



**DISCUSSION NOTE**

# **IMMIGRATION RESTRICTIONS AND THE RIGHT TO AVOID UNWANTED OBLIGATIONS**

BY JAVIER HIDALGO

JOURNAL OF ETHICS & SOCIAL PHILOSOPHY

DISCUSSION NOTE | AUGUST 2014

URL: [WWW.JESP.ORG](http://WWW.JESP.ORG)

COPYRIGHT © JAVIER HIDALGO 2014

## Immigration Restrictions and the Right to Avoid Unwanted Obligations

Javier Hidalgo

IN A RECENT PAPER, MICHAEL BLAKE (2013) presents a novel argument for the claim that, if states have obligations to protect the human rights of everyone in their jurisdiction, then some immigration restrictions are morally justified. Blake argues that citizens acquire new obligations to protect the human rights of immigrants once these immigrants enter a state's territorial jurisdiction. But he contends that people have rights to avoid unwanted obligations and that citizens can permissibly restrict immigration in order to prevent immigrants from imposing unwanted obligations on them. In this paper, I will show that Blake's argument for immigration restrictions is unsound. In particular, I will argue that it is false that we have rights to avoid unwanted obligations.

### 1. The Unwanted Obligations Argument

Blake claims that the citizens of states are morally required to establish and maintain institutions that protect the human rights of everyone in their jurisdiction. For example, citizens' obligations to protect people's rights to security and bodily integrity imply that citizens are under obligations to pay for police to provide protection, to serve on juries to convict people who assault others and so on. But citizens usually lack obligations to protect the human rights of people who live outside their state's jurisdiction. Citizens have obligations to protect the human rights of people outside their state's jurisdiction if other states fail to adequately protect these people's rights. However, if a government adequately protects the human rights of its citizens and some of these citizens immigrate to another state, then the citizens of this recipient state acquire new obligations to protect the human rights of these immigrants. Suppose that Jon lives in Sweden. If the Swedish government adequately protects Jon's human rights, then the citizens of, say, Norway lack obligations to protect Jon's human rights. If Jon emigrates from Sweden to Norway, then the citizens of Norway acquire new obligations to protect his rights.

Blake contends that "we have a presumptive right to be free from others imposing obligations on us without our consent" (2013: 115). If other people could unilaterally impose obligations on us, then they would have the power to limit our moral freedom. The unilateral imposition of duties stands in tension with the attractive idea that people enjoy a kind of normative control over their lives. Blake argues that rights against unwanted obligations justify immigration restrictions. He writes that "when the well-protected would-be immigrant crosses into a given jurisdiction ... she imposes obligations upon the inhabitants of that jurisdiction" and that this "fact licenses those inhabit-

ants in using coercive force to exclude that migrant” (118). Citizens can permissibly use coercive force to prevent foreigners from entering a state’s jurisdiction because this force is necessary to prevent foreigners from imposing new obligations on citizens. To be clear, Blake is not arguing that a state has a right to exclude potential immigrants because immigrants impose costs on the citizens of this state. Instead, Blake is arguing that citizens have rights to exclude foreigners even if admitting these foreigners would benefit citizens on net (114-15).

Blake’s argument goes like this:

1. People have moral rights against the nonconsensual imposition of new obligations.
2. If person A has a moral right against the nonconsensual imposition of new obligations, then it is (presumptively) morally permissible for A (or some agent that represents A) to use coercive force to prevent person B from imposing a new obligation on A.
3. Citizens are morally obligated to protect the human rights of everyone in their state’s jurisdiction.
4. If citizens are morally obligated to protect the human rights of everyone in their state’s jurisdiction and a new immigrant C enters a state’s jurisdiction, then C imposes a new obligation on the citizens of this state to protect C’s human rights.
5. So, it is presumptively morally permissible for citizens (or the state that represents these citizens) to use coercive force to prevent potential immigrants from imposing new obligations on them.

I will refer to this as the *unwanted obligations argument* for immigration restrictions.

## 2. Against the Right to Avoid Unwanted Obligations

I will now argue that premise 1 of the unwanted obligations argument is false: We should reject the view that people have rights to avoid unwanted obligations.

The premise that we have rights to avoid unwanted obligations has objectionable implications. Consider:

*The Child.* Rebecca decides to have a child. Rebecca’s decision to have a child does not harm anyone or impose any significant costs on other people (let us just assume that this decision does not impose any net costs on other people). Rebecca’s decision actually benefits other people. Her child turns out to be a flourishing, productive and decent person whose talents benefit others. Thus, Rebecca’s decision to have a child benefits some people and makes no one worse off.

Citizens in Rebecca’s jurisdiction now have positive obligations to protect the human rights of her child. Citizens are obligated to protect the physical security of Rebecca’s child and provide other benefits for this child as well.

So, Rebecca foreseeably brings it about that the residents of her jurisdiction have new obligations. She imposes new obligations on other people.<sup>1</sup>

If people have rights against unwanted obligations, then Rebecca's decision to have a child violates these rights. Blake claims that people who impose obligations on other people without their consent act impermissibly. He suggests that foreigners who immigrate to a state without the consent of its citizens do something morally wrong by violating citizens' rights to avoid unwanted obligations (117-18). Rebecca's decision to have a child therefore violates the rights of her fellow citizens even though this decision makes some citizens better off and harms no one. This is a *prima facie* objectionable entailment. It seems false that Rebecca's decision to have a child violates anyone's rights.

Blake's discussion of the right to avoid unwanted obligations emphasizes *positive* obligations, such as obligations to protect people or aid other people. Blake holds that citizens of a state acquire positive obligations to protect and fulfill the human rights of new immigrants and that our rights to avoid unwanted obligations explain why it is morally permissible for citizens to decline to assume these positive duties. Yet the right to avoid unwanted obligations should apply to *negative* duties to avoid harming other people or violating their rights. After all, the right to avoid unwanted obligations is the right to be presumptively free "from others imposing obligations on us without our consent" (115). Negative duties limit our moral freedom as well. My negative duty to refrain from punching you in the face constrains what I can permissibly do. If we have rights against the nonconsensual imposition of duties, then we also have rights against the nonconsensual imposition of negative duties.<sup>2</sup>

---

<sup>1</sup> Blake agrees that the decision to have children imposes new obligations on people. He writes: "When my friends and colleagues have children, they place me under new obligations, certainly to defend the legal and moral rights of those children, but also to provide specific goods to them, including such demanding tasks as babysitting and the provision of appropriate gifts on appropriate birthdays" (118-19).

<sup>2</sup> One might argue that we can draw a distinction between positive and negative duties by appealing to the costs of satisfying these duties. Positive duties are typically more costly to satisfy than negative duties. Positive duties to protect or aid someone usually impose significant costs on the duty-bearer. In contrast, negative duties merely require inaction: If you have a negative duty to avoid harming A, then you must simply refrain from harming A to satisfy this duty. This is often less costly than providing someone with protection or aid. Can Blake argue that we have rights against unwanted positive duties and deny that we have rights against unwanted negative duties? I do not think so. Remember that Blake wants to avoid appealing to the costs of immigration in order to justify immigration restrictions. Blake says: "I should note, up front, that this argument [for immigration restrictions] is not one about costs, but about obligations; I am concerned with whether or not we have a right to be free from an obligation to act in particular ways toward particular persons, not whether or not they impose financial costs on us by their presence" (2013: 114-15). So it does not seem that Blake can appeal to the comparative costs of satisfying negative and positive duties to support his argument. Blake wants to argue that we have rights against unwanted obligations even if these obligations are not costly to satisfy.

Now, consider:

*The Tribe.* A tribe of hunter-gatherers lives deep in a large rainforest. This tribe is completely isolated from the rest of the world. Some of the people in this tribe decide to have children. Their decision to have children does not harm anyone or impose any costs on others.

The members of this tribe impose obligations on other people. Their decision to have children imposes negative duties on others. You and I are now under duties to refrain from harming the tribe's children or violating their rights and we lacked these duties prior to the tribe's decision to have children. So, the tribe's actions impose negative duties on the rest of humanity, even though other people never consented to this imposition. The tribe's decision to have children thus violates other people's rights to avoid unwanted obligations on a massive scale. The point generalizes. Blake's position apparently implies that reproduction always violates the rights of others by imposing negative duties on them.<sup>3</sup>

Notice that the same point applies to nonhuman beings. For example:

*The Horse Breeder.* Jon starts a business breeding horses. Jon's business manages to breed hundreds of new horses. All of these horses are treated humanely.

Let us assume that we have moral duties to refrain from torturing animals for fun. Jon imposes new duties on other people. Everyone in the world now has duties to refrain from torturing Jon's horses for fun. So, if people have rights to avoid unwanted obligations, then Jon violates the rights of other people by imposing new duties on them to refrain from torturing his horses.

These are absurd results. If the view that we have rights to avoid unwanted obligations entails these results, then we have good reason to reject this view. My objection to premise 1 of the unwanted obligations argument goes:

1. If people have rights to avoid unwanted obligations, then Rebecca, the hunter-gatherer tribe and Jon violate the rights of other people.
2. It is false that Rebecca, the hunter-gatherer tribe and Jon violate the rights of other people.
3. So, it is false that people have rights to avoid unwanted obligations.

Thus, premise 1 of the unwanted obligations argument is false.

---

<sup>3</sup> Some people argue that reproduction is wrong because it harms the child (Benatar 2006). But, even if reproduction is wrong because it harms the child, it still seems false that reproduction is wrong because it violates other people's rights.

## 4. Responses

How might Blake respond to my argument? In this section, I will consider two possible responses.

### a. Restrictions on reproductive freedom

Blake recognizes that he faces an objection in the vicinity of the one that I sketched above. He considers the objection that his view implies that it is morally permissible to restrict reproductive freedom in order to prevent would-be parents from imposing new duties on us. Blake writes in response:

the rights of my friends and colleagues to control their own bodies is more central than my right to avoid unwanted obligations toward their children, and this means in practice that any attempt to prevent those children from coming into the world would be morally impermissible (119).

In this passage, Blake is claiming that it would be all-things-considered impermissible for you to restrict the reproductive freedom of other people because their rights to control their bodies outweigh your right to avoid unwanted obligations. Even if people's procreative decisions impose new obligations on you, it would be wrong for you to coercively prevent them from having children.

Yet this response fails to meet my objection. My objection is that Blake's position is committed to the implausible view that Rebecca, the tribe and Jon violate the rights of other people by creating new life. Blake's claim in the above passage is that it is wrong to stop people from having children, even if they violate rights. That may be true. But it remains the case that Blake's view entails that Rebecca, the tribe and Jon violate the rights of others. So, even if Blake can coherently maintain that it is wrong for people to restrict reproductive freedom, Blake's position still implies that reproduction is (at least presumptively) rights-violating.<sup>4</sup>

### b. The violinist

Blake could argue that, although the view that we have rights to avoid unwanted obligations has some objectionable entailments, we should endorse this view anyway. Perhaps the reasons in favor of Blake's view are strong enough to justify its acceptance despite its odd implications. To see whether

---

<sup>4</sup> Blake could argue that, although reproduction is presumptively rights-violating, it is all-things-considered permissible because the reasons in favor of reproduction outweigh people's rights to avoid unwanted obligations. But I think we should deny that reproduction is even presumptively rights-violating. When Jon decides to breed horses and the members of the tribe decide to have children, they do not even presumptively violate the rights of others in a manner that would require countervailing reasons to justify.

this is true, let's consider Blake's positive argument for a right to avoid unwanted obligations.

Blake suggests that the right to avoid unwanted obligation helps explain intuitive judgments about cases. He uses Judith Thomson's famous violinist thought experiment to motivate the claim that we have rights to avoid unwanted obligations.<sup>5</sup> But Blake modifies the example in the following way:

Violinists ... can successfully place us under an obligation to offer them support simply by touching us with the tips of their fingers. (Assume that this touching is otherwise permissible; a mere touch of fingertips, in this world, is not a battery.) Imagine, finally, that a violinist is now attached to one individual, and is being offered adequate support by that individual; the violinist, however, would like to be attached to you, instead. Does the violinist have a right to touch you, and place you under an obligation to provide her with those goods to which she is morally entitled? I cannot see why; whatever it is to which she is entitled, she is by hypothesis already receiving it from the individual to which she is attached. You are under no obligation to become the individual charged with the defense of the violinist's entitlement ... (116).

Blake contends that this example supports the idea that people have rights to avoid unwanted obligations (he does not provide any other cases to support his view that we have rights to avoid unwanted obligations besides this one).

Let's assume:

- (1) It is morally permissible for you to refuse to allow the violinist to attach herself to you.

What explains (1)? Blake thinks:

- (2) It is morally permissible for you to refuse to allow the violinist to attach herself to you because you have a right to avoid unwanted obligations.

Yet there are other possibilities, such as:

- (3) It is morally permissible for you to refuse to allow the violinist to attach herself to you because it is morally permissible for you to avoid bearing the very significant costs that supporting the violinist would impose on you in cases where the violinist already has adequate support.

---

<sup>5</sup> Thomson (1971: 48-49) describes the case as follows: "You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, 'Look, we're sorry the Society of Music Lovers did this to you – we would never have permitted it if we had known. But still, they did it, and the violinist is now plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you.'"

Claim (3) does not say that we have a right to avoid unwanted obligations in general. Instead, (3) makes the more limited claim that it is permissible for you to refuse to bear severe burdens for the benefit of a stranger who does not need your help.

It seems to me that (3) can explain (1). I suspect an even stronger conclusion is warranted: (3) explains why the violinist cannot obligate you merely by touching you. Blake assumes away (3). He assumes that the violinist can in fact impose obligations on you via touch. Yet, if (3) is true, then the violinist lacks the moral power to impose an obligation on you by touching you in the first place. She lacks this moral power because she lacks the ability to make it the case that you are morally required to bear the costs of supporting her. We can refrain from appealing to rights to avoid unwanted obligations in order to resist the claim that the violinist can place you under an unwanted obligation. The view that you can permissibly refrain from bearing severe burdens for the sake of a stranger can also explain why you can permissibly refuse to support the violinist.

### 3. Conclusion

In this note, I have evaluated Blake's unwanted obligations argument for immigration restrictions. I have argued that one of the premises of this argument is false: We lack rights to avoid unwanted obligations. Therefore, Blake's argument for immigration restrictions is unsound. Even if immigrants impose new obligations on the citizens of a state, Blake's argument fails to establish that people have rights against the imposition of these obligations. So, Blake's argument falls short of showing that states can permissibly restrict immigration in order to prevent foreigners from imposing obligations on citizens.

Javier Hidalgo  
University of Richmond  
Jepson School of Leadership Studies  
hidalgoj@gmail.com

## References

- Benatar, D. (2006) *Better Never to Have Been: The Harm of Coming Into Existence*, New York: Oxford University Press.
- Blake, M. (2013) "Immigration, Jurisdiction, and Exclusion," *Philosophy & Public Affairs* 41: 103-30.
- Thomson, J. (1971) "A Defense of Abortion," *Philosophy & Public Affairs* 1: 47-66.