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Immigration and Environment: Settling the Moral Boundaries

ROBERT L. CHAPMAN

*Department of Philosophy and Religious Studies
41 Park Row - Shiff Faculty Center
New York, NY 10038, USA
Email: rchapman@pace.edu*

ABSTRACT

Large populations fuelled by immigration have damaging effects on natural environments. Utilitarian approaches to immigration (whether restrictive or permissive) are inadequate, since they fail to draw the appropriate boundaries between people, as are standard rights approaches buttressed by sovereignty concerns because they fail to include critical environmental concerns within their pantheon of rights. A right to a healthy environment is a basic/subsistence right to be enjoyed by everyone, resident and immigrant alike. Current political-economic arrangements reinforced by familiar ethical positions that support property rights and preference satisfaction favours (privileged) residents while directly or indirectly denying basic rights to potential immigrants and should be abandoned and a basic rights procedure adopted.

KEYWORDS

Dependency theory, livable environment, subsistence rights, utilitarianism

There is room in the world, no doubt, and even in old countries, for a great increase of population, supposing the arts of life to go on improving, and capital to increase. But even if innocuous, I confess I see very little reason for desiring it. The density of population necessary to enable mankind to obtain, in the greatest degree, all the advantages both of co-operation and of social intercourse, has, in all the most populous countries, been attained.

John Stuart Mill, *Principles of Political Economy*, 1848

I. OPENING REMARKS

Daily we are overwhelmed with media images of destitute refugees fleeing razed cities and depauperate countrysides. Albanian Kosovars under cover of night dodge Serbian bullets as they escape to a squalid security in the congested hamlets of northern Albania and Macedonia. In equatorial Africa borders shift like sand in what seems to be an endless tide of blood as nearly fifteen million people retreat in stony silence along dusty, inhospitable roads from the latest famine or tribal conflict. In Glen Cove, Long Island, New York, groups of illegal immigrants camp out in downtown city parks; gypsies find a temporary haven in dilapidated trailer camps on the outskirts of Rome; Guinease would rather live in New York City subways with all the attendant dangers than in Conakry where there are no jobs. The litany of quotidian migrations goes on and on. Currently 30 to 100 million necessitous bare boned people are on the move looking for subsistence accommodations, searching for their place in a small and hostile world (Black, 1996: 88.)

Sadly, perhaps inevitably, otherwise Good Samaritan nations have reached the limits of their compassion. Germany, France, England, Australia, New Zealand, Canada and the United States are revisiting the precincts of a particularly ugly prejudice all too familiar during concentrated influxes of migration; xenophobic sentiments grow with the increased number of refugees and immigrants. In Germany the Weisse Bruderschaft have doubled their membership in the last year, while in the United States the Ku Klux Klan and other white supremacist groups have found a voice in national policy. These events are as unsettling as the dispossessed are unsettled.

In an attempt to halt this rising tide of refugees and immigrants, potential host countries are now claiming a strong correlation between swelling populations and environmental degradation. This paper examines the claim that large populations, bloated by immigration, have deleterious effects on natural environments and suggests an argument based on subsistence/basic rights to support restricting immigration that would have significant effects on current economic and political orthodoxies. On the way to making a rights-based claim, a utilitarian approach is examined and dismissed.

II. BACKGROUND CONDITIONS

That swelling human populations and environmental degradation are closely related cannot possibly come as a great surprise (Boyce, 1994, Postel, 1994).¹ Large numbers of persons have a vitiating influence on natural environments, mainly by pressing demands on local natural resources. Population pressure has always been a key force behind land-use intensification (Boserup, 1965). The growth in anthropocentric demands is responsible for much of the environmental

IMMIGRATION AND ENVIRONMENT

deterioration we are experiencing throughout the world today. The evidence for this claim has become painfully clear as we witness worldwide increased water and air pollution, loss of bio-diversity, rapidly disappearing forests and wetlands, soil erosion, depleted water tables, ozone depletion, and the greenhouse effect. Lester Brown reports the following, 'We can see the loss of tree cover, the devastation of grasslands, the soil erosion, the crowding and poverty, the land hunger, and the air and water pollution associated with the addition of people' (Miller, 1997: 47).

It is possible that host countries are overstating the effects of immigration on the environment – maybe their calculations are off, skewed by uncritical acceptance of pessimistic predictions about the state of natural resources, or by a selfish desire to maintain a privileged access to established patterns of consumption. The Singers, writing in 1988, considered the United States (along with Australia, New Zealand and Canada) an 'affluent nation that is not desperately overcrowded' (Singers, 1988: 125).² Much has changed since then; more and accurate information has become available about the impact of population on the environment (Grant, 1992; Hardin, 1993; Bouvier and Grant, 1994; Vitek and Jackson, 1996; Hildegrade, 1997). Also demographic patterns and projections have changed significantly. For example, United States population growth – approximately 3 million per year – exceeds the total growth of all other developed countries combined (*Carrying Capacity Network*, spring 1998; hereafter *CCN*). Indeed, some demographers consider the US one of the most overpopulated nations (P. and A. Ehrlich, 1992 and Grant, 1992) with a population far in excess of the 'impact' (human carrying) capacity of the nation (Costanza, 1992: 53). According to a prominent environmental historian, 'The places where most Americans live are now among the most densely settled on earth. The state of Virginia, for example, has 144 residents per square mile, compared with Iraq's 83. The state of Pennsylvania is more densely peopled than France, with 264 per square mile. Ohio is more thickly settled than Thailand or China' (Worster, 1993: 7). So maybe the case has not been exaggerated.

The impact of so many people on the natural environment has been damaging, and significantly so. The examples are many and menacing. One acre of natural habitat or farmland is converted to built-up space for each person added to the US population. Every year the US paves over an area the size of the state of Delaware, to accommodate increased population (*CCN*, spring 1998: 2). It is estimated that 1.3 acres of farmland is needed to support each person in the US, and this is not included in the 3 to 6 'shadow acres' necessary to support an American lifestyle (Abbasi, et al., 1986: 14)³. The statistics of degradation don't stop here. We are entering a new period, what Lester Brown and Hal Kane christened the era of 'food insecurity' (Brown and Kane, 1994: 21–48). Our lands are overgrazed, our oceans over-fished, and our farms under impossible pressures to feed growing populations. For example, agricultural technology in the US is becoming increasingly expensive, less effective, and is reaching

absolute limits. The pressures on farmers to produce more have led, in many instances, to unsustainable practices. Soil from US croplands erodes at an annual rate of approximately 3 billion tons, producing rivers of silt 'too thick to drink and too thin to plow.'⁴ Increased use of chemical fertilisers is poisoning our groundwater and wiping out coastal fisheries. Increased water use for irrigation is becoming more expensive as the energy costs related to pumping rise and the depletion of groundwater aquifers is immanent. The Ogallala aquifer that supplies water to many of our western states, including California, will, if current consumption rates continue, be depleted in 25 years (Bouvier and Grant, 1994: 37); likewise, the High Plains aquifer will probably be exhausted within the next 50 years (Worster, 1993: 66). With ever increasing populations and current patterns of consumption we are carelessly creating what ecologists refers to as 'depauperate environments'.

The driving force in the increase in US population is immigration (Bouvier and Grant, 1994: 68). In 1996 the United States received 935,000 legal immigrants and refugees and an estimated 400,000 illegal immigrants, representing 40% of the countries growth (see Miller, 1998: 297). A 1992 US Bureau of the Census scenario suggests that fertility will remain at 2.0 live births per woman (a little below replacement rate of 2.1) but immigration will be 880,000 per year. This would place United States population at 383 million by 2050 – only two generations from now (US Bureau of the Census, 1992: P-25-1092).⁵ If immigration were stopped today there would be approximately 80 million fewer people in the US by 2050 – in part because most new immigrants adhere to traditional reproduction patterns (Bouvier and Grant, 1994: 71–73) – and population decline would begin shortly after 2050.

The developed nations wonder out loud, 'Can we keep up with the increased growth in population fuelled primarily by immigration?' It would seem highly unlikely, unless, of course, we adopt lifestyles consistent with severe asceticism. Although it is notoriously difficult to estimate optimal populations, one such crude estimate might be helpful in promoting a perspective of scale. Given current consumption levels and availability of renewable resources, the optimal US population is set at 85 million. And for those of us who believe that our cultural evolution has led to excessive levels of consumption and should be cut, say, in half, and distributional inequities remedied, we come up with an optimal population of 170 million (Costanza, 1992: 51). In either case the present US population of 270+ million far exceeds the presumed impact capacity. Moreover, even if we were to magically change our patterns of consumption significantly lowering resource use, further increase in population – by whatever means – would bring us away from a carrying capacity necessary to reverse the negative impact on the environment.⁶

What makes the immigration issue so troubling and morally frustrating is the inescapable human face to this litany of environmental woes. Each day 110,000 people die from starvation, malnutrition and poverty-related diseases; 500

IMMIGRATION AND ENVIRONMENT

million people worldwide have malaria and 2.5 million die annually from it; 1.2 billion people live in absolute poverty; 1.5 billion people have no access to a safe and healthy water supply; 5 million people – most of them children under the age of five – die every year from preventable, water-borne diseases; every year 500,000 women in LDCs die of pregnancy related causes (Miller, 1998: 601). Again we wonder, how can we turn away people attempting to escape these incessant horrors? Yet how can we admit them knowing the likely impact they will have on natural environments?

III. 'A BACKWARD GLANCE O'ER TRAVEL'D ROADS'

Historically, United States immigration policy has placed a high value on open borders. A policy of semi-permeable borders provided a labour force for an expanding economy, protection for political/economic/religious refugees, and a means for families to reunite (the 'kinship principle') while more generally providing social opportunities lacking in those countries from which migrants were fleeing.⁷ There have been exceptions (Violet, 1991: 3) but for the most part the influx of immigrants in search of a better life was viewed as something positive and culturally enriching. US immigration policy has accommodated the needs and aspirations of immigrants while, at the same time, shaping policy with the country's needs in mind.

Conflicting ethical considerations served to influence immigration policy in the United States during the twentieth century. The national origins quota system adopted in the 1920s to preserve the national ethnic heritage was repealed in the 1960s under the impetus of the civil rights movement and has evolved to its present state guided, in part, by human rights concerns (Violet, 1991: 4). Yet, the primary motivational force behind US immigration and refugee policy is 'ex gratia.' This position expresses the attitude that the United States, or any sovereign nation for that matter, has no moral or legal obligation to open its borders to the destitute for sanctuary, enhanced opportunity, or any other reason. In the language of philosophical ethics, an ex gratia approach can be viewed as an instance of supererogation – going beyond what is required by duty and obligation.⁸ Those who embrace open immigration policies demonstrate their generous and humanitarian characters; their actions might be exemplary of a certain type of character, but they are not performed out of a sense of duty.

Unhappy with the apparent lack of a coherent immigration policy and understandably reluctant to leave such issues to the 'better angels of our nature' philosophers and social critics have appealed to different approaches for an ethics of immigration.⁹ Some advocate an interest approach to social issues, advancing as a basic moral principle that all interests should receive equal consideration (Singer, 1988: 12). Others accept an 'ex gratia' approach with a qualifying rights proviso (Walzer, 1983: 31–63). I am sceptical of both methods

towards an ethics of immigration because both omit serious consideration for natural environments.

Utilitarianism: a worn path

In the case of the interest approach it is argued that ‘interests’ (as a rendition of classical utilitarianism)¹⁰ are preferable to rights-based approaches, presumably, because it is a more fundamental expression of the principle of equality, even though interests are not created equal.¹¹ This raises familiar problems attached to most utilitarian calculations. First, the utilitarian method ignores the boundaries between lives – the separateness of persons’ problem.¹² (This allows them to ignore the boundaries between countries too.) Second, what, which, and whose interests count?

Regarding the first objection: The maximisation of aggregate interests, preferences or systems of desire, for one person or society as a whole, is not based on any set formula of distribution; no one type of distribution is any better than another as long as maximum fulfilment is the outcome overall. Another way of putting this is that when it comes to issues of justice, rights, duties and liberties, all theories and distributional matrices are equal as long as they produce the greatest balance of aggregate satisfaction.

To arrive at an answer to the question of comparing interests (competing or otherwise) one need only adopt ‘the principle of rational choice for one man’ (Rawls, 1971: chap. 1, sec. 5). If it is rational for one man to maximise his preferences then it is right to maximise benefits across society. Thus, the principle of one man is applied to society. In order for this to have cogency this ‘ideal spectator’ must possess the characteristics of impartiality¹³ and sympathy. ‘It is this spectator who is conceived as carrying out the required organisation of the desires of all persons into one coherent system of desire; it is by this construction that many persons are fused into one’ (Rawls, 1971: 27). Implicit in the ‘fusing’ of persons is that the boundaries of and between lives have no moral significance.

Leading into the second objection, does this procedure place us in an appropriate position to compare interests? Only if we are willing to accept the conflating of all persons into one, or the disintegration of the unity of each life. You may recall the boundaries between lives have little moral significance here. The farmer in Wisconsin, the taxi driver in Denver, the greengrocer in Brooklyn, the professor in Boston, the jockey from Yonkers and the migrant from Bombay are all identical for purposes of comparison; their lives are commensurable. It is true that in some sense and in some cases the benefits attached to successful migration *outweigh* the burdens placed on the residents. But surely some other right or principle of justice is responsible for such a determination. It would be wrong to send political refugees back to a certain death or torture, not because

IMMIGRATION AND ENVIRONMENT

it would tilt the scales in favour of pain but because it demonstrates a complete lack of respect for the dignity of persons.

What if the jockey, professor, farmer, et al. wish 'that population, manners, and customs remain fixed' and would like to let 'the great torrent of migration and improvement ... sweep by them unobserved' (Irving, 1849)? What if they chose not to replace the sonorous evening song of the whippoorwill and the ever-diligent forecasting of the tree toad with the clutter of human gossip? Should they be accused of seigneurial isolation? A way-of-life is just that, a way-of-life, and between lives so deeply situated comparisons are odious. The Benthamite injunction that 'each person is to count as one and nobody as more than one' might have merit at the voting booth, the polling station, and, probably, in the windowless enclaves of cost-benefit analysts. But this type of moral arithmetic is sadly inadequate for interpersonal comparisons.¹⁴

Granted the utilitarian procedure has an alluring quality: it is easy to be seduced by the proposition that it can never be right to prefer a worse state of affairs to a better. But the conception of right that utilitarianism incorporates requires each participant to produce the best available outcome overall. So the immigrant at the door should be given the sum of your daughter's college tuition if that will produce the greatest balance of pleasure over pain. College is a luxury whereas a minimal standard of living is not. There is a certain surface attraction here, but what about all those promises to your daughter regarding her education, her future and the family's ingrained roles and expectations?¹⁵ She has structured her life around those promises and an important aspect of your life is contained in those promises. The utilitarian consequence is that her goals and your wishes are, in principle, dispensable. And what about the two thousand million desperately poor living beyond US borders? In a utilitarian mood should we divide them up between US families, having each family take in approximately 30 permanent guests? (see Hardin, 1993: 288-289). No, the horrendous profile of suffering throughout the world is beyond our abilities alone to solve in this manner. What is needed is not to import and spread out equally the misery, but to decrease and, where possible, eliminate it at the source. One solution would create the conditions necessary to provide meaningful aid to those countries generating migration; this would be an important first step to preventing flight to secure resources necessary for a decent human life.

Utilitarianism fails doubly. First, it fails to give adequate weight to the deeply contextual aspects of individual lives – the character, social traits, and roles that define us. Second, it fails to accommodate the basic normative requirement that human choice and action must be guided by broader environmental concerns, especially if we are to maximise autonomy overall.¹⁶ Next we consider whether a rights approach fares any better in accommodating the arborecence of concerns presented by immigration?

Rights: a long day's journey

Rights represent a belief that persons deserve respect, that some aspect(s) of the person are off limits to descriptions of utility. That my moral rights provide me with a claim to possess and use them and places others under an obligation not to deprive me of that use, even if doing so would produce beneficial circumstances overall. For something to become a right, in the legitimate sense of commanding our assent, what is claimed must be of some real importance and must not put an unreasonable demand upon those who are required to honour the right-holder's claim.¹⁷ Is immigration a right in this sense?¹⁸

Like interests, rights are not created equal. There are 'basic' rights and non-basic or 'derivative' rights, all of which can be viewed as instruments, constraints or goals (Nielson, 1985; Sen, 1992; Li, 1996). Basic rights differ from derivative rights in that they are essential for the enjoyment of all other rights – they are first rights or rights that are themselves the condition for their own possibility – *sui generis*. As basic they possess a distinctive logical characteristic, one of priority. It would be impossible (self-defeating) to violate a basic right in order to promote a non-basic right, because the moment you sacrifice the one, you remove the possibility of the other (Shue, 1996a: 19).

There are numerous ways of articulating basic rights. Two familiar expressions are the US Constitution – Bill of Rights (inalienable rights)¹⁹ and the United Nations Declaration of Human Rights (universal rights). One method for delineating such rights – evident in the above documents – is tying them to central human concerns, aligning them with those concerns whose enjoyment constitutes human well being. Under this standard usage, four basic rights are claimed: physical security (freedom from torture, arbitrary punishment, etc.), subsistence (freedom to pursue food, shelter, health care, etc.), political liberty (Shue, 1996a) and, I will argue, a livable environment under the category of subsistence (Blackstone, 1974). Basic rights, then, are 'morality of the depths', the demarcation of human dignity that sets the boundaries of wellbeing and self-respect.

A right to immigrate does not appear to be basic in this sense. Only in cases of political persecution so severe, economic deprivation so excessive, and environmental degradation so comprehensive could immigration (refugee migration) be considered a basic right; and even then basic in a derivative sense, that is, where other fundamental rights have been consistently violated. Yet in such familiar cases we run the risk of a conflict between the putative rights of residents and the derivative rights of those desperately seeking admission.

Speaking on behalf of the resident, Michael Walzer states, 'The members of a political community have a collective right to shape the resident population – a right subject to the double control . . . : the meaning of membership to the current members and the principle of mutual aid' (Walzer, 1983: 50–52).

IMMIGRATION AND ENVIRONMENT

According to Walzer this right is basic in the following sense. Without political communities and the affiliated processes that sustain them there would be little or no social stability, and life would lack the significant meaning and depth imparted by the distinctiveness of cultural cohesion and personal identity. Unless the state has and practices the right of refusal, local groups – neighbourhoods, block associations, civic organisations – will forcefully adopt the right, and often this leads to racism and other moral obscenities. In the absence of potentially closed countries, communities could not exist (Walzer, 1983: 38–9 and Weiner, 1996: 2–3).

One can agree with Walzer that national sovereignty is inherently valuable and still hold that it is extravagant to add the right to distribute membership to the pantheon of basic rights, since it is possible to conceive a situation wherein basic rights, like physical security and subsistence, are available outside territorial, state and national association; a series of economic ‘clandoms’ or gated developments could supply the social guarantees for the enjoyment of basic rights. In the end, Walzer’s position is a sophisticated restatement of the ‘*ex gratia*’ approach, where immigration is a matter of political decision amended by variable moral provisos and constraints (Walzer, 1983: 62). It appears, then, that neither immigration nor national sovereignty is a basic right.

IV. A MORAL ODYSSEY

As suggested earlier, subsistence (as a human right) is basic if it addresses fundamental human developmental needs: that is, *objective* needs like food, shelter, education/training, health-care, security and, most importantly, a healthy environment. Human development in the ways necessary for human dignity – the capacity for freedom and rationality – cannot be achieved in isolation from a healthy environment (Blackstone, 1974, Dryzek, 1987, Benton 1993, Eckersley 1995, Chapman, 1999b). The importance of preserving the viability and integrity of ecosystems ‘is *the* generalisable interest *par excellence*, standing as it does in logical antecedence to competing normative principles such as utility maximisation or rights protection’ (Dryzek, 1987: 204: italics original).²⁰ A healthy, livable environment is just one of the conditions necessary for human wellbeing, but one that provides the foundation for many other rights.²¹ By a healthy environment we mean one that is relatively (optimally) free from toxic contamination, harmful pollutants and radiation, degraded land, diminished biodiversity, and one where access to nutritious food, clean water, stable and secure shelter, ample health care, quality education, political participation, and meaningful employment are common.²² That a livable environment ought to be the content of a basic and general right follows from the fact that it is both vital to leading a genuine human life and vulnerable to repeated abuses, thus requiring continued vigilance and co-ordinated protection.

A healthy environment is vital in the sense that it is the 'precondition for the maintenance of life' (without it we seriously undermine a person's prospects for a decent life). That it is vulnerable is obvious from the dissipated state of many of the world's fragile ecosystems. Yet the vulnerability of a healthy environment to human abuse suggests something further: rights tend to come in bundles and these bundles can contain conflicting rights. For example, environments are often degraded because of violations of other human rights like access to productive land, economic opportunities and medical resources that promote basic health (Shue, 1996b: 114–17), but they can also be degraded by supporting rights that promote unsustainable practices. The right to private property is a cast in point, especially when it is considered an inalienable right and set in the context of free trade. Prevailing terms of trade have in many cases undermined sustainability (see Wackernagel and Rees, 1996, sect. 1).

Undemocratic Vistas

Interest in a healthy environment is vital, so much so that we are justified in expecting everyone – even complete strangers – to honour and promote this interest; this constitutes a legitimate duty. It follows then that the basic right to a healthy environment must apply equally to everyone, residents and immigrants alike. In this case, how do we adjudicate conflicting claims of residents wishing to protect their natural environments and immigrants fleeing desolate environments seeking livable ones? One influential response is the suggestion offered by Garrett Hardin's leaky lifeboat: honour the claim of those who have not exceeded the carrying capacity of their respective countries or, what amounts to the same thing, those who are economically healthy and capable of extending the finite limits of their indigenous resources through trade and other economic/political arrangements.

However, we cannot adopt Hardin's position because it is founded upon an equivocation on the notion of 'carrying capacity'. Hardin confuses biological impact with social impact and in doing so he closes the possibility of providing aid to destitute peoples (and nations) that are suffering under an economic system imposed from without. In other words, when applied to human population, carrying capacity is not a biological function that intrinsically attaches to a particular group or system (as with an ecosystem), but is more on the order of an economic function extrinsically connected to society (Aiken, 1996: 19–24).

In a global economy, self-sufficiency and cultural identity are becoming increasingly more difficult to maintain and, some would argue, undesirable because isolation in today's markets can lead to debilitating restrictions on human lives, especially in developing countries. Unfortunately, current economic strategies and the arrangements based on them favour, almost exclusively, the industrial First World nations. This is evident in both the terms of trade foisted on nations that wish to participate in exchange relations and the requirements

IMMIGRATION AND ENVIRONMENT

(like 'structural adjustment' programmes) imposed on Third World countries by the International Monetary Fund (IMF), the World Bank, and the World Trade Organization (see Shiva, 1997; Nielson, 1984; Sen, 1992 and 1981).²³ Since the middle of the twentieth century dependency on the industrialised nations has been the norm for developing countries. In the 1960s Dependency Theory in economics became influential, especially in Latin America. As one commentator explains, 'Dependency Theory is a major paradigm of developmental economics that differs sharply from classical economic theory on a number of points. According to Dependency Theory, the ongoing economic, political, social and cultural transformations within Latin America bring with them a greater reliance on an expanding capitalistic world system. Through this world system, advanced nations extract surplus value (through labour exploitation) from underdeveloped nations, thus keeping the latter underdeveloped and condemning them to perpetual class conflicts and oppressive governments' (Tansey and Hyman, 1994, 1. Parenthesis added).

The basic tenets of Dependency Theory allow for a systematic exploitation of less developed countries by developed countries through an asymmetry of political and economic power, trade relations favouring the developed nations, and the introduction of conspicuous consumption into less developed countries (Tansey and Hyman, 1994: 4–5).²⁴ The effects of dependency have been devastating to environments and living standards in vulnerable Third World nations as witnessed by the numerous involvement's by the US and other First World countries in the internal affairs of various Third World countries over the last half-century. To our shame, examples are plentiful. For nearly forty years the Nicaraguan government of Anastasio Somoza Debayle with aid from the US government and American corporations under the rubric of the 'Alliance for Progress' initiated policies designated to supply cheap agricultural products and raw materials to the greedy First World in exchange for technologies to promote modernisation. These policies – along with unintended consequences – were directly responsible for the devastation to Nicaragua's natural environment along with the destitution of its people.²⁵ Uprooted and abused Mexican migrants have been crowded into US barrios for decades encouraged by a shortage of labour and more recently by the 'bracero' programme (Lichtenberg, 1983: 22–3). Native people of Chiapas, Mexico, valiantly resist the onslaught of NAFTA and suffer greatly for it. Ecuadorian natives migrate from ancestral homes poisoned by the extraction processes of Texaco Oil. In Nigeria Chevron helicopters and speedboats transport government soldiers that have killed over one hundred Iyaws protesting the contamination of their land by lax extraction/environmental regulations. Terence Freites, an outspoken activist against Occidental Petroleum's plan to drill for oil on the ancestral lands of the U'wa people of Columbia, is found murdered. . . . US is the top consumer of Colombian oil at 260,000 barrels a day (Rainforest Action Network, March 1999: action alert, 143).²⁶ This list could go on indefinitely, but I think the point has been

made. Whether the policies and arrangements that constitute dependency were intentionally chosen with knowledge of the harmful consequences (as is likely, given the nature of global 'casino' capitalism) or another instance of unforeseen emergent circumstances, First World countries bear some degree of responsibility. They have positive obligations arising from historical arrangements, some of which were stated above.²⁷ Thus there is need for a second response to the question of assessing the claims of nationals and immigrants over the basic right to a livable environment.

Democratic Vistas

As we said, for something to count as a right it must carry a special urgency, have significant content, be vital and vulnerable and should not place an onerous burden on those who must comply – 'duty bearers' (see Shue, 1996b and Lichtenberg, 1983: 17–19). Sceptics of subsistence rights are often troubled about compliance issues. Nobody seriously doubts the evils of disease, starvation, and rancid environments. Economic cost and other burdens associated with the amelioration of such evils are the primary concern of the sceptics. In the case of a subsistence right to a livable environment positive obligations might entail radical political and economic changes that would, at least initially, seriously burden certain groups with a vested interest in retaining their privileged positions. Duties make claims on others whose rights may be infringed if basic rights are satisfied. Are these burdens too costly to honour, and what does too costly mean?

A standard reply is that a right is too costly if it causes a loss of something vital on the part of the duty bearer, a loss that would lead to vulnerability or the 'pauperisation of the affluent' (see Shue, 1996a: 111). As stated above 'vital' is understood as a necessary precondition for the ongoing conditions for human life and well being and 'vulnerable' strongly suggests an interconnection of rights. In order to honour the right to a livable environment – for necessitous immigrants – certain changes in First World countries would need to take place. We have already ruled out membership in host countries because of the negative impact increased population would have on the natural environment. Another option is the amelioration of those political and economic conditions that make migration necessary. For instance, we need to create in the originating country conditions congruent with an adequate standard of living with the appropriate attention given to long term environmental concerns. As a beginning we might consider redressing the privileged terms of trade and numerous other economic advantages enjoyed under the hegemony of First World nations.²⁸

At this point the familiar question is often raised as to what status these 'privileged terms' have, and are they justified through the apparatus of basic rights? Put differently, do the affluent nations of the world have a basic right to

IMMIGRATION AND ENVIRONMENT

wealth that is made possible through the machinery of global free markets? This is not the place to provide a fully articulated condemnation of global corporate capitalism, but I conclude by way of what has been argued thus far that no such right is basic.²⁹ And when non-basic rights and preferences conflict with subsistence rights, subsistence rights are trumps (Shue, 1996a: pp. 203–4, fn. 28).

We need to keep in mind that the core issue is not that the affluent nations would lose their wealth, only that they might be required to suspend (maybe indefinitely) the accumulation of greater wealth while marginally reducing their patterns of consumption. That is, they would be called upon to sacrifice non-basic rights in order to provide a basic/subsistence right to those in desperate need and to whom they have obligations based on intricate political and economic activities and other historical conditions – without placing unreasonable burdens on duty-bearers. This completes the negative argument.³⁰

V. 'IN PATHS UNTRODDEN'

This section is mainly hortatory. It is becoming increasingly clear that there are serious normative inconsistencies in liberal democratic theories³¹ and in the economies they support regarding the foundation of rights and a fortiori immigration policy. This is most obvious when rights are viewed as constraints (the 'strong inalienability thesis' (Chapman, 1999a)) and negotiated through self-interested, individualistic premises and entrenched market forces (Dryzek, 1992: 20–21), that is, through the current neo-liberal paradigm. There are correctives to this normative incoherence (Shue, 1996a: sect. III, Lichtenberg, 1981, Nielson, 1991, Sen, 1992).³² One method would be to develop an eco-political discourse (discursive and democratic) that will minimise current anthropocentric ideologies and exploitative cultural schemes (See Dryzek, 1987 and 1992, and Benton, 1993). Another hopeful alternative is the reformulation of traditional liberal rights discourse around ecocentric values (Eckersley, 1995 and di Zerega, 1995). In any case, realisation of the right to a healthy environment requires government.³³ Whether that government is a liberal or discursive democracy or some compromise embracing a more deliberative approach or another version of statism requires further argumentation. Here we can list only some critical features.

Any development of a discourse on rights in general and specifically on the right to a healthy environment must take into account ecological sustainability – whatever this turns out to mean.³⁴ Discussions regarding ecological sustainability focus on various models of social and economic transformation since the protection and recognition of non-human interests are an integral aspect of ecological sustainability. Traditional liberal rights theories that view rights as

absolute constraints are procedurally incapable of adjudicating the inevitable conflicts between humans and non-humans since the interests of these groups are not equivalent. (It needn't be this way. The integrity of the natural world often conforms to human interests whenever those interests are informed by ecology.) Any attempt to enlarge the sphere of moral and legal consideration beyond humans to non-humans and systemic processes will involve significant adjustments in human rights.

Next, liberal governments have a legitimate role in defining the threshold of humanness. They can function as enabling conditions to empower members to participate in the constitution of their own identity. Seen in this light 'man is a political animal', and the role of political affiliation is to *inform* the self. In this case the polity as a source-of-self has the weighty obligation to move its members from the isolated, untutored state of atomistic self-interest into the tutored condition of social cooperation. By moving its members away from the constrained choices of spectral individualism toward a wider autonomy founded on ecological considerations of embodiment and interdependence we can go forward in establishing a sustainable society.

Lastly, by way of providing for the identity needs of their citizens, states should promote conditions necessary for the construction of places.³⁵ Understood from a relational/reciprocal perspective, place is where natural history and human history creatively interpenetrate (Chapman, 1999b). One aspect of this creative interaction is economics: there is an important sense in which place emerges from the familiar activities of livelihood.³⁶ To relate an economy to the physical and social conditions of a particular area is to define a niche. Like any other species involved in niche differentiation, humans will make changes in the natural environment. Yet, changes of this kind would represent appropriate alterations in the environment. Change of this kind is not entirely for the accommodation of humans, but takes into account the long-term effect of human development on the natural world. Those who transact with nature in this way respect the practical harmonies dictated by ecosystemic realities, and in doing so, create a place. By sinking roots into an environment we become native to that place. So it seems that an essential aspect of being in place is participating in a community – community in the larger sense that includes the land (Leopold, 1949: 201–26 and Chapman 1999b).

In sum, governments establish criteria for membership within respective political communities. By enlarging the arena of political participation to include moral and legal consideration of the natural world they necessarily limit the number of human participants; and for the purpose of this essay, limitation by restricting immigration is morally acceptable.

Finally, I conclude that our cherished birthright to a healthy environment is in jeopardy from population growth driven by immigration. We must develop a more balanced view based on broader concerns that include the natural environment and the urgent concerns of immigrants.³⁷ This can be accomplished

IMMIGRATION AND ENVIRONMENT

by revising our current liberal stance on immigration, and abandoning both national and international political-economic policies that produce the need for migration.

NOTES

¹ For a contrary but balanced view see Virginia Black, 1986. I think, however, she relies too heavily on technological progress to solve problems, some of which are non-technological.

² Here the Singers seem to be echoing a sentiment expressed by Henry Sidgwick one hundred year ago: 'I cannot concede to a state possessing large tracts of unoccupied land an absolute right of excluding alien elements.' *Elements of Politics*, 295, as quoted in (Walzer, 1983: 45).

³ It has been estimated that one-sixth of all land development in the US occurred between 1982 and 1992! If this trend continues Maryland will convert more land to housing development between 1995 and 2020 than in the past three and a half centuries. (See Kathrine Day Lassila, 'The New Suburbanites', *The Amicus Journal*, summer 1999, pp. 16–21.)

⁴ To understand the real significance of this loss consider that topsoil may have required thousands of years to develop, accumulating at the rate of an inch a century.

⁵ Some estimates are higher. See *The Amicus Journal*, summer 1999, p. 18.

⁶ This is a rather simplistic restatement of the familiar and widely excepted formula Population x Affluence x Technology = Impact (PxAxT=I); the number of people times the number of units of resources used per person times the environmental degradation equals the environmental impact of population. Demographers and other social scientists agree that there is both people overpopulation and consumption overpopulation and when the two occur together, as is happening in many parts of the world today, the impact is catastrophic. For an excellent short exposition of these ideas (see Miller, 1998, 20–22).

⁷ Nineteenth century classical political economy advocated for free trade and defended unrestricted immigration as a source of cheap labour. Certainly this had some influence on US policy. (A word of caution. Those who would like to apply the logic of free trade – disguised, as a universal theory of justice – to immigration policy should be mindful of the tremendous costs of letting markets define human wellbeing. Some examples of that cost in terms of human dignity include the impoverished and demoralised populations of Youngstown, Ohio, eastern Kentucky, West Virginia, Flint, Michigan, and the plight of indigenous populations in Borneo and the Amazon.)

⁸ Morally praiseworthy actions that exceed obligations may be difficult to identify precisely at times, but we can loosely distinguish two types: thick and thin. Watering a neighbour's plant while he is away would count as 'thin' supererogation, whereas opening one's home to the homeless would certainly qualify as 'thick' supererogation. To say more here would bring us too far afield. Those interested in such an inquiry will profit from Joel Feinberg's article, 'Supererogation and Rules', *Ethics* 71 (1961). A contrary view equates 'ex gratia' with the principle of mutual aid (Walzer, 1983, ch. 2 and Lichtenberg, 1983, 16).

⁹ For a history of the conflict between human rights and national sovereignty over migration see Weiner, 1996.

¹⁰ Utilitarianism is a form of consequentialism that specifies a principle of ranking states of affairs from best to worst; since such rankings are not relative to the agent's particular circumstances. They are impartial. Additionally, utilitarianism is a teleological theory which holds that rightness is a function of goodness, and in most cases it is a maximising function, that is, an action is right just in case it maximises good or realises more value. A familiar formulation of the principle of utility is, 'acts are right if they produce the greatest possible balance of intrinsic good over intrinsic evil for the greatest number, otherwise they are wrong.' Some might prefer a more homespun version, 'With the simpler creatures, good and bad are things simply understood. The good stands for all things that bring easement and satisfaction and surcease from pain. Therefore, the good is liked. The bad stands for all things that are fraught with discomfort, menace and hurt, and is hated accordingly' (Jack London, 1906: 93). There is an enormous literature on utilitarianism. Two books that contain excellent expositions and bibliographies are J.J.C. Smart and Bernard Williams, (eds), *Utilitarianism For and Against* (Cambridge University Press, 1973); Jonathan Glover (ed.), *Utilitarianism and its Critics* (MacMillan, 1990).

¹¹ Utilitarians value equality only instrumentally; they treat it as a mere means, not as a separate end.

¹² The neo-classical economic equivalent to the 'separateness of persons' is often referred to as 'diminishing marginal utility'; accordingly a dollar has the same value to a millionaire as to a homeless beggar.

¹³ I will not get involved here with the subtle distinctions between 'impartiality' and 'impersonality.' An interesting discussion of the differences and their relation to utilitarian outcomes can be found in Derek Parfit, 'Personal Identity and the Separateness of Persons', in *Utilitarianism and Its Critics*, ed. Jonathan Glover (Macmillan, 1990), p. 99.

¹⁴ Stressing the anti-social aspects of utilitarianism Andrew Brennan remarks, '... the utilitarian ... seems designed almost to subvert the very attitudes, feelings and dispositions upon which social cohesion is founded. It is a morality for those who have no conception of society as anything beyond a mere aggregate of individuals.' *Thinking About Nature* (University of Georgia Press, 1988), p. 161.

¹⁵ For different reasons, P. Dasgupta expresses similar sentiments as an important concern for the transmission of values across generations. He says, 'That my neighbor is not as close to me as are my daughter and son is a genetic fact, but that is not the point here. More to the mark is that my children provide me with a means of self-transcendence, the widest avenue open to me of living through time.' 'Population, consumption and resources: Ethical issues', *Ecological Economics* 24 (1998), 151.

¹⁶ Attempts have been made to introduce environmental concerns into the decision procedure of utilitarianism, but they meet with the familiar problems of calculation that we noted above. For an early influential application of utility to environmental issues – specifically animal rights – see Peter Singer's *Animal Liberation*, 2nd edn (New York: New York Review of Books Press, 1990). There is a huge literature on utilitarianism as cost-benefit-analysis in economic theory. For two accessible sources see Bruce Ackerman, et al., *The Uncertain Search for Environmental Quality* (New York: Free Press, 1974), Mark Sagoff, 'Economic Theory and Environmental Law', *Michigan Law Review* 79 (June 1981), pp. 1393–1419, and Alasdair MacIntyre, 'Utilitarianism and Cost Benefit Analysis', in *Values in the Electric Power Industry*, ed. Kenneth Sayre.

¹⁷ For the social make-up of individual rights see Shue 1996b: 124–9.

IMMIGRATION AND ENVIRONMENT

¹⁸ A right to immigration is not stated explicitly in the *United Nations Declaration of Human Rights*. The Declaration does, however, explicitly provide for the right of asylum (see Article 14, sec. 1). Sometimes Article 13 is used to justify a right to immigrate. It reads, 'Everyone has a right to leave any country, including his own, and to return to his country.' Article 13 provides for four separate rights and freedoms: freedom of internal movement, freedom of residence, the right to emigrate and the right to remigration. Some see a logical corollary between leaving one's country and entering another foreign country. (See for example Weiner, 1996: 1.) According to one commentator, the intention of Article 13 was to express a fact about the relationship between the individual and the State, freedom of mobility, such that, 'He shall not be forced to stay in a given territory against his wishes. Can he manage to find a country prepared to accept him, he ought to be free to go there.' But 'Article 13 does not ... mention any right to enter any country other than one's own. And such a right is not ordained in any other of the articles of the *UNDHR*, nor expressly in any other international instrument, for that matter' (Grahl-Madsen, 1992: 212). It appears that immigration as a right has not been internationally institutionalised.

¹⁹ See Radin (1996: 16–29) for a comprehensive review of the set of meanings attached to inalienability. For example, '...inalienability is ascribed to an entitlement right, or attribute that cannot be lost or extinguished. Basic human rights, whatever their content, are of this type', p. 17.

²⁰ And further, 'What in the past had been properly regarded as freedoms and rights ... can no longer be so construed, at least not without additional restrictions. We must recognize both the need for such restrictions and the fact that *none of our rights can be realized without a livable environment*' (Blackstone, 1974: 32, italics added).

²¹ Granted a right to life might be considered more basic if it means a right to continued existence, but not if it means a right to be born. And if we mean continued existence, then a healthy environment is the most basic right when it comes to quality of life.

²² Cultural aspects aside, these are some of the conditions necessary for humans to achieve a level of development which provides them the opportunity for social integration and personal fulfilment. These background or 'enabling' conditions are basic in the sense required: necessary to the enjoyment of all other rights. When someone claims a right to a livable environment they are claiming equal access to resources necessary for a healthy, productive and meaningful life. This is also a claim to the development of personhood and the positive freedom (liberty) essential to it, which can be addressed (and redressed) only within an appropriate context. This context is a healthy environment and it must figure in any adequate theory of the good or what one philosopher calls the 'thick vague conception of the good': See Martha Nussbaum, 'Human Functioning and Social Justice: In Defense of Aristotelian Essentialism', in *Political Theory* 20 (1992), pp. 202–7 and 'Aristotelian Social Democracy', in *Liberalism and the Good*, pp. 217–26. Another refers to 'a pragmatic theory of the good' (Radin, 1996: 66). Both authors include in their open-ended list of circumstances necessary for a good human life, relatedness to the natural world: 'human beings recognize ... that they are animals living alongside other animals and also alongside plants in a universe that, as a complex interlocking order, both supports and limits them' (Radin, 1996: 67).

²³ See *Ecological Economics*, vol. 9, no. 1, 'Special Issue: Trade and the Environment'. This issue addresses many of the concerns about justice and economic distribution raised by GATT and NAFTA treaties.

²⁴ It is important to note that Dependency Theory is contrary to the classical economic view of Comparative Advantage. For example, in the theory of dependency economic development leads to a widening gap between rich and poor, whereas under comparative advantage the creation of a new middle class brings an even distribution of wealth.

²⁵ For a recent account of this see 'La Liberacion del Medio Ambiente: The Rise and Fall of Revolutionary Ecology in Nicaragua, 1979–1999', Daniel Faber, *Capitalism, Nature, Socialism*, vol. 10, no. 1, March 1999, pp. 45–80.

²⁶ The Postwar International Food Order further demonstrates the inordinate cost to human wellbeing with reliance of Third World nations on the more advanced nations (Nielson, 1992: 232–4). Also, a few examples of the callousness of US corporations and international agencies toward the environment under the provisions of NAFTA are in order here. The International Paper Corporation persuaded Mexican authorities to pass the Forest Reform Act, which loosens environmental restrictions and allows for the privatisation of Mexican forests. In 1998 the IMF, World Bank and US Treasury convinced Brazilian authorities to cut their already meagre environmental budget by 66%. (See *The Amicus Journal*, summer 1999, pp. 36–9.)

²⁷ There are also purely moral reasons for these obligations, if we assume that the inferior treatment Third World nations receive is predicated on the lack of value placed on them by multinational corporations and their First World sponsors. For example, the quality of life of Colombian, Ecuadorian, and Mexican workers receives considerably less attention than that of US workers.

²⁸ See Wackernagel and Rees, 1996, who are highly critical of current conditions of trade, '...in a world where the global economy is already pressing ecological limits and poverty still stalks a billion people, don't need 'free trade', but terms of trade that encourage the rehabilitation of natural capital and direct the benefits of export activities to those who need them most'.

²⁹ For examples of such critiques see, Martin O'Connor, *Is Capitalism Sustainable?* (Guilford Press, 1994); James O'Connor, 'The Second Contradiction of Capitalism: Causes and Consequences' in *CNS Pamphlet Series*, no. 1 (Santa Cruz, CA: Center for Ecological Socialism, 1990); John Gray, *False Dawn: The Delusion of Global Capitalism* (The New Press, 1999); David Korten, *The Post-Corporate World: Life After Capitalism* (Berrett-Koehler, 1999); George Soros, *The Crisis of Global Capitalism: Open Society Endangered* (Public Affairs, 1998).

³⁰ It should be noted that nothing in the argument prevents it from being applied to immigration from non-destitute countries. As we have seen increased population from whatever source has deleterious effects on natural environments.

³¹ This includes all strands of the liberal rights tradition: utilitarian, contractarian and deontological. Some argue that liberalism is more fecund, and in the thought of Hume, Smith, Hayek and Polanyi can be found the seeds of reconciliation between liberal and ecocentric values. See di Zerega 1995: 239–68. Also, Eckersley is not prepared to abandon traditional rights approaches (1994: 166–7).

³² Additionally, consult the following seminal works: Herman Daly, *Toward a Steady-State Economy* (W.H. Freeman and Company, 1973); Robert Costanza, *Ecological Economics: The Science and Management of Sustainability* (Columbia University Press, 1991); Kenneth Boulding, *The Economics of Human Betterment* (SUNY Press, 1984).

³³ Champion of individuality that he was, J.S. Mill understood the need for government in this critical area. 'Is there not the Earth itself, its forests and waters, above and below the surface. These are the inheritance of the human race ... What rights, and under what

IMMIGRATION AND ENVIRONMENT

conditions, a person shall be allowed to exercise over any portion of this common inheritance cannot be left undecided. No function of government is less optional than the regulation of these things, or more completely involved in the idea of a civilized society.' (Mill, 1965). A more contemporary expression of the need for government regulation in this area is presented by Hans Jonas, who emphatically declares, 'That much is clear that only a maximum of politically imposed social discipline can ensure the subordination of present advantages to the long-term exigencies of the future.' 'Responsibility Today: The Ethics of an Endangered Future', *Social Research* vol. 43, no.1 (spring 1976), pp. 77–97. The work of Mark Sagoff deserves special mention here. For the last fifteen years Sagoff has stressed the distinction between values and preferences and has suggested that governments' role is the creation and implementation of environmental value as central to any system of social values. See especially, *The Economy of the Earth* (Cambridge University Press, 1989) and 'Values and Preferences', *Ethics* (January, 1986).

³⁴ For purposes of this paper sustainability can be defined as social justice in relation to future generations.

³⁵ Governments might satisfy this obligation best by staying out of the way to allow a personal ethical relationship with the land to evolve. They might also provide ready access to direct personal contact with the land as both Thomas Jefferson and Aldo Leopold advocate.

³⁶ Native American place-names clearly demonstrate the importance of tying place to a particular activity. Anitaash Pond, near New London, Connecticut, meant 'rotten corn', referring to a swampy location; Abessah, in Bar Harbor, Maine, was the clam bake place; Wabaquasset, in Providence, Rhode Island, was where Indian women could find rushes for making mats. See William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (Hill and Wang, 1983, 65.)

³⁷ We will not go so far as to say, '...why should we suffer wayfarers, who come to us only to deplete our wealth. Come, let us abolish the practice of travelling in our land.' (*Babylonian Talmud*, tractate Sanhedrin [ch. Xi, 109a–109b])

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