

Chapter 4: Adding Insult to Injury: Personal Mobility

However else one may choose to evaluate the argument of the last chapter, it should not be taken as an apologia for rich countries' to impositions on the poor. Just the reverse: although it is always and everywhere impermissible to wrong others, all the more so is that the case with inflictions on those already down and out. Duties of special care are owed to those who are most vulnerable, and this surely includes the billion or so people who live under the \$1/day poverty line. Saying "We are not the ones who put them there!" isn't an adequate defense. Response to a further question is called for: "Do your policies and actions help keep them there?" Unfortunately, the answer far too often is yes.

Beyond Rawlsian Global Justice

Traditionally the search for a theory of justice across borders began with consideration of *jus ad bellum*, conditions that must be met in order to wage a just war. That's also pretty much where it ended, with a few codicils thrown in concerning reception of diplomatic emissaries, extension of princely courtesies and fidelity to pacts duly sworn between sovereign entities. Although in *Law of Peoples* Rawls's concerns extend beyond those of predecessors such as Grotius and Pufendorf, the genre is the same: duties owed by one state (or in Rawls's preferred locution, *people*) to another. That is, the parties involved are political collectivities, not the individual citizens of which they are comprised. However one appraises, then, the success of Rawls's account as far as it goes – in the preceding chapter we expressed general concurrence – it is facially incomplete. Along with an appraisal of state-to-state relations, the fuller account of global justice will include actions across borders that involve (1) states acting on private individuals; (2) private individuals acting on private individuals; (3) private individuals acting on states. Further complicating the taxonomy is existence of entities such as NGOs that aren't quite sovereign states but neither are they purely voluntary assemblages of private parties. Sometimes they are created by and act as agents on behalf of various governments: e.g., United Nations bureaucracies, the World Bank, IMF, etc. Other NGOs operate mostly to serve the philanthropic and other ends of private parties: Oxfam is an example. Some straddle the public/private divide. It is not our intention to offer a comprehensive global justice account that fills in each of these boxes. Rather, the primary goal in this and the next two chapters is to speak to significant types of state policies that unjustly impose hardships on people – not peoples – of other nationalities. A secondary goal is to identify ways in which private parties knowingly or inadvertently act as accomplices to state-imposed wrongings.

Several important species of global injustice will receive only a passing glance in these pages. At one time it would have seemed reasonable to excuse omission of the third category, private individuals acting unjustly against states. These, one might suppose, at worst count as trifling inconveniences, mere flea bites to the tough hide of leviathan. After Sept. 11, 2001 that dismissal is no longer so plausible. The phrase *war on terror* is unfortunate, giving the impression that the opposition in question is to certain methods of conducting combat. Nonetheless, either war or something very much like *war against terrorists* is being conducted

by the United States and other countries in multiple theaters across the globe. Because counter-operations against terrorists can be carried out with greater or lesser adherence to principles of justice, attentiveness to this aspect of global justice is of undoubted salience. It is, however, either a proper part or a closely related adjunct to theories of just war and justice in war¹, and we are content to leave its pursuit to specialists in that sub-discipline. Similarly, we will not discuss injustices imposed as a consequence of state counter-offensives against terrorist foes. These include launching attacks that raise hob with substantial numbers of heretofore uninvolved civilians and absconding with “persons of interest” for interrogation that borders on (or crosses the border) into torture.

We confine attention to policies and practices that exacerbate the poverty of foreign nationals. In this chapter the focus is migration restrictions that thwart efforts to live, work, or study temporarily in a would-be host country as well as intentions to settle there permanently. Chapter 5 addresses barriers to free trade imposed by states either unilaterally or through multilateral agencies such as the World Trade Organization (WTO). As was observed in the previous chapter, many millions of people are not only impoverished but also brutalized by their own governments, so Chapter 6 takes up questions concerning the extent of duties not to assist brutalizers and also what positive duties, if any, states have to intervene to put down foreign tyrants. In each case the argument developed will claim not only that distant others are rendered worse off because of the policies of wealthy countries such as the United States but also that they are *wronged*: their rights not to be interfered with in their lives, liberty and property are violated. To err in this regard is not merely to be less charitable or compassionate than one might have been, it is to perpetrate an injustice. As Chapter 2 argued, we are not generally obligated to extend ourselves to provide positive relief to distant (or even nearby) others, but we must not erect barriers that block their own peaceful pursuits. Distressingly often, however, policies adopted by wealthy countries (and, of course, poor ones) culpably worsen the position of those who are already hard-pressed. These policies typically are not thought of as raising issues of justice; they are simply classified under *border control* or *commerce* or *diplomacy*. So regarded they unproblematically fall within the ambit of ordinary domestic politics. Isn't it a bit melodramatic, one might ask, to treat these as being on a par with theft, unlawful imprisonment, or assault? In fact, they are precisely equivalent. Disguising awareness of the equivalence are the distance of victims and familiarity of the offenses. Innumerable practices – e.g., slavery, enforced female subservience, persecution of homosexuals – were at one time taken for granted but now are clearly seen to be unjust. Moral myopia strikes in different ways in different environments and ages. To suppose that our current state of enlightenment has put all species of invidious discrimination behind us is an optimism called into question by that prior experience.

Freedom of Association

Human beings, Aristotle famously informs, are social animals. More distinctively, they are animals that *choose* the company they keep. Not all of it: we are born into families we did not

¹[Is a footnoted explanation of the distinction needed?]

choose and that didn't exactly choose us. Also, the communities in which we find ourselves constitute the basis of associations that will give form to our lives. However, within the unchosen parameters of the feasible, our own voluntary undertakings establish for each of us a personal society in which our most important relationships are established. In some measure or other this has always been the case for post-hunter-gatherer humanity, but under conditions of modernity the ratio of self-determined to antecedently given social ties has greatly expanded. Both fueling and being fueled in turn by that expansion is the philosophy of *liberalism*. Liberalism's stake in freedom of association can be traced along many dimensions.² The early liberal campaign for *freedom of religion* was in part a demand to be permitted to dissociate on grounds of conscience from a community of faith incompatible with one's own convictions and instead to participate in another found to be more congenial. Liberal *abolitionism* was predicated on the injustice of coerced bondage of slave to master, and emancipation promised no less and no more than liberty to associate with others on a voluntary basis. *Freedom of assembly* was the right to come together with willing others to promote a cause to which all mutually subscribe. It goes hand-in-hand with *freedom of speech*.

Not least among the early liberal aspirations was breaking shackles that impeded *residential and occupational mobility*. Adam Smith is rarely more eloquent than when he is protesting laws that restricted the job-seeking ventures of would-be workers: "To remove a man who has committed no misdemeanour from the parish where he chuses to reside, is an evident violation of natural liberty and justice . . . There is scarce a poor man in England of forty years of age, I will venture to say, who has not in some part of his life felt himself most cruelly oppressed by this ill-contrived law of settlements."³ Bit by bit, oppressive guilds and monopolies were stripped of their coercive privileges to the betterment of the prospects of ordinary workers who asked simply to be allowed to proffer their services to willing employers. People demanded and won the liberty to leave impoverished rural areas for industrial labor in the cities. The United States Constitution recognizes the right of citizens to trade and to travel beyond the borders of their home state on equal terms with those who reside in other states. One is put in touch with a matter of some national shame by reading the passages in John Steinbeck's *The Grapes of Wrath* in which the Joad family is stopped at the California border and denied entry because the quota of Okies had already been filled up, but it is a corresponding matter of national pride that nothing like that could ever again be allowed to happen.

Yet happen it does, not only in California but along every other port of entry into the United States. A denial of mobility that would be intolerable if enforced between one of the fifty states against another is merely business as usual, unexceptionable to all but a handful of libertarians, when it occurs along the border separating one of those fifty from foreign territory.

²This section builds on the discussion of Loren Lomasky, "The Paradox of Association," *Social Philosophy & Policy* 25 (Winter 2008), pp. 182-200.

³*Wealth of Nations* I.x.c (Indianapolis: Liberty Press, 1981), p. 157.

The right by a host country to exclude on almost whatever grounds it sees fit to impose⁴ is generally taken for granted. However, it is not easy to develop a convincing rationale for that judgment, especially as the onus of proof would seem to rest on the party that wishes to thwart the liberty of would-be peaceful migrants. That is to say, unless there is compelling reason to block entry, whether it is from Oklahoma to California or Mexico to California, then there is compelling reason *not to block* entry. People's life plans, their aspirations for themselves and for their loved ones, rest crucially on a capacity to pick themselves up and resettle in a venue where they are better able to pursue that which matters to them. Moreover, their ability to move to the desired location constitutes a good also for those with whom they will interact once they arrive. Potential employers, landlords, friends, relatives, lovers all have a stake in the would-be migrant's liberty to choose a place of domicile. For reasons such as these, established systems of apartheid, Jim Crow and caste exclusions have been disassembled *within* many jurisdictions. However, similar exclusion *across* jurisdictions does not seem to trouble enlightened opinion nearly as much. It is maintained, or perhaps more often tacitly assumed, that national citizenship is not only a relevant factor but one decisive in buttressing a case for differential treatment. Upon examination, that case is seen to be thin.

Parceling out burdens on the basis of nationality is *morally arbitrary*. Bennet is born two miles north of the Rio Grande while Dashwood at just the same moment is born two miles to its south. From the moment of birth on, Bennet is the recipient of an infrastructure that favorably conditions his life prospects. He can avail himself of healthcare and educational services that are of world-class standing, and eventually he will be welcome to enter an economic system in which employment and earning prospects are strong. In each of these areas Dashwood's prospects are inferior. Investment in her human capital is apt to be a small fraction of that enjoyed by Bennet, and her lifetime earning prospects are correspondingly diminished. How unfortunate her choice not to have entered the world farther north!

Of course there was no choice in the matter, at least not by Bennet or Dashwood, and so this difference in life prospects is not something that either can be said to deserve.⁵ Rather, that difference is a brute fact to be confronted. People may debate whether it is the proper business of political institutions to meliorate the disparity by transferring additional resources to Dashwood, but what seems to be beyond debate is that no additional impediments to well-being should be imposed on her. That, though, is what exclusionary border controls do. If Bennet is at liberty to pursue excellent life prospects from which Dashwood is barred on dubious grounds of geography, an injustice has been committed.⁶ Note that this is not an argument to subsidize

⁴A limited exception is refugee status, discussed below.

⁵The argument from moral arbitrariness to lack of desert is modeled on that offered by John Rawls in *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. []

⁶It is possible but less likely that Bennet might suffer from the denial of a liberty to take up employment or some other opportunity in Mexico. There exists a theoretical symmetry

Dashwood's travels to the opportunities she seeks. No claim to positive assistance need be advanced here, although we presume that many global egalitarians would be sympathetic to that addition. Rather, it is purely an argument against coercive interference. Blocking Dashwood's mobility in pursuit of a better life is wrong. More precisely, it is a wrong done to her.⁷

Sympathies tend to be a decreasing function of distance. It is not, therefore, surprising that most of us are more attentive to the weal and woe of compatriots than of foreigners. Nor is that necessarily morally discreditable. As argued in Chapter 2, individuals are not required to be scrupulously impartial between the interests of the near-and-dear and distant others. Favoritism with regard to sponsorship of personal travel is no vice. So, for example, Bennet does no wrong when he purchases for his daughter an all-expenses-paid trip to attend a U2 concert when, for the same amount of money, he might have funded Dashwood's urgent job-seeking quest. The limit to permissible partiality is set, however, by the rights of others. Anonymous others as much as valued compatriots must be treated with justice. Thus, although it is psychologically explicable why people tend to be more disturbed by wrongs done to countrymen than to foreigners, those emotional reactions do not constitute a justification for disparate treatment. Note, though, that phrasing the issue this way misleadingly suggests that the only rights in question are those of foreign nationals. In most instances that will not be the case. Association is a two-way (or more) relationship. If Dashwood is denied entry, then the liberty of everyone north of the border who may have wished to interact with her is compromised. If Bennet is desirous of hiring Dashwood to tend his garden and clean his swimming pool, then Bennet's liberty every bit as much as Dashwood's is impugned by her exclusion. The difference, of course, is that Bennet very likely will suffer much less from this foreclosing of the relationship than will Dashwood. That is one of the many privileges of affluence. Some will be unmoved by this example, holding that minor inconveniences to the very fortunate amount at most to moral trivialities. We regard this response both as invidious reverse discrimination against the well-off and a manifestation of insufficient appreciation of the importance in people's lives of commercial relationships. But in deference to the sensibilities of critics, we are willing to change the example. Dashwood, let us imagine, is someone's lover, kept apart from him or her by the inflexible regulations of the immigration control people. (She hasn't filled out the right papers; there are no right papers to fill out; whatever.) It ought to be even clearer in this case that harms are multiple, that they are located on both sides of the domestic/foreign divide, and that they are wrongs done to those who are thereby rendered worse off.

between the cases, but the size of the gulf between equality in theory and in practice is the precisely the measure of must how much border exclusions systematically disadvantage the least well-off.

⁷The argument is developed more extensively in Loren Lomasky, "Toward a Liberal Theory of National Boundaries," in David Miller and Sohail Hashmi, eds., *Boundaries and Justice* (Princeton: Princeton University Press, 2001), pp. 55-78.

There is, then, a strong presumption against barriers to entry. In a previous version of this argument, the point was put: State boundaries should be very much like the boundaries of states.⁸ The seemingly-tautologous statement is a play on the word ‘state’, both a designation of national entities such as Mexico and the United States and also of subnational political divisions such as North Carolina and South Carolina. Although states in the second sense have their own geographically specified areas of jurisdiction, codes of law and regulatory institutions, they present no barriers to personal mobility. Unlike national entities, their borders are *soft*. The first approximation to a satisfactory theory of justice in personal mobility is that the borders that separate nation-state from nation-state should be similarly softened. The United States will remain a jurisdiction separate from Mexico with its own distinctive laws and institutions and culture, but it will afford unencumbered passage to those who wish to come over and try their luck. To this should be added a proviso acknowledging legitimate considerations of national and personal security. On any theory of what nation-states are for, defense against aggressors foreign and domestic is part of the package. (For the so called night-watchman state it is the whole package.) Those who have demonstrated through their words or behavior (or, in cases such as being afflicted by a highly contagious disease, their condition) a likelihood of harming those they encounter can justifiably be excluded. The standard of proof to be met need not be nearly as high as that required for a verdict of guilty in a criminal trial. Nor need it involve any showing of culpability, as the disease example illustrates. That is because the government acts as an agent on behalf of citizens who have a substantial interest in avoiding harms. It is not the agent of non-citizens. To them it owes only the universal duty of not violating their basic rights.

This proposal of qualified open entry will strike many as fanciful: utopian at best, chaotic at worst. Yet it is a close likeness to actual US immigration policy during the hundred years preceding the passage of the *Immigration Act of 1924*.⁹ If you could get yourself to a port of entry, and if you were not disqualified by some medical condition or morals charge, you were entitled to enter the country and remain however long you liked, typically for life. Certainly poverty was not an exclusionary factor; rather it was the typical condition of those who arrived. They yearned to escape oppression, and they yearned to make money. More often than not, the two went together. Emma Lazarus’s lines about “your tired, your poor, your huddled masses yearning to breathe free,” were well-placed and well-acclaimed when inscribed on the Statue of Liberty in 1903. They may not strike the contemporary ear quite so favorably. Perhaps this is due to a lessened taste for sentimentality in verse (but then why continuing success of the Hallmark Cards company?), but perhaps it is instead the vast gulf that has emerged between Lady Liberty’s fine welcoming words and contemporary practice. More often than not, huddled masses are invited to continue huddling in their lands of origin. Some explanation is needed to account for this hardening of hearts and borders.

⁸“Toward a Liberal Theory of National Boundaries,” p. [].

⁹The most conspicuous and shameful exception to free access is the *Chinese Exclusion Act* of 1882.

It does not seem plausible to attribute the change to increased racism or ethnic chauvinism in the United States. To the contrary, every indicator points to the citizenry's greater tolerance. Nor is it plausible to attribute greater wariness about migrants to diminished economic opportunity available for outsiders. This might temporarily be the case during periods of recession, but the country's long-term growth trend has remained distinctly positive since 1620. Rather, the one factor most likely to account for immigration wariness in the United States and other typical destinations for would-be entrants is *rise of the welfare state*. The doughty folks who made their way to and through Ellis Island received the inestimable benefit of not being interfered with by the national government in the pursuit of their dream. That, though, was one of the very few benefits they were afforded¹⁰. They were not handed food stamps, subsidized public housing, clothing allowances, medical insurance, social security eligibility, unemployment insurance, or minimum wage law protection.¹¹ The result was that many were obliged to live under squalid conditions in cramped, dark, and unhealthy slums. This can be judged a misfortune for them if the comparison invoked is to the perquisites today enjoyed by their grandchildren. Compared, however, to their mode of life in the Old Country, whichever Old Country it may have happened to be, they were immeasurably better off than would have been the case had they been excluded. Escaping the potato famine in Ireland or pogroms in the Czar's Russia were literally matters of life and death. That is why the ships kept coming and coming, with new cohorts of ragged people disembarking and seeking their chance. They did so at only minimal expense to the indigenous population: a dollop of taxation to fund the immigration service itself and the few public conveniences enjoyed by the new Americans. The benefits the migrants supplied in return are inestimable.

It has been consistently argued in these pages that there is a fundamental moral distinction between duties not to interfere and duties to provide aid. Only rarely do the latter come into the picture as demands of justice. Individuals may quite justifiably demur from embracing policies that impose a drain on their own resources. But that is what welfare programs of social democracies do. Insofar as these programs mandate transfers from one group to another, they generate discrete sets of net winners and net losers. They are in this regard decisively unlike the positive-sum transactions that individuals generate through market and other voluntary interactions or that the state affords through public goods provision, including most of all the

¹⁰An important additional one is that their children became eligible for the same free public education that was provided to the native born. Also, immigrants could immediately avail themselves of public goods such as police and fire protection, roads and parks, use of the Carnegie free public library, public hygiene such as it then existed, and the like. [The bearing of public goods availability on arguments for exclusion is considered below.]

¹¹The last properly understood is no benefit to the poor but rather an impediment to their chances of securing desired employment.

public good of law and order.¹² The greater the number of people who are eligible to put their hands out for a handout, the greater are pro rata tax shares. Therefore, it is rational to oppose measures that will enlarge the class of net beneficiaries – in theory, the least well-off¹³ – and to welcome inclusion of additional parties to bear the transfer burden. Giving full weight to the relative niggardliness of the American welfare state compared to those found in the European Union, it is clear that penniless new immigrants will be net subtractors from the pot. Even if they withdraw little, they will contribute even less. Therefore, it is in the interest of current residents to restrict entry to those banging on the doors. Professionals and well-heeled investors, yes; huddled masses, please call somewhere else.

Desire to accumulate and preserve wealth is honorable whether it is the motivation of impecunious migrants or of long-established natives. In the context of social democracy, the desire expresses itself as a strategy of restricting entry. Our response is: So much the worse for the welfare state! It would please us a great deal if the apparatus of transfers and subsidies throughout the OECD were pared back to the level that obtains in Singapore (see Chapter 3). We do recognize, though, that this is thoroughly utopian (or, if you so incline, dystopian). Egalitarians who defend sweeping transfers from the more well-off to less well-off should, if they are honest, add to the costs of their favored system the drastically limited welcome to aspiring entrants that inevitably follows. This means that the domestic egalitarian agenda has as a corollary disregard of the much greater inequalities that obtain globally. Clear-thinking domestic egalitarians such as Rawls in *Law of Peoples* recognize and accept that corollary. Because the egalitarianism that we find attractive is equality of basic rights, we cannot endorse the program of social democracy. That is the case for a multitude of reasons, not least of which is that an ideology of domestic wealth redistribution leads to hardened borders that deprive persons of a liberty to associate freely with like-minded others.

If the welfare state in some form or other is here to stay, then melioration of border

¹²That is not to maintain that all welfare state programs are zero-sum (actually, with transaction costs taken into account, negative-sum). It can be argued that various public insurance measures provide overall net benefits to citizens in a way that private insurance could not because of adverse selection concerns that will degrade any scheme that is not coercively mandated for all. Nonetheless, the general proposition that the preponderance of welfare state measures are at best zero-sum is strongly confirmed.

¹³We say “in theory” because a substantial amount of redistribution proceeds from the less well-off to the more well-off. Because of the conditionality and complexity of many policy provisions, it can be difficult to identify the direction of net redistribution. Among those programs that most clearly involve regressive transfers are agricultural price supports, subsidized higher education, and support for the arts.

exclusion has to be sought in the realm of second best¹⁴. One option is to admit all comers but with an explicit blanket denial of access to welfare programs for a period of, say, five years. In many ways this is appealing in that it would essentially confer on today's migrants the same sort of risks and rewards that were assumed by their forerunners of a century earlier – except, of course, that for the earlier arrivals there was no five year provision. It is doubtful, however, that any such policy could be sustainable. If because of bad luck or bad economic times even a small fraction of entrants became unable to support themselves, it would be impossible to view with equanimity their hunger, homelessness, lack of decent health care – nor would many of us wish to live in a society in which equanimity was the standard response to such misfortunes. The problem with people fainting from hunger on the sidewalks is not primarily that one must then carefully step over them.

In an earlier time, humane impulses to assist the unfortunate were largely channeled through religious and secular private charities. The infrastructure that supported such charitable relief was mostly disassembled with the coming of the New Deal in America and even further-reaching governmental assumption of philanthropic activities in advanced European countries. Until and unless a (very unlikely) privatization of most welfare functions is brought about, no denial of access to migrants is feasible or, from the perspective of the indigenous population, desirable. For the migrants themselves it would be a considerable blessing to be afforded an opportunity to run the risk of disease and destitution in America against the much greater risk of doing so in the country of origin. For better or worse, that is not a wager that they are likely to be allowed to make.

More palatable might be to allow entry to all peaceful candidates who provide surety that they will not become a charge on the public. That could be done, for example, by posting of a bond that would be forfeited should they become applicants for public assistance. The obvious drawback with this suggestion is that the impecunious people who most need access to enhanced economic opportunity are in no position to post that bond. Others could, however, do so on their behalf. Earlier arrivers from the same village might post the bond, with an understanding that when the newcomers are on their feet they will take over responsibility for their own continued financial position and will in turn offer guarantees for new cohorts. A side benefit of this structure would be to enhance ties of community that underpin valuable social capital.¹⁵ Alternatively, prospective employers who value the labor that these new hands will provide might be willing to provide an up-front assurance payment that will be paid back over time by the migrants out of wages. Yet another possibility is that for-profit ventures might post bond for migrants much as bail bondsmen do for individuals who would otherwise remain incarcerated. If

¹⁴This discussion builds on ideas earlier put forth in Loren Lomasky, “Liberalism Across Borders,” *Social Philosophy & Policy* 24 (Winter 2007), pp. 206-233.

¹⁵For discussion of the concept of social capital and its currently diminished status in the United States see Robert Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster), 2001.

the idea of professional bondsmen for migrants seems to verge on being a coercive offer imposed on poor entrants with very few options, it should be kept in mind that rejection of this business model would leave them with yet fewer and worse options.

Many problems remain to be solved before any such policy could be put into practice. What conditions could legitimately be placed on migrants by those who sponsor their entry? Would these policies be a convenient avenue for pimps to import sex workers or drug dealers to bring in fresh talent for streetcorner distribution? Will workers sponsored by an employer effectively forfeit a liberty to leave their current job for one that is more attractive? And so on. It is not our intention to advance here anything resembling a fleshed-out scheme for softening borders. Inventing schemes isn't where philosophers' comparative advantage lies. (Even Plato, philosopher beyond compare, comes off rather questionably with regard to the particular devices manufactured for the superintendence of his *Republic*.) Better to identify general precepts of normative acceptability and leave to others – especially, if possible, to market participants – details of implementation. The relevant general precepts include:

- (1) To deny people access to valued associations merely because those associations entail some crossing of conventional political boundaries is a prima facie violation of rightful liberty.
- (2) One legitimate defeater of that prima facie liberty is demonstration of actual or likely harms to others that will be caused by the exercise of that liberty.
- (3) Among alternative measures to prevent harms, those less draconian are to be preferred.
- (4) Soft borders impose less draconian restrictions on would-be entrants and those desirous of transacting with them than do hard borders.
- (5) The borders of contemporary welfare states are, with few or no exceptions, harder than they need to be in order to meet the legitimate security needs of current inhabitants.

We invite those who wish to dispute the suggestions tossed out above concerning enhanced access not to focus on particular policy details. We concede that some or all of those that we have brainstormed may harbor difficulties of implementation that have not been foreseen. Instead, focus ought to be kept on these five precepts that underlie them.

Democracy and Immigration

Some critics will contend that these principles pay insufficient attention to *democratic determination*. Just as individuals by right are at liberty to refuse or admit whomsoever they choose into their homes, so too may democratic electorates through their chosen representatives decide who to admit and who to exclude. Nor is there any onus on them to provide good reasons to justify refusal. Bennet may be an altogether upright and virtuous person, but if for whatever reason Dashwood chooses not to associate with him, she is well within her rights in keeping her doors firmly barred. Similarly, if the United States should choose to admit only 100 or 1000 or 100 thousand or 1 million migrants, that is purely its own decision. It can be faulted on grounds

of economic efficiency, perhaps, but not in terms of any injustice done to those denied entry. It's not their country, so whatever entitlements they have are those of guests – or, as the case may be, those from whom guest status is withheld.

The analogy to private ownership of a property is faulty. Most land in the United States is not owned by the government but by private parties. Because Yellowstone National Park is the property of the United States, the government is entitled to set conditions of access, including the number of people who will be allowed in. Dashwood's house, however, is owned by Dashwood. She is the one who gets to decide matters of access. If her neighbors vote in the next election that Dashwood be required to have Bennet over for tea at least six times during the upcoming year, that result has no standing. The scope of plebiscitary democracy is constrained by the prior rights of individuals. That includes their property rights. Migration restrictions of the sort maintained by the United States and other OECD countries transgress those rights. They interfere with the free movement of non-citizens and also with the choices of citizens. Dashwood may have a rental property that she would like to make available to Bennet or a job for which she would be glad to hire Bennet. To the extent that a majority of Dashwood's fellow citizens are allowed to block those choices by refusing entry to Bennet, they unjustly restrict the scope of Dashwood's rights – and, of course, Bennet's. That this is the case is entirely obvious with regard to strictly domestic impairments. Electoral majorities are not permitted to establish policies "This is a proud, God-fearing Christian neighborhood; no Jews permitted!" or "Marriage between white individuals and persons of color is strictly prohibited." At an earlier period of American history these and other similarly discreditable restrictions were widely accepted.¹⁶ Their utter disappearance is grounds for congratulations: disappearance, that is, except with regard to foreign nationals. As the law stands, the government can still forbid mutually beneficial hirings and rentals. Even marriage to a foreign national is beset with annoying hurdles to jump or stagger over. And if that affectional relationship is expressed in some form other than marriage, perhaps because the parties are of the same sex or one of them has been unable to achieve extrication from a prior marriage, then the hurdles are yet more numerous and more onerous. We freely grant that many questions of lawfulness and policy are best decided via majoritarian institutions. Those that involve usurpations of individuals' rights to free association are not among them.

There is, however, another sense in which democracy is in tension with policies allowing freer access. If the electorate of some country is comprised of N voters, then each enfranchised citizen's voting power is $1/N$ of the total. Now add an additional person to the voting rolls; each citizen's voting power has been diminished to $1/N+1$. The change is small, but it is real, and arguably it amounts to a worsening of one's political condition. People who are permitted entry into the country have taken the first step in a process that will eventually entitle them to cast a ballot. Even if they never join the electoral rolls, their children will. Can citizens argue that they will be politically harmed by the entry of substantial numbers of migrants?

¹⁶Anti-miscegenation legislation was not finally rejected until 1967 in what may be the most perfectly-named case the Supreme Court ever took up: *Loving v. Virginia*.

We would like to deny legitimacy to this sort of reasoning, but it must grudgingly be granted some cogency. The degree of that cogency is a function of how extensively political determinations impinge on the person and property of individuals. If, for example, a country's constitution forbade takings of property from some to transfer to others for reasons of so-called social justice, then majorities would be less threatening to potential minorities and less alluring to those with hopes of reaping rewards via deft political maneuvering. To the best of our knowledge, no constitution anywhere in the world incorporates such a restriction. Rather, redistribution for the sake of greater equality is altogether common(as is redistribution that in fact fosters greater inequality). There is nothing surprising or ignominious with desiring to protect oneself from predatory incursions by electoral factions. If large numbers of immigrants obtain the right to vote, they can form such a faction, voting either their class or ethnic interests. For current residents who fear that this is likely to work out to their detriment, there exist reasons grounded in self-defense to keep them out.

As suggested above, one solution to this conflict is to limit scope for redistribution by political means. Although a campaign for this sort of rollback may enjoy occasional successes at the margin,¹⁷ it is unrealistic to expect any significant enhancement of individual economic rights-against the regulatory and redistributive functions of the state. For better or worse, the *Lochner* era is well in the past. Nonetheless, there other ways to respond to the worry of electoral outflanking than by drastically restricting migration. It is imperative not to be trapped by 19th century models while assessing 21st century conditions. Readers' great-great grandparents who emigrated to the United States (or Canada, Argentina, Australia, etc.) did so in the expectation of never again seeing the native country left behind. Resettlement was wrenching and it was permanent. Now, however, in an era of inexpensive intercontinental jet travel and globalized production, it is entirely common for someone to grow up in one country, attend university in another, take a corporate job which involves postings over a decade in a third, fourth, and fifth, and then perhaps to return to the country of origin. Or, at the other end of the wealth spectrum, a typical narrative may involve leaving one's home village to spend a couple years working abroad as a domestic or construction worker and then, with the money saved from the venture, return home and open a beauty shop or purchase a used automobile to operate as a taxi cab. For those who are in transit, economic rights are paramount; questions of political rights are moot.

In Chapter 3 Singapore was displayed as the paradigm of a developing country that rose to affluence with hardly a misstep along the way. It has increasingly become a site of aspiration for many people around the world and especially for Asian poor. Singapore is relatively accommodating to economic migrants despite offering them limited prospects of political assimilation. Recent governmental statistics give the overall population of the country as 4.8

¹⁷For example, by securing greater judicial acknowledgment of regulations that constitute "takings" under the Fifth Amendment and thus require compensation to the affected property owner. What the Court giveth in one case, e.g., *Lucas v. South Carolina Coastal Council* (1992) however, it taketh away in another, e.g., *Kelo v. City of New London* (2005).

million, of which 3.2 million are citizens. This is a percentage of non-citizen residents some three times that typically found in the United States and European Union countries. Of the non-citizens, 478 thousand are listed as permanent residents while 1.2 million are non-residents, meaning that they will be expected to leave once their stipulated period of access has expired.¹⁸ Only a minority of the permanent residents will ever become Singapore citizens, and only a very small percentage of the non-resident population will be afforded status as permanent residents. In one respect this is disadvantageous to sojourners. They are denied the various educational and housing benefits afforded to long-stay residents, and of course they are also denied the benefit of being able to set down roots.¹⁹ On balance, however, the limitations probably are a plus in that they render the presence of a large migrant population politically palatable to a citizenry who understands that these individuals are adding value through their labor yet subtracting very little from welfare programs and not diluting the power, such as it is, of citizens' ballots²⁰. If the realistic alternatives for access across borders are few entrants but with immediate entitlement to full social benefits and a fast track to citizenship vs. many entrants but without access to most transfer payments or eventual citizenship, then it is highly plausible that the second of these represents a better alternative for would-be entrants and, importantly, the indigenous population.²¹

These are not, however, the only two feasible alternatives. An intermediate one is generous original entry requirements coupled with more demanding criteria for subsequent extended residence and more demanding still for eventual full entitlement to citizens' benefits, including the franchise. We are unable confidently to identify the particular policy that stands best with reference to considerations of equity and economic efficiency, but our confidence is massively greater when we maintain that highly restrictive immigration policy is significantly deficient in both regards. It denies to both foreign and domestic persons valued opportunities without securing compensating benefits to any except the xenophobic and those shy of competing with ambitious and industrious new entrants. Through one mechanism or another, the

¹⁸*Population in Brief 2009*, p. 4, accessed November 18, 2009 at <http://www.singstat.gov.sg/stats/themes/people/popinbrief2009.pdf>

¹⁹Permanent residents are denied certain benefits enjoyed by citizens, but denial of the right to cast a ballot in Singapore's uncompetitive elections is unlikely to be a matter of urgency to many. A noteworthy privilege that permanent residents of the first generation enjoy but male citizens do not is immunity from military conscription.

²⁰Not even businesslike Singapore is immune from nativist resentments. See *The Economist*, Nov. 12, 2009 "A PR problem," accessed at http://www.economist.com/world/asia/displaystory.cfm?story_id=14859345.

²¹For a sensitive discussion of guest worker programs with emphasis on Singapore's see Kerry Howley, "Guests in the Machine," *Reason*, January 2008, accessed at <http://reason.com/archives/2007/12/17/guests-in-the-machine>

case for softening borders in the United States and other wealthy countries that are migrant magnets is morally compelling. We are under no illusions, however, that the politics for such a reform will be easy, not when the economy is booming and certainly not in the wake of wrenching economic dislocations. When George W. Bush advanced a reform proposal during his second presidential term that would have regularized the position of millions of illegal Mexican migrants currently in the country and established quotas for guest workers who would remain for a limited period and before being required to depart, the proposal was excoriated from both the left and right. Conservatives fulminated that this would be to reward prior illegal activities and to forfeit control of the nation's own authority to determine the population it will have. Liberals denounced what they took to be exploitation. The *New Republic*, a journal that usually is literate and thoughtful, declared, "Bush's guest-worker program would codify a large group of people in the United States as second-class citizens. Although they would enjoy many of the same legal protections as American-born workers, they would never be viewed by Americans as equals. Instead, they would be seen as transient figures here only to make a buck."²² The complaints are bizarre. Of course the new entrants would not have been second-class citizens because they would not have been any class of citizen. And it's true that they would have been seen as transient figures because, like foreign university students, tourists, au pairs and numerous others, guest workers are indeed transient. Why that should be supposed a blot on American democracy is mysterious. Logic is omnipotent in philosophy essays but a rare interloper in Congress. Beset from all sides by criticisms that bordered on the hysterical, the proposed reforms went down in flames. We are pleased not to be members of Congress, and so we do rest our case on logic, specifically the logic of liberalism.

We note in passing that our argument turns the usual precedence of bona fide refugees over "mere" economic migrants on its head. Current international law ascribes only to the former a justiciable right to sanctuary (assuming that their fear of persecution is well-founded and that other necessary conditions obtain), while the latter may rightfully be turned away even if the alternative for them is destitution. It is not because of any ill-will harbored toward refugees that we reject the legal status quo. Rather, it is because refugees' claim to positive assistance is grounded in moral sensibilities of *pity* or *compassion*. Because these people are incapable of helping themselves, others must do so for them if they are to get by. Should funds to support them not be forthcoming through private charitable means, the money will be secured through taxation of current residents. The claim of economic migrants, however, is grounded in precepts of *justice*. It is a claim of liberty to transact with willing others located on the far side of the border. Should that liberty be denied, both the migrants and their transactors have been wronged.

Because in most matters claims of justice outweigh those of (supererogatory) beneficence, it may be wondered why with regard to migrants the priority is reversed. Here is a supposition: by recognizing the unique status of refugees' rights to sanctuary, the moral status of non-refugee claimants is implicitly diminished. All the easier to keep them out, no matter how

²²"That's Hospitality," April 17, 2006, accessed November 27, 2009 at <http://www.tnr.com/article/thats-hospitality>

desperate, without any incursions on one's conscience. That this hypothesis is cynical doesn't *prove* that it is true, but cynicism is an attitude that fits wonderfully well with the rhetoric and observed behavior of countries that naturally attract refugees. Coast guards of the United States, Australia and Italy patrol home shores with an aim to interdict and repel desperate boat people hoping to set foot on shore and thus make themselves eligible to apply for refugee status. According such treatment to people who may well satisfy the formal requirements for being refugees should they only reach land is disgraceful. But to refuse a liberty to rescue themselves to migrants who are not refugees is also disgraceful – and it is unjust.

Liberal Democracy and its Illiberal Opponents

It is of the nature of electoral majorities to shift. Denial of the franchise to some demographic group on the grounds that it might vote against the party currently in power is to repudiate the ground rules of democratic governance. What, however, if the group in question is not opposed to some particular political party or policy but rather is hostile to the fundamental tenets of a liberal democratic order? Does adherence to democratic norms entail their extension to those who reject the norms? Is participation in democratic practices open to people whose aim is to roll back those practices?²³

Some will respond that full faith in democracy means confidence to allow it to fight for itself; if democracy wins by using undemocratic means, then it loses. (Pacifists offer similar arguments as to why they refuse to meet force with force.) Perhaps there is something to be said for pushing consistency to this extreme, but there is also something to be said against it. The value of democracy is first and foremost its capacity to afford a population more of the things that make lives worthwhile than are on offer with competing political systems. Among these goods is a lively prospect of future decisions being made via democratic means. Better to restrict participation in elections than to endanger conditions of democratic continuity. Strictly speaking, such restrictions characterize every democratic system; none embraces a universal franchise for all affected parties. The United States, for example, allows only adult United States citizens to vote, not American toddlers or mature Chinese citizens although both groups are affected by U.S. political decisions. Restricting the franchise is sensible insofar as it improves the quality of expected outcomes, however improvement is understood. If it is permissible to withhold the vote from foreign nationals, including those who wish American institutions well, then it is no less permissible to withhold it from those either within or outside borders who would cheer the destruction of those institutions.

If it is possible to identify with reasonable accuracy demographic characteristics of aspiring migrants who are dismissive of democratic structures, then it is not only permissible but strongly indicated that they not be afforded entry. This is a corollary of the proposition that

²³See Lisa Blaydes and James Lo, "One Man, One Vote, One Time?: Modeling the Prospects for Spontaneous Democratization in the Middle East," accessed Nov. 19, 2009 at <http://www.jhfc.duke.edu/disc/events/documents/blaydes-lo-DukePaper9-2-2008.pdf>.

defense is a (or the) fundamental function of states. Keeping potentially dangerous people at a distance tends to render them less threatening than if they are literally next door. It can be objected that exclusion based on general rather than individual characteristics is to punish someone before finding her personally guilty. That, though, is to misunderstand the rationale for exclusion. *Punishment* is indeed only appropriate in response to a wrong previously committed, but *prevention* aims to preclude commission of a wrong. The distinction is ubiquitous in common practices. People who have never secured a driver's licence are not permitted to operate a motor vehicle on public roads. The prohibition is not because they are being punished for culpably avoiding lines at the DMV but because they are judged to pose an unduly high degree of risk to other drivers and pedestrians. Quarantine is another example of denial of liberty predicated on risk-avoidance. There are many complexities involved in setting out an adequate theory of when people may be prohibited from engaging in risky activities as opposed to being allowed to perform that activity subject to compensating those who may be harmed²⁴, but any reasonable theory will strike some balance between the two. Denying access to those who pose significant risks of harm should they be allowed entry into the country does not as a matter of principle violate mobility rights of would-be entrants. (That in practice governments are liable to misapply risk judgments is obvious, perhaps most especially to airline passengers who have experienced TSA screening procedures).

Opposition to democracy is, in the contemporary world, opposition to *liberal* democracy. It includes not only suspicion of the results of plebiscites but also hostility to free speech, freedom of religion (including freedom not to practice religion), insistence on equal rights for women, racial equality, acceptance of homosexual persons, and so on. That is why it is may not be enough to countenance migration but deny eventual access to citizenship; those of a thoroughly illiberal cast will, if allowed past borders, pose an ongoing risk of enmity toward the practices of the host country. We say "risk" because it is also quite possible that immersion in the institutions of liberal society will over time corrode prejudices brought along from less tolerant venues. The entire history of immigration into the United States has been laced with dire warnings that the new entrants carry with them strange beliefs and traditions that don't fit in, and that they will subvert the republic's traditions. Such were the indictments lodged against Irish, Italians, Poles, Jews, Greeks, Hispanic, Chinese and others²⁵; without exception they proved misguided. Over time, in some cases a remarkably short period of time, old ways were largely cast off and new ones donned; the melting pot didn't produce homogeneity, but it did produce a population that was unmistakably American. Had any of the anti-immigrant campaigns from the Know Nothings of the 1850s to CNN's Lou Dobbs carried the day, the fabric of the United States would have been rendered poorer for it. This heritage of misplaced nativist rantings provides powerful inductive reason for skepticism concerning the current crop of dire predictions. Induction is not, however, an unfailing key to the future, especially when background conditions

²⁴A seminal discussion is Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), Chapter [].

²⁵Because the transit of Africans was involuntary, it doesn't fit into this pattern.

are continually undergoing change. (There was good inductive support throughout the history of human beings that none of them would in the coming year set foot on the moon. Those thousands of years of confirmation went by the boards in 1969.) If, for example, a country's increased openness to diversity begins to create a space in which a culture of opposition to liberal democracy finds room to establish itself and to seek further adherents, the rules of the game may thereby have changed sufficiently to mandate a reappraisal of border security concerns.

The discussion of this section has proceeded along lines of general principles. These are the lines with which philosophers are most comfortable. It is no secret, however, that the primary application of these remarks in the first years of the twenty-first century is Muslim immigration to the United States and, especially Europe. The openness of U. S. borders, coupled with the fecklessness of the nation's intelligence-gathering agencies, levied a great cost on Sept. 11, 2001.²⁶ In March 2004 bombs set by Islamic radicals rocked Madrid, killing almost 200 people and injuring another 2000. Coordinated suicide bombings by four British Muslim men spectacularly disrupted London in July 2005 and killed more than 50 people. A few months thereafter rampaging young Algerians in France burned cars and public buildings; Netherlands saw assassinations of leading political and cultural figures; Denmark became the unlikely pretext for riot and murder when its free press published cartoons disliked by certain persons who do not normally peruse Danish journalism: in each case the perpetrators were Islamic. Other sanguinary bombings and assassinations were thwarted before they became fully ripe including, it may be presumed, some that were never announced. Less spectacularly but perhaps ultimately more sinister, those quarters in the West that have welcomed Muslim immigrants find a theology of enmity to liberal institutions increasingly preached to receptive congregations. With all due heed to injunctions not to "demonize the Other," sober assessment²⁷ has to take seriously the concern that the growing Islamic populations of Western states will prove indigestible.

For not only demographic but also philosophical reasons, problems posed by Islamization are graver in Europe than in the United States. They are not, however, negligible in the latter. On November 5, 2009 at Fort Hood military base in Texas, Major Nidal Malik Hasan opened fire in a crowded medical processing center, proclaiming "Allahu Akbar!" as he shot. Before he himself was felled, thirteen people lay dead or dying with numerous others injured. A full picture of the underlying motivations for the carnage remains to be determined. The scale of the massacre is sufficient, though, to overcome in part inhibitions on publicly acknowledging the

²⁶It should not be forgotten that some of this cost was borne by foreigners who wished peacefully to study, work, or merely do a bit of tourism, but who were caught up in the ensuing frenzy.

²⁷One such is Christopher Caldwell, *Reflections on the Revolution in Europe: Immigration, Islam and the West* (New York: Doubleday, 2009).

ramifications of a growing Islamic presence.²⁸ The pat response that crazed killers come in all ethnicities and religions (e.g., Timothy McVeigh, the Oklahoma City bomber) are seen to be more and more shopworn as troubling incidents present themselves. Christopher Hitchens frames the issue well when he observes “I do not say that all Muslims are terrorists, but I have noticed that an alarmingly high proportion of terrorists are Muslims.”²⁹ It is not a manifestation of laudable liberal toleration to ignore risks to persons and institutions consequent on policy decisions, including immigration policy. That frank deliberations undistorted by cant and wishful thinking should be carried out in Washington, London, Paris, Amsterdam, Jerusalem, Canberra, and other capitals is a matter for the liberal democracies in question. These deliberations will reflect local conditions concerning which we lack all expertise. There are, however, two points that we do believe ourselves competent to contribute.

First, we acknowledge that applying a religious test to would-be migrants is odious on the face of it, in tension with basic liberal principles. There exists a strong presumption that, as far as politics is concerned, religion is a personal matter which is the business only of the believer himself. That presumption is nonetheless defeasible. More particularly, to the extent that reliance by the state on religious (or ethnic) data is found to be essential for avoidance of serious harms to those whose safety it is charged to defend, then such reliance should not be peremptorily rejected on theoretical grounds. The defining commitment of liberalism to the overriding importance of liberty does not yield a priori prescriptions in cases where different persons’ liberties come into actual or potential conflict. And, of course, a liberty to deny others their rights carries no weight at all. An order of mutual respect and noninterference does not go of itself. Its smooth functioning requires continuous upkeep and lubrication. Keeping dangerous distant others both distant and other is one important article of programmatic political maintenance. Invariably this means that some individuals whose intent is entirely peaceful and unthreatening will be caught up in the surveillance and exclusion net. That is a matter for regret but not remorse. Governments are at best well-meaning but oafish entities that step on some as they race to the assistance of others. (And that is at best.) Holding them to ultra-fine standards that cannot realistically be met in a morally and epistemically conflicted world would be to undercut their reason for being. To paraphrase Justice Jackson, a nation’s immigration policy is not a suicide pact.

But second, in the great majority of cases it will be abundantly clear that the migrant harbors no ill-will toward the country in which he hopes to provide for himself a nest egg and,

²⁸For a related outcropping of political correctness that is amusingly Orwellian see the *London Evening Standard* story of January 20, 2008, “Government renames Islamic terrorism as ‘Anti-Islamic Activity’ to woo Muslims” accessed November 20, 2009 at <http://www.thisislondon.co.uk/news/article-23433081-government-renames-islamic-terrorism-as-anti-islamic-activity-to-woo-muslims.do>

²⁹“Hard Evidence: Seven salient facts about Maj. Nidal Malik Hasan,” *Slate*, Nov. 16 2009 at <http://www.slate.com/id/2235760/>.

perhaps, someday put down roots. Nor should it be suspected absent compelling evidence to the contrary that migrants are crossing borders with a primary intention of gaming the welfare system. The demagogic rhetoric that equates *alien*, especially when prefixed by *illegal* or *undocumented* with *terrorist threat* or *sponger* is as unprincipled as it is inaccurate. The peasant crossing the Rio Grande in search of a paycheck harbors no malign design to make a second assault on the Alamo. American nativism and its cousins abroad should be exposed for the frauds that they are. Note, however, that the persistence of the apparatus of social democracy stands in the way of doing so. Unless applicants for entry can demonstrate that they are unlikely to be net claimants on the body politic, they will be resisted by principled objections but also by outrageous ones parasitic on the others.

Objection 1: Brain Drain

Critics may accept some or all of the preceding arguments for a softening of borders yet deny that they belong in a discussion of global justice. Or if they are relevant to global justice concerns, it might be contended that they are so in a direction opposite to the one the authors intend. That is because the ineluctable tendency of free (or freer) migration is to intensify the misery of the poor. The *brain drain* argument in its purest form maintains that when wealthy countries open their borders, the predictable effect is to induce the brightest and most productive citizens of poor countries to transfer their labor to a location where it will be more personally remunerative. Those economies that already enjoy the benefits of ample human capital will be piling up yet more at the expense of those that have precious little. It's not nice to abscond with the widow's mite, but neither is it very neighborly to entice away her daughter the computer programmer. In the interests of justice, the rich should refrain from acquiring precious manpower from the poor.

Suppose it the case that migration is bad for the country from which migrants flow. We would nonetheless utterly reject the contention that those would-be migrants can properly be barred from egress. People are not *possessions* of their home country, to be deployed in service of its collective goals. Rather, moral priority runs in the other direction. Individuals are the primary rights holders; to the extent that associations or corporations or states can be said to have rights at all, their entitlements are derivative. Speaking in terms of the interests or well-being of poor countries is liable to obfuscate the secondary status of all such collective ascriptions. Moral clarity is better attained by keeping the focus clearly on the ultimate moral claimants. There is a word for holding one person hostage so that she will be obliged to continue to serve the interests of those who will find themselves worse off if she is allowed to depart, but it is not a word that opponents of the so-called brain drain are likely to wish to employ. Thus, even if Country A is rendered worse off by Bennet's departure to Country B³⁰, it has no claim against B to block the migration regardless of the comparative wealth and poverty of the two countries. This is a corollary of the earlier observation that global justice is not primarily what Rawls calls a law of *peoples* but is rather at its foundations a theory of how states and non-state entities may

³⁰This is a misleading shorthand for saying that *some residents of Country A* are made worse off by Bennet's departure.

permissibly treat *people*.

A somewhat stronger version of the preceding argument will frame it not as a revolving around dubious precepts of distributive justice but rather as unjust appropriation of property. Bennet has been the beneficiary, let us suppose, of prior investment in him by Country A that affords Bennet the human capital enabling him to command a higher wage in Country B. By emigrating he is, therefore, taking something that doesn't really belong to him, or not to him alone. It is, rather, the joint property of all the citizens of Country A. Unless Bennet first pays them back the investment that they have made in him, he is not at liberty to deprive them of the return to that asset. Note that in this version, the primary wrongdoer becomes Bennet himself, not the country that offers him entry.

We reject this version too. It rests on the premise that one acquires partial ownership rights to persons by contributing to their future prospects whether or not they have solicited that contribution and, if they have, whether or not they have contracted with the provider to make repayment. Typically parents contribute time and other resources to the nurture of their children, but neither that nurture nor the original act of procreation bestows on them ownership rights in perpetuity. All the less plausible is it that states are entitled to claim ownership. Moreover, most of the human capital-building investment made in citizens occurs when they are too young to enter into a binding agreement to repay. Those made at a later stage, for example university education, may come attached to specific provisions of mandatory repayment, but that should not be taken to limit migration rights. Just the opposite: persons who exercise a liberty of mobility so as to enter a more remunerative job market are thereby rendered better able to repay an indebtedness previously incurred. When states improvidently insist on paying all or most of higher education costs for citizens who attend university, they thereby effect a domestic transfer from the less well-off to the more well-off. That does not give them a later claim on the continuing presence of those on whom they have graciously bestowed their largesse – not even if the state possessed very little largesse to bestow.

But this is to give the brain drain objection more respect than it merits. There is no reason to accept the assumption that migration from Country A is, in general, bad for those who remain in Country A. For one thing, the great preponderance of economic migration is less well-described as *brain drain* than as *muscle drain*. Landless peasants or unemployed urbanites who flee in the hope of prospects for a better life take with them their malnutrition, not reserves of scarce skills. Insofar as the result is one mouth less to feed out of minimal resources, the sums are apt to be positive for those left behind. That, though, is vastly to understate the typical economic consequences of migration. When Bennet leaves Country A he does not thereby abandon all ties to it. Bennet's wife, children, parents, and extended family remain behind, and Bennet will be better able to support them with the income he can earn in Country B. Remittances make up a large proportion of the income of many of the world's poor. The amount fluctuates in response to changes in economic conditions around the world. According to the World Bank, it totaled \$305 billion in 2008, but in the wake of that year's financial crisis and

global slowdown was predicted to fall to \$290 billion in 2009³¹. That still-substantial sum represents the difference between minimal decency and destitution for tens of millions of the world's poor.

Previously we cautioned against thinking of migration in 19th century terms. It is not only cash transfers that can make the reverse transit back to the country of origin. Those who have gone abroad will, if unimpeded, often choose to return either temporarily or permanently. When they do so they bring with them both financial capital and human capital acquired abroad. This benefits not just themselves but also those with whom they subsequently interact. In particular they provide knowledge externalities, both insofar as others emulate particular skills that the returnee has acquired and also as he is the incarnate illustration of what is achievable by someone possessing ambition and willingness to take risks. Of course those countries that play the brain drain card to denounce as turncoats those who have fled (e.g., as did East Germany with its splendid wall) will thereby diminish incentive to return at all.

Persons who migrate in order to secure greater wealth are not thereby collecting a gratuitous bonanza due to being in a more fortunate location. Rather, economic relationships newly opened up to them often allow them to be far more productive than would have been the case had they remained at home. This observation is true of ordinary occupations such as driving a cab or weeding a garden, but it is especially salient in the context of entrepreneurship. America has from its earliest days to the present been a fount of entrepreneurial activity, and from the time of John Jacob Astor to the present, many of the most innovative and successful entrepreneurs entered as immigrants. In recent years they have jump-started the information revolution. Andrew Grove fled Hungary during the 1956 revolt against Soviet oppression and made his way to America where eventually he became one of the architects of Intel. Sergey Brin came to the United States as a young child when his parents despaired of prospects in Russia. Twenty years later he had become co-founder of Google. Grove and Brin both became enormously wealthy men. Their adopted country profited handsomely because of their presence. All this is obvious. Easier to overlook, though, is that people all over the world benefitted from their migrations. Anyone who has operated a computer with an Intel CPU inside or conducted a Google search is a beneficiary. Had Grove and Brin remained confined to their dreary Communist lands of upbringing or had they encountered a **CLOSED!** sign at the American port of entry, those benefits almost certainly would have never come into existence, although none of us would be in a position to know what had been lost. Nor are we in a position to know what has been lost by withholding entry from persons who also might have opened new wealth-creating vistas but were never afforded an opportunity to do so. We repeat because it deserves emphasis: gains accrue not only to the welcoming country but to people across the world.³²

³¹<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22115303~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>, accessed November 21, 2009.

³²It is probably not coincidental that both Grove and Brin are of Jewish origin. Their capacity to create wealth is a product both of their intellectual gifts and the fact that they were

Asian immigrants constitute a substantial proportion of those who make Silicon Valley hum.³³ The music may have been louder and sweeter but for visa quotas that interfered with firms' ability to hire additional skilled personnel.³⁴ That other countries do an even worse job of affording access to bright, creative foreigners does not constitute an encomium to U.S. policy. Perusal of a listing of tenured faculty at MIT reveals that something on the order of 50% were born outside of the United States. In no small measure does the country's relative openness to foreign talent compensate for the lackluster performance of its public schools³⁵. That is good for those who live within US borders but also good for those who benefit directly or indirectly from research done by scientists and other scholars³⁶. Most of all, though, is it a good for those who have been enabled to give fuller effect to their energy and talents. Even if all the other blessings of liberty were in question, this one by itself would be enough to justify claims to unimpeded mobility.

Objection 2: Priority of the Domestic Least Well-Off

It is difficult to formulate a persuasive argument that justice requires that indigenous engineers and radiologists be protected from harmful competition by foreigners. That the already privileged should be advantaged further at the expense of persons both foreign and domestic who are considerably less well-off than they themselves are is manifestly dubious. But when recycled as a *muscle drain* argument, it fits better with certain strands of egalitarian justice theory. For the foreseeable future, the paradigmatic egalitarianism is that of Rawls's *A Theory of Justice* which requires that inequalities, to be permissible, must pass the test of advantaging the least well-off. Rawls does not in that work consider inflows or outflows of individuals across national borders, but a plausible way of extending his theory to a world in which populations are mobile is to insist that the immigration policies of Country A are permissible on grounds of justice only to the extent that they do not diminish the prospects of the least well-off in Country A. It is not strictly

able to evade barriers associated with Eastern European antisemitism. It is also probably not coincidental that, alongside the United States, one of the world's most fertile sites for entrepreneurship is Israel.

³³AnnaLee Saxenian, "Silicon Valley's New Immigrant Entrepreneurs," Working Paper #15, Center for Comparative Immigration Studies, University of California, San Diego, May 2000, accessed at <http://www.ccis-ucsd.org/PUBLICATIONS/wrkg15.PDF>.

³⁴See Matt Richtel, "Tech Recruiting Clashes With Immigration Rules," *New York Times*, April 11, 2009, accessed at <http://www.nytimes.com/2009/04/12/business/12immig.html>.

³⁵There is a case for suggesting that the Statue of Liberty's message of welcome be revised to "huddled masses/physics classes."

³⁶If readers harbor suspicions that this may constitute a pitch for welcoming migrant philosophers, we can't deny that they have grounds.

relevant to questions of justice in Country A whether the effect of these policies damages the prospects of the worst-off in Country B, not even if persons in Country B are on average much poorer than those in Country A.³⁷ Implications concerning availability of access may seem to follow straightforwardly: Because penniless foreigners with low skill sets will, if allowed admission into a wealthy country, compete with the domestic poor for the limited number of low-end jobs, they should be excluded. It is not enough simply to require that entrants be self-supporting, for the means through which they will support themselves predictably work to the disadvantage of the worst-off of those already present.

We find this objection no more persuasive than the brain drain one. There are at least five respects in which it is lacking.

First, we confess to not being enamored of a Rawlsian egalitarianism confined to the purely domestic context of *A Theory of Justice*. Even if it should become clearer just who Rawls has in mind when he speaks of the least well-off, it would remain obscure why their well-being should count for more, indeed infinitely more, than that of all other members of the society. Nor is Rawls's understanding of the scope and value of liberty one that we can endorse. Nonetheless, that egalitarianism is considerably more attractive than one extended to immigration policy. To the credit of the original version, the least well-off possess the property of being those who are, well, the least well-off. That is not the case with a Rawlsianism rejiggered so as to harden borders. The United States designates as poor a family of 4 with an income of under \$22 thousand³⁸ That sum, though, is more than enough to punch the ticket for admission into the world's elite. That those who are relatively well off with regard to nutrition, shelter, health care and access to educational services should be protected against competition from people markedly worse off along all these dimensions does not plausibly present itself as any kind of egalitarianism worthy of respect. The position denies to the desperate the sort of human equality that has been urged throughout this book: equal liberty to engage in consensual relationships with willing others. Surely the better term for the so-called egalitarian position is *nativism*, a smugly satisfied expression of a nationalistically-based "we've got ours" attitude. By criticizing that

³⁷Something like this position is developed by Thomas Nagel who writes, "Every state has the boundaries and population it has for all sorts of accidental and historical reasons; but given that it exercises sovereign power over its citizens and in their name, those citizens have a duty of justice toward one another through the legal, social and economic institutions that sovereign power makes possible. This duty is *sui generis*, and is not owed to everyone in the world . . . Furthermore, though the obligations of justice arise as a result of a special relation, there is no obligation to enter into that relation with those to whom we do not yet have it." "The Problem of Global Justice," *Philosophy & Public Affairs* 33, p. 121. Although most of Nagel's nuanced and challenging discussion focuses on cash transfers to the foreign poor, a straightforward reading of the text seems to indicate rejection of the sorts of principles of justice in migration that have been urged in this chapter.

³⁸See <http://www.census.gov/hhes/www/poverty/threshld/thresh08.html>.

stance we do not mean in any way to take back earlier assertions that it is not only permissible but honorable for individuals to insist on the continued validity of their property rights even when there are others who have much less. But to deny those others a liberty to better their conditions in order to favor the competing interests of others who have much more is to get the worst of two worlds: it is to embrace a chimera neither libertarian nor genuinely egalitarian.

Second, this argument will, at most, support restricting access to the hardscrabble poor. Migrants who possess substantial financial or human capital improve the prospects of the domestic poor both indirectly insofar as they add value to the overall economy and directly as they employ gardeners, cleaners, freelance handymen and the like. Again, the implication is professionals to the head of the line, huddled masses to the rear.

Third, the claim that entry of poor migrants harms the domestic least well-off class is contentious.³⁹ It is often claimed (and often denied) that foreign laborers will gladly take jobs that citizens spurn. If true that is less a commentary on the lesser industrious of citizens than a reflection of their greater opportunities for income. To the extent it is true, though, it means that complementary employment positions will be greater. That is, more busboys means more restaurants which means more jobs for suppliers to those restaurants which means more jobs to those who provide goods and services to the suppliers. Moreover, those migrants will themselves purchase products that sustain yet further jobs. Because economic modeling is not an exact science, judging whose macroeconomic projections are correct is too difficult for the authors of these pages – and, we suspect, for anyone else. To call the competition a draw, though, is to obliterate whatever egalitarian case there may be for keeping the outs firmly out.

Fourth, the preceding comments do not get to the heart of the matter. Under virtually any reading of economic tea leaves it will not be the case that the only or best method to protect the domestic poor is at the expense of the weakest and most vulnerable. If, for example, immigration by poor from abroad is to the disadvantage of the indigenous poor, then the latter could be given either cash transfers or in-kind provisions such as job training by way of compensation. These could be paid for either out of general funds or by a special assessment on employers who have applied for a permit to hire external workers. This is not the place to try to develop in detail an optimal policy for the United States or other wealthy countries, but it is precisely the place to offer a reminder that setting up roadblocks at the border is only one way, and almost certainly not the best, to act on behalf of the domestic least well-off.

Fifth, it should be observed that this whole debate ought to stand as a considerable embarrassment to domestic egalitarianism. Consider, for example, marginal workers in the United States compared to potential competitors from Mexico who seek entry. The U.S. citizen is probably a native speaker of English (or has from an early age had substantial exposure to English) while the Mexican is not. The U.S. citizen has enjoyed the advantage of early education in much more generously funded U.S. schools, has enjoyed greater access to health care,

³⁹New citations []

nutritional support, and virtually every other aspect of welfare assistance. If she is nonetheless hard-pressed to compete with the new entrant, that fact stands as a searing indictment of the prevailing welfare state. And so it should stand; despite expenditures on the less well-off that are quite enormous by world standards, the United States welfare apparatus has managed somehow to become a conspicuous subtractor from human potential. By way of assuaging bruised U.S. sentiments we hasten to add that in this regard it is only slightly, if at all, a laggard when compared to other wealthy countries. The failure of welfare state nostrums on their home turf where they possess every advantage ought to have been a great story of the twentieth century; perhaps it finally will be widely told in the twenty-first. It is difficult to avoid concluding that the proposal to show solidarity with the domestic least well-off by excluding desperate people from abroad is a desperation move from an ideology at the end of its tether.

Conclusion

We do not labor under any illusion that the prescriptions set forth in this chapter will be adopted any time soon. Because poor and powerless non-citizens possess negligible political heft, their rights and interests carry little weight in the calculations of wealthy countries' political elites. That is true at all times but becomes intensified when economic conditions worsen. Then more than ever it is every man for himself and devil take the hindmost. The devil has indeed been busily engaged with the hindmost in the wake of the financial crisis of 2008, and reactive nationalist sentiments have waxed. That is especially the case with regard to openness to migrants, but it also has clouded prospects for international trade. To that we turn next.