

From Swain, ed.

Debating Immigration
(2nd Rev. ed.) 2018

The Moral Dilemma of U.S. Immigration Policy Revisited: Open Borders vs. 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 from the acknowledgment that we have special obligations to “our own” poor, that is, 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?

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 Americans.¹ In addition to the effects on labor markets, there are other ways in which high levels of immigration may have lessened 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 U.S. 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 everything that they might favor – humanitarian concern for the world’s poor, an openness to an ever-widening social diversity, and support for distributive justice within our political community – necessarily go together.

These are vexing questions in politics as much as in political theory and moral philosophy. Recent events have made them even more central. President

* My thanks to those who have suggested changes during the ten years since this was first published.

Donald Trump has revived the isolationist slogan “America first,” and linked immigration to the loss of well-paying American jobs. His anti-immigration message is crude and cruel but he also speaks to real grievances. His message has resonated with millions of working-class Americans – especially white working-class men without a college degree – who have in many ways borne the brunt of globalization.

We have not paid sufficient attention to the domestic distributive impact of immigration (as well as globalized trade). High levels of immigration by low-skilled workers make fulfilling our moral obligations to the poorest Americans more costly and less likely. If that is true, does it mean that the borders should be closed and immigration by the poor restricted? That conclusion would be hasty: the moral terrain and the policy options are complex.

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 are poorer than our own poor whose condition is worsened. Citizens have special obligations to one another: we have special reasons to be concerned with the distribution of wealth and opportunities among citizens. The relative standing of citizens matters in ways that the relative standing of citizens and non-citizens does not. In this respect, I argue against “cosmopolitanism” with respect to the principles of social justice, and join Michael Walzer, John Rawls, David Miller, and Michael I. Blake, among others, in defending the idea that distributive justice holds among citizens.²

What is the basis of these special obligations among citizens? I argue that it is as members and co-participants in self-governing political communities that we have special obligations to our fellow members.

Distributive justice is a weighty moral consideration that bears on immigration policy, but it is not the only one. We also have significant moral duties and obligations to poor people (and others) abroad; these are different in content from what we owe to fellow citizens and they may take priority. The large external effects of our policies may dominate smaller negative effects on distributive justice.

This chapter proceeds as follows. The first part describes the reasonable grounds for thinking that we face a dilemma in shaping US immigration policy. I feature claims advanced by George Borjas and others in order to raise important moral questions while allowing that there is serious disagreement about the effects of immigration. In section two 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 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. It may be that on balance we should

accept and manage ongoing high levels of movement back and forth across the U.S.–Mexico border.

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 is not 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 poor, they overwhelmingly affirm that institutions such as public education should insure that every child has a good start in life, irrespective of accidents of birth.³ 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 past half-century, American immigration policies and practices became, in some important 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. Immigration to the U.S. has trended upward since the end of World War II. Between 2001 and 2016, about one million foreign nationals per year became long-term permanent residents in the U.S. (including both new arrivals and adjustments to visa status). Whereas in 1970, less than 5 percent of the general population was foreign born, that percentage rose to 14 percent – or 45 million people – in 2015 (just under the historic record of 15 percent around the beginning of the twentieth century). Twenty-six percent of the current U.S. population – or 85 million people – are either immigrants or the children of immigrants. Over half the U.S. population growth since 1965 is due to immigration and were it not for immigration, it is estimated that the current population of the U.S. would be 252 rather than 324 million.⁴

Patterns of immigration to the U.S. were shaped deeply by amendments to the Immigration and Nationality Act passed in 1965, emphasizing the principle of family reunification. The exact formulas are complicated, but "immediate relatives" of U.S. citizens (spouses, parents, and unmarried children under 21 years of age) can enter without numerical limit (and often number nearly half a million per year). An additional 226,000 annual admission priorities are

extended to adult children and adult siblings of U.S. citizens, and spouses and children of legal permanent residents ("green card" holders). In 2010, family-based preferences accounted for 66 percent of annual immigration to the US.⁵

U.S. policy also favors some migrants based on employment qualifications and skills (14 percent of the total in 2010) and others based on humanitarian grounds, as refugees and asylum seekers (13 percent of the total in 2010).⁶ There are also shorter-term skills-based green card programs, including the H-1B visa program.

The composition of the growing immigrant pool changed markedly after 1965, with the skills level and earnings of immigrants declining relative to the native U.S. population. Whereas in 1960, the average immigrant man living in the U.S. 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, "Since the immigration reforms of 1965, U.S. immigration law has encouraged family reunification and discouraged the arrival of skilled immigrants."⁷

The ethnic and racial 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.⁸

On Borjas's influential if controversial analysis, recent decades of high immigration have tended to lower wages overall by increasing the labor supply, with the biggest negative impact being felt by the least well-off. Immigration from 1980 to 1995 increased the pool of high school dropouts in the US by 21 percent, while increasing the pool of college graduates by only 4 percent. By 2013, half of U.S. workers with less than a high school degree were foreign born.⁹ This, argues Borjas, contributed to a substantial decline in the wages of high school dropouts and to a widening of the wage gap based on education. He argues that immigration between 1980 and 2000 had the effect of lowering the wages of the average native worker by 3.2 percent, while lowering wages among those without a high school diploma (roughly the bottom 10 percent of wage earners) by 9 percent.¹⁰ To put it another way, it is widely agreed that in the U.S. in the 1980s and 1990s there was a substantial widening of the wage gap between more and less educated workers. Borjas has argued 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.¹¹

Of course, all Americans have benefited from cheaper fruits, vegetables, and the many other products and services that immigrants (including undocumented workers) help produce.¹² Firms have also benefited from cheap labor. Wealthier Americans have also benefited from increased access to cheap labor to perform service work – as nannies, gardeners, etc. By decreasing the cost of childcare and housekeeping, immigration has helped highly educated women participate in the labor force.¹³ However, Borjas

argues that native-born African American and Hispanic workers have suffered disproportionately because they are disproportionately low-skilled and own few firms, and often compete directly with low-skilled immigrants.¹⁴

Borjas also observes that nations with notably more progressive domestic policies often have immigration policies that are quite different from the U.S. While U.S. immigration policy since 1965 has emphasized family ties rather than desirable skills, Canada pioneered a system in the late 1960s that gives greater weight to educational background, occupation, and language proficiency. Canada's policy favors better-educated and high-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 level of the worse off.¹⁵ Australia, New Zealand, and other countries have followed Canada's lead and President Trump has argued that the U.S. should also move in that direction.¹⁶

It seems quite possible that Canada's policy of favoring more educated immigrants helps lessen domestic income disparities, while seeming less generous from the position of poor people abroad. U.S. policy, by admitting predominantly low-skilled and low education immigrants looks generous to poor persons abroad but may worsen the relative standing of the American poor. As is now obvious, were the U.S. to follow Canada and impose an education test on immigration this would have a substantial impact on the ethnic and racial composition and national origins of immigrants to the U.S. It would, in short, substantially and disproportionately reduce immigration from Mexico and the rest of Latin America.

We should emphasize that Borjas's arguments are controversial, and many economists argue that he exaggerates the negative effects of immigration while downplaying the positive side.¹⁷ Economist David Card argues that "immigration exerts a modestly positive effect on the labor market outcomes of most natives," but not all, and not the least well-educated cohort.¹⁸

The *labor market argument* advanced by Borjas (and others including Steven A. Camarota and Karen Zeigler in this volume¹⁹) describes one possible way in which recent decades of immigration to the U.S. may worsen distributive justice in the United States. There are several other pathways – political, cultural, and economic – by which recent high rates of immigration may harm the relative standing of poorer Americans. I will mention these briefly.

One response to the foregoing argument is that if immigration increases our collective wealth while worsening income disparities across rich and poor, why not welcome immigration and redistribute the surplus via tax and spending policies?²⁰ Redistributive policies could compensate for the malign distributive effects of immigration, but immigration may undermine political support for social welfare and redistributive programs.

Nolan McCarty, Keith T. Poole, and Howard Rosenthal argue that recent patterns of immigration help explain why increasing inequality since the 1980s

has come about in the U.S. without an increase in political pressure for redistribution. Since 1972, the percentage of non-citizens has risen and their income relative to other Americans has fallen. "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%."²¹ Meanwhile, a "large segment of the truly poor does not have the right to vote. Whereas in 2010, noncitizens were 9.2 percent of the general population," they were 13 percent of families with incomes below \$7,500 per year.²² McCarty, Poole, and Rosenthal argue that the increasing proportion of non-citizens among the poor has shifted the position of the median voter – the voters likely to be the "swing voters" who decide close elections. Immigration to the U.S. has made the median *voter* better off relative to the median *resident*, and this has decreased median voters' likelihood of supporting redistribution.²³

Immigration may have, thus, both worsened the relative standing of the least-well-off Americans and also made it less likely that crucial "swing voters" would support redistributive programs. McCarty, Poole and Rosenthal point out that countries with smaller portions of non-citizens among the poorest – such as France, Japan, and Sweden – have not seen the sort of sharp increases in the proportion of national wealth going to people in the top 1 percent as in the United States.²⁴

This *median voter argument* suggests that recent patterns of immigration to the U.S. may not only worsen the relative lot of the least well-off Americans but also make it harder to enact redistributive policies. Excluding immigrants from social welfare services is one way to counteract these effects, but immigrants – including illegal immigrants in many places – will still be provided with a variety of social services, including education.²⁵

Consider next an additional possible impact of immigration on social justice. Feelings of solidarity and mutual identification that help support social justice may be undermined, at least in the short to medium term, by the increased racial and ethnic heterogeneity associated with immigration.²⁶ Robert Putnam surveys a range of different forms of evidence suggesting that, "in ethnically diverse neighborhoods residents of all races tend to 'hunker down.' Trust (even of one's own race) is lower, altruism and community cooperation rarer, friends fewer."²⁷ The fact that immigrant groups typically have higher fertility rates than natives amplifies the effect. Putnam and others thus argue that immigration-induced increases in ethnic and racial diversity can reduce social solidarity and undermine support for the provision of public goods, including programs aimed at helping the poor.²⁸

On the basis of their survey of the evidence, Stuart Soroka, Keith Banting, and Richard Johnston argue, "International migration does seem to matter for the size of the welfare state. Although no welfare state has actually shrunk in the face of accelerating international movement of people, its rate of growth is smaller the more open a society is to immigration." They further argue that, "The typical industrial society might spend 16 or 17 percent more than it does

now on social services if it kept its foreign-born percentage where it was in 1970."²⁹

All of these empirical claims are controversial and the impact of immigration on a society's capacity to sustain redistributive programs is bound to be complex. Just how immigration and increased ethnic and racial diversity inhibit social spending is unclear: the rise of New Right political parties in Europe is associated with controversies over immigration, and mainstream parties may need to shift to the right in response.³⁰

Consider, finally, the argument advanced by John Skrentny in his contribution to this volume.³¹ He joins those who think that the direct economic impact of immigration on wages is likely small. Yet he argues that native white and black workers, in particular, may be disadvantaged in local labor markets by popular stereotypes that associate Latino and Asian workers – especially immigrants – with hard work and greater reliability. The availability of Latino and Asian immigrants in a labor pool may, therefore, put white and especially African American workers at a disadvantage.

To sum up. There are reasons to believe that the specific contours of American immigration policy over the last 40 years may have lowered wages at the bottom, by increasing competition for low-wage jobs, while also reducing political support for more generous social provision targeted at low-wage workers and the poor generally. The greater ethnic and racial diversity associated with immigration may also have lowered trust among groups and support for public goods provision. And, finally, pro-immigrant workplace stereotypes may disadvantage native workers, especially whites and African Americans. Vexed empirical issues surround all of these claims.

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 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 domestic distributive justice.

Of course, the question of how we should respond to this – if it is true – is not straightforward. It does not follow that the most morally defensible policy – all things considered – is to enact more restrictive immigration policies. It might well be morally preferable to change the other laws and policies that allow the immigration of low-skilled workers to generate adverse effects on native-born poor. The inegalitarian distributive effects of immigration could be offset via publicly funded income support for low-wage workers, improved education and training for the unemployed, and other social welfare benefits for the less well-off. And yet, high levels of low-skilled immigration may also tend to lower public support for social welfare provision. This sharpens the dilemma.

We should not underestimate the complexity of the questions that surround policy choice in this area. Distributive justice is important, but other moral

values are also in play, including humanitarian concern for all humans who are very badly off. Aside from the moral considerations that might help us rank various options, there is also the question of what package of policies might be politically saleable. This chapter can only scratch the surface of these issues.

COSMOPOLITAN VS. CIVIC OBLIGATIONS?

Let us step back and consider some framing moral issues. 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, etc., which 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 up at least 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" when we can save people in distress without undue cost to ourselves.³²

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 America should have a fair chance to attain good jobs – 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 progressivity 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 distribute 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? Do national

borders matter with respect to our fundamental moral obligations to one another?

There are, roughly speaking, two opposed lines of thought. One emphasizes the moral arbitrariness of borders and the universality of our obligations to the less well-off. The other position holds 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 "cosmopolitanism": the idea that we are, in effect, citizens of the world. The latter position – which I argue for – goes under various names and I'll refer to it as the *civic view*.

The civic view holds that we have special obligations of mutual justification to our fellow citizens, and that the fullest obligations of distributive justice have special force among fellow citizens. With respect to people in the rest of world, our duties and obligations are different, though still quite important: fair dealing – including curbs on the exploitive potential of our corporations, and doing our fair share to address common problems (such as environmental dangers like 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."³³ It seems to me that Walzer is on the right track here, though he is unclear about the moral grounds. He famously argues that moral arguments in politics should take the form of interpreting "shared social meanings." Principles of justice are justified 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.³⁴

Given this account of the nature of moral argument and distributive justice, it is not surprising that Walzer would argue that distributive justice applies within ongoing political communities which are the natural homes of shared meanings. "[T]he political community is probably the closest we can come to a world of common meanings. Language, history, and culture come together (come more closely together here than anywhere else) to produce a collective consciousness . . . the sharing of sensibilities and intuitions among the members of a historical community is a fact of life."³⁵ 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 contains part of the truth, but it is also puzzling. Achieving shared and well-justified principles of justice is surely a worthy aspiration within political communities. 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.

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 are not the basic thing when it comes to 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 are those with whom we share a comprehensive system of binding laws. Publicly justified "common meanings" are not the basis of political obligations but rather the goal of public argument and deliberation within our political community.

Walzer 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 is essential to 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 shared conventions, is not enough.

David Miller has argued eloquently for the advantages to political communities of a shared national culture and a common language, for 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."³⁶ That again seems right, as far as it goes: social justice may be harder to achieve in very diverse societies. But justice remains an important goal in divided societies. Some societies, such as Canada, seem able to generate impressive levels of support for social justice even amidst great diversity, partly by adopting effective multicultural policies. Social scientists have more work to do to understand the relationships among heterogeneity, social capital, and social justice.³⁷

Particular political societies – at least when they are well ordered rather than tyrannical, oppressive, very deeply divided, or desperately poor – will tend to generate roughly common understandings among members including standards for how disputes and disagreements should be resolved.³⁸ They may generate disagreements and conflicts galore, but these will be manageable if the society has working standards and practices for how disagreements should be dealt with and a reserve of rough agreement on the most important matters sufficient to sustain a common willingness to share a political order.

In his *The Law of Peoples*, John Rawls argues that the political community – or "people" – is the appropriate site of distributive justice: there are no obligations of distributive justice among human beings simply. We have humanitarian duties to relieve those in distress – as mentioned above – but 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).

Many have found this puzzling. Rawls does not as a general matter share Walzer's emphasis on the authority of shared social meanings. Moreover, Rawls's general approach to justice encourages us to transcend morally arbitrary accidents of birth. There is a puzzle here.

When formulating principles of justice, Rawls's guiding thought is that we should put aside 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 regard these advantages as arbitrary when justifying to one another principles of justice to regulate the basic structure of society, which includes the system of property and market exchanges, incomes and inheritance taxation, and public institutions and policies of all kinds. We instead regard one another as free and equal persons, and imagine 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.³⁹ 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 whichever 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.⁴⁰

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 are 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 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 of reasonable pluralism "is more evident within a society of well-ordered peoples than it is within one society alone."⁴¹ Some have supposed that this invocation of diversity signals a retreat in Rawls's later writings with respect to his ambitions regarding justice. I think this interpretation is wrong, and, in any event, we should seek a better one if we can find it.⁴²

The diversity-based argument for limiting obligations of distributive justice to particular political communities is a non-moral 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 is it?

THE MORAL SIGNIFICANCE OF COLLECTIVE SELF-GOVERNANCE

Borders are morally significant because they bound systems of collective self-governance.⁴³ The arbitrariness of the location of borders does not stop them from being of great moral significance once a collectively self-governing people creates a common life within them, as Michael I. Blake, Anna Stilz, and others have emphasized.⁴⁴ Citizens of self-governing political communities – together making and being subject to the law – share a morally significant special relationship. 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 and choices 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 taking 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. Legitimate governments are capable of putting citizens under new duties, and this is an awesome moral power.⁴⁵ We can be held collectively liable as citizens for the actions of our government, recognized by us and others to be our collective agent.⁴⁶

Americans take responsibility – and *should* take responsibility – for what happens in North Dakota and Mississippi in a way they do not for what happens in Chihuahua and Ontario. Citizens look to one another to jointly establish collective programs concerning health and welfare: they view

themselves as jointly responsible in perpetuity for their health and welfare, culture, and territory.

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 which determine patterns of opportunities and rewards for all.⁴⁷ 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 UN or its peoples: individuals are not governed directly by multilateral institutions.⁴⁸ 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 and well-ordered) makes no sense absent a cosmopolitan state and a cosmopolitan political community, which hardly anyone seriously argues for, and which 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.

Federations or unions of states such as Europe may voluntarily enter into increasing cooperative relations, but we understand European peoples to be doing this as a matter of mutual advantage and choice, not as an obligation of fundamental justice. It may be good for them but it is also up to them, as the people of the United Kingdom have recently affirmed.

To argue that membership in a political collectivity is morally significant in the ways I have begun to describe raises the further question: which political collectivities qualify? Does every political community have equal moral standing, or if not, which ones? Respect for basic human rights is one crucial threshold condition of legitimacy and international respectability. 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’ basic interests and provide working legal and political arrangements and within which (a) basic human rights are respected and (b) there are effective processes for giving everyone a say, for insuring that all groups within society are listened to, responded to, and effectively included in collective self-rule.*⁴⁹ 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 which nevertheless observe basic rights and take all members interests seriously into account, and thereby make legitimate law. If by our lights such communities go wrong in some respects 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 NON-MEMBERS?

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

First, societies have general duties of (a) *fair dealing* with one another, and this would include non-exploitation, 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 includes doing our share to address common problems (avoidance of free-riding), including environmental problems such as global warming, disaster relief, and humanitarian assistance.

Second, they 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*. (b) 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 which require some sort of recompense.

I should emphasize that these first two categories almost certainly generate strong demands to strengthen international institutions and for reform in the way that countries like the U.S. conduct themselves in the world.

Finally, it seems right to say that well-off societies have (c) 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 would require rich countries like the U.S. to spend more than they currently do on assistance, if it could be shown that such assistance is effective (which it very often is not⁵⁰). The proper target of aid is helping societies to develop their own effective and legitimate political institutions which can secure the basic interests of all citizens.

Our general humanitarian duties include doing our fair share to provide safe harbor for refugees, whose basic needs are not being met in their home countries and who have no prospect for having them met as a consequence of well-founded fears of persecution.⁵¹ If we have contributed to the creation of the conditions that generate refugees then we have special obligations to address

their plight. In the absence of specific connections and special responsibilities, we still have general duties to do our part along with others: to bear some significant cost to relieve suffering abroad.

Crucially, however, members of wealthier societies do not owe to all the people of the world precisely the same consideration that they owe to fellow citizens. Full justice holds within political communities because of the special moral relation that citizens share: as the ultimate controllers and subjects of extensive institutions of shared governance.

U.S. IMMIGRATION POLICY AND DISTRIBUTIVE JUSTICE

As we have seen, it is not implausible to think that America's immigration policy has contributed to rising inequality and distributive injustice in the U.S. over the last half century. Poor immigrants are better off for having been allowed to immigrate, but many have competed for jobs with less-well-off Americans, and social programs to address inequality may have been made less politically popular. What, from an egalitarian perspective at least, could possibly be wrong in the U.S. being more like Canada,⁵¹ 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.⁵²

Chang allows, 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 responsibilities 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 to our poorer fellow citizens. If the U.S. 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 re-unification (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 vexed area of policy need to take into account a wider set of moral considerations and a great deal more of the relevant context, including geography and the heavy residue of historical patterns and practice. So far as the context is concerned, the United States is not Canada, and the costs of pursuing a Canadian-style immigration policy in the U.S. 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 in concluding, and it should also be noted that patterns of migration to the U.S. are shifting rapidly.

The U.S. shares a 2,000-mile long border with Mexico, and that border has marked large differences in development, income, and wealth. For decades, there have been high levels of migration from Mexico to the U.S., and the U.S. has frequently welcomed massive influxes of migrant workers. In the period from 1965 to 1986, 1.3 million Mexicans entered the U.S. 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 U.S. of around five million during that time.⁵³ Patterns of migration and return are self-reinforcing: migration prepares the way for more migration as language, labor market skills, and personal contacts are acquired.⁵⁴ Heightened border security in the late 1980s and 1990s had the perverse consequence that illegal migrants chose to remain in the U.S. far longer than they did when it was easier to leave and re-enter.

Over three million Mexicans enter the U.S. yearly on non-immigrant visas and there are well over 200 million short-term border crossings. The U.S. and Mexico (along with other Western Hemisphere nations) are committed to policies of open markets and free trade.⁵⁵ Economic growth in Mexico has narrowed the wage gap between the U.S. and Mexico: GDP in Mexico is now over \$17,500 per capita, making it a middle-income country. The birth rate in Mexico has also declined.

Remittances from the U.S. undoubtedly contributed considerably to economic growth in Mexico, and Mexican migration to the U.S. has been falling since the early 2000s. In 2013, China and India surpassed Mexico as the largest senders of migrants to the U.S., though other Caribbean and Central American countries – including Cuba, the Dominican Republic, El Salvador, and Guatemala – continue to send large numbers of migrants.⁵⁶

What is the most ethically defensible way of responding to concerns about immigration, including concerns stemming from social justice within the U.S.? We must consider the humanitarian costs of attempts to massively alter longstanding patterns of movement across our long and long-porous borders with Mexico and other Central American countries.

The approach long favored by some on the right, and now being implemented at least in part, 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, including increased arrests and deportations of undocumented persons.

Will this be effective? Policy changes in the U.S. seem to be having some effect. As this book goes to press, it appears that migration to the U.S. from Central American countries in general is down significantly: U.S. Customs and Border Protection reports that apprehensions of undocumented persons along the Southwest Border are down 64 percent from May 2016 to May 2017.⁵⁷

But this has been partly at the cost of imposing tremendous burdens on the 11 million undocumented persons living and working in the U.S. It is estimated that 60 percent of these people have been living in the U.S. for over a decade, and a third of those have American-born children who are therefore citizens.⁵⁸ It may be that many or most of these people had no right to come here in the first place, but they came mainly for honorable and decent reasons: to help their families cope with often desperate poverty. The costs of disruption for those who have been here for any considerable amount of time, as law-abiding citizens, makes it immoral to not provide a path to regularized status.⁵⁹

Another way of curtailing illegal migration by poor workers would focus on stemming the demand for migrant workers in the U.S. We might institute a national identification card, increase penalties for forging identification papers, and vigorously punish employers who hire undocumented people. 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 they are unwilling at the prevailing low wage, and that is just the problem from the standpoint of distributive justice.⁶⁰ Suppose the wages were doubled and the work conditions improved significantly?

An alternative approach would be to accept and regularize the flow of migrant labor, as Massey, Durand, and Malone recommend. Such proposals include increasing the annual quota of legal entry visas from Mexico, and perhaps other Central American countries. In addition, instituting a temporary two-year work visa, which would be renewable once. Massey, Durand, and Malone have proposed making available 300,000 such visas per year. This would regularize and re-channel the flow of illegal migrants into a legal flow. The work visas would be awarded to workers not employers, so that workers would be free to quit. Fees for these visas plus savings in the Immigration and Naturalization Services 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 legal permanent residents, and they recommend making it easier for relatives of U.S. citizens to get tourist visas, so they can visit and return home more easily.⁶¹

It may be that the guestworker program component is most controversial. It has the advantage of directly addressing some of the underlying forces generating migration to the U.S. from Central America and elsewhere: poverty and the need for economic and social development. Massey and his colleagues emphasize that immigration is part of the development process and it is temporary. The poorest nations do not send out migrants. Developing countries typically send out immigrants for eight or nine decades, until growth at home relieves the pressures to leave. As we have seen, migration from Mexico has indeed been falling as predicted. Facilitating short-term migration and return would help promote growth elsewhere. While government-to-government foreign aid has a very poor track record, remittances sent home by migrant workers contribute considerably to economic development.

One moral problem with this approach is that it regularizes a system that would seem to impose some downward pressure on low-wage jobs in the U.S. It takes seriously the interests of poor people abroad and it benefits American employers, American consumers, and better-off Americans, but it does not fully 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 conditions of poorer and less well-educated Americans, whose economic prospects have deteriorated considerably in recent decades of globalized trade while elites have prospered. This would be appropriate and overdue in any case. While high levels of immigration by low-income people may make transfer payments less politically popular, a guestworker program, by excluding guestworkers from many public benefits, could help address this problem.

A 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. A regulated guestworker program ought to be coupled with measures to require decent wages and work conditions, basic healthcare, protection from poisoning by pesticides, etc.⁶² However, if a guestworker in the U.S. 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 to workers concealing and postponing treatment of serious illnesses then we would need to re-think the acceptability of the provision.)⁶³

An additional track of immigration reform can only be mentioned here: greater emphasis on skills-based migration. Such policies have spread from

Canada to many countries around the world. They may be advantageous for developed countries and have some specific advantages from the standpoint of domestic distributive justice, as discussed above. But there are serious questions concerning whether skills-based migration policies are causing a “brain drain” for sending countries. The benefits of remittances, and the likelihood that many migrants will return home, may outweigh the costs, but these issues deserve more attention than I can give them here.⁶⁴

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 may worsen the relative and absolute positions 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 have been high: border security efforts have imposed great hardships and expense on migrant workers. Employer sanctions could be a more humane enforcement mechanism, but Americans have not had the political will to impose such measures.

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 vs. humanitarian concern with the plight of poor persons abroad. We have urgent reasons to shape major public policies and institutions with an eye to 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. 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 tight curbs on immigration. While domestic distributive justice is an urgent moral concern it does not, I would argue, take absolute or lexical priority over broader humanitarian concerns. Fostering development in very poor countries is a humanitarian imperative. If we can make significant contributions to this while bearing only small and uncertain costs in terms of domestic distributive justice, it seems likely that we should do so.

The proposals by Massey and his colleagues hold out the prospect of doing some real good for hundreds of thousands of migrant workers, their families, and countries of origin. 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.

This discussion has only meant to suggest the shape of certain moral considerations relevant to any defensible immigration policy.

NOTES

1. George J. Borjas, *Heaven's Door: Immigration Policy and the American Economy* (Princeton: Princeton University Press, 1999).
2. Walzer and Rawls are discussed below. See also Thomas Nagel, “The Problem of Global Justice,” *Philosophy and Public Affairs* 33.2 (2005): 113–147; David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016).
3. See Jennifer L. Hochschild, *The American Dream and the Public Schools* (New York: Oxford University Press, 2003), pp. 9–11.
4. For a very helpful overview, see Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, 2012), pp. 3, 7–8. Available at: www.fas.org/sgp/crs/homesecc/RL32235.pdf, accessed February 23, 2018. See also Pew Research Center reports, including: “Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065: Chapter 5: U.S. Foreign-Born Population Trends,” September 28, 2015. Available at: www.pewhispanic.org/2015/09/28/chapter-5-u-s-foreign-born-population-trends/; and see also Chapter 2: “Immigration’s Impact on Past and Future U.S. Population Change.” Available at: www.pewhispanic.org/2015/09/28/chapter-2-immigrations-impact-on-past-and-future-u-s-population-change/, accessed February 23, 2018.
5. Wasem, *U.S. Immigration Policy*; see also United States Citizenship and Immigration Services website. Available at: https://my.uscis.gov/helpcenter/search?q=sibling&tag=tag_search. And see: www.bipc.com/immigration-through-the-family-sponsored-preferences, accessed February 23, 2018.
6. Dallas Fed Report, 18–19.
7. George J. Borjas, “The U.S. Takes the Wrong Immigrants,” *The Wall Street Journal*, April 5, 1990, A18; the quote continues, “75% of legal immigrants in 1987 were granted entry because they were related to an American citizen or resident, while only 4% were admitted because they possessed useful skills.”
8. See Pew, “Modern Immigration.”
9. Dallas Fed Report, 10.
10. George Borjas, “The Labor Demand Curve is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market,” *Quarterly Journal of Economics* 118.4 (November 2003): 1335–1374, 1336.
11. Borjas, *Heaven's Door*.
12. See Jorge Durand, Nolan J. Malone, and Douglas S. Massey, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage, 2003), pp. 150–151; conceding the wage effects discussed earlier, see p. 154.
13. Patricia Cortés and José Tessada, “Low-Skilled Immigration and the Labor Supply of Highly Skilled Women,” *American Economic Journal: Applied Economics* 3.3 (2011): 88–123.

14. Borjas, *Heaven's Door*, pp. 11, and 22–38, 82–86, 103–104. For an update see Borjas, “The Labor Demand Curve.” And see Borjas, Center for Immigration Studies, *Background*, “Increasing the Supply of Labor Through Immigration: Measuring the Impact on Native-Born Workers,” April 1, 2004, which argues that immigration between 1980 and 2000, by increasing the labor supply, reduced the wages of native-born men by 4 percent; among natives without a high-school education (roughly the bottom 10 percent) he estimates the reduction at 7.4 percent. The impact on blacks and Hispanics is especially great because they form a disproportionately large share of high school dropouts; the effect holds regardless of whether immigration is legal or illegal.
15. Borjas, *Heaven's Door*, pp. 176–77.
16. See Lazaro Zamora and Jeff Mason, “Merit-Based Immigration System,” Bipartisan Policy Center, April 11, 2017. Available at: <https://bipartisanpolicy.org/blog/merit-based-immigration/>, accessed February 23, 2018.
17. See David Card and Giovanni Peri, “Immigration Economics: A Review.” See also the recent report arguing for small labor market effects, National Academies of Sciences, Engineering, and Medicine. *The Economic and Fiscal Consequences of Immigration* (Washington, DC: The National Academies Press, 2016), doi: 10.17226/23550.
18. See David Card, “How Immigration Affects US Cities,” Center for Research and Analysis of Migration, Discussion Paper, November 2007, Department of Economics, University College, London. Available at: www.cream-migration.org/publ_uploads/CDP_11_07.pdf.
19. See Camarota (Chapter 3).
20. This and the next few paragraphs draw on Stephen Macedo, “When and Why Should Liberal Democracies Restrict Immigration?” in Rogers M. Smith, ed., *Citizenship, Borders, and Human Needs* (University of Pennsylvania Press, 2011), pp. 301–323.
21. Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches, Walras-Pareto Lectures* (Cambridge, MA: MIT Press, 2006), chapter 4.
22. Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches, Walras-Pareto Lectures* (Cambridge, MA: MIT Press, 2nd edition 2016), p. 137.
23. Congress restricted alien access to many federally funded welfare benefits in 1996. This would seem one way to help dampen the downward effects argued for by McCarty et al. Nevertheless, immigrants to the U.S. receive various forms of public assistance at a higher rate than Native Americans. Howard F. Chang, “Public Benefits and Federal Authorization for Alienage Discrimination by the States,” *New York University Annual Survey of American Law*, Vol. 58 (2002): 357–570.
24. McCarty, Poole, and Rosenthal, *Polarized America*, 2nd edition, p. 122.
25. Malanga argues that, “Though the federal government bans illegal aliens from receiving many benefits, several states and cities have made themselves immigrant havens by providing government services through a don’t-ask, don’t-tell policy. New York City, for instance, offers immigrants, regardless of their status, such benefits as government-sponsored health insurance, preventive medical care, and counseling programs. Some states have moved to ensure that illegals receive in-state

- tuition discounts to state colleges, even though out-of-state American citizens don’t qualify for those discounts.” See Malanga, *City Journal*, 2006, *ibid*.
26. As David Miller puts it, “A shared identity carries with it a shared loyalty, and this increases confidence that others will reciprocate one’s own cooperative behavior,” *On Nationality* (Oxford University Press, 1995), p. 92. Michael Walzer argues that the provision of social goods depends on shared social meanings, which in turn depend upon the enforcement of political boundaries, *Spheres of Justice*, chapter 2, “On Membership.”
27. Robert D. Putnam, “E Pluribus Unum: Diversity and Community in the Twenty-First Century: The 2006 Johan Skytte Prize Lecture,” *Scandinavian Political Studies* 30.2 (June 2007): 13, 137–174.
28. A. Alesina, E. La Ferrara, “Who Trusts Others?” *Journal of Public Economics* 85 (2002): 207–234, finding that homogeneous places tend to be more trusting; Alberto Alesina, Reza Baquir and William Easterley, “Public Goods and Ethnic Divisions,” *Quarterly Journal of Economics* 114. 4 (November 1999): 1243–1284; R. La Porta, F. Lopez-de-Silanes, A. Shleifer, and R. Vishny, “The Quality of Government,” *The Journal of Law, Economics, and Organization* 15.1 (1999): 222–279; Stephen Knack and Philip Keefer, “Does Social Capital Have an Economic Payoff? A Cross-Country Investigation,” *The Quarterly Journal of Economics* 112.4 (1997): 1251–1288; William Easterly and Ross Levine, “Africa’s Growth Tragedy: Policies and Ethnic Divisions,” *The Quarterly Journal of Economics* 112.4 (1997): 1203–1250; Francis Fukuyama, “Social Capital and the Global Economy,” *Foreign Affairs* 74.5 (1995): 89–103.
29. Stuart Soroka, Keith Banting, and Richard Johnston, “Immigration and Redistribution in a Global Era,” in Pranab Bardhan, Samuel Bowles, and Michael Wallerstein (eds.), *Globalization and Egalitarian Redistribution* (Princeton: Princeton University Press, 2007), p. 278.
30. Soroka, Banting, and Johnston argue that the “effect seems wholly political and wholly through its direct impact on mainstream governing parties,” and reflects the influence of “perceived cultural threat and economic cost,” (pp. 278–279). The challenge is to devise ways to “combine openness at the global level with social integration at the domestic level,” (Soroka *et al.*, p. 279). There is a large literature on ethnic diversity and public good provision, see James Habyarimana, Macartan Humphreys, Daniel N. Posner, and Jeremy M. Weinstein, “Why Does Ethnic Diversity Undermine Public Goods Provision?” *American Political Science Review* 101 (November 2007): 709–725, which notes that “the empirical connection between ethnic heterogeneity and the underprovision of public goods is widely accepted,” though there is no consensus on “the specific mechanisms through which this relationship operates,” (709). See also Alesina and La Ferrara, “Who Trusts Others?”; William Easterly and Ross Levine, “Africa’s Growth Tragedy: Policies and Ethnic Divisions,” *Quarterly Journal of Economics* 112 (1997): 1203–1250. For a contrary view, see Christel Kesler and Irene Bloemraad, “Does Immigration Erode Social Capital? The Conditional Effects of Immigration-Generated Diversity on Trust, Membership, and Participation across 19 Countries, 1981–2000,” *Canadian Journal of Political Science*, 43.2 (2010): 319–347.
31. See Skrentny (Chapter 1).

32. Of course, there are important debates about whether foreign aid is efficacious. For a skeptical view, see William Easterley, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (New York: Penguin, 2006).
33. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic, 1983), see chapter 2, "Membership."
34. Walzer has developed this argument in a number of places, perhaps most pointedly in "Philosophy and Democracy," *Political Theory*, 9 (1981): 379–399; this essay complements the approach of *Spheres of Justice*.
35. Walzer, *Spheres of Justice*, 28.
36. David Miller, *On Nationality* (Oxford University Press, 1995), p. 96.
37. For important recent efforts along these lines, see Keith Banting and Will Kymlicka (eds.), *The Strains of Commitment: The Political Sources of Solidarity in Diverse Societies* (Oxford: Oxford University Press, 2017).
38. Similarly, Philip Pettit argues that if we are to speak of "peoples" – understood as collective agents capable of taking decisions that bind all their members – then we must suppose that the persons who compose these societies "must subscribe as a matter of common awareness to certain ideas about how their affairs should be ordered. They must treat these ideas as common reasons that constitute the only currency in which it is ultimately legitimate to justify the way things are done in the collective organizing of their affairs," Philip Pettit, "Rawls's Peoples," in Rex Martin and David Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia* (Oxford: Blackwell, 2006), pp. 38–56.
39. I paraphrase here the general approach of *A Theory of Justice* (Cambridge: Harvard, 1971).
40. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 5–6. See also *Theory of Justice*.
41. John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), p. 18. Rawls also emphasizes that principles of justice among peoples should take seriously an international duty of toleration.
42. Some misread Rawls's *Political Liberalism* as insisting that principles of justice are limited to matters about which we can achieve an "overlapping consensus." If so, it would then seem obvious that, since in the international arena we encounter more diversity, so principles of global justice will need to be thin. However, this misreads *Political Liberalism*: the idea of an "overlapping consensus" is an account of how principles of justice can be stable given a plurality of conflicting "comprehensive" philosophical and religious views, and it is not an argument that the only justified principles are those that secure a consensus.
43. The account that follows draws on my "What Self-Governing Peoples Owe to One Another: Universalism, Diversity, and *The Law of Peoples*," *Fordham Law Review*, Symposium Issue on Rawls and the Law 72 (2004): 1721–1738. I am also indebted to various others, including Donald Moon's "Rawls's *Law of Peoples*" (unpublished manuscript); and Michael I. Blake's "Distributive Justice, State Coercion, and Autonomy," *Philosophy and Public Affairs* 30 (Summer 2001): 257–296; and Thomas Nagel's "The Problem of Global Justice," *Philosophy and Public Affairs*, 33. 2 (2005): 113–147.

44. See Blake, "Distributive Justice, State Coercion, and Autonomy," and Stilz's various recent writings, including, "Why do states have territorial rights?" *International Theory* (2009): 1.2, 185–213.
45. See Henry S. Richardson, *Democratic Autonomy: Public Reasoning About the Ends of Policy* (New York: Oxford University Press, 2002).
46. There are obviously many complexities here concerning the moral obligations of citizens – or subjects – under not fully legitimate or even illegitimate governments. And even under legitimate governments, some citizens do not recognize the authority of government to bind them.
47. Blake rightly emphasizes the central role of the mutual imposition of coercive law, but I do not think that coercion is the central consideration here. Much governance is not coercive. In addition, we are prepared to coerce outsiders, including those who try to get in illegally.
48. The UN Charter and the Universal Declaration of Human Rights are instruments created by "the peoples of the United Nations" or "Member States." See www.un.org/en/charter-united-nations/index.html. Contrast the phrasing "We the peoples of the United Nations" and "We the people of the United States," which open the preambles to the UN Charter and the U.S. Constitution. The UN Charter closes, "IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter" (capitals in original). These matters cannot of course be resolved by these textual or historical facts alone. Provinces and states within nations, autonomous territories, and plural or consociational regimes raise additional issues not covered here.
49. See the report of the International Commission on Intervention and State Sovereignty, "The Responsibility to Protect." Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf>, accessed February 23, 2018. For a valuable discussion, arguing against the idea of a human right to democracy, see Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2009).
50. For discussions see William Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (Oxford University Press, 2006), and Angus Deaton, *The Great Escape: Health, Wealth, and the Origins of Inequality* (Princeton, NJ: Princeton University Press, 2015).
51. For a general discussion see William E. Shacknové, "Who is a Refugee?" *Ethics* 95.2 (1985): 274–284.
52. Howard F. Chang, "The Immigration Paradox: Poverty, Distributive Justice, and Liberal Egalitarianism," *DePaul Law Review*, 52 (2003), 759–776. Available at: <http://ssrn.com/abstract=414561>, accessed February 23, 2018.
53. Massey, et al., *Beyond Smoke*, pp. 4145.
54. *Ibid.*, 54–70.
55. Massey et al., *Beyond Smoke*, p. 158, source is 1999 *Statistical Yearbook of the Immigration and Naturalization Service* (Washington, DC: Government Printing Office, 2000).
56. Muzaffar Chishti and Faye Hipsman, "In Historic Shift, New Migration Flows from Mexico Fall Below Those from China and India," Migration Policy Institute (2015). Available at: www.migrationpolicy.org/article/historic-shift-new-migration-flows-mexico-fall-below-those-china-and-india, accessed February 23, 2018.

57. See Kirk Semple, "Central Americans, 'Scared of What's Happening' in U.S., Stay Put," *New York Times*, July 3, 2017. Available at: www.nytimes.com/2017/07/03/opinion/trump-trade-war.html?action=click&contentCollection=Sports&module=Trending&version=Full®ion=Marginalia&pgtype=article, accessed February 23, 2018.
58. Vivian Yee, Kenan Davis, and Jugal K. Patel, "Here's the Reality About Illegal Immigrants in the United States," *The New York Times*, March 6, 2017. Available at: www.nytimes.com/interactive/2017/03/06/us/politics/undocumented-illegal-immigrants.html?_r=0, accessed February 23, 2018.
59. See Joseph H. Carens, *The Ethics of Immigration* (Oxford University Press, 2013), chapter 5; I don't agree with Carens's larger argument for open borders.
60. Such policies would lessen the need for immigration restrictions and border security.
61. Massey *et al.*, *Beyond Smoke*, pp. 157–163.
62. See the report by Oxfam, *Like Machines in the Fields: Workers Without Rights in American Agriculture*, 2004. Available at: www.oxfamamerica.org/static/media/files/like-machines-in-the-fields.pdf.
63. I am grateful to Ronald Dworkin for raising this question and also for supplying part of the answer.
64. For valuable discussions, see Lea Ypi, "Justice in Migration: A Closed Borders Utopia?" *Journal of Political Philosophy*, 16 (2008): 391–418; and Gillian Brock and Michael Blake, *Debating Brain Drain: May Governments Restrict Emigration?* (Oxford University Press, 2015).

15

Carved from the Inside Out: Immigration and America's Public Philosophy on Citizenship

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In 2016 Americans elected a president whose campaign made anti-immigrant rhetoric and promises a centerpiece. The tenor of the campaign could not have been a surprise in the wake of popular calls for immigration reform and a series of victories for anti-immigrant parties in European democracies. What is surprising is that this kind of election – one in which opposition to immigration was a central campaign issue – has almost never taken place in the United States. Furthermore, when they have occurred, they have not succeeded in permanently closing borders or replacing American ambivalence about immigration with a more unequivocal opposition to immigration. Immigration has shaped the country in manifold ways and yet only rarely has the government, the American republic, or the people, shaped immigration. Why is it that subjects as basic as the status of children born on American soil to undocumented immigrants, or the fairness of guestworker programs, inspire such a long-standing tradition of ambivalence in the U.S.?

Despite its lengthy history as an immigrant-receiving nation, the U.S. has, as yet, failed to produce coherent theories or practices related to immigration. Many European nations, most of which have been the recipients of large-scale immigration for less than half a century, seem as well or even better equipped than the U.S. to answer questions about the terms on which immigrants are welcome and the conditions of their continued residence and incorporation.¹ We may not like all of their answers nor may all of them be compatible with basic principles of the European Union and liberal democracy. However, that does not take away from the fact that the U.S. has a comparatively anemic sense of what role it wants immigration to play in its national identity. Twenty-first-century Americans find themselves in the position of trying to extract a reasoned set of policies to govern the border from a relatively shallow well of public policy or opinion. If we are to come to conclusions regarding how much and which sorts of immigration we ought to welcome, it seems sensible to first ask ourselves why it is that America, of all nations, asks these questions as often as any other nation and repeatedly fails to answer them.