances. In the political status quo, he argues, would-be migrants do not have a general duty to obey the state's unjust claim to a right of unilateral exclusion, but have a right to deceive the state and, if necessary, use proportionate force in defence of their vital interests. Citizens of excluding states, on the other hand, have duties to go to reasonable lengths to further the establishment of the ideally just migratory regime, while withholding compliance with the state's unjust migration policies where this is feasible and does not come at excessive personal cost. Moreover, they have positive duties to discharge some form of assistance to lessen the burden carried by the victims of unjust migration policies. Bertram then outlines three sets of duties for the conduct of states in the absence of a globally just regime. Firstly, states have duties to act cooperatively to bring about a just global regime. Secondly, states have duties to take in *some* outsiders, and the determination of that number should be guided by the logic of fair shares. Thirdly, Bertram insists that whatever state of affairs can be granted as acceptable in such non-ideal circumstances, states always have especially stringent duties of both non-violation and positive protection of affected persons' human rights. His points here are consequential, since he envisions these duties as the criteria that states must meet to legitimately command some compliance with those principally unjust migration policies that are generated in the status quo of unilateral authority. These criteria are envisioned to relate to the rights and duties of individuals expounded above: these rights and duties hold vis-a-vis manifestly unjust states, whereas states that conduct themselves with a proper eye towards justice "have some claims to expect compliance with their policies" (p. 108). This is a Kantian way of thinking yet again: it refers to Kant's *lex permissiva*, a principle that provisionally allows unilateral action in the absence of just omnilateral structures under certain conditions.

I find this to be an elegant approach to providing action-guidance in unjust circumstances, albeit one which is often (too) indeterminate. Regarding Bertram's views on the duties of individuals, it would be especially interesting to know *the extent* to which duties of allegiance to a state acting in provisional good standing would be re-established, given that Bertram is adamant that states ignoring their transitional duties command almost no moral authority

of compliance with their unjust migration laws. Bertram's state duties as conditions for provisional authority likewise need to be fleshed out in more detail. It seems, for instance, that the proactiveness required by states to fulfil Bertram's duties of cooperation is underdeveloped. He suggests at one point that states fulfil their minimal requirements of cooperation by upholding and promoting the 1951 Refugee Convention and ought to "extend protection in line with its founding spirit" (p. 110), but *to which extent* such an extension is required or merely desirable remains unclear. Provisional authority in the Kantian sense, and on Bertram's own account, requires a profound commitment to the abolishment of the unrightful condition, and the mere promotion of the better parts of the status quo may well fall short of displaying such commitment.

All in all, however, Bertram's is a lucidly written project that attempts an elaborate balancing act between serving as a succinct introduction to the ethics of migration and offering an independent and original argument. Ultimately, his book serves two objectives: Firstly, it aims to demonstrate to a broad audience that scholarly occupation with migration ethics provides exciting intellectual tools to critically think about migration issues beyond vague if justified moral concern. Secondly, it endeavours to suggest to researchers in the field that imaginative answers to well-trodden problems lie in plain sight and need only be developed in greater detail. Bertram convinces on both accounts.

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# AUTHOR QUERIES

NO QUERIES