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The Moral Dilemma of U.S. Immigration Policy

Open Borders Versus Social Justice?

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IMMIGRATION POLICY AS A MORAL DILEMMA

How should we think about U.S. immigration policy from the standpoint of basic justice, especially distributive justice, which encompasses our obligations to the less well-off? Does a justifiable immigration policy take its bearings (in part) from the acknowledgment that we have special obligations to “our own” poor, our least well-off fellow citizens? Or, on the other hand, do our moral duties simply argue for attending to the interests of the least well-off persons in the world, giving no special weight to the interests of the least well-off Americans?

As is clear from other chapters in this volume, there are reasons to believe that recent American immigration policy has had a deleterious impact on the distribution of income among American citizens. According to influential arguments – associated with George Borjas and others – by admitting large numbers of relatively poorly educated and low-skilled workers, we have increased competition for low-skilled jobs, lowering the wages of the poor and increasing the gap between rich and poor

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Americans. The high proportion of noncitizens among the poor may also lessen political support for social welfare policies.

How should we think about the apparent ethical conflict between, on the one hand, the cosmopolitan humanitarian impulse to admit less well-off persons from abroad who wish to immigrate to the United States and, on the other hand, the special obligations we have to less well-off Americans, including or especially African Americans? Those with liberal sensibilities need to consider whether all the things that they might favor – humanitarian concern for the world's poor, an openness to an ever-widening social diversity, and concern for distributive justice within our political community – necessarily go together.

These are vexing questions not only in politics but in contemporary political theory and moral philosophy, and what I say will be controversial, though the perspective I defend is shared by some others. I argue that if high levels of immigration have a detrimental impact on our least well-off fellow citizens, that is a reason to limit immigration, even if those who seek admission seem to be poorer than our own poor whose condition is worsened by their entry. Citizens have special obligations to one another: we have special reasons to be concerned with the distribution of wealth and opportunities among citizens. The comparative standing of citizens matters in some ways that the comparative standing of citizens and non-citizens does not. Of course, distributive justice is only one consideration bearing on immigration policy, though a weighty one.

I argue against what is sometimes characterized as a “cosmopolitan” position with respect to distributive justice and defend the idea that distributive justice is an obligation that holds among citizens, a position that has also been defended by Michael Walzer, John Rawls, and David Miller, among others.¹ What is the basis of these special obligations among citizens? I argue that it is as members or co-participants in self-governing political communities that we have special obligations to our fellow members.

Do we conclude, therefore, that the borders should be closed and immigration by the poor restricted? That conclusion would be far too hasty. For one thing, we do have significant moral obligations to poor people abroad, although these are different from what we owe to fellow citizens. In addition, measures designed to “tighten up” the borders may do more harm than good. On balance, we should perhaps accept ongoing high levels of movement back and forth across the U.S.-Mexico border, as Douglas Massey recommends. But we also need to consider whether high levels of immigration by low-skilled workers make it less likely that we will fulfill

our moral obligations to the poorest Americans. The distributive impact of immigration policy is important.

This chapter proceeds as follows. The first part describes why it is reasonable to think that we face a dilemma in shaping U.S. immigration policy. I feature the sorts of claims advanced by George Borjas not because I am sure he is right but because he raises important moral questions. In the next section, I consider the debate between “cosmopolitans” – who argue against the moral significance of shared citizenship and in favor of universal obligations of distributive justice – and those who argue for the existence of special obligations of justice among citizens. I seek to clarify the moral grounds for regarding shared membership in a political community as morally significant but also emphasize that we do have significant cosmopolitan duties. In the final section, I return to the moral dilemma of U.S. immigration policy and offer some reflections on policy choices.

One point is worth making before moving on. The perspective adopted and defended here is politically liberal. John Rawls and Michael Walzer (whose ideas I treat in some detail) are philosophers of the Left in American politics. It might be thought that this limits the relevance of my argument, but this may not be so. For one thing, the vast majority of Americans profess a belief in some liberal principles, such as equality of opportunity. While Americans are less supportive than Europeans of measures designed directly to reduce income disparities between the wealthy and the poor, they overwhelmingly affirm that institutions such as public education should ensure that every child has a good start in life, irrespective of accidents of birth.² The question of whether we have special obligations to our fellow citizens is important independently of the details of one's convictions about what justice requires among citizens. Even those who believe that “equality of opportunity” mandates only a modest level of educational and other social services may still think that the mandate holds among fellow citizens and not all of humanity. The general thrust of my argument should therefore be of relevance to those who do not accept the specific prescriptions of Rawls and Walzer.

THE CONTOURS OF THE IMMIGRATION DILEMMA

Over the last 40 years, American immigration policies and practices have become, in some respects, more accommodating to the less well-off abroad. Some argue that this “generosity” has exacted a significant cost in terms of social justice at home.

The basic facts are striking. Whereas in 1970, 5 percent of the general population was composed of immigrants, that figure is now 12 percent, the highest in nearly 80 years. By 2002, there were 56 million immigrants and first-generation Americans (children of immigrants), comprising 20 percent of the U.S. population in 2000, the highest overall number in U.S. history according to the Census Bureau, though not the highest percentage.³

The composition of the growing immigrant pool has changed markedly in recent decades, with the skill level and earnings of immigrants declining relative to that of the native U.S. population. Whereas in 1960 the average immigrant man living in the United States earned 4 percent more than the average native-born American, by 1998 the average immigrant earned 23 percent less. Most of the growth in immigration since 1960 has been among people entering at the bottom 20 percent of the income scale. This is partly because, as George Borjas observes, “[s]ince the immigration reforms of 1965, U.S. immigration law has encouraged family reunification and discouraged the arrival of skilled immigrants.”⁴ At the same time, the ethnic makeup of immigration has also changed, with the percentage arriving from Europe and Canada falling sharply and the percentage from Latin America and Asia rising.⁵

In Borjas’s influential if controversial analysis, recent decades of immigration have worsened income disparities in the United States. Immigration from 1980 to 1995 increased the pool of high school dropouts in the United States by 21 percent while increasing the pool of college graduates by only 4 percent, and this, argues Borjas, has contributed to a substantial decline in the wages of high school dropouts. He argues that immigration between 1980 and 2000 had the effect of lowering wages overall by about 4 percent while lowering wages among those without a high school diploma (roughly the bottom 10 percent of wage earners) by 7.4 percent. To put it another way, it is widely agreed that in the United States in the 1980s and early 1990s there was a substantial widening of the wage gap between more and less well-educated workers. Borjas argues that nearly half of this widening wage gap between high school dropouts and others may be due to the increase in the low-skilled labor pool caused by immigration.

Steven A. Camarota, in Chapter 10 of this volume, associates recent immigration with employment losses among Americans: from 2000 to 2004, unemployment among native-born Americans increased by more than two million, while more than two million immigrants entered the labor force (half of them illegally).⁶ A study funded by the Congressional

Black Caucus Foundation argues that labor force participation among African American males with low levels of education has fallen especially steeply, with immigration being one possible contributing factor.⁷

Of course, all Americans have benefited from cheaper fruits and vegetables and other products that immigrants (including undocumented workers) help produce.⁸ But wealthier Americans have also benefited from increased access to cheap menial labor – such as service work performed by nannies, gardeners, and others. Firms have also benefited from cheap labor. However, Borjas argues that native-born African American and Hispanic workers have suffered disproportionately because they have disproportionately lower skills and education, own few firms, and often compete directly with low-skilled immigrants for jobs.⁹

Let me add one other element to this admittedly controversial account before moving on. Nations with notably more progressive domestic policies often have immigration laws that are quite different from those of the United States. American immigration policy emphasizes family reunification (including children, spouses, parents, and adult siblings), with a very small percentage of immigrants – around 5 percent in recent decades – receiving visas based on the possession of desirable skills. Canada, by contrast, has a quota system that gives greater weight to educational background, occupation, and English-language proficiency of applicants for admission. Canada’s policy favors better-educated and higher-skilled workers, and this seems likely to have distributive effects that are the opposite of U.S. policy. By increasing the pool of skilled workers relative to the unskilled, Canadian policy tends to lower the wages of the better-off and to raise the relative wage levels of the worse-off.¹⁰

Finally, recent patterns of immigration to the United States may also tend to lower public support for social welfare and redistributive programs. Economic inequality in the United States has increased sharply since 1970, but this has not led to increased pressure for redistribution. If anything, the reverse would seem to be the case: the real value of the minimum wage has fallen, and taxes paid by the better-off have been cut, including top marginal tax rates and the estate and capital gains taxes. Congress restricted alien access to many federally funded welfare benefits in 1996;¹¹ nevertheless, immigrants to the United States receive various forms of public assistance at a higher rate than native-born Americans.

Nolan McCarty, Keith T. Poole, and Howard Rosenthal argue that recent patterns of immigration help explain why increasing inequality has come about without an increase in political pressure toward redistribution. Since 1972, the percentage of noncitizens has risen and their incomes

relative to those of other Americans have fallen. According to McCarty, et al., "From 1972 to 2000, the median family income of non-citizens fell from 82% of the median income of voters to 65% while the fraction of the population that is non-citizen rose from 2.6% to 7.7%."¹² Over this time, the incomes of the median voters – the voters likely to be the "swing voters" who decide close elections – have not fallen. Increasing economic inequality has left these median voters no worse off in terms of relative income. Meanwhile, the income of the median family living in the United States (including voters and nonvoters) has fallen on account of the sharp decline in the incomes of noncitizens. According to this analysis, immigration to the United States has made the median voter better off relative to the population as a whole (including voters and nonvoters), decreasing the median voter's likelihood of supporting redistribution.

There are yet other ways in which immigration might have an impact on distributive justice. I have not considered the argument that welfare states benefit from the presence of a shared culture, a position ably defended by David Miller.¹³ There is evidence suggesting that cultural diversity leads to lower trust among groups and declining support for the provision of public goods.¹⁴ We have enough on the table to raise some relevant ethical questions, though I should also emphasize that all of these empirical questions cry out for additional investigation.

The questions before us include the following: if U.S. immigration policies appear to be liberal and generous to the less well-off abroad (or at least some of them), does this generosity involve injustice toward poorer native-born Americans, including – or perhaps especially – African Americans? If we have special obligations to our poorer fellow citizens – obligations that are sufficiently urgent and weighty – then U.S. immigration policy may be hard or impossible to defend from the standpoint of justice.

Of course, the question of how we should respond to this – if it is true – is not straightforward. It does not follow that greater justice argues for more restrictive immigration policies. It may be that justice requires us to change the laws and policies that allow the immigration of low-skilled workers and thus generate adverse effects on the native-born poor. The inequalitarian distributive effects of immigration could be offset via a higher minimum wage or improved education and training for the unemployed along with other social benefits for all of the less well-off. And yet we have seen that high levels of low-skilled immigration may also lower public support for social welfare. This sharpens the dilemma.

COSMOPOLITAN VERSUS CIVIC OBLIGATIONS?

If the better-off have moral obligations to help the least well-off, why shouldn't those obligations focus on the least well-off of the world? Can we justify special obligations to our own poor, even if they are less poor than many others in the world?

Consider two ways in which we might care about the condition of the poor and seek to do something about it. We might care only about their absolute level of poverty or deprivation, or we might care about relative deprivation: the gap between the lives of the poorest and those of the richest. In response to the first concern, we would engage in *humanitarian assistance* and seek to establish a floor of material well-being: a standard of decency below which no one should fall. In response to the latter concern, we would articulate and enforce principles of social or *distributive justice*: standards to regulate the major institutions of taxation, inheritance, social provision, wage policies, education, and so forth that help determine over time the relative levels of income, wealth, and opportunity available to different groups.

Most people seem to accept that wealthy societies owe the first sort of concern to human beings generally. Via humanitarian assistance, wealthier societies should pool their efforts and seek to lift poorer countries at least up to a level of basic decency; exactly what level is adequate or morally required is an important question. This sort of cosmopolitan moral concern has been likened to the duty we all have to be "Good Samaritans."¹⁵

The latter species of concern – social or distributive justice – requires the establishment of institutions to regulate market inequalities: systems of progressive taxation, inheritance taxes, and the provision of social services. As noted, most Americans profess a belief that every child born in the United States should have a fair chance to attain a good job – to compete based on his or her talents and effort – and this requires that governments raise taxes in order to provide good schools for all. Virtually everyone accepts some degree of progressiveness in the tax structure, so efforts to promote fair equality of opportunity are typically redistributive and constitute part of a system of distributive justice. Opportunity is one of the things we "redistribute" by building public institutions – including tax-supported schools – alongside market institutions. As we have seen, immigration policies may also have an impact on the distribution of opportunities and rewards in society.

Do we have special moral obligations to our fellow citizens, especially obligations falling under the rubric of distributive justice? The question is whether, and if so, how, national borders matter with respect to our fundamental moral obligations to one another.

There are, roughly speaking, two opposing lines of thought. One emphasizes the moral arbitrariness of borders and the universality of our obligations to the less well-off. The other argues that borders are morally significant, that we have special obligations to poorer fellow citizens, and that obligations of distributive justice in particular apply only among citizens. The first position is often referred to as a form of moral "cosmopolitanism;" the latter position – for which I argue – goes under various names, and I will refer to it as the "civic view."

I want to join those who argue that we have special obligations of mutual justification to our fellow citizens and that distributive justice often has special force among fellow citizens. With respect to people in the rest of the world, our duties are different, though still quite important: fair dealing – including curbs on the exploitative potential of our corporations and doing our fair share to address common problems (e.g., environmental dangers such as global warming); more specific projects of historical rectification and redress in response to particular past acts of injustice; and humanitarian assistance to help lift other societies (insofar as we can) out of poverty.

Michael Walzer strikingly asserts that, "Distributive justice begins with membership; it must vindicate at one and the same time the limited right of closure, without which there could be no communities at all, and the political inclusiveness of existing communities."¹⁶ It seems to me that Walzer is on the right track here, though he is not very clear about the moral grounds for his claims. He has a distinctive approach to the practice of justifying moral claims in politics to one another, and this helps explain why he argues that obligations of distributive justice apply within political communities only. Walzer famously argues that moral arguments in politics should avoid philosophical system building and abstraction; arguments of political morality should take the form of interpreting "shared social meanings." We should, he says, think about principles of justice in light of "the particularism of history, culture, and membership." Social goods should be distributed according to criteria internal to their social meanings, and these shared social meanings are located within particular political communities.¹⁷

Given this account of the nature of moral argument and distributive justice, it is not surprising that Walzer should argue that distributive justice

applies within ongoing political communities that are the natural homes of shared meanings. For Walzer, the rejection of cosmopolitan obligations of distributive justice goes hand in hand with the claim that common understandings of values are shared within particular political communities but not across them.

Walzer's argument may contain part of the truth, but it is also puzzling. Achieving shared meanings with respect to justice is a worthy aspiration. But while shared meanings are an important goal of public argument, an achievement to be worked toward, the extent of shared meanings is not the proper ground for circumscribing claims of social justice. Publicly justified "common meanings" seem more like a goal of public argument and deliberation rather than the basis (or the presupposition) of political obligations.

Shared social meanings – common understandings, shared assumptions of various sorts – are important for sustaining a political system based on discussion and mutual justification, but they would seem not to be the central criterion for demarcating the range of those to whom we owe justice. The range of those with whom we should seek to establish common and publicly justified principles of justice consists of those with whom we share a system of binding laws.

Walzer sometimes lays too much emphasis on consensus and shared meanings in another way as well: what we should want is a justified consensus that is the result of criticism and testing. Critical argumentation (which I would characterize as philosophical) is essential to this project of public justification because what we should work toward are common understandings that are sound, and their soundness is essential to their authoritativeness. The mere fact of agreement, the mere existence of conventions, is not enough.

David Miller has argued eloquently for the advantages to political communities of a shared national culture and a common language because these can help support a collective identity and bonds of mutual sympathy and understanding: "Social justice will always be easier to achieve in states with strong national identities and without internal communal divisions."¹⁸ Social scientists are only beginning to explore systematically the relationship between heterogeneity, social capital, and social justice.¹⁹

Particular political societies – at least when they are well ordered rather than tyrannical, oppressive, or desperately poor – will tend to generate common understandings among members, including standards for how disputes and disagreements should be resolved.²⁰ They may generate a plethora of disagreements and conflicts, but these will be manageable if

the society has set standards and practices for how disagreements should be dealt with and a reserve of rough agreement on other matters sufficient to sustain a common willingness to continue to share a political order.

In his *The Law of Peoples*, Rawls cites and endorses Walzer's discussion of the moral significance of membership and borders. He argues that the political community – or “people” – is the appropriate site of distributive justice: there are no obligations of distributive justice simply among human beings. We have humanitarian duties to relieve those in distress – as mentioned earlier – but both Walzer and Rawls agree that we have no obligations across borders to regulate the relative well-being of better- and worse-off people (or to create institutions capable of doing so).

Why does Rawls embrace Walzer's view of the limited scope of distributive justice? Rawls does not as a general matter share Walzer's emphasis on the authority of shared social meanings. Moreover, Rawls's general method seems designed to encourage us to transcend the limited perspective of morally arbitrary accidents of birth, so there is a puzzle here.

When Rawls argues about domestic justice, the guiding thought is that when we consider principles of justice to regulate the “basic structure” of a polity, we should regard each other as free and equal persons and put aside moral claims based on morally arbitrary differences and accidents of fate. We put aside claims to unequal rewards based on advantages flowing from accidents of birth, including the good fortune of being born into a well-off family or with a superior genetic endowment. We do this by imagining ourselves in an “original position” behind a “veil of ignorance”: we ask which principles of social justice we would choose if we did not know the social position we would occupy.²¹ This helps us consider which principles of justice for regulating the design of the basic structure are fair to all and so capable of being freely accepted by reasonable people regardless of the position they occupy in society. To affirm mutually justified principles to regulate basic social institutions is to affirm that we regard one another as moral equals.

The upshot of Rawls's thought experiment is his argument that two basic principles of justice would be chosen by citizens of modern pluralistic democracies:

1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

2. Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and, (b) they are to be to the greatest benefit of the least advantaged members of society.²²

Principle 2 (b) is also known as the “difference principle.”

What is the relevance of all this to obligations across borders? If being born into a well-off family or with especially advantageous genes is to be regarded as morally arbitrary when thinking about justice, surely it seems equally arbitrary whether one is born in New Mexico or Mexico. One's place of birth with respect to nationality or political community seems quintessentially arbitrary. And yet Rawls follows Walzer in arguing that obligations of distributive justice (such as the difference principle and the principle of fair equality of opportunity) apply only within the borders of a political community and only among co-participants in a shared political order. What can justify this?

Like Walzer, Rawls mentions the fact of greater diversity on the international scale, the fact that reasonable pluralism “is more evident within a society of well-ordered peoples than it is within one society alone.”²³ Some have supposed that this invocation of diversity signals a retreat in Rawls's later writings with respect to his ambitions regarding justice. Suffice it for these purposes to say that I think this interpretation is wrong, and in any event we should seek a better one if we can find it.²⁴

The diversity-based argument for limiting obligations of distributive justice to particular political communities would appear to be a nonmoral account of why justice's sails need trimming, a matter of bowing before unfortunate necessities, a pragmatic or prudential concession rather than a full moral justification. I believe there is a moral justification for confining obligations of distributive justice to co-participants in particular political communities. But what might it be?

THE MORAL SIGNIFICANCE OF COLLECTIVE SELF-GOVERNANCE

Borders are morally significant because they bound systems of collective self-governance.²⁵ As Michael I. Blake has emphasized, the arbitrariness of the location of borders does not stop them from being of great moral significance.²⁶ Co-participation in governance is an important moral relation. As members of a political community, we are joined in a collective enterprise across generations through which we construct and sustain a comprehensive system of laws and institutions that regulate and shape

all other associations, including religious communities and families. We are born into political communities and are formed by them. From cradle to grave (and beyond), our interests, identities, relationships, and opportunities are pervasively shaped by the political system and the laws that we collectively create, coercively impose, and live within. The basic values of our political order pervasively shape the lives of those who reside within it.

The governments of self-governing political communities – at least so long as they are legitimate – are recognized by members to be capable of authoritatively resolving conflicts and of making decisions that bind us as members of the political community: our government as our agent enters into treaties, makes alliances, declares war, and conducts various undertakings in our name. As Henry Richardson has emphasized, legitimate governments are capable of putting citizens under new duties, and this is an awesome moral power.²⁷ We can be held collectively liable as citizens for the actions of our government, recognized by us and others to be our collective agent.²⁸

Citizens have powerful obligations of mutual concern and respect, and mutual justification, to one another because they are joined together – as constituent members of a sovereign people – in creating binding political institutions that determine patterns of opportunities and rewards for all.²⁹ A self-governing political society is a hugely significant joint venture, and we understand it as such. We have strong common obligations as fellow citizens because we collectively govern one another: we collectively make hugely consequential decisions. This could not simultaneously be true of the international society, and it is not. Membership in international bodies does not have the same significance because that membership is mediated by membership in primary political units, namely the “Member States” of the United Nations or its peoples: individuals are not governed directly by multilateral institutions.³⁰ International institutions deal with a limited range of subjects.

Cosmopolitan distributive justice (as opposed to a duty to assist other peoples to become self-governing) makes no sense absent a cosmopolitan state and a cosmopolitan political community, for which hardly anyone seriously argues and we are not obliged to bring into being, though there are good reasons for strengthening international institutions. It is, moreover, hard to understand the reasonableness of making people responsible for the welfare of others without also making them responsible for their governance. It would be strange and unreasonable

to sever ongoing responsibilities for the provision of health, welfare, and education from responsibilities for governance with respect to these matters.

To argue that membership in a political collectivity is morally significant in the ways I have begun to describe raises further questions. Which political collectivities qualify? Does every political community have equal moral standing, and if not, which ones do? The traditional answer is to say that all sovereign and independent regimes have full moral status in international law. Rawls, in *The Law of Peoples*, in effect offers an account of full legitimacy that seems to me to be on the right track. Respect for basic human rights is one crucial threshold condition of legitimacy. Liberal democracies qualify for full respect, but so do certain not fully liberal and democratic regimes, which Rawls calls “decent” peoples. We need not go into the details here, but suffice it to say that the theory of legitimacy at work here is the following: *we ought to fully respect states that effectively protect citizens and provide working legal arrangements and within which (a) basic human rights are respected and (b) there are effective processes for giving everyone a say, for ensuring that all groups within society are listened to, responded to, and effectively included in collective self-rule.*³¹ To respect such political societies is to respect distinctive forms of collective self-rule, forms of collective self-rule that may deviate from some of the features that we understand to be aspects of liberal democracy but nevertheless observe basic rights and take all members’ interests seriously into account. If such communities go wrong in some of the respects identified here, we can nevertheless say that the mistake is theirs to make. Such political communities can be regarded as the fit custodians of the interests of their own citizens.

WHAT DO WE OWE TO NONMEMBERS?

Space does not permit an extensive discussion of what the civic view might say about obligations to nonmembers, but it may be helpful to round out the account before returning to the problem of immigration.

First, societies have general duties of *fair dealing* with one another, and this would include nonexploitation, the avoidance of force and fraud, and the duty to curb the capacity of one’s citizens or corporations to harm or exploit others. This general duty of fair dealing would seem to include doing our fair share to address common problems (avoidance of

free-riding), including environmental problems such as global warming, disaster relief, and humanitarian assistance.

Second, societies have specific obligations to other countries or groups growing out of particular relations of exploitation, oppression, or domination, which give rise to specific obligations of *rectification and redress*; that is, if we have exploited or oppressed poorer and weaker societies, or if we have allowed our corporations to do so, then we have debts to these other societies that require some sort of recompense.

I should emphasize that these first two categories almost certainly generate strong demands for serious reform of the ways in which countries such as the United States conduct themselves in international affairs.³²

Finally, it seems right to say that well-off societies have general *humanitarian duties* to relieve those in destitution or distress and to respond to gross and systematic violations of human rights. Our duty is to do what we can to relieve distress, to end suffering, to stop gross violations of human rights, and to get a society on its feet so that it can look after its own affairs. These duties may involve substantial resource commitments, and they certainly require rich countries such as the United States to spend more than they currently do on assistance. It is crucial to specify the target: the proper target of aid could be such that all members of a given society are capable of leading good lives; while Americans and other consumerists might disagree, Aristotle was right to note long ago that the good life does not require vast amounts of wealth.

Crucially, members of wealthier societies do not owe to all the people of the world precisely the same consideration that they owe to fellow citizens. The reason is that fellow citizens stand in a special moral relation with one another: they share extensive institutional relations of shared governance.

U.S. IMMIGRATION POLICY AND DISTRIBUTIVE JUSTICE

As we have seen, it is not implausible to think that U.S. immigration policy of the last 40 years has been bad for distributive justice within the United States. It may have worsened income inequalities by admitting large numbers of poor people. Those poor immigrants are better off for having been allowed to immigrate, but the burdens of funding some social welfare programs are increased, and those programs may be less politically popular as a consequence. What, from an egalitarian perspective at least, could possibly be wrong in making the United States more like Canada by reducing overall levels of immigration and giving greater priority to immigration by the better-educated and higher-skilled?

Howard Chang rightly observes that the civic, or “liberal nationalist,” policy on immigration seems anomalous:

If the welfare of all incumbent residents determines admissions policies, however, and we anticipate the fiscal burden that the immigration of the poor would impose, then our welfare criterion would preclude the admission of unskilled workers in the first place. Thus, our commitment to treat these workers as equals once admitted would cut against their admission and make them worse off than they would be if we agreed never to treat them as equals. A liberal can avoid this anomaly by adopting a cosmopolitan perspective that extends equal concern to all individuals, including aliens, which suggests liberal immigration policies for unskilled workers.³³

Chang admits, of course, that the morally justified cosmopolitan immigration policy may be politically infeasible because Americans seem unwilling to embrace the right sort of cosmopolitan moral attitude.

I have argued, however, that there are good reasons for believing that we have special obligations for our fellow citizens, obligations arising from membership in a self-governing community. In shaping immigration policies, concerns about distributive justice are relevant and urgent, and these concerns are inward-looking rather than cosmopolitan, emphasizing the special obligations we have toward our poorer fellow citizens. If the United States were to move toward a more Canadian-style immigration policy, this could improve the lot of less-well-off American workers. Considerations of distributive justice – taken in the abstract – argue for the superiority of the Canadian system: this would mean limiting immigration based on family reunification (perhaps limiting that preference to spouses and minor children), placing greater weight on priorities for education and other skills, and curbing undocumented or illegal immigration.

However, sound policy recommendations in this vexing area of policy need to take into account a great deal more of the relevant context, including geography and the heavy residue of historical patterns and practice. The United States is not Canada, and the costs of pursuing a Canadian-style immigration policy in the United States could be prohibitive. Empirical description, and careful analysis and prediction, must be combined with moral judgment. I can only sketch a few of the relevant considerations here.

The United States shares a 2,500-mile border with Mexico, and that border represents vast differences in development, income, and wealth. For more than 60 years, there have been high levels of migration from Mexico to the United States, and the United States has periodically welcomed massive influxes of migrant workers. In the period 1965–1986,

1.3 million Mexicans entered the United States legally along with 46,000 contract workers, but 28 million entered as undocumented migrants. The vast majority subsequently returned to Mexico, yielding a net migration to the United States of around five million during this time.³⁴ These patterns of immigration and return are self-reinforcing: migration prepares the way for more migration as language and labor market skills are acquired, along with personal contacts, including Mexicans who remain in the United States.³⁵ In 2000, there were eight million American citizens who were born in Mexico. Estimates of the number of undocumented persons working in the United States illegally vary widely. Stephen Camarota puts the total number of illegals at 9.1 million as of March 2004, with about 5.5 million illegal workers. In addition, 3.4 million Mexicans enter the United States yearly on nonimmigrant visas, and there are 213 million short-term border crossings. The United States and Mexico (along with other Western Hemisphere nations) are committed to policies of open markets and free trade.³⁶ The costs of trying to close the border would be quite high.

What is the most ethically defensible way of responding to concerns about immigration, including concerns stemming from social justice within the United States? The answer is far from simple. We must, however, consider the humanitarian costs of attempts to massively alter long-standing patterns of movement across a long and long-porous border.

One approach is to try to limit legal migration and stop illegal immigration by more vigorously controlling the southern border, by constructing a security fence, and by other means.³⁷ Would this be effective? It could just lead to a surge in illegal migration by tunnel, sea, and air. It is far from obvious that a fence by itself would accomplish anything useful.

A more feasible way of curtailing illegal migration by poor workers would focus on stemming the demand for migrant workers in the United States. We might institute a national identification card, increase penalties for forging identification papers, and vigorously punish employers who hire undocumented people. None of these proposals are new, and some have been tried before.³⁸ Obviously, if such policies were implemented effectively, the cost of low-skilled labor would increase considerably in many areas, especially in agriculture, but that would appear to be good insofar as wages rise at the bottom of the income scale. It is often said that illegal migrants do work that Americans are unwilling to do, but of course the reality is Americans are unwilling to do the same work at the

prevailing low wage, and that is just the problem from the standpoint of distributive justice.³⁹

An alternative approach would be to accept and regularize the flow of migrant labor, as Douglas Massey, Jorge Durand, and Nolan J. Malone recommend. Their proposals include increasing the annual quota of legal entry visas from Mexico from 20,000 (the same as for the Dominican Republic) to 60,000 and instituting a temporary two-year work visa, which would be renewable once for each Mexican worker. They propose making available 300,000 such visas per year. This would regularize the flow of migrant workers and rechannel the flow of illegal migrants into a legal flow. The work visas would be awarded to workers, not employers, so that workers are free to quit. Fees for these visas plus savings in the Immigration and Naturalization Service budget could generate hundreds of millions of dollars a year that could be passed along to states and localities with high concentrations of migrants to offset the costs of some local services. Finally, Massey and his colleagues would curtail the priorities that are now provided to family members of those who become naturalized Americans: they would eliminate the priority given to adult siblings of naturalized citizens, and they recommend making it easier for Mexican relatives of U.S. citizens to get tourist visas so they can visit and return home more easily.⁴⁰

One advantage of this approach is that it seems to deal directly with the underlying force generating migration to the United States from Mexico: poverty in Mexico. Massey and his colleagues emphasize that immigration is part of the development process and is temporary. The poorest nations do not send out migrants – witness sub-Saharan Africa. Developing countries typically send out immigrants for eight or nine decades until growth at home relieves the pressures to leave. Facilitating short-term migration and return would help promote growth in Mexico, and it is consistent with the general emphasis of the North American Free Trade Agreement on the integration of North American markets.

One moral problem with this approach is that it regularizes a system that would seem to impose downward pressure on low-wage jobs in the United States. It takes seriously the interests of poor people in a neighboring country – with whom we have long-standing ties and very likely unpaid historical debts – and it benefits American employers, American consumers, and better-off Americans, but it does not address the special obligations we have to our poorest fellow citizens. The distributive justice problem could be dealt with by explicitly coupling these reforms

with measures designed to improve the condition of poor Americans; that would be appropriate and overdue in any case.⁴¹ But as we have seen, high levels of immigration by low-income people may make transfer payments less politically popular and, if so, that is a liability of the proposal, perhaps one that can be partially addressed by excluding guestworkers from many public benefits.

Another possible problem with this policy is the intrinsic status of guestworkers. Adequate protections must be built into any guestworker program so that workers are not exploited and oppressed. The fact is that wages and work conditions among agricultural workers in the United States are currently awful, and a regulated guestworker program ought to be coupled with measures to require decent wages and work conditions, basic health care, protection from poisoning by pesticides, and so on.⁴² However, if a guestworker in the United States becomes seriously ill, the program might be designed so that he or she is entitled to a trip to the emergency room and then a one-way ticket home. Such provisions seem likely to be part of the price of getting Americans to accept a guestworker program, and they seem legitimate so long as work conditions, wages, and protections are such that we can regard the conditions of work as humane and reasonable. (If such provisions led workers to conceal and postpone treatment of serious illnesses, then we would need to rethink the acceptability of the provision.)⁴³

CONCLUSION

There is reason to believe that current patterns of immigration do raise serious issues from the standpoint of social justice: high levels of immigration by poor and low-skilled workers from Mexico and elsewhere in Central America and the Caribbean may worsen the standing of poorer American citizens. Furthermore, such immigration may lessen political support for redistributive programs. Nevertheless, as we have also seen, the costs of "tightening up" the border could be extremely high: border security efforts have imposed great hardships and expense on migrant workers without stemming the tide of immigration. Employer sanctions could be a more humane enforcement mechanism, though it remains to be seen whether Americans have the political will to impose such measures. In addition, it is not clear how many poor Americans would be interested in doing the agricultural work done by many migrants, though independent of all other considerations, work conditions and wages for migrant agricultural work should be improved.

I have argued that U.S. immigration policy presents us with the necessity of grappling with the tension between two important moral demands: justice to our fellow citizens and humanitarian concern with the plight of poor persons abroad. I have argued that we do indeed have urgent reasons to shape major public policies and institutions with an eye toward the distributive impact. Justice demands that we craft policies that are justifiable not simply from the standpoint of aggregate welfare – or the greatest good of the greatest number. We must consider the justifiability of policies from the standpoint of the least well-off among our fellow citizens. John Rawls's theory of justice stands for the proposition that the political equality of citizens requires this sort of "distributive" justification among citizens: it is not reasonable to expect our less-well-off fellow citizens to accede to a policy on the grounds that it makes those with the luck of superior endowment by nature and birth even better off. Immigration policy – as part of the basic structure of social institutions – ought to be answerable to the interests of the poorest Americans. An immigration policy cannot be considered morally acceptable in justice unless its distributive impact is defensible from the standpoint of disadvantaged Americans.

And yet, we must also consider the collateral costs of border security measures given the long border and long-standing patterns of migration from Mexico. It is possible that the best combination of policies would be something like the Massey proposals involving guestworkers, coupled with more generous aid to poorer Americans. But we also need to consider whether immigration policies themselves significantly affect the political saleability of aid to the poor; they may well do so. Of course, it is possible that under current conditions the prospects of doing anything serious for poorer Americans are dim, and given that, we should simply do good where we can and for whom we can. The proposals by Massey and his colleagues hold out the prospect of doing some real good for hundreds of thousands of migrant workers and for Mexicans and Americans as a whole.