

Unjust Borders: Individuals and the Ethics of Immigration

Frontmatter

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States restrict immigration on a massive scale. Governments fortify their borders with walls and fences, authorize border patrols, imprison migrants in detention centers, and deport large numbers of foreigners. *Unjust Borders: Individuals and the Ethics of Immigration* argues that immigration restrictions are systematically unjust and examines how individual actors should respond to this injustice. Javier Hidalgo maintains that individuals can rightfully resist immigration restrictions and often have strong moral reasons to subvert these laws. This book makes the case that unauthorized migrants can permissibly evade, deceive, and use defensive force against immigration agents, that smugglers can aid migrants in crossing borders, and that citizens should disobey laws that compel them to harm immigrants. *Unjust Borders* is a meditation on how individuals should act in the midst of pervasive injustice.

Biography: Javier Hidalgo is an Associate Professor of Leadership Studies at the University of Richmond. His work has appeared in venues such as *The Journal of Political Philosophy*, *The Journal of Ethics and Social Philosophy* and *The Journal of Moral Philosophy*.

Dedication

For my parents.

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To a large extent, this book is a synthesis of my work on the ethics of immigration. Portions of this book draw on “The Ethics of People Smuggling,” *Journal of Global Ethics* 12.3 (2016): 311-326, “The Duty to Disobey Immigration Law,” *Moral Philosophy and Politics* 3.2 (2016): 165-186, “Resistance to Unjust Immigration Restrictions,” *Journal of Political Philosophy* 23.4 (2015): 450-470, “The Case for the International Governance of Immigration,” *International Theory* 8.1 (2016): 140-170, and “Liberalism or Immigration Restrictions, But Not Both,” with Christopher Freiman, *Journal of Ethics and Social Philosophy* 10.2 (2016): 1-22.

Introduction

1. A Story

I'm going to start with a true story. This story will illustrate themes in this book.

During the 1980s, there was a refugee crisis on the United States' southern border. Tens of thousands of refugees were trying to cross. They were fleeing civil war in Guatemala and El Salvador. The despotic governments of Guatemalan and El Salvador had launched military campaigns against citizens who opposed their rule. These campaigns were brutal. Paramilitary death squads in El Salvador and the military in Guatemala targeted human rights activists, union leaders, students, indigenous populations, and the members of other opposition groups.¹

Over one hundred thousand people were killed in these conflicts. A priest in El Salvador described the horrific violence: "People were not just killed by death squads...they are decapitated and their heads are placed on pikes and used to dot the landscape... It is not enough to kill children; they are dragged over barbed wire until the flesh falls from their bones while parents are forced to watch."² The priest tells the story of a women he knows, Tonita, who returned to her home one day to find her young children along with her mother and sister butchered by soldiers for no apparent reason. Many citizens of El Salvador and Guatemala decided to escape the violence by fleeing their countries. Some of them showed up at the United States-Mexico border. With the aid of smugglers, a large number of refugees crossed the border without permission from the United States government.

Yet the United States government refused to recognize these people as refugees. Why? The reasons are complex. This was the 1980s. The United States government wanted to prevent the spread of communism in the Americas. Many of the opposition groups in El Salvador and Guatemala were leftist. Government officials feared that they would align with the Soviet Union

and communist Cuba if they toppled the right-wing governments of El Salvador and Nicaragua. So, the Carter and the Reagan administrations provided military aid to these governments. American officials thought that these governments were reliable allies in the fight against communism.

But there was a problem. Congress prohibited foreign aid to countries that violated human rights. If the United States granted asylum to fleeing refugees who were the victims of government violence, this would be acknowledging that the Salvadorian and Nicaraguan governments were engaged in systematic human rights violations. So, American officials argued that the people from El Salvador and Nicaragua were economic migrants, not refugees. The government thus barred most of them from asylum and deported them. The deported people often met a grisly fate. For example, one refugee, Santana Chirino Amaya, was deported from Texas and found decapitated in El Salvador two months later. Perhaps 5 to 10 percent of these refugees were killed upon their return.³

Some American citizens were outraged by this policy toward Central American refugees. One of them was Jim Corbett. Corbett was a Quaker and he had once taught philosophy at Cochise College. He later became a goat herder in Arizona. Corbett had a strong anti-authoritarian streak. He'd been an opponent of the Vietnam war and had helped organized efforts against it, and he was dismissed from his philosophy job for protesting the college's censorship of an instructor's syllabus and the work of a visiting artist. Corbett was an advocate of a kind of nomadic pastoralism. He wanted to escape modern society and live in the wilderness with his goats, which he occasionally did. By chance, Corbett learned about the plight of Salvadorian and Nicaraguan refugees. After realizing how unjust their treatment was, Corbett decided to help them.

In a letter to his fellow Quakers, Corbett wrote:

Speaking only for myself, I can see that if Central American refugees' rights to political asylum are decisively rejected by the U.S. government or if the U.S. legal system insists on ransom that exceeds our ability to pay, active resistance will be the only alternative to abandoning the refugees to their fate. The creation of a network of actively concerned, mutually supportive people in the U.S. and Mexico may be the best preparation for an adequate response.⁴

Corbett was serious. He began to smuggle refugees across the border and housed two dozen of them in his home. He taught Central Americans to convince the border patrol that they were Mexicans so that they would be deported back to Mexico, not Guatemala or El Salvador. Corbett would even lead groups of Guatemalans all the way from the Guatemalan border to Arizona.⁵ Corbett recounted: "I traveled throughout Mexico to...accompany those who most urgently needed help." He also "spread information about routes and roadblocks [and] methods and risks" among refugees to aid them in evading border patrols.⁶ Corbett might have helped hundreds of people to cross the border without authorization.

Corbett was not alone. Corbett enlisted the aid of John Fife, a Presbyterian minister. Fife's congregation in Tucson helped shelter and hide more refugees. Other congregations in Tucson and eventually across the country started to aid the refugees and hide them from the authorities. They formed a kind of underground railroad to shield refugees from the American government. This would grow into the sanctuary movement. Corbett, Fife, and several other members of the sanctuary movement were ultimately prosecuted for their law-breaking. But Corbett was found not guilty and the other defendants only received probation and no jail time. Meanwhile, they had successfully rescued many refugees and their movement attracted

sympathetic media attention. Eventually the U.S. government extended protection to a large number of Central American refugees. In some ways, the sanctuary movement never ended. Religious organizations continue to shelter refugees and evoke the movement in the 1980s to justify their conduct.⁷

Why start this book with the story of the sanctuary movement? Because it casts into stark relief the individualistic dimension of immigration policy. Migrants, smugglers, disobedients, and government officials are, of course, individual people who make moral choices. The story of the sanctuary movement illustrates how the choices of individual people matter. We can also evaluate these choices. Let's focus on a few of the actors in this story:

- (A) *Government officials*. State officials tried to prevent refugees from El Salvador and Guatemala from immigrating and deported many of those who reached the United States back to their countries of origin.
- (B) *Refugees and migrants*. Desperate to reach a safe place, refugees from El Salvador and Guatemala crossed borders without authorization and deceived and evaded immigration agents.
- (C) *Smugglers*. Various third-parties helped refugees cross borders without authorization and hide from the authorities. Some of these people were people smugglers—they aided refugees in return for compensation. Others, like Jim Corbett, smuggled the refugees for free.
- (D) *Citizens*. Ordinary citizens in the United States refused to turn over the refugees to the authorities, hid them, obstructed efforts to catch them, and publicly advocated for their rights.

How should we evaluate the actions of these different actors from a moral perspective? Were each of them doing something good or bad, or right or wrong?

My description of the story probably reveals my answers to these questions. Notice though that there's nothing really special about this episode in history. Sure enough, the story of the sanctuary movement is a dramatic one. But similar things happen all of the time. Let me describe some events that are taking place as I write this book. There's a refugee crisis in the Middle East and Europe. Millions of Syrians have fled violence in their country and sought refuge in neighboring societies. A large number of people from Central America and Sub-Saharan Africa continue to escape violence and grinding poverty by moving abroad. The governments of affluent democracies are trying to stop most of these refugees and migrants from entering their territories. They're busy building walls, deploying more border agents to hunt down and capture unauthorized entrants, and detaining thousands of migrants in jails and camps.

Yet many people immigrate anyway. Migrants continue to cross borders illegally by evading border agents and through deception and subterfuge. Smugglers often help migrants to escape detection and reach their destinations, although some smugglers abuse and betray migrants. The citizens of states that enforce immigration restrictions are also making choices about how to interact with immigration laws. For instance, the Trump administration has made it a priority to strictly enforce immigration laws and deport more unauthorized migrants. Many citizens have decided to refuse compliance with these efforts. Local officials have implemented sanctuary policies that forbid cooperation with immigration agents. Ordinary citizens have engaged in protests and public civil disobedience to oppose what they see as unjust deportation policies. We can evaluate the choices that these actors make from a moral perspective. This book sketches a framework for doing this.

This book has a more radical agenda as well. You might judge that it was wrong for the United States to deport refugees from Central America because they were escaping civil war. In these desperate circumstances, maybe it's okay for foreigners to cross borders unimpeded, for people smugglers to aid them, and for people like Jim Corbett to defy the law. But you may still think that it's *normally* fine for states to exclude foreigners and that it's wrong for people to immigrate without permission and for others to help them to do so. I disagree. I think that *most* immigration restrictions are unjust. Furthermore, I'll argue in this book that resistance to immigration law is usually permissible and even obligatory. You may say that this disobedience and resistance is only justified during humanitarian emergencies. I say that the emergency is still happening as long as states continue to massively restrict immigration.

2. From Public Policy to the Individual Ethics of Immigration

The questions that I've raised are about individual ethics. They're questions like:

1. Is it permissible for migrants to illegally cross borders and resist government authorities?
2. Should we praise or condemn people smugglers for aiding unauthorized migrants?
3. How should the citizens of recipient states respond to the presence of unauthorized migrants? Should citizens comply with laws that prohibit them from interacting with these migrants? Should they turn unauthorized migrants over to the authorities?
4. If ordinary citizens think that the exclusion of refugees and migrants is unjust, how should they seek to overturn this injustice?

These are only some of the moral questions that we can raise about the conduct of individual actors in relation to immigration policy and law. There are surely others too.

Most books that focus on the ethics and political philosophy of immigration don't address these questions. While there has been an explosion of interest in the ethics of immigration in recent years, most of it focuses on public policy.⁸ Philosophers ask whether immigration restrictions are permissible and what kinds of immigration laws may be justified. They also examine how states should regulate access to citizenship, integrate immigrants, treat unauthorized entrants, and other important policy questions. This focus is, of course, fine. Much of this book will also be about public policy, especially the first three chapters. Yet most philosophers and political theorists have neglected to carefully examine the individual ethics of immigration.⁹ The individual ethics of immigration are about the moral decisions and questions that individual people, not governments as a whole, confront. Much of this book will also examine (1-4) and related questions.

Why is it important to consider the individual ethics of immigration? This may be of theoretical interest. Maybe we just want to know how individuals ought to act for its own sake. Yet the individual ethics of immigration have practical importance as well. Understanding how individuals ought to act can have more practical importance than understanding how governments ought to act. Why? For the most part, governments don't listen to political philosophers. Government officials rarely even know what political philosophy is or that political philosophers are arguing about what governments should do, much less paying them any heed. Perhaps that's a bad thing, but it's reality. And, even if some government officials are persuaded by a philosopher's moral arguments, they operate within constraints. For one thing, they would need to convince other officials to cooperate with them in order to change policy. That's hard to do.

In contrast, personal ethics are within the control of individuals. If you're persuaded by a moral argument to change your own behavior, then you don't need to convince the government to do anything. You can simply change your conduct. This is why personal ethics seems more practical to me than do moral arguments about public policy. Consider an example. Suppose that you're an employer and you realize that one of your workers is an unauthorized migrant. The law tells you to fire him. Should you comply? What you do is within your own control. Maybe an argument for the claim that it would be wrong to fire the worker could actually persuade you and change what you do. However, there's probably not much you as an individual can do to repeal the laws that require you to fire unauthorized workers.

I don't want to dismiss the ethics of public policy. We need to form ethical judgments about the law in order to understand how we ought to interact with it. But we also need moral arguments to bridge the gap between public policy and individual ethics. Suppose I think that my state's immigration laws are unjust. I still need to answer the question: if immigration law is unjust, what does this mean for my conduct?

3. A Comment on Moral Methodology

Before I proceed, I want to say a word about my methodology in this book. This is a book about ethics and I make various moral arguments throughout. But there are different ways of arguing for moral views. Some people start with a comprehensive theory of justice or morality. They begin by assuming or arguing for, say, utilitarianism, left libertarianism, public reason liberalism, or John Rawls' theory of justice. They then apply this comprehensive theory of justice to questions of public policy and personal ethics. This is a top-down approach to practical ethics.

I worry that the top-down approach is unpersuasive. Maybe the top-down approach makes sense when your interlocutor is someone who accepts your starting point. But people who disagree with an author's theory will lack reason to accept this person's conclusion. And virtually all theories of justice are controversial. Here's an illustration of the problem. Suppose that I assume that utilitarianism is true, the view that you ought to maximize net happiness or pleasure. I then argue that you ought to give most of your income away to poverty relief because this would maximize utility. If you're not a utilitarian already, this wouldn't be very persuasive. The same goes for arguments that begin with other controversial starting points, like John Rawls' theory of justice.

Perhaps there's still merit to the top-down approach. But I prefer something different. I prefer a more bottom-up approach. I'll try to start from commonsense moral principles and judgments and work from there. That is, I'll try to appeal to moral premises that most people accept in order to justify my conclusions, like "it's wrong to coerce other people without good reason," "you should help someone in need if it's not costly for you," or "you shouldn't contribute to violating someone's rights if you can avoid doing so at low-cost." Almost everything in ethics is controversial to some degree. But I'll aspire to reason from starting points that are acceptable to many, if not most, people.

The philosopher Michael Huemer observes that:

Ideal theory in political philosophy commonly relies on very abstract philosophical reasoning.... Such theories should be viewed with suspicion from the start, because abstract philosophical reasoning in general tends to be wrong. Throughout the history of the subject, when a philosopher thinks that she has a compelling abstract proof of a theory, the theory is almost always false.¹⁰

Huemer recommends that we start from uncontroversial moral judgments about particular cases and construct arguments from these judgments. I agree. I probably won't always succeed at convincing people who disagree with me. Perhaps I'll fail most of the time. Still, this bottom-up approach seems to stand a better chance of success than starting with a controversial theory of justice or morality and proceeding from there.

4. Terminology

The politics of immigration tend to create a war on words. Phrases like “illegal” or “undocumented immigrant” are contentious and people adopt their preferred terms to slant the debate in their favor. It's easier to argue for immigration restrictions if you refer to immigrants who live in a state without official authorization as “illegal aliens.” And it's easier to defend a policy of amnesty by calling members of this group “undocumented immigrants.” Here I'll briefly explain which terms I'll use in this book and why.

I'll generally refer to people who cross international borders or who are actively attempting to cross borders as “migrants.”¹¹ Some people use this term to apply also to people who move around within a country, but I'll stipulate that a migrant must seek to relocate internationally. I'll generally use the narrower term “immigrant” to mean people who have moved to a new country and who intend to stay in this country more-or-less permanently. Finally, I'll call people “unauthorized migrants” who have moved across borders and reside in a state in violation of this state's law or without the official permission of this state. I find that no term is perfect on this subject, but I still prefer this one to the alternatives.

Why? For one thing, “illegal immigrant” seems like a persuasive definition. We don't typically call people who violate, say, traffic laws “illegal drivers” or people who don't pay all

their taxes “illegal taxpayers.” But, as I noted, people find it rhetorically useful to define unauthorized migrants as “illegal” in order to justify penalizing them. Also, the term “illegal immigrant” obscures that there’s a spectrum of illegality. Some migrants may only be in violation of minor immigration laws while others lack any legal right to live in a state’s territory at all.

But I don’t think that “undocumented immigrant” is quite right either. For one thing, many unauthorized residents have plenty of documents, even official ones, like driver’s licenses or work permits. They merely lack official authorization to reside in a state. Other authors prefer “irregular migrant” to each of these terms. I have no strong objection to this phrase, but it strikes me as too unspecific: irregular how? In some regions, unauthorized migration is the most common way of crossing borders and thus not “irregular” in the usual sense.

So, via a process of elimination, I conclude that “unauthorized migrants” is the least-bad term for the group that I want to describe. I also find this phrase more descriptive and accurate. People who cross borders or reside in a state without the government’s permission are in fact unauthorized to be there by the government. I’ll define other important terms as I go along.

5. An Outline of the Book

This book has two parts. Chapters 1 to 3 argue that most actual immigration restrictions are unjust and that states should admit many more immigrants than they currently do. Beginning in chapter 4, I examine the individual ethics of immigration. This investigation takes the remainder of the book and concludes in the last chapter, chapter 8.

In chapter 1, I examine why there’s a moral presumption against immigration restrictions. I claim that the case for freedom of movement is just the case for liberalism again. Respect for

basic liberal freedoms, like occupational freedom and freedom of association, require that we respect freedom of movement too. The scope of individual rights extends across borders. If we ought to respect liberal rights and freedoms regardless of whether their bearers are citizens or foreigners, then we have good reasons to respect foreigners' freedom to immigrate as well. Even if you reject this liberal argument against immigration restrictions, there are other reasons to suspect that existing immigration restrictions are problematic. Immigration restrictions trap people in conditions of poverty and oppression and states have strong reasons to avoid contributing to these conditions.

In chapter 2, I evaluate some major arguments for restrictions on immigration. One common argument holds that we have special moral obligations to prioritize the interests of our fellow citizens over those of foreigners. But immigration can damage the interests of our compatriots and, when this happens, we ought to restrict immigration. Another popular argument for immigration restrictions says that political communities have rights to self-determination. According to this argument, states have rights to shape their character and membership and this implies the permissibility of exclusion. I show that both of these arguments fail to justify immigration restrictions.

Chapter 3 argues that actual immigration restrictions are likely unjust. I make the case that, even if immigration restrictions can be justified in principle, there's reason to doubt whether states are reliable when it comes to immigration policy. Citizens often harbor biases against immigration and these biases influence public policy in democracies. As a result, states are disposed to restrict immigration too much. I also give a more radical argument that open borders are morally required. I then consider some implications of my argument for how states ought to distribute citizenship.

Chapter 4 marks a transition from the ethics of immigration policy to the individual ethics of immigration. This chapter asks: if more open borders are a good idea, then why do states heavily restrict immigration? My answer is that a range of factors explain why states implement unjust policies: states have the legal right to exclude, they're responsive to their own citizens and not the views of foreigners, immigration is unpopular, and other factors as well. These forces imply that more open borders are likely infeasible in the near term. Nonetheless, I argue that the case for freedom of movement can still matter for what individuals ought to do even if states will fail to enforce just policies. I give an analogy with slavery to illustrate this point.

Chapter 5 and 6 focus on the moral choices that migrants confront vis-à-vis unjust immigration restrictions. I argue that unauthorized migrants can permissibly deploy a range of actions to resist unjust immigration restrictions, and that people smugglers should aid them in doing so. Immigration restrictions pose unjustified threats to migrants and, thus, migrants have defensive rights against the state officials who enforce these restrictions. Furthermore, it's permissible and sometimes required for people smugglers to transport migrants across borders without authorization. I defend these conclusions against a range of possible objections.

Chapters 7 and 8 move on to consider the moral responsibilities of citizens of states that enforce unjust immigration restrictions. In chapter 7, I observe that modern immigration restrictions depend on the compliance of ordinary citizens for their effectiveness. These laws ask private citizens to refrain from interacting with unauthorized migrants and to deny them access to crucial goods and services. But citizens should refrain from contributing to violating the rights of migrants. So, they should disobey laws that attempt to conscript them into supporting states' aims of restricting immigration. I'll explore as well what my argument implies for agents of the state, such as immigration officials as well as high-ranking officials. Chapter 8 turns to the

question of how citizens should promote just immigration policies. I explore different strategies for encouraging change. I conclude with the prediction and the hope that long-term liberalizing forces will ultimately erode the legitimacy of immigration restrictions.

¹ My narrative here is indebted to: Hilary Cunningham, *God and Caesar at the Rio Grande: Sanctuary and the Politics of Religion*, First edition edition (Minneapolis: Univ Of Minnesota Press, 1995). 21-2.

² Daniel Santiago, "The Aesthetics of Terror, The Hermeneutics of Death," *America*, March 24, 1990 at p. 293.

³ Miriam Davidson, *Convictions of the Heart: Jim Corbett and the Sanctuary Movement* (Tucson: University of Arizona Press, 1989), p. 18.

⁴ Jim Corbett, *Goatwalking: A Guide to Wildland Living* (New York: Penguin Books, 1992), p. 116.

⁵ Douglas Martin, "James Corbett, 67, Is Dead; A Champion of Movement to Safeguard Illegal Refugees," *New York Times*, August 12, 2001, <https://www.nytimes.com/2001/08/12/us/james-a-corbett-67-is-dead-a-champion-of-movement-to-safeguard-illegal-refugees.html>.

⁶ Corbett, *Goatwalking*, p. 142.

⁷ Aspects of this narrative come from: Cunningham, *God and Caesar at the Rio Grande*; Davidson, *Convictions of the Heart*; Susan Bibler Coutin, *The Culture Of Protest: Religious Activism And The U.S. Sanctuary Movement* (Boulder, CO: Westview Press, 1993).

⁸ Prominent examples include: Joseph Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013); David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016); Ryan Pevnick, *Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty* (New York: Cambridge University Press, 2014); Christopher Heath Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (New York: Oxford University Press, 2011).

⁹ One notable exception is: Luis Cabrera, *The Practice of Global Citizenship* (New York: Cambridge University Press, 2010).

¹⁰ Michael Huemer, "Confessions of a Utopophobe," *Social Philosophy and Policy* 33, no. 1–2 (2016): 214–234 at p. 230.

¹¹ For different definitions of migrant and immigrant, see: Bridget Anderson and Scott Blinder, "Who Counts as a Migrants? Definitions and Their Consequences," Migration Observatory Briefing (University of Oxford, UK: COMPAS, January 2017).

Chapter 1: The Case Against Exclusion

1. Introduction

Gabriel Hernández Cortez is a Mexican citizen from Guanajuato in central Mexico. In Guanajuato, Gabriel worked in construction and earned about four dollars per day. Gabriel's son, Carlos, became ill and was hospitalized. The cost of Carlos' medical care (\$650) was ruinous for his family's finances. His wife and two children had to move in with her parents. Meanwhile, Gabriel set out for the United States to earn more money. Gabriel says: "I prefer to stay home. But the only way to make it is to come north...I just want a very tiny slice of pie. I just want to work for a little bit of money."

But Gabriel couldn't reach the United States. Gabriel tried crossing the border four times. Each time American immigrant agents caught him and turned him back. In one case, border agents caught Gabriel as he was climbing a barbed-wire fence. An agent grabbed Gabriel by his hair and the barbed wire cut his leg. He says: "I don't blame la migra. They're just doing their jobs, enforcing the laws that come down from above." Gabriel remained in Naco, Sonora and slept out in a central plaza in the city, pondering how to cross the border. I don't know what happened to him.¹

Here's another case. Gloria lived in Phoenix with her four children where she worked as a housekeeper. She was a single mom and she was also undocumented. One day she was arrested. Her employer had been operating drop houses where unauthorized migrants would stay after crossing the border. Gloria says that she had nothing to do with it, but she was charged as an accomplice. After serving time in prison, she was deported to Mexico and lost custody of her children. The children were separated and put into foster care. Gloria now lives in Nogales, Mexico. She works in a factory for \$15 per day and lives in a plywood shed. Gloria rarely sees

her children. Gloria says: “when I was young and my kids were little, I thought that I could never live without them. I never thought that one day they’d grow up and I’d be far away from them. But you have to learn how to live like this.” Her children visit her at the border where they can talk through a mesh fence, but these visits are infrequent. Gloria’s son says: “I just sometimes feel like I’m a stranger to her. And sometimes she’s a stranger to me.”²

The laws and policies that forbid migrants like Gabriel from crossing borders and that deport migrants like Gloria are immigration restrictions. Immigration restrictions stop foreigners from crossing borders and permanently residing in another state’s territory. There’s nothing special about the United States, of course. Every functioning state enforces immigration restrictions.

Are immigration restrictions justified? My answer: generally speaking, no. In this chapter, I’ll begin to explain why. My overall argument goes like this. Immigration restrictions interfere with valuable freedoms, such as freedom of association and occupational choice. So, there is a presumption against immigration restrictions. Other moral considerations can in principle defeat this presumption. Yet actual states enforce immigration restrictions in an unreliable way. States are biased against immigration. They do a poor job of tracking the balance of moral considerations when it comes to immigration policy. As a result, they enforce unjust immigration laws. We thus have reason to conclude that almost all actual immigration restrictions are unjust.

I will only develop part of my argument here. This chapter focuses on sketching a presumptive case against immigration restrictions. It aims to show that strong moral reasons speak in favor of free movement. My argument in this chapter owes much to the pioneering work of other authors, such as Joseph Carens and Michael Huemer.³ My goal is to clarify the argument

for free movement, place it on firm foundations, and respond to important objections that critics have raised to the case for free movement. Chapter 2 and 3 complete my all-things-considered argument against immigration restrictions.

2. Freedom and Movement

A Thought Experiment

To motivate my argument, let's start with a thought experiment. Imagine that tomorrow you wake up in the morning and you start getting ready for work, just like every other day. As you're pulling out of your driveway, you notice something strange. You see walls topped with barbed wire encircling your neighborhood. You also notice police officers patrolling the area around the walls, and pulling down people who try to scale them.

You angrily ask the police officers why they're doing this. They respond: "The local government has determined that the members of your community are taking jobs from other citizens and using too many welfare benefits. Besides, your community is culturally distinct from the broader community and we can't have your community changing our culture in bad ways. Finally, doesn't the rest of the community have a right to self-determination? We can decide with whom we want to associate and we've decided that we don't want to associate with you!"

Needless to say, you don't accept these arguments and you're eager to escape your neighborhood. You need to get to work, for one thing. But you also want to visit friends and family members in other parts of the city, attend concerts and classes, eventually move to a new apartment across the city, and so on. But state officials stop you from leaving. You might be injured if you evade these officials and scale the walls. Maybe you'll cut yourself on barbed wire. If you are undeterred and try to leave anyway, these officers will overpower and imprison

you. Moreover, state officials will probably track you down and return you to your neighborhood even if you do manage to escape. Finally, let's suppose that public officials make it illegal for people outside of your neighborhood to interact with you by employing or sheltering you. Let's call this case: *Neighborhood*.

At first glance, the actions of state officials in *Neighborhood* seem seriously wrong. Why's that? Well, we have strong moral reasons to refrain from coercing and harming other people. Almost everyone thinks that assault and violent threats are usually wrong. The reasons against coercion and violence speak against the actions of the state employees. After all, state officials threaten you with physical force in *Neighborhood* and deploy this force against you if you disobey their commands.

The deeper story is that state employees infringe on valuable liberties when they prohibit you from leaving your neighborhood. If you're unable to leave your neighborhood, you can't search for work, you can't associate with your friends and family, you can't attend your church, and you can't explore cultural opportunities outside of your neighborhood. So, state employees seem to violate your rights to freedom of association, occupational choice, religious freedom, and so on. Your personal liberties in *Neighborhood* are curtailed by restrictions on freedom of movement.

Reflection on *Neighborhood* suggests that freedom of movement is intimately connected with core freedoms.⁴ To exercise occupational freedom or religious liberty, we must have the freedom to move around. Your religious freedom is impaired if the state forbids you from traveling to the church of your choice. You lack occupational freedom if other people stop you from searching for a job or traveling to employers who are willing to hire you. Yet the state should respect basic liberal freedoms like freedom of conscience, freedom of association,

freedom of speech, and occupational freedom. The state's reasons to respect these freedoms need not be absolute. My argument only depends on the premise that states have strong moral reasons to respect these liberties. I suspect most readers will accept this premise and I'll say more about it below. For now, my claim is that, if states should respect basic liberties and restrictions on freedom of movement curtail these liberties, then states should respect freedom of movement.

Here's another way to put the point: freedom of movement just is a *constitutive* aspect of valuable liberties, such as occupational freedom and freedom of association. Let's say that entity A is a constitutive component of entity B if A is a component or part of B. For example, the stone in a statue is a constitutive component of this statue. The stone just is a part of the statue. Or consider the paint in the frescos of the Sistine Chapel. This paint is a constituent of Michelangelo's frescos. My claim is that freedom of movement is a constitutive part of important liberties like freedom of association and occupational freedom. Freedom of movement is itself a component of, or part of, valuable liberties.

Moreover, if freedom of movement is a constitutive part of something is valuable, then freedom of movement is itself valuable. You ought to refrain from scraping off the paint of the frescos in the Sistine Chapel. Why? After all, it's just paint. But this paint is a constitutive of something else that is extremely valuable—Michelangelo's frescos. The same goes for freedom of movement. You ought to respect this freedom because it's part of respecting more fundamental liberties.

Let me qualify these claims somewhat. It's false that *every* restriction on freedom of movement infringes on basic liberties. Suppose that state officials forbid you from traveling to Antarctica. This doesn't seem to restrict your basic liberties, liberties that people have strong reasons to respect. This restriction could still be wrong, but it doesn't seem like a big deal.

Why's that? The answer is that restricting your freedom to travel to Antarctica avoids restricting your freedom to associate with others, and the freedom to associate with others is essential for exercising valuable liberties.

Things are different when it comes to restrictions on movement to places where people live. Restrictions on our freedom to move to where other people live prevent us from entering into certain relationships with others. If your friends, family members, co-religionists, and potential employers lived in Antarctica, then laws that prevent you from moving to Antarctica would restrict valuable liberties. You usually need freedom of movement to associate with others and to enter into certain relationships with them. The more general point is that many of our most important liberties protect our ability to form and control our relationships with others. To a large extent, our basic liberties protect our interests in sociability. This is why restrictions on freedom of movement normally (but don't always) restrict valuable freedoms. Restrictions on freedom of movement typically stop us from associating with others on freely chosen terms.

To illustrate, consider religious freedom. Freedom of religion doesn't just protect our ability to endorse different religions on an intellectual level. Imagine that government officials said: "we respect your freedom to endorse and practice Buddhism. But we forbid you from associating with fellow Buddhists. To enforce this prohibition, we'll make sure to prevent you from traveling to any more mindfulness retreats." This would obviously be unjust. This example suggests that freedom of religion protects our ability to form relationships with co-religionists by worshipping with them, participating in religious ceremonies and events, and associating with them in other ways. And, in order to associate with people in these ways, you need to enjoy freedom of movement. To worship along with your co-religionists, you must actually travel to a place where your co-religionists reside.

The point generalizes to other freedoms: we need freedom of movement to exercise a range of personal liberties. This is why restrictions on freedom of movement normally violate freedoms that liberals (and others) prize, such as freedom of religion, freedom of association, occupational freedom, and so on. Take occupational freedom. Most people think that we should have the freedom to pursue the occupation of our choice. If you want to become an actor, college professor, or auto mechanic, the state should let you pursue your dreams. But this freedom is worthless if you lack the ability to actually travel to your place of work. Suppose that government officials told you: “sure, you have the freedom to become dental hygienist, but we will stop you from reaching any dentist office.” Clearly, your freedom of occupational choice is violated to the extent that you lack freedom of movement in this case.

I want to consider one final, morally relevant feature of restrictions on freedom of movement. These restrictions interfere with the liberty of people on both sides of a border. In Neighborhood, state officials obviously restrict your liberty. But these officials in effect restrict the freedom of people outside of your neighborhood as well. Look at it this way: restrictions on *your* movement impair *their* freedom to associate with you. Suppose employers want to hire you or your family wants you to live with them. Officials remove these possibilities by blocking your freedom of movement. Merely restricting your freedom of movement indirectly affects the freedom of other people who want to associate with you. It seems presumptively wrong to curtail other people’s freedom to associate with or interact with you, and this compounds the injustice of restricting your movement.

Some Objections

You might concede that it's wrong for state officials to restrict your freedom of movement in Neighborhood. But you might argue that this is an extreme case. Sure, it's wrong for governments to put you in prison without justification. It hardly follows from this that states are obligated to respect your freedom of movement in general. Instead, maybe states are only obligated to ensure that you have an adequate range of options.⁵ The government avoids violating your rights if it restricts your freedom of movement *and* you already have an adequate range of options to live a decent life. So, this objection says that it's wrong to restrict your freedom of movement if you lack enough options to live a decent life. Otherwise though it can be permissible to restrict your freedom of movement.

The problem with this line of argument is that we actually have strong reasons to avoid restricting freedom of movement even when people already have adequate or decent options. Let's consider a new variation on Neighborhood. Imagine that you live in a major city—say, Los Angeles. You have plenty of good options in this city. You can access a range of jobs, associate with a wide variety of people, and access many different cultural opportunities. After all, there are more people in Los Angeles county than there are in many countries, such as Denmark or New Zealand. So, you can have a decent life if you stay in Los Angeles. But imagine that state officials decide to stop you from leaving the city or that all other towns and cities in the United States deny you admission. If you try to get to San Francisco, the police will track you down and force you to come back to Los Angeles. Let's call this case: *City*.

It's less bad for officials to stop you from leaving Los Angeles than it is for someone to prevent you from leaving your neighborhood. It's still wrong though. This indicates that, even if you have decent options where you live, states should still respect your freedom to move. To drive this point home, let's compare freedom of movement to other freedoms, such as freedom of

occupational choice. Suppose that you already have a good job and you can easily satisfy your basic needs. You are a tenured college professor, say. But you want to pursue a new career in a different industry because you are bored with your work and you want a career that you'll find more meaningful. Let's imagine that the government forbids you from changing jobs.

Government officials explain: "you already have a job, plenty of decent options, and you already have enough options to live a good life. So, it's permissible for us to prohibit you from quitting your tenured professorship."

This is obviously a bad argument. It's wrong to stop you from exercising your occupational freedom even if you can already satisfy your basic needs or have decent options. The same point again applies to other valuable liberties. Take freedom of religion. It's unjust for the government to forbid me from practicing the Jedi religion despite the fact that I have plenty of other religious options. We can apply this point to freedom of movement too. States should still respect your freedom of movement regardless of whether you are already well-off or not. There's no cutoff point. So, states can have strong moral reasons to avoid interfering with the liberties of people who have many options, as they can have important interests in enjoying freedom of movement as well.

You might wonder at this point: is it wrong to restrict someone's freedom of movement if they don't care about using this freedom? Imagine that you live in Montana. You have no interest in moving to Los Angeles because you're constitutionally adverse to traffic. Might it still be wrong to restrict your ability to move to Los Angeles? The answer: it can be wrong to infringe on your freedom of movement even if you lack any plan to make use of this freedom. Return to Neighborhood. Let's make the unlikely assumption that you are perfectly content to stay in your

neighborhood in the near term. Yet restricting your freedom to leave your neighborhood sets back your interests in another way.

Let's distinguish between two kinds of interests: interests in accessing particular options and interests in enjoying possibilities.⁶ We have interests in doing particular things, like living with our families or working at the particular job that we hold. Restrictions on freedom of movement can obviously set back these interests. Yet we also have interests in possibilities—the possibility of meeting new people, finding a new job, experiencing new cultural opportunities, and so on.⁷ By trapping you in your neighborhood, the police officers extinguish these possibilities in addition to frustrating your interests in accessing the particular options that you happen to value. Restrictions on freedom of movement damage both your interests in accessing the options you value *and* your interests in keeping your options open.⁸

Notice that we often have strong interests in keeping our options open even though we lack interests in accessing these options. Suppose that I have no interest in attending my local church because I'm an atheist. But imagine that the government forbids me from attending church. The government has wronged me. While this option of attending church is currently of little interest to me, it may one day be extremely important. I might change my mind about religious matters and become passionate about attending church. So, even though I now lack an interest in accessing the option of going to church, I maintain a strong interest in preserving my option of attending church.

You might now say: "okay, I'm convinced that freedom of movement is valuable. But, look, states restrict freedom of movement all of the time. States install traffic lights, enforce the rules of the road, and protect property rights in land. You can't just sleep on my lawn or park your car in the middle of the freeway. All of these things restrict freedom of movement and all of

them are totally justified. If these restrictions on freedom of movement are justified, then it's false that other restrictions on freedom of movement are necessarily unjust either."

If you made this objection, you'd have a point. It's sometimes acceptable to curtail people's freedom of movement if there's sufficiently good reason to do so. We have excellent reasons to maintain traffic rules and these reasons surely outweigh the reasons we have to refrain from slightly restricting people's freedom of movement. Maybe the same holds true for private property rights. Unless you're a radical socialist, you think that there are good reasons to respect private property and these reasons seem to outweigh the reasons to promote freedom of movement in some cases. The same basic point applies to other basic liberties. Few people think that freedom of speech allows you to stand outside your neighbor's house at 3am screaming obscenities through a loudspeaker.

So, I'd concede that we can permissibly restrict freedom of movement. But I never said that freedom of movement is absolute and my argument doesn't rely on this view. My argument only depends on the assumption that there are strong reasons to refrain from restricting freedom of movement in virtue of the fact that freedom of movement has a constitutive relationship with valuable freedoms. That's consistent with the claim that it's okay for the state to enforce traffic rules.

Let's now gather together some preliminary conclusions about the value of freedom of movement. These are:

- Freedom of movement is a constitutive component of valuable liberties. As a result, freedom of movement is itself a valuable liberty.

- As states have strong moral reasons to respect valuable liberties like occupational freedom, freedom of association, and so on, they have strong moral reasons to respect freedom of movement. But these reasons can be defeated by other considerations.
- States should respect freedom of movement even if people already have adequate options to live decent lives and if they lack a strong desire to make use of this freedom right now.
- Restrictions on freedom of movement interfere with the liberties of people on both sides of a border—the people who want to move and those who want to associate with these potential migrants.

With these clarifications on the table, let's now turn to immigration restrictions.

3. The Presumption Against Immigration Restrictions

Immigration restrictions infringe on freedom of movement. Immigration restrictions coercively stop many millions of people from moving to other countries, and they in effect forbid citizens of states that restrict immigration from associating with foreigners.

Let's return to the case that I discussed in the beginning of this chapter: the case of Gabriel Hernández Cortez. To recap: Gabriel is a Mexican citizen who lives in poverty and who wants to immigrate to the United States. He tried to cross the border, but border agents used physical force to stop him, imprison him, and deport him back to Mexico. Most people would judge that the conduct of state officials in Neighborhood and City is wrong. But many people also endorse immigration restrictions that prevent people like Gabriel from crossing borders.

Why though? If it's wrong to restrict your freedom of movement in Neighborhood and City, then why it's permissible for American officials to prevent people like Gabriel from immigrating to the United States? Here's my view: the same reasons bear on each of these cases.

Public officials have strong moral reasons to refrain from restricting your freedom of movement in Neighborhood and City and, if public officials have these reasons, then the United States government has strong moral reasons to refrain from restricting Gabriel's freedom of movement too. Let's now consider some different ways of blocking this conclusion.

Duties to Foreigners

An objector might argue that governments lack obligations to maximize the freedoms of foreigners. This critic might reason as follows: "It would be *nice* if the United States allowed Gabriel to immigrate. But the United States only has obligations to expand and protect the freedom of Americans, not the freedoms of foreigners. So, it's permissible for the United States to refuse to allow Gabriel to immigrate. In contrast, state officials have duties to respect the liberties of their citizens. These duties explain why it's wrong for state employees to forbid you from leaving your neighborhood or city."

It's false though that governments only have obligations to respect the freedom of their own citizens. They are obligated to respect the liberty of foreigners too. This is so because we have "negative" duties to other people. Negative duties are duties to refrain from harming or coercing people. Negative duties are universal. They apply to all other people simply in virtue of their humanity. I ought to refrain from beating other people up just because they're people, not because they're my compatriots.

Here are some other examples to illustrate:

- (A) A Mexican police officer, Fernando, decides to assault and imprison an American tourist, Tracy, while she is visiting Mexico.

- (B) An American public official, Roy, goes on a vacation to Mexico and he assaults Mexican citizens without provocation.
- (C) American public officials decide to forcibly round up foreign tourists in the United States and place them in a prison camp.
- (D) The president of the United States orders a military strike on a Mexican city, killing hundreds of non-combatants. This strike is unprovoked.

The actions (A-D) seem wrong. But why? The answer again is that we have negative duties to refrain from interfering with other people, even if they are foreigners. We might say that the negative duty to refrain from harmful interference is a “general” duty, a duty that we *prima facie* owe to all other people. So, we can’t coerce, assault, or imprison foreigners without a good justification.

What about Gabriel’s case though? It looks like state officials in this example are violating negative duties here too. In particular, their negative duties to refrain from coercing Gabriel. Maybe this duty is overridden by other considerations. But at first glance officials do have these duties. After all, if the actors in (A-D) have duties to respect the rights and liberties of foreigners, then it stands to reason that immigration agents have these duties too. The point generalizes. The United States government has obligations to respect the freedom of Gabriel and others who want to immigrate. These obligations are moral reasons to oppose immigration restrictions.

Positive Duties

You might object to my argument by pointing out that rights to immigrate involve more than just the permission to enter a territory. When someone immigrates, they also become

entitled to public services, such as police protection and access to the courts, and eventually other resources, like welfare benefits.⁹ These benefits can be costly. Citizens might need to foot the bill for public benefits in the form of higher taxes, say. So, the decision about whether to admit Gabriel into the United States is not just about the decision to refrain from forcibly stopping him from immigrating. It's also about whether citizens are obligated to bear the costs of allowing Gabriel to immigrate. For this reason, you might reasonably doubt whether we can ground the right to immigrate solely in the negative duty to refrain from coercing foreigners.

Maybe allowing Gabriel to immigrate would impose costs on citizens. Yet this fails to break the analogy between immigration and Neighborhood and City. If the police allow you to leave your neighborhood or city, then your movement might impose costs on other people. Suppose that, if the government lets you leave your neighborhood or city, then you will move to a nearby city. And, once you live in this town, you'll become entitled to public services there. You will be entitled to police protection, access to the courts, and so on. This may impose costs on the other residents of the town where you now live. Yet the actions of state officials in Neighborhood are unjust nevertheless. Gabriel's immigration seems no different to me. It looks like it's false that we can permissibly deny a person freedom of movement just because this person *might* impose costs on others.

Here's another way of looking at this issue. The right to immigrate is actually constituted by two different kinds of duties. If you have a right to immigrate to Finland, then third-parties have negative duties to refrain from interfering with your movement to Finland. Moreover, the Finnish government has a positive duty to provide you with basic services and legal protections if you choose to immigrate. Positive duties are duties to act in a way that provide resources or assistance to other people. So, it's true that the right to immigrate involves more than just

negative duties. But it's still the case that the case that, if a state denies you the permission to immigrate, then this state violates a negative duty. That's enough to explain the injustice of immigration restrictions.

Consider an analogy. Suppose that my wife and I want to have another child. But the government of Richmond, Virginia (where we live) tells us no. A government spokesman explains to us that, if we have another child, this will impose positive duties on our fellow Richmonders. Now other residents of Richmond will have positive duties to help pay for the schooling of our child, their police protection, their access to the courts, and so on. If we persist and have another child, the government will, regrettably, have to punish us through heavy fines and jail time. Everyone can recognize that the government is doing something wrong here. The government is violating a negative duty, a duty to respect our reproductive freedom. It's no justification for doing so that our actions impose positive duties on other Richmonders.¹⁰

The same goes for immigration. If states have negative duties to refrain from coercing foreigners, then states have a strong reason to allow foreigners to immigrate. The fact that states also have positive duties to provide services to people after they immigrate is a non-sequitur. It's irrelevant to the claim that states have negative duties to foreigners as well. And immigration restrictions seem to violate these negative duties, which explains why these restrictions are *prima facie* wrong.

Adequate Options

Suppose that you agree with me that it seems unjust for the United States to exclude people like Gabriel. But you could deny that this judgment generalizes to immigration restrictions more broadly. You could argue that it's wrong to exclude Gabriel because Gabriel is

unable to satisfy his basic needs or the basic needs of his child. Maybe Gabriel lacks adequate options to live a decent life. He's unable to find a decent job and source of income. However, you might claim that it's permissible to restrict the immigration of someone who is already well off. Thus, Gabriel's case fails to ground a *general* objection to immigration restrictions. So, on this line of argument, it's wrong to deny admission to foreigners if this imperils their ability to satisfy their basic needs, but it may be permissible to restrict their entry otherwise.

Yet it seems impermissible to restrict the immigration of people who are already well off. Let's consider another case. This case is fictional, but it's hardly unrealistic. Imagine that Jolene is a citizen of the United States. Jolene is well-off. She has a decent job and income and her rights are reasonably well-protected. But Jolene wants to immigrate to Canada. She prefers Canadian culture and institutions to American ones, Jolene has friends there, and she wants to pursue job opportunities that are more available in Canada. The Canadian government prohibits Jolene from immigrating though. Jolene doesn't have any skills that are in great demand in Canada, she is not a refugee, and she lacks immediate family there.

Is it unjust for Canada to exclude Jolene? To answer this question, let's return to my thought experiment *The City*. To recap, you live in Los Angeles, you are already well off, and you have plenty of options for living a decent life. Nonetheless, it seems wrong for government officials to trap you in Los Angeles. Thus, even if you have decent options where you live, states should still respect your freedom to move. But, if restricting your movement in this case is unjust, then it could be unjust for Canada to restrict Jolene's freedom to move there despite the fact that she already has good options where she lives. Remember that freedom of movement has no cutoff point. Like other liberties such as freedom of speech and occupational freedom, states

have good reasons to respect your freedom of movement even if you already have plenty of options of where to move.

A critic might object to my analogy between Neighborhood or City and immigration restrictions. This critic might argue: “there is a difference between trapping someone in a city or neighborhood and merely refusing to allow someone to immigrate to another country. If you trap a person in a neighborhood or city, you completely cut off this person’s options. In contrast, when the Canadian government refuses to permit Jolene to immigrate, they just remove one of her options.” I agree. But this fails to show that immigration restrictions are acceptable. For one thing, many people lack the legal option of immigrating to *any* other countries. So, if another country denies them the option of immigrating, then this country in effect is trapping them in the country where they currently live. Maybe Canada is not solely at fault if Jolene is trapped in the United States. Other countries may also deny Jolene the option of moving. Yet, by denying Joelene admission, Canada contributes to a situation in which Jolene is trapped.

Obviously, it *is* morally worse for the United States to stop Gabriel from immigrating than it is for Canada to forbid Jolene from immigrating. Everything else being equal, it’s worse to coercively stop a person from moving from one place to another if this person’s interest in doing so is stronger. Gabriel has a stronger interest in moving to the United States than Jolene has in immigrating to Canada. If Gabriel had the chance to immigrate to the United States, this would make him much better off. But it does not follow from this that it’s permissible to prohibit Jolene from moving to Canada. There are degrees of wrongness. It’s worse to kill an innocent person than it is to break her arm. It hardly follows that it’s permissible break an innocent person’s arm. It’s important though to emphasize that there are stronger moral reasons against restricting the freedom to immigrate when this sets back people’s urgent interests, such as their

interests in satisfying their basic needs or escaping oppression. And actual immigration restrictions trap many people in conditions of poverty and vulnerability (§1.4).

Liberal Assumptions

Here's one final objection to my argument: it relies on liberal moral premises. My core premise is the value of human freedom. If states have strong moral reasons to respect the basic liberties, then states have strong moral reasons to respect freedom of movement, including foreigners' freedom of movement. I've been taking it for granted that states should respect certain basic liberties, such as occupational freedom, freedom of association, and so on. More fundamentally, my argument rests on an aversion to violence and coercion and an affirmation of the equal dignity and rights of all individuals.

These are liberal assumptions. Liberalism is a political philosophy that emphasizes individual liberty and holds that liberty has priority over other social values. Liberals include people like John Locke, John Stuart Mill, Isaiah Berlin, John Rawls, Friedrich Hayek, and many others. Liberals affirm everyone's right to pursue their own good in their own way consistent with the equal rights of others. So, I'm guilty as charged—my argument assumes liberalism. Is that a problem?

Every moral argument needs to start from somewhere. There are few, if any, moral arguments that start from premises that no one rejects. Liberalism seems as good a place to start as any. It's true that I won't defend liberal principles here. Doing so is beyond the scope of my project. But many thinkers over hundreds of years have defended liberal principles. I doubt I could add much to what they've already been said.

Moreover, certain liberal principles seem to be grounded in commonsense morality. Liberals think that it's presumptively wrong to coerce people without a good justification. This liberal commitment is just moral commonsense. If I walked up to you and punched you in the face or threatened you for no good reason, everyone would say that's wrong. If I locked you in my basement without provocation, everyone would say that I'm a kidnapper and a terrible person.¹¹ Public officials aren't much different in this regard. I deny that they have a special moral permission to coerce people that you and I lack. And this is the key premise in my argument against immigration restrictions. Immigration restrictions coerce people and thus need a good justification. This justification is probably not forthcoming.

4. Immigration Restrictions Cause Deprivation

People often object to immigration restrictions on the grounds that they trap people in conditions of deprivation. But my arguments suggest that immigration restrictions would be morally problematic even in a world without poverty and oppression. Immigration restrictions interfere with people's personal liberties regardless of whether these people are well off or not.

That said, immigration restrictions in practice do contribute to deprivation. Migrants like Gabriel are desperate and destitute. These cases are not exceptional. States prohibit many destitute and desperate foreigners from immigrating. So, actual immigration restrictions set back the urgent interests of many people. And remember that it's morally worse to stop someone from doing something to the extent that this person has a stronger interest in performing this action. Oppressed and impoverished people often have strong interests in crossing borders. Thus, the moral reasons that speak in favor of allowing them to immigrate are strong too. To get a sense of how harmful immigration restrictions are, let's consider two factors: (1) how much people would

benefit from immigrating and (2) how many people would like to immigrate but are unable to do so.

Let's start with (1). The economist Branko Milanovic finds that location of birth is the biggest predictor of a person's lifetime income.¹² Your prospects in life are probably determined less by your class or sex than by the place where you were born. If location determines your prospects in life, then this suggests that moving your location could improve your prospects. And this is what economists find. Estimates indicate that low-skilled immigrants from Mexico raise their wages by over 400 percent after they migrate to the United States. Unskilled Salvadorians increase their annual incomes from about \$1,200 to \$18,000 by moving to the United States.¹³ This increase could partly be due to selection. Maybe people who decide to immigrate have characteristics that also make them earn higher wages than other people. But economists examine immigration lotteries to mitigate selection bias—they study cases in which people are randomly selected to immigrate. And they still find that foreigners massively increase their wages by immigrating.¹⁴ In general, low-skilled workers in poor countries can more than triple their real earnings by moving to the United States or a similar country.¹⁵

Another way of understanding the benefits of open borders (and the harm that immigration restrictions cause) is to estimate the impact of open borders on the world economy. Some economists argue that immigration would dramatically improve the standard of living of people in poor countries. They estimate that, if states opened their borders, the world economy would double in size and most of these gains would go to the residents of poorer countries. Michael Clemens says: "when it comes to policies that restrict emigration, there appear to be trillion-dollar bills on the sidewalk."¹⁶ If that's right, immigration laws prevent enormous gains to the global economy. The economist John Kennan has investigated the effects of open borders

on the incomes of all workers in forty low-income countries.¹⁷ Kennan finds that open borders would raise the average annual income per worker (including non-migrants) by about a 125 percent. Even more conservative estimates find that more immigration would represent a major boost to the world economy.¹⁸

Historical evidence supports the view that immigration can be a potent force for reducing poverty and inequality.¹⁹ Consider evidence from the nineteenth century. Although it's hard to imagine now, many states in the Western hemisphere had open borders. Pretty much anyone could legally immigrate. Economists Kevin O'Rourke and Jeffrey Williamson have analyzed the effects of immigration during this period. They argue that migration accounts for the entirety of economic convergence between rich and poor countries: "all . . . of the [global] real wage convergence between 1870 and 1910 was attributable to migration."²⁰ At first glance, there's little reason to think that more open borders wouldn't generate similar gains today. The liberalization of immigration restrictions would probably benefit people in the developing world much more than other policies like trade liberalization or foreign aid.²¹

Why do migrants benefit from immigrating? Here're a few reasons. Richer states tend to have better institutions. They do a *relatively* good job of protecting property rights, implementing the rule of law, and avoiding inefficient regulations. Rich states also tend to have more human capital, better technology, and superior infrastructure. These attributes help people to become more productive when they move to rich countries.²² Productivity is the main determinant of income. So, we should expect that moving people from a poor to a rich country would significantly increase their incomes. In fact, migration from, say, Nigeria or Chad to an affluent country massively boosts people's standard of living. To take another example, computer programmers earn dramatically more in the United States than they do in India, even

though they're performing similar tasks.²³ Thus, to the extent that immigration restrictions prevent these people from moving, these restrictions deny foreigners large benefits.

There is more to life than money, of course. People want to immigrate for non-economic reasons too. People move in order to escape authoritarian governments, political instability, and violence. Authoritarian regimes rule a large fraction of the human race. According to one estimate, about a third of the global population lives under governments that are “not free”—these countries heavily restrict civil and political liberties.²⁴ The residents of these countries often want to immigrate to states that protect their civil and political liberties. Many people also live in societies with high rates of violence. For example, Latin American countries experience high rates of drug-related violence. This violence has caused hundreds of thousands of people to immigrate to other countries, such as the United States.²⁵ Civil wars in the Middle East have recently generated millions of refugees who desperately want to find safety abroad.

You can tell how badly people want to immigrate by observing how many of them die trying to do so. About forty thousand people have died while trying to cross borders between the years 2000 and 2014.²⁶ Immigration restrictions are responsible for many of these deaths. If people could legally immigrate to other countries, they could just buy plane tickets or use other legal and safe ways of moving. But people often lack the legal right to immigrate to other states. So, they try to immigrate without official authorization. To migrate without authorization, migrants use dangerous routes in order to evade immigration agents and border fences. They undertake dangerous sea journeys or cross arid deserts in order to migrate. The predictable consequence is that many of these migrants die.

So, it appears that a large number of people would benefit a great deal if they could immigrate, but they cannot do so. But how many people would immigrate if they could? Some

social scientists estimate how many people would move under open borders by surveying them. According to one survey, 40 of adults in the poorest quartile of countries say that they would like to move permanently to another country. Over 600 million adults desire to move to another country permanently and over a billion want to immigrate temporarily.²⁷ In one World Bank study, about 62 percent of Albanians, about 79 percent of Romanian males, and 73 percent of Bangladeshi men expressed interest in immigrating to another country.²⁸ Maybe most respondents in these surveys are exaggerating. Perhaps they say that they would immigrate, but they would decline to do so if actually given the opportunity. But suppose that even a small fraction of respondents would actually immigrate if they had the opportunity. Tens of millions would still move in a world of open borders. Entire countries might empty out.

Other pieces of evidence suggest that a large fraction of the global population would migrate under open borders. Sometimes countries do have open borders with one another. Here's an example: Puerto Rico and the United States. While Puerto Rico is a distinct nation, it's a part of the United States. So, Puerto Ricans can freely immigrate to the United States. It turns out that a large fraction of them have done so. It took decades for migration from Puerto Rico to pick up steam, but more Puerto Ricans now live on the mainland United States than live on the island of Puerto Rico.²⁹ Compare this with other countries in the Caribbean. For example, only about 5 percent of Haitians live in the United States, even though Haiti is far poorer than Puerto Rico.³⁰

You may still harbor doubts that immigration is such a good deal for the global poor. One common concern is that, if states allowed more immigration, then skilled workers from poor countries would immigrate.³¹ If skilled workers left, this would deprive poor countries of human capital. The most talented entrepreneurs and the most educated citizens would seek their fortunes

in rich countries. Poor countries would thus lose their most skilled citizens. Wouldn't this make the global poor worse off?

Economists actually disagree about the effects of skilled migration. While some economists think that the emigration of skilled workers has negative effects on poor countries, others believe that this emigration has neutral or even positive impacts.³² Skilled workers may benefit the compatriots that they leave behind by forming technological and trade networks between their new and old countries. They also spread valuable ideas and send home remittances. Also, migration is often circular. Skilled people might work in, say, Britain for a few years and return home with more education and skills. In these and other ways, skilled migration can make poor countries better off.

Anyway, the current order makes it much easier for skilled workers to immigrate to rich countries.³³ Rich countries are eager to recruit doctors and computer programmers from poor countries while they shun construction workers and taxi drivers. If more people from poor countries could immigrate to rich countries, we should expect a higher proportion of unskilled workers to immigrate. So, more liberal immigration policies might not make the problem worse relative to the status quo. At worst, concerns about skilled migration merely limit the scope of my argument. My claim is that more immigration is good for the global poor. Maybe that's false about skilled immigration. Regardless, it's still true about unskilled migration. Even if skilled migration is bad for the global poor, people in poor countries would benefit if more unskilled workers had the legal opportunity to immigrate to rich countries.

To sum up, immigration has large benefits for migrants, and immigration restrictions deny these benefits to many millions of people. This empirical information is relevant because it tells us something about the magnitude of the harms that immigration restrictions inflict on

people. Immigration restrictions curtail valuable freedoms and this fact grounds a powerful objection to these restrictions. I think that immigration restrictions are morally problematic even if they avoid trapping people in poverty or oppression. But, as I claimed earlier, it's morally worse to coercively stop people from immigrating if their interest in doing so is stronger. People have weighty interests in substantially improving their standard of living, escaping authoritarian governments, and living in conditions free from violence, and that immigration restrictions frustrate these interests.

5. Conclusion

This chapter has sketched a presumptive case against immigration restrictions. Roughly speaking, my argument is that respect for individual liberty grounds a presumption in favor of free movement. Furthermore, actual immigration restrictions are especially problematic because they prevent many people from escaping poverty, oppression, and other harms. Obviously, my argument so far falls short of showing that immigration restrictions are all-things-considered justified. Maybe there are good reasons for immigration restrictions and the reasons outweigh the considerations against them. Let's now turn to this possibility.

¹This story is reported in: Margaret Regan, *The Death of Josseline: Immigration Stories from the Arizona Borderlands* (Boston, Mass.: Beacon Press, 2010), pp. 16-20.

² This story is from: This American Life, *The Walls*, March 18th 2018, accessed June 1, 2018, <https://www.thisamericanlife.org/641/the-walls>.

³ Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics* 49, no. 02 (1987): 251–73; Joseph Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013); Michael Huemer, "Is There a Right to Immigrate?," *Social Theory and Practice* 36, no. 3 (2010): 429–61.

⁴ This discussion draws on ideas developed in: Christopher Freiman and Javier Hidalgo, "Liberalism or Immigration Restrictions, But Not Both," *Journal of Ethics and Social Philosophy* 10, no. 2 (2016): 1–22.

⁵ Something like this view is suggested in: David Miller, "Immigration: The Case for Limits," in *Contemporary Debates in Applied Ethics*, 2nd Edition (Malden, MA: Wiley-Blackwell, 2013), 363–75.

⁶ Here I'm relying on a point made in: Kieran Oberman, "Immigration as a Human Right," in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (New York: Oxford University Press, 2016), 32–56.

⁷ Oberman.

⁸ For a discussion of the value of keeping one's options open, see: Ian Carter, "The Independent Value of Freedom," *Ethics* 105, no. 4 (1995): 819–45.

⁹ For a version of this objection, see: Caleb Yong, "Immigration Rights and the Justification of Immigration Restrictions," *Journal of Social Philosophy* 48, no. 4 (2017): 461–480.

¹⁰ I develop this point in greater detail in: Javier Hidalgo, "Immigration Restrictions and the Right to Avoid Unwanted Obligations," *Journal of Ethics and Social Philosophy*, 2014, 1–8.

¹¹ Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (New York: Palgrave Macmillan, 2012).

¹² Branko Milanovic, "Global Inequality of Opportunity: How Much of Our Income Is Determined By Where We Live?," *Review of Economics and Statistics*, 2014.

¹³ Lant Pritchett, *Let Their People Come: Breaking the Gridlock on Global Labor Mobility* (Washington, D.C.: Center for Global Development, 2006), p. 22.

¹⁴ David McKenzie, Steven Stillman, and John Gibson, "How Important Is Selection? Experimental vs. Non-Experimental Measures of the Income Gains from Migration," *Journal of the European Economic Association* 8, no. 4 (2010): 913–45.

¹⁵ Immigration restrictions set back the interests of other people besides the people who would move. For instance, when people immigrate, they often send back remittances to their home countries. Michael Clemens, Claudio E. Montenegro, and Lant Pritchett, "Bounding the Price Equivalent of Migration Barriers," *Review of Economics and Statistics*, (Forthcoming).

¹⁶ Michael Clemens, "Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?," *Journal of Economic Perspectives* 25, no. 3 (2011): 83–106.

¹⁷ John Kennan, "Open Borders," *Review of Economic Dynamics* 16, no. 2 (April 2013): L1–13.

¹⁸ Frédéric Docquier, Joël Machado, and Khalid Sekkat, "Efficiency Gains from Liberalizing Labor Mobility," *The Scandinavian Journal of Economics*, 2014, n/a-n/a.

¹⁹ I've adapted this paragraph from: Javier S. Hidalgo, "An Argument for Guest Worker Programs," *Public Affairs Quarterly* 24, no. 1 (2010): 21–38.

²⁰ Kevin H. O'Rourke and Jeffrey G. Williamson, *Globalization and History: The Evolution of a Nineteenth-Century Atlantic Economy*, Reprint edition (Cambridge, Mass.: The MIT Press, 2001), p. 163.

²¹ Dani Rodrik, "Feasible Globalizations," in *Globalization: What's New?*, ed. Michael Weinstein (New York, NY: Columbia University Press, 2005), 196–213.

²² For more discussion, see: Bryan Caplan and Vipul Naik, "A Radical Case for Open Borders," in *The Economics of Immigration*, ed. Benjamin Powell (New York: Oxford University Press, 2015), 180–209.

²³ Michael A Clemens, "Why Do Programmers Earn More in Houston than Hyderabad? Evidence from Randomized Processing of US Visas," *American Economic Review* 103, no. 3 (2013): 198–202.

²⁴ Freedom House, *Freedom in the World 2014*, available online at:

<http://www.freedomhouse.org/sites/default/files/Freedom%20in%20the%20World%202014%20Booklet.pdf> (accessed September 17th, 2014).

²⁵ Viridiana Rios Contreras, "The Role of Drug-Related Violence and Extortion in Promoting Mexican Migration: Unexpected Consequences of a Drug War," *Latin American Research Review* 49, no. 3 (2014): 199–217; Michael Clemens, "Violence, Development, and Migration Waves: Evidence from Central American Child Migrant Apprehensions" (Center for Global Development, 2017), <https://www.cgdev.org/publication/violence-development-and-migration-waves-evidence-central-american-child-migrant>.

²⁶ International Organization for Migration, *Fatal Journeys: Tracking Lives Lost During Migration* (Geneva, Switzerland: International Organization for Migration, 2014).

²⁷ These figures come from: Clemens, "Economics and Emigration," p. 83.

²⁸ Branko Milanovic, *The Haves and the Have-Nots: A Brief and Idiosyncratic History of Global Inequality* (Basic Books, 2012), p. 127.

²⁹ Nelson Denis, "Due to Crisis, More Puerto Ricans Now Live in the U.S. Than on the Island," *The Atlantic*, July 6, 2015, <https://www.theatlantic.com/politics/archive/2015/07/due-to-crisis-more-puerto-ricans-now-live-in-the-us-than-on-the-island/432246/>.

³⁰ Pritchett, *Let Their People Come*, p. 71.

³¹ For concerns along these lines, see: Gillian Brock, *Global Justice: A Cosmopolitan Account* (New York: Oxford University Press, 2009).

³² For contrasting perspectives on skilled immigration, see: Devesh Kapur and John McHale, *Give Us Your Best and Brightest: The Global Hunt for Talent and Its Impact on the Developing World* (Baltimore, MD: Brooking

Institution Press, 2005); Michael Clemens, “Losing Our Minds? New Research Directions on Skilled Emigration and Development,” *International Journal of Manpower* 37, no. 7 (2016): 1227–48.

³³ Kapur and McHale, *Give Us Your Best and Brightest: The Global Hunt for Talent and Its Impact on the Developing World*.

Chapter 2: Challenges to Free Movement

1. Introduction

In his book *The New Minority*, Justin Gest interviewed white working class people about their political views and concerns. His subjects live in formerly thriving towns that have experienced sharp downturns (the towns are Youngstown, Ohio and Dagenham, England). These towns had also received an influx of immigrants. Gest found that most of the people that he interviewed strongly opposed immigration.

One British woman was so concerned that she wrote a letter to the prime minister with the following observation. Her letter reads:

I am proud to be English and I love England but I hate seeing it disappear and our language being lost among all these other tongues. I hate seeing our way of life eroding and all our values being ignored. I hate all our little bits of green being built on to house even more immigrants, who are a drain on our society, certainly of no benefit to us.¹

Other respondents reported similar worries. One man said:

The West Indians make me goat curry all the time. I'm not a racist. I fucking love goat's curry, pardon my language. But the principle of English families not coming first is just not right.²

Some respondents expressed sympathy with immigrants. They acknowledged that immigrants have good reasons for moving to other countries. But they condemned immigration anyway. One person remarked: "we're not going to other countries and working for little money, nicking other people's jobs."³ Gest writes: "Nearly all believed that immigration was out of hand" and "[n]early all were frustrated with the 'politically correct brigade' favoring the rights of immigrants over the entitlements of citizens."⁴

As Gest's book illustrates, people often dislike immigration. This tendency is probably obvious for anyone who turns on the news. Populist parties are surging in popularity. One of their main platforms is stopping immigration. Many people think that immigration harms their societies and has stripped them of control of their countries. We might chalk some of this opposition to immigration up to ignorance and racism. But there's no denying that people have important concerns about immigration. We should take these concerns seriously and examine them carefully. At any rate, common reasons for opposing immigration have philosophical analogues. Many ordinary people think that citizens should come first over immigrants and that communities have rights to control their cultural and demographic destinies. These claims express inchoate moral arguments against immigration that philosophers and political theorists have developed in a more rigorous and sustained way. Even though I'll ultimately argue that objections to immigration have little merit, they're still worth a close look.

So, in this chapter, I'll examine these arguments for immigration restrictions. I'll also argue that they are unsound. I won't try to rebut every argument for immigration restrictions.⁵ Instead, I'll focus on the more philosophically interesting and influential arguments that also make some connection with ordinary people's concerns about immigration.

2. National Partiality

When people defend immigration restrictions in public debate, they often cite the costs of immigration. They claim that immigration raises unemployment, lowers wages, increases crime and terrorism, and has other harmful effects. Critics of immigration then conclude that immigration restrictions are justified. But usually critics of immigration only cite the costs of immigration to native citizens. They ignore the benefits of immigration to the immigrants.

Why do defenders of immigration restrictions ignore the benefits to foreigners? Because they think that states ought to protect their own citizens first and that states have minimal duties to foreigners. The influential economist George Borjas writes along these lines: “immigration should be set in ways that further the national interest, and the nation’s interest may simply not coincide with giving any particular person or any particular ethnic group the opportunity to partake in the unrivaled opportunities that the United States has to offer.”⁶ Donald Trump put the point more bluntly: “there is only one core issue in the immigration debate and it’s this: the well-being of the American people. Nothing even comes a close second.”⁷

These proponents of immigration restrictions are implicitly appealing to the view that we ought to prioritize the interests of our fellow citizens over the interests of foreigners. Let’s refer to this view as *compatriot partiality* and people who accept this view as “partialists.” Partialists believe that we have special obligations to our fellow citizens and that we lack these duties to foreigners. A special obligation is an obligation that you owe to another person in virtue of some relationship or interaction that you have with this person. For instance, you probably think that you have special obligations to your friends and family members and that you lack these obligations to strangers. According to a common view, citizens have special obligations to one another and government officials have special obligations to the citizens that they serve. These are moral reasons to benefit compatriots and protect them from harm.

We often think that special obligations are weightier than general obligations. For instance, it’s plausible that you have stronger obligations to benefit your spouse or children than you have to benefit strangers. Perhaps the same goes for your fellow citizens. Maybe your obligations to your compatriots outweigh our general duties to foreigners. So, if you face a

choice between benefiting your compatriot or an equally needy foreigner, you should benefit your compatriot.

Of course, this point wouldn't matter if immigration benefited everyone. If immigration benefited everyone, then we wouldn't need to choose between our compatriots and everyone else. But immigration has costs. Consider some possible economic costs of immigration. Many critics of immigration point to the bad effects of immigration on wages and employment. Immigration increases the number of workers in a society. If you increase the number of workers, then they may compete with native workers. This causes their wages to fall. Immigration could have other bad effects. Immigrants might consume more welfare benefits than they contribute. Immigration could increase crime and terrorism. Immigration also brings new and unfamiliar people into the community. This can make it harder for people in this community to maintain social ties and form new connections. In other words, immigration might reduce social solidarity. People may feel less connected with one another and less willing to cooperate in societies with mass immigration.

So, suppose that states have special obligations to benefit their citizens and that immigration has significant costs for citizens. If these two claims are true, then states' obligations to benefit citizens may outweigh their moral reasons to permit immigration. Michael Sandel suggests a view like this. Sandel suggests that the United States should restrict immigration from Mexico because this would protect American workers, even though American workers are better off than Mexican ones. Sandel writes:

Why should we protect our most vulnerable workers if it means denying job opportunities to people from Mexico who are even less well-off? From the standpoint of the least-advantaged, a case could be made for open immigration. And yet, even people

with egalitarian sympathies hesitate to endorse it. Is there a moral basis for this reluctance? Yes, but only if you accept that we have a special obligation for the welfare of our fellow citizens by virtue of the common life and history that we share.⁸

Other political theorists agree that compatriot partiality justifies immigration restrictions. David Miller says: “What justice requires is that the interest a particular immigrant (or group of immigrants) has in entering [a country] should be properly assessed and weighed against the interests of citizens in self-determination, but in the weighing process a degree of compatriot partiality is permissible.”⁹

The overall argument for immigration restrictions goes something like this:

1. Citizens (and public officials in particular) have special obligations to benefit their compatriots that they lack to foreigners.
2. Immigration imposes significant costs on citizens.
3. If citizens have special obligations to benefit their compatriots and immigration imposes significant costs on citizens, then citizens’ obligations to benefit their compatriots outweigh, at least in some cases, the moral reasons to permit more immigration.
4. If citizens’ obligations to benefit their compatriots outweigh the moral reasons to permit more immigration, then immigration restrictions are morally justified.
5. So, immigration restrictions are morally justified.

Let’s call this the *partiality argument* for immigration restrictions. I’ll now consider several different objections to the partiality argument.

Preliminary Objections

We can challenge the partiality argument at several different points. We might reject the empirical premises of the partiality argument. Take the economic effects of immigration. Many people think that immigration harms their economies, lowers wages, and has other bad economic consequences. But the evidence for these bad effects is thin.

A large number of studies have examined the effects of immigration on wages and other forms of economic activity, and these studies tend to find that immigration has few negative economic effects. One review of this literature concludes that the “large majority of studies suggest that immigration does not exert significant effects on native labor market outcomes” and that immigration has only small effects on public finances.¹⁰ Immigration also has significant benefits. For instance, a recent study tried to estimate the overall welfare effects of immigration on rich countries (the members of the OECD). Researchers found that immigration has benefited over 80 percent of all non-migrant citizens in these countries by providing distinctive goods and services.¹¹

I’ll discuss the empirical evidence on the economic effects of immigration in more detail later (§3.4). For now, I just want to point out that one problem with the partiality argument is that its empirical premises may be false. That said, it’s surely the case that immigration does *sometimes* cause harmful outcomes for citizens. Social scientists have documented cases in which immigration lowered wages, increased crime, or had other negative effects.¹² If immigration makes citizens worse off in some cases, then perhaps the partiality argument gets off the ground in those cases.

But there is another problem with the partiality argument. Even if immigration harms native citizens, it’s unclear why immigration restrictions are the answer to this problem. Governments could offset the harms of immigration in other ways. Suppose that immigration

worsened the economic prospects of poorer citizens. States could compensate for these losses by transferring income to poorer citizens and investing more in education and public goods that benefit poor citizens. You might respond by arguing that these alternative policies are expensive. Yet so are immigration restrictions. States spend many billions of dollars on immigration restrictions annually. For instance, the United States government spends about \$15 to 18 billion every year on immigration enforcement. The total deadweight losses from government spending on immigration restrictions are likely much larger still because citizens use resources to capture the gains from government spending. That is, citizens engage in wasteful lobbying to capture the “rents” from immigration policy.¹³ This money might be better spent elsewhere.

Anyway, maybe governments could compensate native citizens who lose out from immigration by transferring some of the gains from immigration to these citizens. States could tax immigrants more than citizens and transfer this revenue to citizens. Or states could charge immigrants a fee for admission (if immigrants are unable to pay, then states can’t loan them the money and they would need to pay it back over time). Bryan Caplan and Vipul Naik observe that defenders of the partiality argument are deeply uncreative. If open immigration would generate trillions of dollars in wealth, they should ask: “how can my countrymen get a hefty piece of the action?”¹⁴

Policies that transfer income from immigrants to citizens this might seem unfair to the immigrants. But it’s any better to exclude them entirely? These policy schemes have the advantage of compensating citizens for the harms of immigration while allowing people to immigrate. Defenders of the partiality argument think that the interests of foreigners matter somewhat. If that’s true, then immigration restrictions must be the last resort given that there are other policies that states could pursue instead to achieve similar objectives. Adherents of the

partiality argument must show that immigration restrictions are narrowly tailored to benefit citizens. Otherwise, states should adopt alternative policies that allow immigration and simultaneously benefit citizens.

Compatriot Partiality and General Duties

Let's grant that it's infeasible for states to adopt alternatives to immigration restrictions. Suppose that, for some reason, states are unable to compensate the people who lose out from immigration restrictions through other policies. So, I'll assume that immigration harms citizens and that states must impose immigration restrictions in order to avert these harms. Yet premise three of the partiality argument, the premise that states' special obligations outweigh their moral reasons to permit immigration, seems false. The duty to permit immigration defeats special obligations to one's compatriots when these duties come into conflict.

To motivate my argument for this conclusion, let's consider some cases. Here is a famous case that I have taken (with some modifications) from Judith Thomson:¹⁵

Imagine that you are an excellent transplant surgeon. At the moment, you have five patients who are dying of organ failure. If you want to save them, you will need to find two lungs, two kidneys, and a heart. You must find these organs soon in order to save your patients. Unfortunately, there are none available. But a young man comes to your clinic for a minor operation. This man just happens to have the right tissue type for your five dying patients. Suppose that you could arrange an "accident" such that this man dies during surgery. And, if the young man dies, you will have the organs that you need to save your five patients. Let's assume that no one will ever find out if you intentionally kill this young man. Finally, suppose that the young man happens to be a foreigner, while

your patients are your compatriots (if you'd like, you can also assume that you are a state employee).

Call this: *Compatriot Transplant*.

Should you kill the young man in order to save your five patients? Most people say "no." They think it's wrong to kill the one in order to save the five. The most straightforward explanation for this response is that it's impermissible to cause grievous harm to someone in order to bring about even a good outcome. And it seems grotesque to think that facts about the man's citizenship make any difference to your decision. It still appears wrong to kill a foreigner to save your compatriot patients. Another way to describe this judgment is that your negative duty to refrain causing harm to people defeat moral reasons to prioritize your compatriots.

You might object though that the surgeon case involves intentional harm. The surgeon intends to cause the foreigner harm in order to benefit compatriots. But most people think that it's morally worse to intentionally cause harm than it is to foreseeably cause harm. Moreover, immigration restrictions only cause foreseeable harm to foreigners. When states restrict immigration, these states lack intentions to harm foreigners. Instead, the harm to foreigners is a foreseeable but unintended side effect of these laws. So, there's a relevant disanalogy between the surgeon case and immigration restrictions.

But other cases show that it's also wrong to cause foreseeable harm to foreigners as a means of benefiting compatriots. Consider another famous case:

Compatriot Trolley. Imagine that there is a runaway trolley about to hit a person who is tied to the track. You can save this person by pushing a button that would divert the trolley onto a sidetrack. But there happens to be another person tied to the sidetrack. Let's

assume that the person on the main track is your compatriot while the person on the sidetrack is a foreigner.

Should you divert the trolley? Again, it's hard to believe that the victim's citizenship makes a difference. It's wrong to save the man on the main track by diverting the trolley just because the man on the sidetrack is a foreigner. Notice though that, if you divert the trolley, you would only be causing foreseeable harm to a foreigner. His death would be a foreseeable but unintended consequence of your actions. Nonetheless, it still seems wrong to divert the trolley.

In fact, it's often wrong to prioritize the interests even of our friends and family members over the interests of strangers. Here is a case that I have adapted from Michael Huemer:¹⁶

Job Competition. Imagine that my daughter is apply for a job and she very much wants this job and would benefit from having it. I know that another person, James, is applying for the job too. James is the better candidate and will likely get the job over my daughter. But, on the day that James is scheduled for a job interview, I assault James and physically prevent him from going to the interview. As a result, my daughter gets the job.

Is my conduct acceptable?

Suppose I made the following argument: "Yes, it's true that my actions set back James' interests. But my actions also benefited my daughter and I ought to prioritize her interests over the interests of mere strangers like James." This argument rings hollow. It seems obviously impermissible to coerce James in order to benefit my daughter in the competition for jobs. The morals reasons to refrain from coercing James defeat my reasons to benefit my daughter. But our special obligations to benefit our children are commonly thought to be weightier and more stringent than our obligations to benefit our compatriots. If my negative duties to refrain from coercing a stranger overrides my special obligations to help my daughter, then it seems even

more plausible that negative duties to foreigners would defeat the moral reasons to benefit your compatriots. Yet people often make analogous arguments for immigration restrictions. They argue we should restrict immigration in order to shield our compatriots from competition for jobs. But, if this is wrong in the case of my daughter, then it's unclear why it would be permissible in the case of immigration.

Notice that even positive general duties defeat compatriot obligations. Consider:

Compatriot Rescue (Three Victims). You are at the beach and, to your horror, you see that three children are swept away by a riptide. Two children are visiting your country with their parents. In contrast, the other child is your compatriot (you know all this because you talked to the children earlier). You are the only capable swimmer in the area and you only have time to save either the two foreign children, or the one child who is your compatriot.

Obviously, you should save the two foreign children in this case. The fact that one of the children is a fellow citizen makes no difference to what you ought to do. Now consider:

Compatriot Rescue (Two Victims). You are at the beach and you notice two children are swept away by a riptide. One child is foreign, while the other child is a compatriot. You are the only capable swimmer in the area and you only have time to save one child.

It again seems grotesque to claim that you should save the child who is your compatriot over the foreign child. Maybe it's permissible to save arbitrarily save either child, or perhaps you should flip a coin. But it seems to me that the citizenship of the child fails to affect what you ought to do.

These cases lend support to the following claim: general positive and negative duties defeat special obligations to benefit your compatriots when these obligations come into conflict.

When a general duty weighs against a compatriot obligation, you ought to satisfy the general duty. But remember that immigration restrictions appear to violate general negative duties. They coerce foreigners and cause them harm. So, if immigration restrictions violate negative duties to foreigners, then it stands to reason that negative duties to potential immigrants defeat the moral reasons to benefit your compatriots when these different moral reasons come into conflict.

You might object at this point that, while it's true that it's impermissible for private citizens to harm or coerce foreigners with the aim of benefiting their compatriots, it's permissible for public officials to do so. On this line of argument, political leaders and public officials have special obligations to protect the interests of the people that they govern and private citizens lack these obligations.

Although this view seems plausible at first glance, it faces major problems on closer inspection. One problem is that it's unclear why it would be permissible for state officials to perform some action when it's wrong for ordinary citizens to do these things. Suppose it would be wrong for me, a private citizen, to assault a foreigner. Now imagine that I run for office and win election in my national legislature. It would be strange to say that I am permitted to assault foreigners just because I am a public official now. If different moral standards applied to public officials, then we could circumvent moral prohibitions merely by becoming public officials or encouraging these officials to perform the prohibited actions. This seems like an absurd implication.¹⁷ A person's status as a public official fails to alter the fact that moral prohibitions against coercion and harming apply to this person.

Here's another way of thinking about this issue. Citizens delegate power to public officials by electing them. Public officials are agents of the people in this respect. But our agents are unable to permissibly perform actions that we lack the right to perform in the first place.

Suppose that I appoint Jane as my lawyer in a criminal case. Jane now has an obligation to represent me to the best of her ability. In that sense, Jane should prioritize my interests over the interests of other people. Yet it's false that Jane has the right to destroy evidence or intimidate witnesses. As I lack the right to do these things, it's wrong for Jane to do them as well. Or consider a corporate CEO. A good CEO should increase shareholder value and, in this way, she should prioritize the interests of her company's investors over other people. Nonetheless, it's still wrong for a CEO to order her employees to assault and imprison strangers. The same goes for citizens. If citizens are unable to permissibly harm or coerce foreigners in order to benefit their compatriots, then their public officials lack these rights as well.¹⁸

Here's the funny thing. Most people recognize that it's wrong for them to violate strangers' rights in order to benefit their friends and family members. But we forgot this lesson in moral commonsense when it comes to foreigners. Unless there is some reason to think that compatriot partiality is very different from other kinds of partiality, then it's difficult to see why it's permissible to coerce foreigners, or even fail to benefit them, in order aid your compatriots.

Rejecting Compatriot Partiality

Where does this leave us? Two positions are consistent with my argument so far:

- (i) Although we may have compatriot obligations, general duties always or almost always defeat these duties when they come into conflict.
- (ii) We lack compatriot obligations—it's false that we have special moral reasons to prioritize the interests of our compatriots over the interests of other people.

If (i) is true, then special obligations to compatriots are unable to justify immigration restrictions and my objection to the partiality argument goes through. But I want to pursue an argument for (ii) as well.

Here's an argument for (ii). In Compatriot Transplant, Trolley, and Rescue, it's wrong to harm foreigners or fail to benefit them even if this means that you will fail to benefit your compatriots. One inference to the best explanation is that you lack special duties to your compatriots. This would nicely explain why you ought to avoid violating the rights of foreigners, or why you ought to rescue these foreigners despite the fact that this prevents you from aiding your compatriots. After all, if you lack special duties to your compatriots, then it makes sense that general duties would be decisive in each of these cases.

Consider an analogy. Suppose that I think that I have a weighty special obligation to other members of Aetna, my health insurance company. My view is that I ought to prioritize the members of Aetna over non-members and aim to protect their interests. But I also think that, if my duty to my fellow members of Aetna conflict with my general duties, my general duties trump my special obligations. Yet, if I do have a weighty obligation to benefit the members of Aetna, then it would be puzzling that general duties always trump this obligation. If the obligation to Aetna is a genuine moral requirement, then how come other duties always defeat it?

One obvious way of resolving this puzzle is to deny that I have a special obligation to the members of my health insurance company. That would make sense of the fact that these special obligations seem otiose when they conflict with general duties. In contrast, it seems plausible to me that my special obligations to my wife and children can defeat other obligations. For example, if I could save either my son or two drowning strangers, I would save my son. If my wife was on the maintrack, I would refuse to turn the trolley. And I would think that I would be

morally justified in doing these things. So, my special obligations to my wife and children appears to defeat my general duties in some cases. This is a reason to believe that I have special obligations to my wife and children. If other special obligations can defeat general duties and compatriot partiality is unable to defeat these duties, then there must be some difference between compatriot partiality and these other duties. As in the case of my health insurance company, the most plausible explanation of this difference is that we lack special obligations to compatriots altogether.

So, we have reason to reject the view that we have special obligations to prioritize the interests of our compatriots over those of foreigners. But why then do many people think that compatriot partiality is true? Here I have a debunking story to tell. Even if compatriot partiality is false, we should expect people to believe it. This is the case because humans are subject to various in-group biases. These in-group biases lead us to accept compatriot partiality despite the fact that it's unjustified.

Consider the results of famous “minimal group” experiments.¹⁹ The psychologist Henri Tajfel divided his subjects into groups arbitrarily. Sometimes he would assign them into different groups on the basis of a coin toss. Other times he would divide them into groups depending on whether they liked the paintings of Paul Klee or Wassily Kandinsky. The groups would then engage in a problem-solving activity and would need to allocate rewards to other subjects (but not to themselves). Membership in groups was anonymous. Tajfel and his collaborators found that people would allocate more money to their groupmates and would sometimes even prefer to penalize the other group rather than benefiting both groups. This result was replicated in experiments all around the world and in different variations of the experiment. People like to

benefit their own groups and harm other groups even if the differences between these groups are utterly trivial.

In the minimal group experiments, subjects' membership in their groups is arbitrary and members lack any morally significant relationships with one another that could justify special obligations. So, it would be implausible to claim that the members of minimal groups have special obligations to one another. For example, it's clearly false that you have a special moral reason to benefit your in-group at the expense of another group if the only difference between these groups is that one group likes Klee and the other likes Kandinsky. Nonetheless, people prefer to benefit their own groups and punish out-groups despite the fact that any reasonable observer should acknowledge that there is no good moral reason to be partial to your group.

Now, let's consider the parallel between minimal groups and our relationship with compatriots. The minimal group research shows that we are biased towards our in-groups. This is already a reason to be suspicious that our preference for compatriots is unjustified. Our tendency toward in-group bias means that we would probably believe that we have special obligations to our compatriots even if we actually lacked these obligations. So, we should lower our confidence in any prior belief that we do have special obligations of this kind. Also, our membership in our states is often arbitrary. Most of us inherited citizenship from our parents. Our membership in a state resembles a minimal group in that the luck of the draw arbitrarily assigned us to our political community (immigrants are of course the exception). Finally, it's hard to see why compatriots would have relationships with one another that could justify special obligations. Political philosophers have advanced various arguments in favor of compatriot partiality, and I lack the space to consider all of these arguments here. But let's briefly consider some candidates.

Some philosophers propose that we owe special obligations to our compatriots because we share a common culture or national identity. We ought to honor and value this common culture by recognizing that we have special obligations to our compatriots. The problem though is that some citizens don't share a national culture with other compatriots. For example, many Americans probably share more of a common culture with foreigners than they do with each other. An American who is a vegetarian, Bernie Sanders supporter, and a yoga teacher might share more in common culturally with likeminded people in Toronto, Stockholm, or Berlin than with, say, NASCAR fans in rural Alabama who like to hunt for fun.

Other philosophers point to the moral significance of membership in a democratic state. Citizens in a democracy share relationships of equality with one another. Everyone has an equal voice and they participate in a process of collective self-determination. According to some authors, this relationship between citizens is intrinsically valuable and the fitting way to respond to this intrinsic value is to recognize that we have special associative duties to our compatriots. But I don't think that this is right. It's false that merely relating to other people as equals and having a democratic say grounds special obligations.

Suppose that I enjoy watching America's Top Model. I along with millions of other people have the right to vote for my preferred candidate for America's Top Model. Whomever receives the most votes will be selected. Imagine that I do vote regularly over the internet. Do I have a special obligation to other viewers of America's Top Model who also vote? It seems that I do not. Yet I stand in a relationship of democratic equality with other viewers. We all get to vote for our favorite models and our votes count equally. We might even deliberate about which model to vote for in internet forums and chatrooms. But it would be fairly absurd to conclude that I have special obligation to other viewers. This suggests that relationships of democratic

equality by itself fail to ground special obligations between people. And that goes for fellow citizens too.

Another common defense of compatriot partiality appeals to reciprocity. Here's an example to motivate this idea. Suppose that your roommate always cleans your apartment. And let's also assume that you're a messy person. You leave your clothes on the floor, your dishes in the sink, your hair in the bathroom drain, and so on. But your roommate always cleans up after you. In contrast, you do nothing to contribute to a clean apartment. So, you free ride off of the effort of your roommate. That seems unfair. Given that you enjoy the benefits of a clean apartment, you should do your fair share to contribute to this good by cleaning as well. Another way of describing this judgment is that you have a duty of reciprocity to your roommate. He provides you with benefits that you willingly accept. So, you ought to contribute to providing these benefits too.

The same might apply to the public goods that your fellow citizens help create. Citizens benefit each other by helping to provide goods like national security, a system of law and order, and other beneficial institutions, such as the welfare state. If a group of people benefit you, then you owe duties of reciprocity to benefit these people in turn. More precisely, you ought to do your fair share to contribute to these goods. You should pay your taxes and perhaps contribute to the provision of public goods in other ways.

While there is something to this argument, I doubt that it can ground special obligations to your compatriots in general. For one thing, some of your compatriots don't contribute much to public goods. Take your compatriots who are severely disabled or those who free ride off of the contributions of others. If your fellow citizens fail to contribute their fair share, then it's false that you owe them duties of reciprocity. Anyway, some foreigners also benefit you. Foreigners

also contribute to public goods from which we benefit, like peace, a system of beneficial trade, scientific research, and so on. This suggests that we have duties of reciprocity to foreigners too, not just compatriots.

Let's grant though that you do have duties of reciprocity to your compatriots. Does reciprocity require you to prioritize your compatriots over foreigners? In short, no. If you have a duty of reciprocity, then this is just a reason to do your fair share to contribute to the system of cooperation from which you benefit. This is not necessarily a reason to prioritize the interests of other contributors.

To see why, let's consider a case. Imagine that you live near the beach and you often enjoy swimming there and running along it. So, you benefit from the beach. But the beach needs to be maintained. Litter is starting to clutter the beach, say. Luckily, some intrepid beachgoers start a fund to clean the beach up. They distribute flyers asking people in the area to contribute. Another beachgoer, Claudio, also enjoys the beach. Claudio contributes \$100 to the fund. You never meet Claudio and don't know anything about him.

Claudio contributes to providing a good from which you benefit—a clean beach. You perhaps have a duty of reciprocity to Claudio and other contributors for this reason. If so, you should also contribute your fair share to the fund. But it would be strange to think that you owe Claudio anything above and beyond this fair contribution. You lack a duty to prioritize Claudio over other people. If you faced a choice between saving two other strangers or Claudio, you should save the two instead. The lesson is that a duty to contribute your fair share to public goods isn't equivalent to a duty to prioritize the interests of contributors more generally. Most of your compatriots are like Claudio. You know nothing about them and have no relationship with them. Sure, they contribute to public goods from which you benefit. But it's hard to see why you

owe them anything more than your fair contribution in return. You shouldn't prioritize your compatriots over other people just because you cooperate with them in some way.

You may object that the beach analogy is misleading. The good of a clean beach is a trivial benefit. Yet your compatriots supply you with essential benefits, like police and military protection. Without these, your life would probably go much worse. So, this objection goes, you have stronger obligations to your compatriots than you owe to your fellow beachgoers because your compatriots provide you with major benefits.

But I don't think that this objection tells against my view. Notice that we can run the same scenario again with more crucial goods. Suppose that you and Claudio live in a town with a crime problem. Criminals often commit theft and assault in your town, and the police fail to do anything about the problem. So, some residents hire a private security force to police the town and, as a result, crime declines. These residents ask others to contribute to a fund to pay for this service. Claudio contributes some money to the fund. You should too because you benefit from the crime reduction. But it still seems false that you're now obligated to prioritize Claudio's welfare over the welfare of other people. This is true even if protection from crime is a major benefit to you. One again, you owe Claudio a fair contribution, not prioritization. I see no reason why this same lesson wouldn't apply to compatriots.

I now want to bring together the different strands of my argument. The most parsimonious explanation for why general duties defeat the reasons to prioritize compatriots is that we lack duties to prioritize the interests of our compatriots. Now, it could be that we have independent reasons to believe that compatriot partiality is true, and the widespread acceptance of compatriot partiality might be evidence for this possibility. But we can debunk the widespread belief in compatriot partiality. This belief is plausibly the product of in-group biases. The

minimal group research shows that we are disposed to favor the other members of our group even though there is no good reason to do so. Our membership in states are like minimal groups. Citizens are thrown together arbitrarily and our membership in states activates our in-group biases and disposes us to prioritize our compatriots over foreigners. For this reason, people think that they have special obligations to their compatriots even though they lack these obligations. Of course, we should still endorse compatriot partiality if there is some convincing argument for it. Yet it's unclear whether any such argument is forthcoming. So, we have good (abet tentative) reason to reject compatriot partiality.

Conclusion

To sum things up, the partiality argument for immigration restrictions faces several key challenges. First, its empirical premise may be false. Maybe immigration often benefits citizens on net. Second, there may be other ways to avert the costs of immigration than through immigration restrictions. Third, our negative duties to respect the liberties of foreigners seem to defeat our special obligations to compatriots when they come into conflict if we in fact have special duties to compatriots. Fourth, we should doubt that we have special obligations to prioritize the interests of compatriots in the first place. For all of these reasons, the partiality argument is unsound.

3. Collective Self-Determination

Another major argument for immigration restrictions invokes the value of collective self-determination. The argument goes like this. People have rights to control the character of their communities. They have entitlements to control their membership and shape their culture. Let's

call these entitlements: rights to collective self-determination. Immigration changes the culture, membership, and character of a society. So, if citizens have rights to collective self-determination, then it stands to reason that citizens should be able to control immigration. These rights can outweigh or defeat foreigners' claims to immigrate. Thus, rights to collective self-determination explain why immigration restrictions are permissible. Call this overall argument: *the self-determination argument* for immigration restrictions.²⁰ I'll occasionally refer to people who endorse the self-determination argument as "self-determiners."

Many political theorists and philosophers endorse the self-determination argument. David Miller defends immigration restrictions by appealing to "the value of self-determination, to the importance to a political community of being able to determine its future shape, including for example the balance it wishes to strike between economic growth and environmental values, and pointing out that questions of membership are intimately involved in such decisions."²¹ In defending the right to exclude, Margaret Moore writes: "People have an interest in ensuring that, both individually and collectively, they have control over their lives, over the place that they live, and over the collective character of their community."²² Christopher Wellman argues that "the members of a group can change, an important part of group self-determination is having control over what the 'self' is ... a significant component of group self-determination is having control over the group which in turn gets to be self-determining."²³ Wellman adds that citizens have entitlements to exclude foreigners in part because "a country's immigration policy determines who has the opportunity to join the current citizens in shaping the country's future" and "this policy will matter enormously to any citizen who cares what course her political community will take."²⁴

The self-determination argument is even popular outside of academia. Here's an example. A few years ago, the United Nations released a comprehensive report on the relationship between migration and human development. The report acknowledges that migration has many benefits for people in poor countries. Nonetheless, the authors of the report rejected open borders. They wrote "we recognize that people at destination places have a right to shape their societies, and that borders are one way in which people delimit the sphere of their obligations to those whom they see as members of their community."²⁵ This seems like an appeal to the self-determination argument: people have rights to control and shape their societies, which entails a right to exclude foreigners.

Self-determiners agree that political communities have rights to control some aspect of their collective character or membership. But they develop this argument in different ways. Some authors understand self-determination in cultural terms. They think that states have rights to shape and control their cultural character. Other authors believe that rights to self-determination are rights to freedom of association. Consider an analogy with private associations like clubs. If you and I decide to form a chess club, then our club has a right to freedom of association. This means that we can exclude non-members. If Joe wants to join our chess club, you and I are within our rights to exclude him. Wellman argues that states have rights to freedom of association too.²⁶ Thus, states can permissibly forbid foreigners from joining. Finally, some political theorists believe that citizens have collective ownership rights over their institutions or territories.²⁷ To illustrate, here's another analogy. Suppose that you would like to live in my house. Let's stipulate that you are not homeless—you simply prefer my house to yours. But I own my home. So, I am within my rights to stop you from living in my house. Similarly, maybe

citizens own their territories or institutions. Thus, they are within their rights to exclude immigrants.

A Reductio of the Self-Determination Argument

Although the self-determination argument is a popular argument for immigration restrictions, I think that it's fundamentally flawed. One major problem is that this argument has unacceptable implications.

The self-determination argument says that states can restrict immigration because citizens have rights to control and shape the character of their community. For these rights to justify immigration restrictions, it must be the case that self-determination can justify restricting individual liberty. After all, immigration restrictions are restrictions on individual liberty—of both citizens and foreigners. But, if self-determination can justify restricting individual liberty, then self-determination can likewise justify restricting other liberties, such as freedom of speech, religion, reproduction, and association. However, it's false that the value of self-determination can justify restricting these liberties. And, if it's false that self-determination can justify restricting individual liberty, then it's also false that it can justify immigration restrictions. So, the self-determination argument is unsound.

Here's a schematic overview of my argument:

- (1) Assumption for Reductio: rights to collective self-determination can justify immigration restrictions.
- (2) If rights to collective self-determination can justify immigration restrictions, then rights to collective self-determination can justify restricting foreigners' freedom to immigrate and citizens' freedom to associate with these foreigners.

- (3) If rights to collective self-determination can justify restricting foreigners' freedom to immigrate and citizens' freedom to associate with these foreigners, then rights to collective self-determination can justify restricting other individual liberties, such as freedom of speech, religion, reproduction, and so on.
- (4) It's false that rights to collective self-determination can justify restricting other individual liberties, such as freedom of speech, religion, reproduction, and so on.
- (5) So, it's false that rights to collective self-determination can justify immigration restrictions.

This argument is a *reductio ad absurdum*. It assumes a premise for the sake of argument, the claim that rights to self-determination can justify immigration restrictions, and shows that this premise leads to a contradiction with something else that we know. If a premise leads to a contradiction, then we should reject this premise. So, the first premise (1) is just the assumption I'm making for the purpose of this reductio. Let me now clarify and justify steps (2-5) of the argument.

The rationale for premise (2) of the argument should be clear in light of my argument in chapter 1. When states restrict immigration, they constrain foreigners' freedom to immigrate and associate with the citizens of another country on voluntary terms. States also interfere with citizens' freedom to associate with foreigners and often directly threaten citizens with harm if they interact with foreigners and unauthorized migrants in prohibited ways. So, for the self-determination argument to justify immigration restrictions, it must be able to justify these restrictions on freedom. Otherwise, the self-determination argument would be otiose.

Premise (3) is more controversial. Remember that rights to self-determination are rights to control the character and membership of a political community. But notice that many other

things besides immigration can change the character and membership of a political community. The exercise of standard liberal freedoms, such as freedom of speech and reproductive freedom, can also alter the culture and membership of a community.

To illustrate premise (3), I want to consider an extended thought experiment. Imagine a society that has conservative social and political norms and traditions. For reasons that will become apparent in a moment, let's call this society "ChangeLand." ChangeLand is a liberal democracy. But many of the citizens of ChangeLand endorse some illiberal norms. They condemn gay relationships, having sex and raising children out of wedlock, and support a division of labor between men and women such that men are the breadwinners and women care for children.

Suppose though that liberal reformers convince an increasing number of citizens that gay relationships are fine, that it's morally acceptable to have sex outside of wedlock, and that a division of labor based on gender is unjust. These reformers use their rights to free speech to adopt new norms, values, and practices. As a result, liberal reforms change the culture and character of ChangeLand. Indeed, their actions would likely affect the demographics of ChangeLand if their message persuades people to change their reproductive practices. Maybe, for instance, the members of ChangeLand might start having fewer children as a result of this liberal movement. Although this is obviously fictional case, this description matches what has happened in many Western societies.²⁸

Consider also religious freedom. Religious freedom includes the freedom to leave your religion. Suppose ChangeLand is overwhelmingly Catholic. Many of the traditions and rituals of ChangeLand are grounded in Catholicism. Yet a growing fraction of citizens convert to Buddhism. This will change the character of a community too. Fewer and fewer citizens would

attend church on Sunday and instead go to meditation sessions, instead of praying to God more citizens would undergo loving-kindness training, instead of accepting immortal souls more citizens deny the existence of the self, and so on.

Or take reproductive and sexual freedom. Imagine that ChangeLand has small internal minorities. These minorities have different traditions, practices, and values than most citizens in ChangeLand. But there are differential rates of reproduction. The members of minority groups have many more children than do most of the dominant group. The members of these groups also succeed at passing down their distinctive values and traditions to their children. As a result of this differential rate of reproduction, the membership, culture, and demographics of ChangeLand shifts over time. Suppose, for instance, that the members of a small internal minority are Muslim. And, since Muslims in ChangeLand tend to have more children than the average, there are a growing number of Muslims in this society. Let's also suppose that other members of ChangeLand exercise their rights to freedom of association and begin to intermix with the Muslim citizens. This causes more citizens of ChangeLand to synthesize their religious traditions with Islam, and adopt some of the minority's practices.

Clearly, ChangeLand has seen quite a lot of change. How did these changes happen? Citizens exercised their liberal freedoms of speech, religion, reproductive freedom, and association. The exercise of these freedoms brought about cultural and demographic changes. Does ChangeLand seem unrealistic to you? Maybe you prefer to think about real cases instead of thought experiments. Then you might instead think about real cases of rapid cultural change, such as, say, the 1960s and 70s in most Western democracies. Think about the Civil Rights Movement, the Women's' Rights Movement, the Sexual Revolution, the Gay Rights movement, and so on. These changed Western societies in remarkable and radical ways. These changes

came about in large part because citizens used their liberal freedoms to persuade other people to change their values and behaviors. My thought experiment is hardly crazy. We can see elements of it in history.

Suppose though that a majority of the citizens of ChangeLand dislike how their society is evolving. These traditionalists argue: “we have rights to collective self-determination. This means that citizens have the right to control the collective character of our community and shape its future development. But people are changing the culture and character of our society in ways that we don’t like. For this reason, we should restrict people’s freedoms to alter society in these ways. Sure, we acknowledge that people have moral claims to freedom. But rights to self-determination can outweigh those claims.” These traditionalists propose that the government of ChangeLand should censor countercultural speech and restrict Buddhists’ freedom to associate and congregate with one another. The government might also prohibit citizens from having more than a certain number of children and, let us assume, this would slow the population growth of the Muslim community.

There is a certain logic to the traditionalists’ argument. If the citizens of ChangeLand have rights to control the future shape and direction of their community, then it’s hard to see why it would be wrong for them to restrict freedom of speech, reproductive liberty, and other freedoms. The same considerations that justify a society’s right to exclude immigrants—the entitlement to control the collective character of a society—also seem to justify ChangeLand’s right to restrict individual liberty.

Let’s consider how the different versions of the self-determination argument would bear on the traditionalists’ proposal. Recall that some versions of this argument emphasize the right control the pace of cultural change. If citizens really do have that right, then it stands to reason

that they have the right to restrict speech or reproductive liberty in order to avert cultural change. Some authors, such as Christopher Wellman, think that states have rights to freedom of association. But notice that other associations with this right can restrict the liberty of their members in all kinds of ways. Religious organizations impose many constraints on the liberties of their members. They often forbid members from taking birth control, wearing provocative clothes, and having sex out of wedlock. Or take colleges. Wellman says that universities have rights to freedom of association and compares states to universities. Yet universities restrict their members' behavior in various ways. Brigham Young University forbids students from growing beards and Harvard prohibits students from joining all-male organizations. Many colleges implement speech codes that restrict the free speech rights of their students. If states are really analogous to other associations that have rights to freedom of association, then it seems to follow that states can interfere with the liberties of their members too.

Some political theorists contend that citizens have collective ownership rights over their territories or institutions. The thought is that citizens contribute to their institutions and enhance the value of their territories, and this gives them ownership claims over these things. If citizens have ownership over their territories and institutions, then they have rights to exclude foreigners from accessing them. Suppose though that some fraction of citizens want to associate with foreigners and use their individual property rights to interact with them by, for instance, inviting them to work on their property. Presumably, defenders of the ownership version of the self-determination argument would say that collective ownership rights trump individuals' rights to associate with foreigners. But, if collective ownership rights can justify restricting these individual rights, then why can't collective ownership rights justify restricting all individual rights?

Here's an analogy. Private businesses sometime restrict the liberty of both workers and customers. For example, a restaurant may have a dress code that forbids customers from taking off their shirt, wearing clothes with profanity on them, or wearing baggy pants, and that requires workers to wear a uniform. They can also forbid people from, saying, staging a political protest in their restaurant. Why is it permissible for a restaurant to do this? Ownership rights. The owner of the restaurant has a right to control what happens on his or her property. Maybe the same goes for collective ownership rights over countries. If citizens have ownership rights over their institutions, they could use their collective ownership rights to forbid people from wearing baggy pants, uttering profanity, holding political protests, and so on.

It therefore appears that, if self-determination can justify restricting immigration, then it can justify restricting individual liberties more generally. And it's false that self-determination can do this. To be clear, I'm not claiming that it's always wrong to restrict individual liberty. In fact, I do think it's justified to restrict individual liberty in order to prevent harm to others and perhaps in other cases as well. My claim here is that the value of collective self-determination is unable to justify restricting individual freedoms.

To see why, let's return to the ChangeLand example. Suppose that the changes that are happening in this society don't cause significant harm to other citizens. Liberal reforms avoid harming other people, religious conversions don't cause social turmoil or other major harms, and differential rates of reproduction fail to lead to terrible outcomes. If you think that self-determination can justify restrict individual liberty, then you need to say that it's fine for the citizens of ChangeLand to restrict basic liberties anyway even though the exercise of these freedoms avoids causing harmful outcomes.

This is an unacceptable extension of the self-determination argument. If you think that self-determination permits us to restrict individual liberty, then you must likewise reject liberal principles and values. You need to be ready to give up on basic liberal freedoms, like freedom of speech and religion, in order to accept this implication. I'm going to assume that most of the people reading this book think that the state should respect individual liberty. So, I'm going to assume that it's false that collective self-determination can justify infringements on core liberal freedoms. Remember that, for better or worse, my argument assumes liberalism (§1.3). Self-determination conflicts with liberalism. Rights to collective self-determination are rights to control other people's lives and restrict their liberties. And we lack these rights. But, if it's false that self-determination can justify restricting core liberal freedoms, then the assumption with which we began is also false, the assumption that collective self-determination can justify immigration restrictions. If this premise is false, then the self-determination argument is unsound.

Responses

Let's now consider some ways that self-determiners might respond to my objection. One possible response goes:

Response 1: The freedom to immigrate protects less important interests than freedom of speech, reproductive freedom, and so on. So, collective self-determination justifies restricting the freedom to immigrate because it protects less urgent interest. In contrast, collective self-determination can't permit restricting basic liberties because these liberties are more important.

This response still fails to rebut my objection. For one thing, it's not obvious that the freedom to immigrate protects less important interests than other freedoms in general. Here's a striking fact: millions of people immigrate from democratic but poor states like India to authoritarian but rich states like Saudi Arabia.²⁹ Thus, many people are willing to tradeoff freedom of speech and religion for the freedom to immigrate. This suggests that a large number of people think that the freedom to immigrate is more valuable than other liberal freedoms.

But, even if it's true that freedom of speech and reproductive freedom protect more important interests than the freedom to immigrate in general, it's false that freedom of speech and reproductive freedom *always* protect more important interests. For example, many citizens of liberal democracies have only weak interests in having more than five children or publishing books that evangelize the Jedi religion. In contrast, it's quite possible that citizens have stronger interests in immigrating to another society. This means that the marginal value of the freedom to immigrate could be higher than the marginal value of other freedoms, even if other freedoms are more valuable on average than the freedom to immigrate. If self-determination can justify restricting immigration, then self-determination can justify restricting other liberal freedoms on the margin too. So, response 1 fails to drive a wedge between the freedom to immigrate and other liberal freedoms.

Here's another possible response to my argument:

Response 2: Cultural and demographic changes due to immigration are external changes that are imposed on citizens from the outside. In contrast, changes due to the exercise of free speech and reproductive rights are "internal" changes. Moreover, states have rights to resist external changes, but not internal ones.

David Miller suggests this line of argument. Miller says: “people may welcome the introduction of new elements of culture from the outside, but this is different from having changes forced upon you by external factors that you cannot control.”³⁰ He adds that citizens may “have an interest in resisting externally-generated cultural change, and retaining control over immigration is one of the levers that allows them to do this.” The idea here is that citizens have rights to control externally-generated change, while they lack entitlements to limit freedoms that give rise to internally-generated change.

But it’s hard to sustain a morally relevant distinction between external and internal changes. Return to the case of ChangeLand. In ChangeLand, religious conservatives may resent and dislike the fact that their culture is changing. More citizens of ChangeLand are adopting liberal values and practices. From the perspective of religious conservatives, this cultural change is imposed on them. Anyway, let’s even suppose that liberal reformers in ChangeLand first started adopting liberal values and norms because they were influenced by foreigners. Imagine a neighboring state is liberal and the citizens of this state advocate in favor of liberal beliefs. Some of citizens of ChangeLand heard these arguments and were persuaded by them, which led them to push for change in their own society. So, foreign influence shifted the cultural norms of ChangeLand.

This is a case in which external factors changed the culture of a society and many of the citizens dislike this change and are unable to control it. Nonetheless, conservatives in ChangeLand lack rights to limit the freedoms of other citizens in order to stop cultural change. The government of ChangeLand is certainly unable to permissibly censor foreign speech or prevent their own citizens from hearing and repeating this speech. In other words, it’s unjust for the government to prohibit externally-generated change as well. It doesn’t matter if cultural

change is external or not. But, if it's false that the citizens of ChangeLand have rights to limit freedom of speech in order to block cultural change, then it's unclear why they would have the right to restrict immigration in order to limit cultural change.

A third response to my argument goes:

Response 3: States have strong obligations to protect the freedoms of their own citizen.

These obligations prohibit states from infringing on the basic freedoms of citizens, such as their freedoms of speech, religion, association, and so on. But states have only weak obligations to protect the freedoms of foreigners. So, it's permissible for states to restrict the freedom of foreigners to immigrate, while it's wrong to restrict the freedoms of their own citizens.

My objection to the self-determination argument aims to show that, if you accept the self-determination argument, you must also accept that it's permissible to restrict the freedoms of citizens. This response to my argument is another attempt to drive a wedge between laws that constrain the freedoms of foreigners and those that limit the freedoms of citizens. Response 3 says that there is a principled reason why it's permissible to restrict the freedom of foreigners to immigrate and wrong to restrict the freedom of citizens: states have strong moral reasons to respect the freedoms of citizens.

The problem with response 3 is that it assumes the partiality argument. It assumes that states have weighty duties to respect the liberties of citizens and that states lack weighty duties to refrain from interfering with foreigners. But my discussion of the partiality argument shows that this assumption is false. States' duties to avoid interfering with foreigners are weighty after all. In fact, the moral reasons to respect the liberties of foreigners and the reasons to respect the liberties of citizens are just about equally weighty.

Suppose that I forcibly kidnap five people at random and lock them in my basement. Later I discover that four of my captives are foreign tourists, while one is American. Should I feel worse about kidnapping the American than my other captives? Is my interference with the freedom of the tourists less bad than my assault on my American captive? The answers to these questions are “no” and “no.” It’s equally wrong to infringe on the basic freedoms of both Americans and foreigners. And, recalling my earlier argument (§2.2), the same goes for government officials. If that’s right, then response 3 is unsound. We should reject the claim that it’s easy to justify restricting the liberties of foreigners and hard to justify infringing on the liberties of citizens. So, adherents of the self-determination argument are unable to block the implication that it’s permissible for states to restrict the liberties of their own citizens and easy to justify restricting the freedoms of foreigners.

Let’s sum up. Self-determiners aim to show that immigration restrictions are justified. Yet the self-determination argument also implies that it’s permissible for states to infringe on core freedoms. We should reject this entailment. If we reject this entailment, we should repudiate the view that rights to self-determination can justify immigration restrictions.

Explaining Away Collective Self-Determination

The self-determination argument is perhaps the most prominent justification of immigration restrictions in the literature. Why have so many political theorists been attracted to this argument if it faces from the serious objections that I’ve outlined? Here’s my hypothesis: political theorists misunderstand the nature of collective self-determination.³¹

International law and common opinion affirms the claim that states have rights to self-determination. But what does this mean? My suggestion is that states have rights to self-

determination just in case it's wrong to interfere with these states in certain ways. For example, Nazi Germany violated Poland's right to self-determination when the German army invaded Poland. The CIA may have violated Chile's right to self-determination by helping to violently overthrow the Chilean government in 1973. The right to self-determination prohibits coercive external interference with the domestic affairs of another state. In more technical terms, rights to self-determination are claim-rights against violent international aggression: they impose duties on other actors, such as states, to refrain from coercive interference. But rights to self-determination fail to imply that a state's policies are morally permissible.

Here's an example.³² It's wrong in my view for the United States government to prohibit the recreational use of marijuana. This is an unjust policy that infringes on liberty and has bad consequences for users and third-parties. Moreover, it would be absurd for the United States government to defend this policy by appealing to self-determination. That is, it would be absurd for government officials to argue: "it's permissible for us to prohibit recreational marijuana because we have rights to self-determination." Now, let's suppose that Canada's army invaded the United States. The citizens and government of the United States could now justifiably complain "Canada has violated our right to self-determination!" Rights to self-determination are just another way of objecting to violent and coercive interference by other states. They tell us nothing about whether a state's policies are morally acceptable.

This goes for immigration policies too. It's a category mistake to defend a state's immigration policies by arguing that this state has a right to self-determination. At most, this just means that it's wrong for another state or actor to violently invade this state. When political theorists cite self-determination in order to argue that immigration restrictions are justified, they illicitly move between different kinds of rights. Self-determination is a claim-right against

interference. But adherents of the self-determination argument want to show that states have liberty-rights to exclude. A liberty-right is a moral permission—you have a liberty right to watch television, say, just in case it's morally permissible for you to watch television. So, if states have liberty-rights to exclude immigrants, then it would be permissible for states to exclude them. Yet we can't derive liberty rights from claim-rights in any straightforward way.

Take freedom of speech and association. I have the freedom to write books defending white supremacy. This means that it's wrong for the state to stop me from writing and publishing these books. But it's false that I have a liberty-right to advocate white supremacy. It's wrong for me to defend white supremacy and try to convince others to endorse it too. In this way, claim-rights and liberty-rights often come apart. My claim-right to free speech fails to imply that my speech is permissible and there is no clear way to bridge the gap from one kind of right to the other. In other words, we are unable to derive:

- (1) It's morally permissible for you to engage in some speech act (say, writing books defending white supremacy).

from:

- (2) It's wrong for some other agent to interfere with your ability to engage in this speech act.

We have rights to free speech and, for this reason, (2) is true. But (1) doesn't follow from (2), and in fact (1) is false.

Claim-rights and liberty-rights come apart in the case of immigration too. So: it's wrong for Canada to invade the United States. But nothing follows about the permissibility of the United States' immigration policies. As in the free speech case, we can't derive:

- (3) It's morally permissible for the United States to restrict immigration.

from:

(4) It's wrong for some agent, such as another state, to interfere with the United States in certain ways.

If the United States has a right to self-determination, then (4) is true. But (3) is false—at least, (3) doesn't follow from (4). Rights to self-determination can't show that immigration restrictions are morally acceptable.

6. Conclusion

Prominent defenses of immigration restrictions fail. National partiality and collective self-determination are unable to justify immigration restrictions. But I still haven't reached the conclusion that immigration restrictions are unjust. In the next chapter, I'll give a general argument for this conclusion.

¹ Justin Gest, *The New Minority: White Working Class Politics in an Age of Immigration and Inequality* (New York, NY: Oxford University Press, 2016), p. 61.

² Gest, p. 72.

³ Gest, p. 138.

⁴ Gest, p. 64.

⁵ One argument that I lack the space to adequately address is the complaint that skilled immigration makes poor countries worse off. But I've responded to this argument elsewhere. See: Javier Hidalgo, "The Active Recruitment of Health Workers: A Defense," *Journal of Medical Ethics* 39 (2013): 603–9; Javier Hidalgo, "Why Restrictions on the Immigration of Health Workers Are Unjust," *Developing World Bioethics* 14, no. 3 (2014): 117–26; Javier S Hidalgo, "The Missing Evidence in Favour of Restricting Emigration," *Journal of Medical Ethics* 43, no. 8 (2017): 564.

⁶ George Borjas, *Heaven's Door: Immigration Policy and the American Economy* (Princeton: Princeton University Press, 2001), p. xxii.

⁷ Donald Trump, "Address on Immigration," (August 31st, 2016) at: <https://www.donaldjtrump.com/press-releases/donald-j.-trump-address-on-immigration>

⁸ Michael J. Sandel, *Justice: What's the Right Thing to Do?* (Farrar, Straus and Giroux, 2009), p. 232.

⁹ David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016), p. 71.

¹⁰ Sari Pekkala Kerr and William R. Kerr, "Economic Impacts of Immigration: A Survey," *Finnish Economic Papers* 24, no. 1 (2011): 1–32.

¹¹ Amandine Aubry, Michał Burzyński, and Frédéric Docquier, "The Welfare Impact of Global Migration in OECD Countries," *Journal of International Economics* 101 (July 2016): 1–21.

¹² Joel Fetzer, *Open Borders and International Migration Policy: The Effects of Unrestricted Immigration in the United States, France, and Ireland* (New York, NY: Palgrave Pivot, 2016), chapter 8. While Fetzer finds that immigration generally has few negative effects, there are occasionally exceptions, such as the impact that Cuban migration to Miami had on crime.

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- ¹³ Benjamin Powell, “Coyote Ugly: The Deadweight Cost of Rent Seeking for Immigration Policy,” *Public Choice* 150, no. 1–2 (2012): 195–208.
- ¹⁴ Bryan Caplan and Vipul Naik, “A Radical Case for Open Borders,” in *The Economics of Immigration*, ed. Benjamin Powell (New York: Oxford University Press, 2015), p. 200.
- ¹⁵ Judith Jarvis Thomson, “The Trolley Problem,” *The Yale Law Journal* 94, no. 6 (1985): 1395–1415.
- ¹⁶ Huemer, “Is There a Right to Immigrate?”
- ¹⁷ Thomas W. Pogge, *World Poverty and Human Rights*, 2 edition (Polity, 2008), chapter 5.
- ¹⁸ For similar arguments, see: Richard A. Wasserstrom, “Three Arguments Concerning the Morality of War,” *The Journal of Philosophy* 65, no. 19 (1968): 578–90; Pogge, *World Poverty and Human Rights*, chapter 5.
- ¹⁹ Henri Tajfel, “Experiments in Intergroup Discrimination,” *Scientific American* 223, no. 5 (1970): 96–103; Henri Tajfel, “Social Psychology of Intergroup Relations,” *Annual Review of Psychology* 33, no. 1 (1982): 1–39; Henri Tajfel, *Human Groups and Social Categories: Studies in Social Psychology* (New York: Cambridge University Press, 1981).
- ²⁰ To my knowledge, this argument was first sketched in detail in: Michael Walzer, *Spheres Of Justice: A Defense Of Pluralism And Equality* (Basic Books, 1984).
- ²¹ David Miller, *National Responsibility and Global Justice* (Oxford University Press, USA, 2008), p. 23.
- ²² Margaret Moore, *A Political Theory of Territory* (New York: Oxford University Press, 2017), p. 195.
- ²³ Christopher Heath Wellman, “Immigration and Freedom of Association,” *Ethics* 119, no. 1 (2008), p. 115.
- ²⁴ Christopher Heath Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (New York: Oxford University Press, 2011), p. 40.
- ²⁵ United Nations, *Overcoming Barriers: Human Mobility and Development* (New York, NY: United Nations Human Development Programme, 2009), p. 17.
- ²⁶ Wellman, “Immigration and Freedom of Association.”
- ²⁷ Ryan Pevnick, *Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty* (New York: Cambridge University Press, 2014).
- ²⁸ See: Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined*, Reprint edition (New York Toronto London: Penguin Books, 2012), chapter 7.
- ²⁹ Michael Clemens, “Testing for Repugnance in Economic Transactions: Evidence from Guest Work in the Gulf,” *Legal Studies*, Forthcoming, 1–41.
- ³⁰ David Miller, “Is There A Human Right to Immigrate?,” in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (New York: Oxford University Press, 2016), p. 28-9.
- ³¹ The following draws on: Javier S. Hidalgo, “Freedom, Immigration, and Adequate Options,” *Critical Review of International Social and Political Philosophy* 17, no. 2 (November 8, 2012): 212–34.
- ³² This point also appears in Javier Hidalgo, “Review of *Debating the Ethics of Immigration*,” *Journal of Value Inquiry* (2013).

Chapter 3: Actual Immigration Restrictions are Unjust

1. Introduction

So far, I've defended the view that states have strong moral reasons to respect the liberty of foreigners to immigrate. Furthermore, prominent arguments in favor of immigration restrictions fail. Where does that leave us?

In this chapter, I'll complete my case against the status quo. My argument is that states systematically balance the reasons for and against immigration restrictions in the wrong way. They ignore or discount the moral reasons to allow immigration and exaggerate the reasons in favor of restrictions. Because of this bias, states restrict immigration more than they should. We can infer from these claims that actual immigration restrictions are unjust.

After I complete my argument, I will explore some of the institutional implications of more open borders. I'll make the case that, while all residents of a state should ideally have access to citizenship, there are sometimes good reasons to deviate from equal citizenship. In particular, states should sometimes implement large-scale guest worker programs.

2. When Are Immigration Restrictions Justified?

I'm not an absolutist. I agree that sometimes immigration restrictions can be justified. When? They're justified if immigration would bring about sufficiently bad consequences overall.

Consider the following fictional scenario. Suppose that a state opens its borders and huge numbers of people immigrate. This causes severe social and economic disruptions. The wages of citizens collapse and there is pervasive social tension between immigrants and citizens. Violent conflicts break out between migrants and natives. This society become unstable and political

institutions buckle under the stress. This lowers economic growth and democratic government begins to fail. Both migrants and citizens are now worse off. Let's call this case: *Disaster*.

In Disaster, I'd say that immigration restrictions would be justified. Why? Open borders bring about serious harm. We have strong moral reasons to avoid these bad outcomes.

Sometimes the reasons for preventing bad outcomes can override the moral reasons to respect people's liberties or refrain from harming them. Most people agree. Consider some examples:

- It would be permissible for you to shove me out of the way in a painful way if this was necessary to save a person's life.
- It's fine for the government to forcibly quarantine someone if this person has a deadly and infectious disease.
- If someone shouts fire in a crowded theater, you can shut this person up by putting your hand over his mouth in order to prevent a panic.
- If too many people step onto a bridge, the bridge will collapse, killing hundreds. It's okay to coercively stop people from getting onto the bridge.

In all of these cases, someone can permissibly use coercion to interfere with another person's freedom in order to prevent a sufficiently bad outcome.

The explanation for this judgment is that our general duties to protect people from harm override our negative duties to respect liberty along some margin. This kind of justification is sometimes called a "lesser-evil" justification. To have a solid lesser-evil justification for an action that infringes on liberty, your actions need to meet several conditions. First, your actions must be necessary to prevent some harm from happening. If there's another less harmful option, then you must take that one instead. Second, your actions ought to be proportionate. The harm that your actions prevent must outweigh the harm that your actions cause.

Let me say more about proportionality. It's not enough for your actions to prevent more harm than you cause. The harm you prevent must be *significantly greater* than the harm you cause. Why? Well, most people think that it's worse to cause harm than it is to allow harm to happen. It's worse to kill someone than it is to fail to save this person. When you fail to save people, you allow harm to occur. When you harm people, you cause harm to happen. Thus, the burden of justification is harder to meet when you cause harm.¹ To meet this burden of justification, you need to show that your actions prevent a much greater harm from occurring. I don't have a precise way of determining when a harm is sufficiently worse than another harm. I'll just appeal to the readers' intuitive judgments. Suppose you could save Sarah's life by pinching Sally's arm. Death is much worse than a pinch. So, you should pinch Sally's arm.

Let's return to immigration. Lesser-evil considerations can justify immigration restrictions in Disaster. Proportionality is satisfied. The bad outcomes of open borders are so bad that they seem to outweigh the reasons in favor of open immigration. Necessity is also satisfied. There doesn't seem to be another way to prevent damage to political institutions and other bad consequences. This society just can't adapt fast enough to offset the risks of immigration. Thus, immigration restrictions pass the lesser-evil test.

Let's call this account of when immigration restrictions are justified as *the cosmopolitan account*. Why this name? This account has cosmopolitan presuppositions. It appeals to general positive duties. We all have positive duties to rescue people from harm if we can do so at reasonable cost. These duties are general in nature—we owe them to all of humanity. If you can rescue someone from harm, you should do it regardless of whether this person is a foreigner or your compatriot. According to the cosmopolitan account, our general duties to humanity sometimes outweigh our other general duties—in this case, our duties to leave people alone. In

Disaster, bystanders have general duties to prevent the harm that open immigration would cause and these duties defeat countervailing considerations. So, the cosmopolitan account justifies immigration restrictions in Disaster.

Yet it's hard to justify immigration restrictions on the cosmopolitan account. To do this, you need to show that immigration has terrible consequences and that immigration restrictions are truly necessary to avert these bad consequences. While this is possible to do, it's going to be difficult, especially if the evidence I'll review later is correct. So, on the cosmopolitan account, most immigration restrictions are likely unjust.

But, of course, there are other accounts of the ethics of immigration. I've already criticized them. Remember that, according to partialists, states or citizens have weighty special obligations to benefit their citizens and they lack these obligations to foreigners. If states' obligations to benefit their citizens and foreigners conflict, the obligations to benefit citizens win out, everything else being equal. Partialists think that immigration restrictions are easier to justify than the cosmopolitan account suggests. The cosmopolitan account says that there is only one good reason to restrict immigration: when doing so prevents very bad consequences. Partialists agree with the cosmopolitan account in that they think that immigration restrictions are justified to prevent bad consequences. But, unlike cosmopolitans, partialists hold that immigration restrictions should prevent bad outcomes *for citizens*. Moreover, partialists tend to believe that immigration restrictions are justified not only to prevent disasters or terrible outcomes, but also to prevent more mundane harms, like lower wages for native workers.

We've also seen another account of when immigration restrictions are justified. This is the self-determination account. Defenders of this view think that states have rights to collective self-determination and these rights can override or qualify the rights of foreigners to immigrate.

The partialist and self-determination account are often grouped together, although they are analytically distinct. You could endorse the partialist account and reject the self-determination account or vice versa. Adherents of the self-determination account can claim that states have *prima facie* rights to restrict immigration even if this doesn't protect citizens from harm.

I've already argued against the partialist and self-determination accounts. Why am I bringing them up again? Because philosophical arguments are rarely decisive or, more to the point, persuasive. There's a good chance that my arguments in the second chapter failed to convince you if you already accepted the partialist or self-determination accounts. So, it's a bad idea to put all of my eggs in the cosmopolitan basket. If I can show that even the partialist and self-determination accounts lead to my conclusions, then my argument will be more persuasive overall.

To be clear though, I do endorse the cosmopolitan account. Why exactly? My reason is this: the partialist and self-determination accounts are subject to powerful objections. As I argued in the last chapter, they're likely false. But almost everyone agrees that we can restrict liberty if this is necessary to stop catastrophes. Via a process of elimination, I conclude from this that lesser evil considerations are the only good reason to restrict immigration. The cosmopolitan account is the last man standing.

So my argument for the cosmopolitan view goes:

1. In general, it's permissible to restrict liberty if doing so is necessary to satisfy general positive duties and this interference is proportionate.
2. So, immigration restrictions are permissible if these restrictions are necessary to satisfy general positive duties and they are proportionate.
3. All other accounts of why immigration restrictions are permissible are unsound.

4. So, immigration restrictions are permissible *if and only if* these restrictions are necessary to satisfy general positive duties and they are proportionate.

The tricky premise is step 3. While I'm pretty confident that premise 3 is true, others are going to disagree. So, I won't rest all of my argument in this book on the cosmopolitan view. My argument will be more powerful and robust if the cosmopolitan view is true. But the partialist and self-determination accounts can go much of the way toward my conclusions too.

3. States Can Be Wrong

I'm now going to argue that actual immigration restrictions are systematically unjustified. My argument begins with a key assumption. On any reasonable account of the ethics of immigration, states can wrongly restrict immigration. Everyone thinks that governments can screw up from a moral perspective by closing their borders. All three accounts of the ethics of immigration that I've discussed hold there are moral reasons to permit immigration and that we need to balance these reasons against the reasons to restrict immigration. If immigration has big benefits for foreigners, then this is a good reason to permit immigration and this reason can sometimes be decisive.

Cosmopolitans think that there are strong moral reasons to refrain from interfering with the liberty of foreigners and that's normally a decisive reason in favor of open borders. Yet both partialists and defenders of the self-determination account conclude that states should admit refugees and even some economic migrants. States still have duties to rescue foreigners in need. They think that states should admit at least some needy refugees. Moreover, partialists and self-determiners usually concede that states have reasons to respect *citizens'* liberty to associate with foreigners. Citizens may want to marry, adopt, or hire foreigners and governments ought to take

these desires seriously. So, partialists and self-determiners agree that states have strong reasons to permit immigration. They just think that the reasons in favor of immigration are more likely to be outweighed than do cosmopolitans. But sometimes the reasons in favor of immigration restrictions are decisive.

Is this a fair description of what partialists and self-determiners think? Consider some illustrations:

- Michael Walzer is a famous defender of immigration restrictions. Walzer argues that nations have rights to preserve their national cultures or, at least, to control how their national cultures evolve over time by enforcing immigration restrictions. But Walzer also says that states have obligations of mutual aid to admit refugees. If states have space and admitting refugees won't impose large costs on the political community, then societies ought to admit them.²
- David Miller defends a broadly similar account as Walzer. He endorses both the partialist and the self-determination accounts. But, like Walzer, Miller thinks that states can be morally required to admit both refugees and even some economic migrants, provided that the costs of doing so are not too great.³
- Christopher Wellman is the most influential contemporary defender of the self-determination account. Wellman argues that states have rights to freedom of association and these rights permit exclusion. But Wellman also argues that states have egalitarian duties of justice to the global poor and potent duties of humanity to aid them. In addition, states should respect the liberty of their own citizens to associate with foreigners. All of these concerns can justify relatively permissive immigration policies on Wellman's view.⁴

- Stephen Macedo defends the partialist account. He argues that citizens have special obligations to one another and that these obligations are reasons to restrict immigration if immigration harms citizens. But Macedo holds that the United States should admit many guest workers from Mexico in part because the United States has moral reasons to aid them.⁵
- Ryan Pevnick contends that citizens have ownership rights over their political institutions and that citizens have rights to exclude outsiders from using their collective property. Yet Pevnick also concedes that states should admit immigrants who would otherwise lack adequate options to live decent lives in the states where they currently reside.
- Michael Blake thinks that states have rights to exclude immigrants because states have rights to prevent their citizens from acquiring obligations and allowing immigrants into a territory imposes new obligations on citizens. Blake though acknowledges that “the right of a state to exclude people from underdeveloped and oppressive nations is likely to prove rather weak” and easily overridden.⁶

This list includes some of the most prominent philosophical defenders of immigration restrictions. And I could go on. Almost all partialists and self-determiners acknowledge limits on the right to exclude.

So, everyone accepts the following claim: states can wrongly restrict immigration. In other words, states can make moral mistakes when forbidding immigration. Here’s a different question though: regardless of what we think about the ethics of immigration in theory, do states often make moral mistakes in practice? I’ll now argue that the answer to this question is yes. States are biased against immigration. Public officials and citizens overestimate the costs of

immigration and underestimate its benefits. They also discount and ignore the interests of foreigners when making immigration policy. As a result of these biases, states restrict immigration too much. So, for any actual immigration restriction, it's likely that this law is morally unjustified.

To defend this argument, I'm going to pursue the following strategy. I'll first argue that public opinion influences public policy and that the public is consistently wrong about immigration on a variety of different issues. That's because the public is often biased against immigration. If that diagnosis is correct, then this is evidence that public policy is unreliable on immigration.

4. Biases Against Immigration and Political Decision-Making

From Public Opinion to Public Policy

Immigration is unpopular. Overwhelming majorities oppose open borders and, in many countries, most citizens want less immigration than current levels. In one massive poll of countries around the world, researchers found that majorities want either to keep immigration levels the same or to decrease them.⁷ Remember that the status quo is already highly restrictive. So, if people want to either keep the status quo in place or restrict immigration further, then majorities are definitely in favor of immigration restrictions. Of course, public opinion varies by region. It seems to be the most negative in Europe where slight majorities want to see immigration restricted more. But even majorities in Canada and the United States want to see either immigration decreased or kept the same. In effect, that's a vote for major immigration restrictions.

Other surveys broadly confirm this picture.⁸ In one survey of eight high-income democracies, more than fifty percent of respondents favored reducing immigration to their country “a little” or “a lot.”⁹ Most people also have negative views of immigrants. In another survey of citizens of 22 countries, on average only 20 of respondents think that immigration has had a “fairly positive” impact on their country and 49 percent believe that there are too many immigrants in their country.¹⁰ Strikingly, majorities in many states say that their country should close its border to refugees *entirely*. In contrast, the fraction of citizens who favor a lot more immigration is tiny.¹¹ Between 1 and 7 percent of citizens want to see immigration “increase a lot.”¹² The number of people who endorse open borders is infinitesimal.

Why care about public opinion? Public opinion influences policy. In democracies, legislatures are the institutions that primarily decide immigration policy. Legislatures are elected.¹³ To win elections, public officials must be responsive to the interests and opinions of citizens. If citizens oppose immigration, then legislators will have a strong incentive to adopt the same view. Otherwise, political leaders will lose.

Public opinion isn't the only thing that matters. Interest groups influence immigration policy through lobbying and campaign contributions.¹⁴ For instance, businesses might persuade legislatures to push for more liberal immigration policies. Political leadership matters too. Presidents, prime ministers, and immigration agencies affect immigration policy on the margins. Political leaders can occasionally defy interest groups and popular opinion in crafting immigration policy. States enforce somewhat more liberal immigration laws than the median voter prefers. This indicates that pro-immigration interest groups and elites play a role in setting immigration policy.

Public opinion is also mediated through political institutions. Some political institutions are more responsive to public opinion than others. For instance, parliamentary systems and proportional voting make political institutions more responsive to voter preferences. So, parliamentary institutions and governments with proportional voting tend to enforce more restrictive immigration policies. Direct democracy and popular referendum implement more restrictive immigration laws as well.¹⁵ In contrast, more federal and presidential systems of government are more insulated from popular opinion.

Finally, the public lacks knowledge about whether immigration restrictions are effective. Most voters don't have accurate information about whether a government's policies really do curtail immigration. Instead, they rely on public cues and vivid images and events to monitor government performance. This is why immigration policies have a performative or symbolic element.¹⁶ Governments erect large border fences, operate detention camps, and publicly deport immigrants in order to signal to voters that they are cracking down on immigration. But, if governments can signal that they are tough on immigration while refusing to implement policies that would actually decrease immigration, they will often prefer this option. This means that governments can placate voters by tricking them. Public officials can use voter ignorance to keep borders relatively open.

Nonetheless, public opinion does exert an influence on policy in the long-run. The mechanism is simple. If elected officials defy popular opinion enough, then voters will eventually favor candidates who oppose immigration. This pressure will result in the election of public officials who adopt roughly the same views as their electorate. Social scientists find that the immigration policies of rich democracies are consistent with the preferences of the median voter in broad strokes.¹⁷

Here's an interesting fact: democracies in the Americas (like the United States) were the first states to implement race-based immigration policies during the late nineteenth century and early twentieth century. Undemocratic regimes were actually the first states to forbid selecting immigrants on the basis of race.¹⁸ This is probably because democracies are more responsive to public opinion, and public opinion about immigration is both exclusionary and often racist. Since public opinion tends to be hostile to immigration, governments are disposed to restrict immigration. A similar pattern emerges today. Many authoritarian governments, such as the Gulf States in the Middle East, actually admit many more immigrants than do democracies. One group of researchers writes:

[E]mpirical research shows that the public in even the most liberal democracies is consistently anti-immigration. Democratic regimes have to respond to this public xenophobia by strengthening border controls and deportation capacity. In short, autocracies attract immigrants because of their flexible labour markets and guest worker programmes, and because their rulers are less constrained by popular xenophobic demand.¹⁹

Most potential immigrants want to move to democracies like the United States and Britain. But voters don't want them and voters in democracies have an impact.

Why do citizens dislike immigration? I'll now devote some space to answering this question. My argument in short is that citizens have systematic biases against immigration and false beliefs about immigration's effects. I'll now start with the economic effects of immigration and go from there.

Wages and Effects on the Economy

Many citizens oppose immigration on the grounds that immigration is harmful for the economy and that immigration increases unemployment among citizens. The Ipsos survey I mentioned earlier finds that only 38 percent of respondents think that immigration is good for the economy and that only 25 percent disagree that immigration makes it more difficult for citizens to get jobs. Pew finds that about 50 of respondents in European countries think that refugees are a burden because they take jobs and social benefits.²⁰ In other surveys, large pluralities or small majorities in Britain and the United States say that immigrants take jobs away from citizens.

But citizens' beliefs about the negative effects of immigration are exaggerated. The dominant view among economists is that immigration has small or even negligible effects on employment and wages. Most recent studies find that immigration typically has ambiguous effects on wages and employment and, when immigration does have an impact, the effect is small and sometimes positive.²¹

Perhaps the most famous studies of the economic impact of immigration use natural experiments. They work like this. States sometimes experience a large increase in immigration. In the early 1980s, many people fled communist Cuba and escaped to Miami. Over 100,000 migrants reached Miami over a six-month period.²² There are other cases like this. Many people immigrated to France after the French government withdrew from Algeria,²³ Ireland experienced a surge in immigration once it joined the free movement zone of the European Union,²⁴ and a large number of Russian Jews immigrated to Israel after the collapse of the Soviet Union.²⁵ More recently, over two million Syrians have immigrated to Turkey.²⁶ Economists have studied each of these cases in order to determine if immigration caused lower wages or higher rates of unemployment in the countries that received immigrants. They have generally found that large

increases in immigration had few net effects on the wages of native citizens. Sometimes large inflows of immigrants temporarily depress wages. But wages recover after a few years.

One reason that immigration has small effects on wages is that, like everyone else, immigrants buy goods and services. So, immigrants generate demand for goods. Increased demand boosts the demand for labor, which creates jobs for citizens. Immigrants can complement the labor of citizens by performing different functions in the division of labor. If the labor of immigrants and native citizens is complementary, then immigration can boost the wages of native citizens. If immigration increases the division of labor, this can allow native citizens to specialize and become more productive. As a result, immigration can boost the wages of native citizens. It's true that not everyone benefits from immigration. Some people lose out. But that's true of every public policy. Immigration seems to benefit workers on average.

Here's another piece of evidence. A survey of randomly selected people in the United States asked respondents to say whether immigration is a "major reason," "minor reason," or "not a reason at all" why the "economy is not doing better than it is." About 47 percent of the public said that immigration is a major reason that the economy is not doing better than it is. This survey also posed the same question to a randomly selected group of economists. Just 1 percent of the surveyed economists said that immigration is a major reason that the economy is not doing better.²⁷

The overwhelming majority of economists could be wrong about the effects of immigration on the economy. Maybe economists are biased. But the disagreement between economists and the public persists even when social scientists control for many of the factors that could produce bias, such as income, job security, race, gender, age, ideology, and party identification.²⁸ This is prima facie evidence that many members of the public have false views

about the economic effects of immigration. This helps explain why 65 percent of respondents in surveys believe the number of immigrants to the United States should be decreased, while only 16 percent of economists agree that “current U.S. immigration levels are too high.”²⁹

Public Finance and Welfare Use

Citizens also worry about the effect of immigration on public finances. They believe that immigration worsens public finances and that immigrants take more in welfare than they contribute in taxes. One report by the Organization for Economic Co-Operation and Development finds that “there is clearly a link between the perception of the fiscal impact and public acceptance of additional immigration.”³⁰

But most major studies of the fiscal effects of immigration find that immigration has few net effects on public finances. A survey of the evidence concludes: “in general, there is no strong fiscal case for or against sustained large-scale immigration.”³¹ Let’s consider some examples. A majority of citizens in the United Kingdom say that immigrants take more out of the welfare system than they put it in, but it appears that immigrants are actually net contributors to public finances in the United Kingdom on average.³² Similarly, a majority of Americans worry that immigration puts too much pressure on public services.³³ And perhaps it’s true that immigration does strain local public services at first. But the National Academy of Sciences finds that the total fiscal impact of immigration is positive when we take into account the contributions of the immigrants’ descendants.³⁴

So, immigrants and their children often pay their own way. Take refugees. Almost everywhere citizens are concerned that refugees are burdens on the public. But, despite popular belief to the contrary, refugees are often net contributors to the public purse. Refugees in the

United States consume more in services than they contribute for a few years, and they are net contributors on average afterward.³⁵

Crime and Terrorism

Most citizens also seem to have false beliefs about the relationship between immigration and crime. Majorities in Western Europe believe that immigration increases crime.³⁶ Concerns about crime are significant determinants of people's attitudes toward immigration. In some countries, concerns about crime may be a more important predictor of attitudes toward immigration than concerns about the economic impact of immigration.

Yet the claim that immigration increases crime is generally unsupported. Three political scientists observe: "reports from single and multicountry studies suggest that immigration does not actually elevate crime rates. Recent U.S. research even finds that immigration is associated with lower levels of crime."³⁷ Sociologists Waters and Simes note that the popular belief that immigration causes crime "is remarkably resilient to the evidence that immigrants are no more likely than natives, and in most cases much less likely than natives, to commit crimes."³⁸

There is no denying that immigration can increase crime. In particular, a rapid influx of young men can increase crime rates. Nonetheless, social scientists have failed to identify a consistent link between crime and immigration. The most convincing studies of the relationship between crime and immigration use natural experiments to study the impact of immigration on crime levels. Researchers consider cases where there was an "exogenous" increase in immigration to a society. By "exogenous," I mean that immigration was not caused by the variable that researchers are trying to study. Instead, increased immigration has an independent

cause and was likely unrelated to trends in crime rates in the area that researchers are studying. Social scientists can then try to determine whether this immigration led to more crime.

Let's consider some examples:

- Refugee crises in the late 1990s and early 2000s caused a surge in asylum-seekers in England and the European Union expanded to include many Eastern European countries, which allowed people from these countries to move to England too. It seems that more asylum-seekers do slightly increase property crimes, although they had little effects on violent crime. But immigration from Eastern Europe actually reduced crime in England and Wales slightly overall.³⁹
- Rainfall patterns in Mexico are associated with more immigration to the United States. When there is less rain, agriculture does less well in Mexico. This causes more Mexicans to immigrate to the United States. So, patterns in rainfall are a semi-random exogenous cause of immigration. We can use rainfall patterns as an “instrumental variable” to estimate the effects of Mexican immigration on crime. The economist Aaron Chalfin finds that Mexican immigration has no statistically significant impacts on crime rates in the United States.⁴⁰ Chalfin also uses fertility trends in Mexico to estimate the impact of immigration on crime. The reasoning is that, if fertility rates are high, then this will ultimately result in more immigration. So, fertility rates are the source of exogenous variation. When he uses this identification strategy, Chalfin finds that immigration reduces property crimes, although it may increase assaults.⁴¹

These findings appear to be representative. While immigration has complex effects on crime, it does not seem to increase crime in general. Meta-analyses of the research on immigration and crime finds that the immigration-crime association is actually negative.⁴² That is, immigration is

associated with slightly less crime. This is consistent with the observation that cities with more immigrants tend to be safer than cities with fewer immigrants.

Another common worry about immigration is that it causes terrorism. Large majorities in many European societies think that admitting refugees increases terrorism.⁴³ A substantial number of Americans—possibly a majority—favored Trump’s ban on immigrants from “terror-prone” countries, particularly people from Syria, Iraq, Iran, Libya, Somalia, Sudan and Yemen.⁴⁴ And it’s undeniable that some immigrants commit terrorist attacks, just like it’s undeniable that some native-born citizens engage in terrorism.

Yet the number of immigrants who are terrorists is infinitesimal. Take Trump’s travel ban. How many Americans have been killed by foreign terrorists from the banned countries? Zero.⁴⁵ The United States admitted 3.25 million refugees over the past four decades and only twenty of them have been convicted of attempting or committing terrorism on U.S. territory. The policy analyst Alex Nowrasteh estimates that the chance of an American being killed by a foreign terrorist is 1 in about 3,600,000.⁴⁶ Falling furniture is much more likely to kill you than an immigrant terrorist, to say nothing of car accidents, ordinary homicides, or heart disease. Steven Pinker comments: “in 2015 an American was more than 350 times as likely to be killed in a police-blotter homicide as in a terrorist attack, 800 times as likely to be killed in a car crash, and 3,000 times as likely to die in an accident of any kind.”⁴⁷ You can tell a similar story about Western Europe. In any given year, terrorists kill few people and the number of terrorist attacks is declining over time. Despite frightening terrorist attacks in Paris and Brussels, terrorists killed many fewer people in Western Europe in recent years than they did in the 1970s and 1980s.⁴⁸

There is a reasonable argument for security checks and border screenings to deter and catch terrorists. If these measures would save lives and only mildly interfere with freedom of

movement, then they would be justified on lesser-evil grounds. Yet the public's fears about terrorism seem wildly disproportionate and divorced from the actual dangers. *A fortiori*, the same point applies to fears about immigration terrorists.

Assimilation

Many citizens deny that immigrants want to assimilate. For instance, a substantial fraction of Americans say immigrants prefer to retain their old norms and cultural traditions.⁴⁹ Samuel Huntington, an influential political scientist, articulated these concerns in an influential article and book. Huntington wrote: "The persistent inflow of Hispanic immigrants threatens to divide the United States into two peoples, two cultures, and two languages...."⁵⁰ Huntington later argued in his book on the subject: "Unlike past immigrant groups, Mexicans and other Latinos have not assimilated into mainstream US culture, forming instead their own political and linguistic enclaves...."⁵¹ People tend to reserve special ire for Muslims. Anti-immigration commentators often accuse Muslims of being unassimilable. And the public agrees. Majorities in seven European countries say that Muslims don't want to assimilate and instead want to remain distinct from the rest of society.⁵²

Are immigrants failing to assimilate? I can't comprehensively survey the literature here, but there's plenty of evidence that assimilation is going fine. Let's start with immigrants in the United States. Recent immigrants rapidly adopt the same values and norms as Americans and their children often stop speaking the native language of their parents.⁵³ According to the National Academy of Sciences, immigrants integrate over time across all measurable outcomes.⁵⁴ Some social scientists even find that immigrants are assimilating faster now than they did in the beginning of the twentieth century.⁵⁵

Consider Hispanic immigrants and their descendants. Despite Huntington's concerns, Hispanic immigrants are assimilating quickly, but this trend has been disguised by ethnic attrition. Many of the children of immigrants stop identifying as Hispanics and instead identify as "white," which prevents researchers from accurately tracking the outcome of Hispanic immigrants and their children over time. Once we adjust for this ethnic attrition, Hispanics are assimilating more quickly than skeptics initially thought.⁵⁶ This is partly because the immigrants who identify as white tend to integrate faster than those who don't, which introduces a bias in the data if we focus only on immigrants who identify as Hispanic. This is not to say there are no problems with the integration of Hispanic immigrants. There are. For example, denying unauthorized migrants access to citizenship seems to seriously degrade their integration and the integration of their children. But, for the most part, the melting pot is alive and well.

Now let's turn to Muslims. Newcomers from Islamic countries are the immigrants that people love to hate. Critics argue that they are too conservative, too religious, and too authoritarian. A British poll found that a majority of non-Muslim respondents agreed that there is a serious conflict between Muslims and non-Muslims in Britain (most Muslims disagreed).⁵⁷ And it's true that Islamic immigrants tend to begin from a lower base when it comes to endorsing liberal values. But, like most immigrants, they and their decedents gradually adopt the norms and values of their new society. For instance, Pippa Norris and Ronald F. Inglehart find that Muslim immigrants are more liberal than their country of origin and less liberal than their new countries, which suggests a gradual pace of assimilation.⁵⁸ Other research paints a broadly similar picture.⁵⁹

Critics argue that Muslims reject liberal sexual norms, such as the acceptance of homosexuality. You mean like most Westerners twenty years ago? Steven Pinker notes: "young Muslims in the Middle East, the world's most conservative culture, have values today that are

comparable to those of young people in Western Europe, the world's most liberal culture, in the early 1960s."⁶⁰ And those are Muslims in the Middle East—most immigrants in the West are more liberal still. Again, this doesn't mean that the story is completely rosy.⁶¹ But worries about the assimilation of Muslims are overblown.

Explaining Anti-Immigrant Biases

The publics of rich liberal democracies are systematically wrong about immigration. Moreover, they're not wrong in a random way. If citizens were wrong in a random way, we'd expect them to sometimes think that immigration has more positive impacts than it does. That's not what we find. Instead, most citizens overestimate the negative effects of immigration. They're biased against immigration. Why though? Why are people disposed to dislike immigration? The answer is complex. Overlapping cognitive and emotional processes push people to dislike immigration. I'm going to discuss just a few of them.

One factor is ethnocentrism. Ethnocentrism involves the disposition to believe that members of in-groups are trustworthy, cooperative, friendly, and safe, and that the members of out-groups are untrustworthy, dangerous, and uncooperative. Many citizens have nationalist ethnocentric biases. They think that foreigners have undesirable dispositions and characteristics in comparison with their compatriots. To see the influence of nationalist ethnocentrism, consider popular beliefs about the relationship between immigration and crime. Most citizens in the United States think immigration causes more crime. But the available empirical evidence fails to support this belief. Why explains citizens' false beliefs? Nationalist ethnocentrism is one answer. If citizens believe that immigrants are untrustworthy, uncooperative, or dangerous, then it's only a short step to the conclusion that immigrants commit more crime than native citizens.

There is systematic empirical support for the claim that nationalist ethnocentrism explains public opinion about immigration. According to one study, ethnocentrism is “the single most important determinant of American opposition to immigration—across time and setting and for various aspects of immigration policy.”⁶² Another study of attitudes toward immigration in Italy finds that:

...a sizeable segment of the Italian public denies that immigrants, whether white or black, whether from North Africa or Central Africa, act honestly and properly toward others, behave like good citizens, and observe the regulations and laws of the government. They perceive immigrants as intrusive, pressing themselves on others, as lazy, trying to avoid honest work but complaining about being badly treated, and not infrequently using or threatening to use physical force.⁶³

Respondents blamed immigrants for contributing to a variety of social problems, such as unemployment and crime. If you think about it, this is just what we would expect to find. Recall the minimal group research (§2.2). People who are arbitrarily divided into groups develop biases against out-groups. Well, the state system is just another way of arbitrarily dividing people into groups. As expected, members of the in-group (citizens) acquire pervasive biases against out-groups (foreigners).

Other kinds of out-group biases, such as racial ethnocentrism, influence immigration policy too. For example, people in the United States are more likely to feel threatened by non-white immigration.⁶⁴ We see more evidence for the role of racial attitudes in immigration policy when we consider that support for immigration depends on the origin of this immigration. Voters in Switzerland are more likely to reject observably similar applicants for naturalization if these applicants come from Yugoslavia or Turkey rather than Northern or Western European

countries.⁶⁵ In other words, voters discriminate against people from Yugoslavia and Turkey even though these applicants are nearly identical to applicants from Western Europe.

The fact that opposition to immigration depends on the origin of this immigration indicates that racial or ethnic in-group favoritism influences attitudes about immigration. It's hardly surprising that racism affects states' immigration policies. After all, most democracies explicitly adopted racist immigration policies in the nineteenth and early twentieth centuries. The United States banned Chinese immigrants and Australia pursued a "White Australia" policy to discourage non-white immigration. Although states have abandoned explicit racial quotas, it's plausible that racialized attitudes continue to influence their policies.

Other cognitive distortions, like disgust, influence attitudes about immigration. In humanity's ancestral environment, pathogens were a major threat to survival, and other groups of humans were a major source of pathogens. Evolutionary psychologists posit that humans evolved defense mechanisms against pathogens, which includes mechanisms that insulate them from out-groups. Disgust might be one of these mechanisms. Disgust is a reaction that protects us from contagion. If out-groups were a source of contagion, it makes sense that we would be disposed to be disgusted by out-groups. It turns out that people with sensitive immune systems are especially likely to oppose immigration.⁶⁶ It's no coincidence that xenophobes throughout history have compared immigrants to rats, insects, and other carriers of disease.

Yet disgust is a source of cognitive and emotional distortions. For one thing, disgust is unreliable. People feel disgust at different things. According to Martha Nussbaum, people in eighteenth century England felt disgust at the thought that opera singers were paid to perform.⁶⁷ Many people report that they feel disgust at the idea of gay sex. If disgust is so variable, this is a reason to discount it. Of course, disgust might still be useful heuristic or avoiding pathogens. But

this heuristic misfires in the modern world. For the most part, foreigners are not more likely to get you sick than your own compatriots. So, there's little reason to think that disgust is a reliable guide to the ethics of immigration.

We can overcome our biases against immigration. The evidence suggests that the highly educated and people with high IQs favor more immigration than other groups, and people who score well on objective tests of political knowledge prefer more immigration.⁶⁸ But most people lack the motivation to correct their biases. Each individual citizen has only a tiny impact on political decisions through voting and other forms of political participation. Why bother reading economics papers about the impact of immigration when you have only a miniscule effect on public policy? Unless you're an odd person and happen to enjoy developing accurate beliefs about immigration, you'd be better off spending your time doing something else. The predictable result is that most citizens will remain ignorant about the actual effects of immigration and lack the motivation to overcome their biases. Bryan Caplan observes: "in politics, critical thinking is an act of charity. Objective truth has to beg for spare change to survive" because few people have good incentives to engage in critical thinking.⁶⁹ At any rate, if citizens remain ignorant and harbor biases against immigration, then they will have a tendency to oppose immigration. In other words, people's biases against immigration are compounded by the logic of political ignorance.

5. The Bias Argument

To sum up my argument so far: voters are biased against immigration and politicians listen to voters. The predictable result is that states implement unjustified immigration restrictions. Let me elaborate on this inference a bit more.

If you endorse the cosmopolitan account, then it should be clear that actual immigration restrictions are unjust. Remember that the cosmopolitan account holds that immigration restrictions are justified if and only if they are necessary to prevent sufficiently bad outcomes from occurring, where “bad outcomes” are outcomes that are impartially bad on net for both foreigners and citizens. It’s hard to believe that’s the case for most actual immigration restrictions. More immigration has major benefits (§1.4 and above). Yet the public dramatically overestimates the costs of more immigration. Citizens think that immigration increases crime, hurts the economy, causes terrorism, and so on. The reality of immigration is much more positive.

So, it’s probably false that immigration restrictions really prevent bad outcomes. It’s much more likely that citizens push politicians to implement immigration restrictions that are harmful on net. In general, immigration seems to bring about good outcomes on balance. Cosmopolitans reject efforts to stop something that brings about good outcomes impartially considered. We can debate about whether completely open borders are justified. But, on a cosmopolitan view, actual immigration restrictions are surely unjust.

Think about it this way. Imagine that you discover that politicians, police officers, judges, and other influential citizens in your community are biased against ethnic minorities. They hold offensive stereotypes about minorities, discount their interests, and endorse false empirical beliefs about the effects of laws that would benefit minorities. Would you expect minorities in your community to be treated fairly? Probably not. You should expect that biases against ethnic minorities would translate into unjustified laws and policies. The same goes for immigration restrictions. Given people’s biases against immigrants, we should expect states to treat them unjustly. And that’s what states do.

Actually, this analogy understates things. It's not just that voters are biased against immigrants. There's another deep bias in political decision-making about immigration: foreigners have no voice. Foreigners don't get to vote on the immigration policies of other states. Since foreigners don't have a seat at the table, their needs and interests are ignored. History and political science reveal that, when a group lacks access to political power, the government ignores and tramples on the rights of the excluded group. This is why governments in the past often neglected and violated the rights of women and racial minorities—they lacked political power almost everywhere in the world prior to the twentieth century. After women gained access to the vote, governments became markedly more friendly to the interests of women and invested more in public goods that benefited them.⁷⁰ We can tell a similar story about African-Americans in the United States.

In light of this reliable pattern, we should expect governments to treat excluded groups badly, like potential immigrants. So, there are two biases against immigrants. First, public opinion is biased against prospective immigrants in the ways that I've described. Second, political institutions are biased too because they exclude the voices of potential immigrants. From a cosmopolitan perspective, these two biases virtually guarantee that states will treat prospective immigrants unjustly.

That's how we should see immigration restrictions from a cosmopolitan point of view. What about the perspectives of partialists and self-determiners? Even they should conclude that existing immigration restrictions are unjustified. Let's start with partialists. Remember that partialists hold that citizens have special obligations to their compatriots that weigh against their duties to foreigners. Although partialists would support more immigration restrictions than

cosmopolitans, they should also support more open borders than the status quo given the evidence I've laid out.

Immigration often benefits native citizens. For one thing, immigration generates economic gains, for one thing. One group of researchers estimate that immigration has benefited about 80 percent of the populations of rich democracies.⁷¹ If we cut off immigration, we're hurting that 80 percent. It's true that the gains are unevenly distributed and that some citizens lose out. Yet partialists should consider an obvious solution: redistributing the gains from immigration to citizens who are harmed by it. Anyway, as I pointed out earlier (§2.2), immigration restrictions harm many citizens too and cost a boatload of money to boot.

So, the partialist doesn't face a choice between "benefit immigrants" and "hurt citizens." Instead, the partialist face a choice between two options both of which benefit some citizens and harm others, except one option (more immigration) seems to benefit citizens more, especially with redistributive measures in place. And it's not like partialists totally ignore the interests of foreigners. They also agree that there are reasons to benefit immigrants. If more immigration would deliver major gains to immigrants, then that's an important consideration even from the partialist perspective. Thus, partialists should conclude that the public is biased against immigration and that immigration restrictions are likely unjustified as a result.

Let's now turn to self-determiners. Self-determiners think that states have rights to exclude immigrants and that we can derive these rights from the value of collective self-determination. Yet, to my knowledge, no self-determiner believes that the right to exclude is absolute. They claim that we need to balance the right to exclude against other moral concerns, such as the moral reasons to benefit immigrants and refugees as well as citizens. States may have the right to exclude, but that doesn't mean whatever they decide is right. If immigration benefits

foreigners and most citizens a great deal, then the reasons to secure these benefits could outweigh the right to exclude. So, if other concerns can override the right to exclude, then it's still possible that actual immigration restrictions are unjust. In light of the biases against immigration, this possibility seems likely. People overstate the costs of immigrants and understate the benefits. This means that they also exaggerate the reasons in favor of immigration restrictions and downplay the benefits. If the benefits are greater than most people think, then the reasons to bring about these benefits is more likely to defeat the right to exclude.

So, every major perspective on the ethics of immigration can agree that the status quo is seriously suspect. Here's my overall argument against the status quo:

1. Immigration restrictions are only justified if the moral reasons in favor of these restrictions outweigh the reasons against them.
2. States are systematically biased against immigration: public officials and citizens overestimate the costs of immigration and underestimate its benefits.
3. If states are systematically biased against immigration, then it's unlikely that, for any actual immigration restriction, the moral reasons in favor of this restriction outweigh the moral reasons in favor of them.
4. So, it's unlikely that, for any actual immigration restriction, the moral reasons in favor of this restriction outweigh the moral reasons in favor of them.

This is the *bias argument* against actual immigration restrictions. If sound, the bias argument shifts the burden of proof onto any defender of the status quo. Sure, it could still turn out that some immigration restrictions are permissible on closer inspection. Yet most states are biased in favor of restriction and probably implement unjust immigration laws as result. In light of the

pervasive anti-immigrant biases that citizens hold, we should expect states to enforce unjust immigration restrictions. And that's what they do.

6. What I Really Think

I've emphasized that every major account of the ethics of immigration can agree with the bias argument. But here's what I really think. The cosmopolitan account is true. That means that most immigration restrictions are almost certainly unjust. Almost all immigration restrictions fail to pass the lesser-evil test. Actual immigration restrictions represent a major restriction on individual liberty, and the evidence that even much more immigration would cause harmful consequences is weak. The best available estimates suggest that vastly more immigration would bring about major benefits and that these benefits would swamp the costs.⁷² Remember that, according to the cosmopolitan account, we need to consider all of the costs and benefits of immigration impartially, including the benefits to foreigners. When you factor in these considerations, the net benefits of open immigration are overwhelming. Moreover, it's hardly clear that immigration restrictions are really necessary to avert the harm that more immigration might cause. Maybe other policies could work too. So, lesser-evil considerations fall short of justifying immigration restrictions.

So do I endorse open borders? The short answer is "yes." But, if I could press a button that would open borders overnight, there's one consideration that would make me hesitate. That's the impact of immigration on institutions.

Maybe immigration will harm a society's institutions. This can happen in several different ways. Suppose that many people from an authoritarian society immigrate to a liberal democracy. Perhaps these immigrants will acquire the right to vote and use their political power

to influence their new country's politics. As these immigrants grew up in an authoritarian society, they might shift their new country's institutions in a more authoritarian direction. Here's another possibility. Immigration brings new people into the community and many find this to be unsettling. Perhaps people will be less willing to trust one another if there are many new immigrants in a community. Or immigration can bring about ethnic diversity. Ethnic diversity might make the members of a society less willing to cooperate with one another, and this can damage social solidarity. Consider a final possibility. Immigration might trigger a populist backlash. If a society opens its borders and immigrants pour in, then native citizens may be upset and end up supporting populist leaders. Populist leaders tend to be authoritarian and they might damage liberal institutions.

The risk that immigration will damage institutions worries me more than the other concerns that I've discussed because good institutions are supremely important. Good institutions, such as representative political institutions and an independent court system, safeguard and promote liberal freedoms. Many economists think that good institutions, such as markets and property rights, are responsible for prosperity.⁷³ On their view, the main difference between poor and rich countries is that rich countries have good institutions that facilitate economic growth. So, if immigration damaged good institutions, then this would be a serious concern. There would be a decent lesser-evil justification for immigration restrictions because the benefits of good institutions are so vast.

The key question is, of course, whether immigration actually damages good institutions. What does the evidence say? Here is one reason to be suspicious that immigration undermines good institutions: some of the richest places on earth are also the places with the most immigrants. Take some of the richest cities on earth: New York, Miami, Vancouver, Singapore,

and London. The immigrant share of each city is: 37,⁷⁴ 52,⁷⁵ 45,⁷⁶ 38,⁷⁷ and 37 percent respectively.⁷⁸ Many immigrants live in these cities. In some cases, the majority of the people who live in these cities are immigrants. Nonetheless, these cities are extremely prosperous and well-off. Someone forgot to tell Brussels, where immigrants make up 62 percent of the population, that immigration wrecks institutions.⁷⁹ If immigration undermined good institutions, this is not what we would expect to find.

There is evidence that immigration can lower social solidarity and trust. In certain contexts at least, more immigration seems to reduce the density of social networks. So, if there are more immigrants in a community, the residents of this community are less likely to form social networks with one another.⁸⁰ Yet this effect is limited and it only happens in certain cases. For instance, immigration does not seem to be associated with less social trust in some countries, like Canada.⁸¹

Anyway, we should avoid jumping to the conclusion that less social trust will necessarily damage institutions in a significant way. The link between these social trust/solidarity and good institutions is unclear. Some societies have low trust and good institutions. Take Japan. Japan has little immigration. But, interestingly, it also has low social trust.⁸² While Japan has plenty of problems, it's also one of the more prosperous and successful societies on earth. To be clear, I don't want to say that social trust is unimportant. My claim is rather that the relationship between social trust and institution is more complicated than "high social trust = good institutions" and "low social trust = bad institutions."

Economists who have studied the impact of immigration on institutions give us other reasons to doubt that immigration is harmful. More immigration is historically associated with long-term economic growth, which suggests that immigration does not damage institutional

quality. If immigration did cause harm, we would expect places with more immigration to have lower economic growth in the long run. This is not what we find.⁸³ Economist Benjamin Powell and his co-authors try to examine whether immigration harms institutions. They examine the relationship between immigration and measures of economic liberty, such as respect for property rights and the freedom to trade internationally. They find that immigration is associated with *improvements* with economic freedom in recipient societies.⁸⁴ Other economists have also tried to determine whether immigration has a negative impact on institutions. So far, they've largely come up empty.⁸⁵

Does immigration provoke populist backlashes? Friedrich Hayek, the influential economist and classical liberal, wrote:

While I look forward, as an ultimate ideal, to a state of affairs in which national boundaries have ceased to be obstacles to the free movement of men, I believe that within any period with which we can now be concerned, any attempt to realize it would lead to a revival of strong nationalist sentiments and a retreat from positions already achieved.⁸⁶

Like me, Hayek thought that ideal justice requires open borders. But, in practice, open borders would lead to large-scale migration and large-scale migration would be destabilizing and trigger a nationalist and populist backlash. People would become upset by immigration and end up supporting nationalism and populist politicians. Nationalists and populists tend to undermine liberal institutions. So, the backlash against immigration would endanger liberalism.

Contemporary authors, such as Jonathan Haidt and Karen Stenner, have echoed these concerns.⁸⁷

Immigration does appear to promote the growth of right-wing populist movements in certain contexts. Here's what seems to happen. If a small number of ethnically diverse immigrants move to a homogenous community, the members of this community react strongly

against this new diversity and favor exclusionary immigration policies.⁸⁸ People are then more likely to support populist and authoritarian leaders that promise to protect them from this out-group threat. You can observe this phenomenon with small homogenous towns. As a small number of immigrants begin to move to small towns with little diversity, these towns tend to become more conservative and populist. These places go from virtually no ethnic or racial diversity to a tiny bit of diversity, and people hate that. This makes sense of the finding that proximity to immigrants increases support for extreme right-wing parties.

The interesting thing is that this reaction mainly seems to happen when a group is already homogenous. If a group is more diverse and used to intergroup contact, then the populist reaction to immigration is muted. This is why immigration often fails to generate populist backlashes in large cities and why cities with large immigrant populations are the places that are most supportive of immigration. The backlash against immigration is not happening in places like Los Angeles, London, and Toronto. These cities already have many immigrants and people are used to interacting with them. More immigrants won't affect residents much. This suggests that, once a society has enough immigrants and diversity, this society will be less vulnerable to populism.⁸⁹ People will already be used to interacting with immigrants and less susceptible to populist messages.

So, maybe the solution to the problem of populist backlashes is *more* diversity and immigration. If people get used to interacting with immigrants, they will fear them less. There might be a populism "hump." When a society has a low level of immigration, then a sudden increase in immigration (or just a perceived increase in immigration) can trigger a populist backlash. You can tell a story like this about Poland and Hungary. Extreme right-wing movements in these countries have succeeded at eroding liberal democratic institutions. Illiberal

leaders have capitalized on fear of immigrants in order to mobilize political support. But here's an interesting fact: both Poland and Hungary have relatively low levels of immigration. Immigrants make up about 1.7 percent of Poland's population and about 5 percent of Hungary's population.⁹⁰ Perhaps the ethnic homogeneity of their populations makes them *more* vulnerable to right-wing populism.

In contrast, when a society already has a high level of immigration, more immigration can perhaps avoid triggering a right-wing revolt. For example, Canada has a larger share of immigrants in its population than do most other liberal democracies. Yet, at the time that I'm writing this, Canadian voters have largely rejected right-wing populism. We can tell a similar story about other countries with relatively high levels of immigration, like New Zealand and Australia. These countries have experienced a less pronounced swing toward populism in recent years than countries with fewer immigrants. It's possible that enough immigration can inoculate a country against the extreme right-wing. If right-wing populism is your problem, then immigration might help cure what ails you.

Suppose though that immigration does bolster illiberal movements. That doesn't yet mean that immigration restrictions are justified. Another possibility is that states could open their borders and grant immigrants political rights, such as voting rights. Immigrants will almost certainly vote against right-wing parties that want to exclude and deport immigrants. This can serve as a counterweight against the extreme right-wing. If a country's voters are willing to ditch democracy in order to stop immigration, we can blunt this problem by importing new, better citizens who favor both democracy and immigration.

My point is that, if we're worried about populist backlashes, we might be able to find another option to address this concern without significantly restricting immigration. The

connection between immigration and right-wing populism does worry me. Maybe the risk of a right-wing backlash justifies some immigration restrictions in new democracies or democracies with fragile institutions. But I have yet to see strong evidence that this problem is serious enough to justify immigration restrictions in most states.

You might argue that, while existent immigration flows fail to harm institutions, immigration under open borders would have bad effects.⁹¹ Many more people would immigrate under open borders and this could have bigger negative impacts on institutions. While this is possible, it's also speculative. And we can't justify restricting important freedoms on the basis of mere speculations. Even if open immigration did damage institutions, this might not be an immutable fact. We might be able to adapt our institutions so that they are more compatible with open borders. So, we don't know that immigration restrictions are necessary to protect good institutions, but we do know that existent immigration laws interfere with individual liberty and cause harm. If certain laws interfere with important liberties and we have no clear evidence that these laws are necessary to prevent harmful outcomes, then these laws are unjust. I continue to worry that immigration will harm valuable institutions. But, so far, this is not a credible defense of existing immigration restrictions.

My argument doesn't imply that states ought to open their borders overnight. If there are unknown risks to open borders, it might make sense to pursue a gradual approach.⁹² Countries could increase the number of foreigners that they admit every year. For example, the United States admits about one million immigrants every year. It could admit two million next year, and then three million the year after. The United States could continue to admit more and more immigrants unless it becomes apparent that more immigration would cause severe harm. There would then be a lesser-evil case for restrictions. So, while lesser-evil considerations are unable to

justify actual immigration restrictions in general, they could conceivably justify a gradualist approach to abolishing immigration restrictions.

Anyway, to endorse my general argument in this book, you don't need to sign on to my radical view. You just need to conclude that existing immigration restrictions are unjust and that states should allow more immigration. Here's why even skeptics about open borders should accept this conclusion. While other considerations can in principle justify immigration restrictions, we have reason to doubt that actual political decision-making about immigration reliably tracks these considerations. States are biased against immigration. As a result, governments will be disposed to restrict immigration even when the balance of reasons falls short of justifying these restrictions.

7. Equal Citizenship

Suppose that you agree with me that justice requires more open borders. You may favor the abolition of immigration restrictions entirely or perhaps you just endorse allowing more immigration than the status quo. How exactly though would more open borders work? I have argued that people have rights to cross borders and states should permit many more people to cross borders and live in their territories. But would immigrants automatically be entitled to citizenship? Or would they only have access to a lesser form of membership?

Equality and Citizenship

Many people regard equal citizenship as the ideal for all long-term residents of state. To explain what this means, consider the difference between temporary residents and full citizens. Residents of a state should have basic rights, such as the right to access basic public goods like

police protection, the right to a fair trial, and perhaps the right to emergency healthcare. A state should protect the basic rights of tourists, even though they will only reside in this state's territory for a short period of time. These rights though are different from the rights of citizenship. Citizens, at least in a liberal democracy, also have rights to vote, run for office, rights to access welfare programs, and so on. So, unlike short-term residents, citizens have political rights and more expansive rights to public benefits. Most political theorists who discuss the rights of immigrants argue that immigrants who live in a state for a long-period of time should at least have the option of becoming citizens.⁹³

There is something attractive about the idea that all permanent residents in a state should be equal citizens. This is because citizenship publicly signifies full membership in a community. Here's an analogy. Imagine that you join a golf club. But, even though you pay your dues, the other members of the club treat you unequally. They forbid you from using the club house and, if other members of the club want to use the golf course, they get priority over you. The other members can also kick you out of the club anytime they want. This treatment would be insulting and stigmatizing. It's arbitrary for the members of the club to deny you equal rights along with other members for no good reason. We can tell a similar story about equal citizenship. For better or worse, citizenship is the way that we signal public status and belonging. States that deny people citizenship send the message that these people are less deserving of consideration and respect than other residents. Many people also find it to be humiliating and stigmatizing to be denied equal citizenship.

It seems wrong to stigmatize people and signal disrespect for them without good reason. If denying people access to equal citizenship stigmatizes and disrespects people, then there are significant moral reasons against denying people access to citizenship. Now, it's surely okay to

refuse to grant citizenship to short-term visitors. Tourists, for instance, aren't really members of the community. So, it doesn't express contempt or disregard toward tourists if we withhold citizenship from them. But we want to communicate respect and inclusion to all members of the national community, and members of this community include all long-term residents (by long-term resident, I am referring to people who have lived in a state for several years—say, five or ten years). So, all long-term residents ideally ought to have access to citizenship. I endorse this basic argument for equal citizenship for all long-term residents. More precisely, all permanent residents should have access to citizenship unless there is a good reason to deny it to them. Equal citizenship is the morally default option.

Deviations from Equal Citizenship

Nonetheless, we might sometimes have good reason to depart from the default. I have two scenarios in mind: lesser-evil cases and cases of political infeasibility. Let's start with the lesser-evil case.

Suppose that Germany, say, is already admitting very many immigrants. Let's also assume that, if Germany admits more immigrants and grants them access to equal citizenship, then this will bring about a very bad outcome. Imagine that many people who want to immigrate to Germany live in authoritarian and illiberal cultures. If they have access to citizenship, they will vote for more authoritarian and illiberal policies and leaders. Or suppose that immigrants consume more in public benefits and welfare than they contribute in tax revenue. Germany's social welfare system is buckling under the pressure of open borders. Or imagine that German voters revolt against this high level of immigration. If immigration continues, they will vote for extreme right-wing parties that will threaten liberal institutions. So, there's a good lesser-evil

justification for restricting immigration to Germany. If there's no way of averting these bad outcomes, Germany can permissibly restrict immigration in order to prevent a much worse outcome from happening.

Yet there is also another option: Germany can admit immigrants and deny them access to citizenship. The German government will continue to protect the basic rights of immigrants and provide them access to essential public goods, like police protection. But Germany will deny immigrants access to social welfare and political rights, like the right to vote. This will mitigate the costs of immigration, prevent immigrants from damaging German institutions, and placate German voters who oppose immigration. So, German officials have three options: (a) maintain open borders and suffer the harmful consequences of unlimited immigration, (b) restrict immigration and deny potential immigrants the option of immigrating, and (c) continue to admit immigrants but restrict their access to citizenship. It looks like (c) is the best option. This option protects people's freedom of movement and avoids the harmful consequences of open borders with full access to citizenship.

But doesn't option (c) treat immigrants unfairly? No. By assumption, it would otherwise have been permissible to deny admission to these immigrants altogether. If it were permissible to deny admission to these immigrants entirely, then then it's unclear how the German government would wrong them by giving them the additional option of immigrating insofar as they consent to this option. Consider an analogy. Suppose that I'm the rightful owner of my house and you really want to rent a room there. As I'm the rightful owner, let's stipulate I can permissibly stop you from living in my house. But imagine that I instead give you another option: you can live in my house as long as you maintain the lawn, take out the trash, and clean the bathrooms every

week. You agree. Have I wronged you? It's hard to see how I have. I just gave you another option above and beyond what I already owed you, and you consented to it.

It's true that I'm treating you unequally in a sense. I'm not going to maintain the law, take out the trash, and clean the bathrooms—that's your job now. But, as a general matter, we aren't required to treat everyone exactly equally. For example, it would be absurd to insist that a judge treats innocent and guilty defendants equally. There is obviously a morally relevant difference between these people and so equal treatment is inappropriate. Furthermore, there is a morally relevant difference between me and you in the above example: it's permissible for me to exclude you from the house.

Now, I don't think countries are like houses. I deny that states have general rights to exclude outsiders. My point is more limited: I can imagine cases where it can be permissible to exclude foreigners. In these cases, states don't wrong foreigners by offering them a lesser set of rights. So, while equality might be the default, some deviations from equality are permissible. The same goes for immigration. If Germany can permissibly exclude immigrants to prevent bad outcomes, then it stands to reason that Germany can admit them on the condition that they can't access citizenship if this helps mitigate these bad outcomes.

Thus, it's sometimes permissible to deny immigrants access to equal citizenship. These circumstances are probably rare. As I argued earlier, there is no good general argument for restricting immigration on lesser-evil grounds. But there might be isolated cases where lesser-evil considerations would otherwise permit restrictions. In those cases, it can be permissible to treat immigrants unequally.

Let's grant though that it's often unjust to deny immigrants citizenship and equal rights. Nonetheless, this may be the most politically feasible way of permitting more immigration in

certain cases. The economists Martin Ruhs and Philip Martin have identified a tradeoff between openness to immigration and the number of rights that states grant to these immigrants. In comparing immigration policies around the world, Ruhs and Marin find that “programs that are more open to admitting migrant workers are also more restrictive with regards to specific rights.”⁹⁴ States are more willing to admit migrants if these migrants have fewer rights.

Consider a dramatic example: the Gulf States in the Middle East, including Kuwait, Oman, Bahrain, and Saudi Arabia. The Gulf States admit an enormous number of immigrants. Migrants make up a majority of the labor force in most of these states. In Kuwait, Qatar, and the United Arab Emirates, migrants constitute over 90 percent of the private sector labor force.⁹⁵ The Gulf States only admit most of these migrants as guest workers and deny them citizenship as well as many other protections, such as access to the general labor market and welfare benefits. The Gulf States can admit so many immigrants in part because these migrants have few rights. Migrants are segregated from citizens, lack political rights, and impose few costs on citizens while benefiting native employers. Reports of employer abuse of migrants are common. But there is evidence that, if the Gulf States granted migrants more rights, this would cause states to admit fewer migrants. For instance, the United Arab Emirates increased migrants’ ability to switch employers. This policy resulted in less immigration.⁹⁶

The example of the Gulf States suggests that sometimes it’s only politically feasible to admit many immigrants if states deny them access to citizenship and other benefits. So, sometimes there is a tradeoff between numbers and rights, or domestic equality and openness to immigration. What should an advocate of open borders think about this tradeoff? While it’s normally unjust to deny immigrants citizenship and a greater package of rights, it’s morally

worse to exclude them altogether. So, if we need to choose between rights or numbers, we should choose numbers. There are two reasons for this.

First, the benefits of immigrating are large. The economist Glen Weyl calculates that the Gulf States actually do more to reduce global inequality than do rich democracies.⁹⁷ Domestically, the Gulf States are dramatically unequal. These states enforce radical divisions between citizens and guest workers. However, they admit far more migrants than do affluent democracies, these migrants command relatively high wages in the Gulf States, and they send home a great deal of money in remittances. This income transfer is far greater than the miniscule amounts that rich democracies spend on foreign aid. Although this is hard to believe, Weyl calculates that the United Arab Emirates reduces global inequality more than Canada does. The economist Michael Clemens also finds that Indian guest workers earn much more money, are more likely to start businesses, and are less likely to be in debt than Indians who were not selected for construction jobs in the United Arab Emirates.⁹⁸ If the benefits of more immigration are large enough, then this is a reason to prefer numbers over rights. Assume that more rights for guest workers would reduce the number of migrants that the Gulf States admit. A larger package of rights would benefit guest workers, but this would cut off the larger aggregate gains to the excluded migrants. And the gains to people from immigrating seem to be much bigger than the gains to migrants from more rights.

Second, and perhaps more importantly, guest workers had a choice. They consented to move to Saudi Arabia or Kuwait even though they know that these states grant them few rights. So, guest workers knowingly choose to trade off rights for mobility. Contrast the situation of guest workers with the foreigners that states exclude altogether. They never consented to this exclusion.

Choice makes a moral difference. To see why choice matters, consider a thought experiment. Suppose that two impoverished workers in India, Ayaan and Raahithya, want to immigrate to the United Arab Emirates as guest workers. Let's suppose that the United Arab Emirates admits Ayaan as a guest worker with limited political and civil rights. Ayaan must agree to work for a certain employer, although he can return to India if he so chooses. Ayaan will also earn much more than is possible in India. In contrast, the United Arab Emirates forbids Raahithya from immigrating. If Raahithya tries to immigrate anyway, he'll be punished and deported back to India. Quite plausibly, the United Arab Emirates has treated both Ayaan and Raahithya unjustly. They have rights to move and work in the United Arab Emirates with no conditions attached. But who has the United Arab Emirates government treated worse—Ayaan or Raahithya? It seems that the United Arab Emirates government treated Raahithya worse. At least the United Arab Emirates gave Ayaan an option and respected his ability to decide what's best for himself. Yet the UAE flatly excluded Raahithya and refused to give him any options. Again, the actions of the United Arab Emirates in either case is unjust. However, these actions are more unjust in Raahithya's case.

So, I agree that it's normally unjust to permanently deny migrants access to citizenship and to give them an inadequate package of legal rights. These circumstances render guest workers vulnerable to mistreatment and abuse. Permanently denying people access to membership rights is also stigmatizing and insulting. But it would have been worse to exclude potential immigrants altogether like most affluent democracies do. At least the Gulf States gave would-be immigrants an option. Most democracies don't even give foreigners that—they just prohibit them from immigrating altogether. In this regard, the Gulf States treat foreigners more respectfully than do most rich democracies. So, advocates of more open borders should think that

the immigration policies of the Gulf States are on the whole more just than the immigration policies of other states.

8. Conclusion

This chapter completes my argument for more open borders. Justice requires that states allow much more immigration. In its broad contours, my argument for broadly open immigration is an old one. In 1869, the famous abolitionist Frederick Douglass gave a speech entitled “The Composite Nation” in which he argued in favor of allowing Chinese immigration to the United States. Douglass said:

There are such things in the world as human rights. They rest upon no conventional foundation, but are external, universal, and indestructible. Among these, is the right to locomotion, the right of migration; the right which belongs to no particular race, but belongs alike to all and to all alike.... I know of no rights of race superior to the rights of humanity and where there is a supposed conflict between human and national rights, it is safe to go to the side of humanity.⁹⁹

Douglass was right. We should go opt for the side of humanity and embrace more open immigration.

¹ The view that there is a difference between causing harm and failing to prevent it is often called the doctrine of doing and allowing. This doctrine is controversial to some extent. Utilitarians deny it. They think that there is no fundamental difference between allowing harm to occur and causing harm. But even most consequentialists think that, in practice, it makes sense to blame people more for their harmful actions than their failures to help. For a defense of this doctrine, see: Fiona Woollard, *Doing and Allowing Harm* (New York: Oxford University Press, 2015).

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⁹⁷ E. Glen Weyl, “The Openness-Equality Trade-off in Global Redistribution,” *The Economic Journal* 128, no. 612 (2018): F1–36.

⁹⁸ Clemens, “Testing for Repugnance in Economic Transactions: Evidence from Guest Work in the Gulf.”

⁹⁹ Frederick Douglass, “The Composite Nation,” 1869, <http://www.blackpast.org/1869-frederick-douglass-describes-composite-nation>.

Chapter 4: Are More Open Borders Feasible? Does It Matter?

1. Introduction

To sum up my conclusions so far, justice requires that states should open their borders or, at least, allow much more immigration than they currently do. In most cases, states should also give immigrants access to equal citizenship. This is obviously a tall order. In fact, it seems downright utopian. It's unlikely that states will open their borders any time soon. Why though? Why does the goal of free movement seem like an impossible ideal? I'll now explain why more liberal immigration policies are infeasible and consider the implications of this infeasibility for the ethics of immigration.

2. Why States Restrict Immigration

Let's discuss some of the factors that explain why states restrict immigration and examine what, if anything, can be done to counteract these factors. I want to describe four reasons why states are reluctant to open their borders: (a) states have unilateral control over their immigration policies, (b) this control is effective, (c) immigration is unpopular, and (d) popular opinion influences public policy. I've already discussed (c) and (d) in chapter 3, but I'll now elaborate on other important reasons why immigration restrictions exist. These factors mean that states will in all likelihood continue to restrict immigration.

Unilateral Control

Sovereign states have legal discretion over immigration. Under modern international law, states can both legally choose to open their borders or close them. The foundations of the modern state system are territorial integrity and sovereignty. These tenants are often thought to imply the

legal right to exclude immigrants.¹ At least, this is what courts and international lawyers have long argued.

Take a famous case: the Chinese Exclusion Act. In 1892, the United States government forbade the immigration of all Chinese workers. The Supreme Court upheld this law. The Court ruled that the United States could exclude Chinese immigrants because “it is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.” In other words, according to international law, states can do whatever they want when it comes to excluding immigrants. International law has changed radically since the late nineteenth century. Among other changes, international human rights law limits how governments can treat their own citizens. But international law continues to place few constraints on states’ immigration policies.²

There are exceptions to the legal power that states wield over immigration. Here’s a big one: refugees. After the Second World War and again in the 1960s, states agreed to a refugee convention that specifies how they can treat refugees. But the refugee convention only tells states that they need to refrain from deporting refugees who arrive in their territories. It doesn’t tell states that they need to allow refugees to set foot on their territories. This is why states often do everything in their power to stop refugees from reaching their territories in the first place. Many states take active measures to prevent this by setting up interdiction zones and taking other measures that prevent refugees from reaching a place where they can claim asylum.³

Consider Australia’s immigration policies. Many people, including many refugees, want to immigrate to Australia. But the Australian government tries hard to stop them from ever

reaching Australian waters. The Australian government has paid off people smugglers to get them to return refugees to their countries of origin.⁴ Also, Australian officials often divert refugees to neighboring island where refugees languish in detention for years before being released.⁵ Other countries take similar measures to prevent refugees from touching their territories and claiming their rights under international law.

So, legally speaking, states can often do whatever they please when implementing immigration policy. Moreover, few international organizations bind states' immigration laws. Contrast immigration policy with trade. Most states are members of the World Trade Organization (WTO) and many states have bilateral trade agreements with one another. Membership in these organizations stops states from restricting trade. If the United States imposed high tariffs on Chinese goods, China could challenge this policy in the WTO and the WTO might rule against the United States. So, the United States lacks the freedom to close down trade with China because the United States is a member of international institutions that constrain its trade policies. The United States can buck the verdicts and rules of the WTO to some degree. But these international institutions matter: membership in the WTO seems to significantly increase trade between member states.⁶

Yet states have refused to cede control over their immigration policies to international institutions. Again, there are some exceptions. The major exception is the European Union (EU), which enshrines in the law freedom of movement between EU citizens. But most states aren't members of the EU or other organizations that constrain their discretion over immigration. For the most part, these states can restrict immigration without having to pay attention to what international law and institutions have to say.

State Capacity

It's not just that states have the legal power to restrict immigration. States also have *effective* control over immigration. By this, I mean that modern states are actually capable of enforcing laws that bar foreigners from immigrating. This factor may sound too obvious to mention. But states in the past sometimes lacked the ability to effectively control immigration. Premodern empires and kingdoms did not possess large and centralized bureaucracies that could detect and detain migrants at the border. Premodern states couldn't even identify most of their own citizens. Until recently, most native citizens were "undocumented": they had no legal papers that could identify them as citizens of a state. As a consequence, it was sometimes practically impossible for governments to distinguish natives from immigrants.⁷ This might help explain why states placed few restrictions on immigration in past centuries. During the nineteenth century, many states in the Western Hemisphere refrained from restricting international movement. Why? The story is complex. But one possible explanation is that states simply lacked the capacity to effectively restrict immigration. They just couldn't control the movement of people across borders. So, they didn't try.

Yet governments gradually began to document and categorize their populations. States have long tried to make society legible by identifying the monitoring the movement of populations and domesticating nomadic peoples. They did this in order to identify and extract revenue from their population and deal with threats to state authority.⁸ Modern states have largely succeeded in these aims, at least in comparison with premodern regimes.

Consider the passport. Intellectuals in the late nineteenth century thought that passports were a thing of the past, a relic of the Old Regime. Only feudal regimes like the Russian Empire made extensive use of passports. For a time, it seemed like the future belonged to free

movement. But the early twentieth century saw the reintroduction of passports and travel restrictions. After the First World War, most Western states implemented strict passport regimes that regulated movement across borders. The immediate cause of this legal change was nationalism and war. However, the long-term cause was likely state capacity. Ian Golding, Geoffrey Cameron, and Meera Balarajan note: “states that had attempted to limit migration before had often done so on racial/ethnic lines, but the introduction of mandatory passports coincided with growth in the capacity of states to effectively police their borders.”⁹ After the Second World War, the practice of issuing and requiring passports was nearly universal.

So, modern states became strong enough to detect and stop immigrants from entering. The same process is happening in the developing world. Kamal Sadiq, a political scientist who studies citizenship in Southeast Asia, writes:

During the precolonial and colonial periods, immigration flows took place between weakly institutionalized political entities, such as kingdom, city-states, empires, and other nonstate entities. Fluid boundaries with minimal control over populations and the lack of a centralized citizenship structure marked the historical period in developing countries.¹⁰ Nomadic peoples more-or-less freely circulated between empires and kingdoms, and many low-income states continue to lack the ability to restrict immigration effectively. Things though are changing quickly. Governments in South East Asia and other parts of the developing world are doing more to document, identify, and categorize their population, and distinguish them from foreigners. Someday these states will be just as effective at restricting immigration as rich countries. When that happens, we should expect immigration between these states to decline.

Public Opinion and Responsiveness

Thus, two reasons why modern states restrict immigration is that they have the legal discretion and capacity to do so. This raises a question though. States have the power to control immigration. But why do they use this power to restrict immigration when states could instead use their discretion over immigration to open their borders?

I've already given the answer in the third chapter. States refuse to adopt open borders is that immigration is unpopular (§3.4). Overwhelming majorities oppose open borders and, in many countries, most citizens want less immigration than current levels. To be sure, public opinion is not uniform. People like the idea of admitting brain surgeons and oppose allowing in construction workers. In other words, popular opinion tends to support more skilled immigration and opposes letting low-skilled immigrants in. This is reflected in public policy: many states have liberalized their standards for admitting skilled workers while making it harder for low-skilled workers to immigrate.¹¹ Democratic governments usually listen to citizens' opinions. They don't much care what foreigners think.

Occasionally other actors, such as corporations, can counterbalance the drive for more closed borders. If corporations desperately need more immigrant workers, then they might succeed at blocking public opinion. But the political scientist Margaret Peters suggests that corporations in rich countries no longer have strong incentives to push for more open borders.¹² International trade is relatively free. And businesses don't need to import workers if they can export production to other countries. Instead of importing workers to make products in San Diego, you can set up a factory in Tijuana. Businesses can get around the need for more workers in their own country insofar as they have access to cheap labor abroad. Many businesses would still *like* more immigration. Yet their incentive to push for more immigration is fairly weak. So,

strangely, free trade may be the enemy of free migration. In the absence of determined opposition from business, public opinion that is hostile to immigration tends to win out.

3. Possible Solutions

Let's bring together the strands of my story. International law gives states extensive authority and discretion over immigration. Except for refugees, the legal power of states to restrict immigration is virtually unchecked. Moreover, unlike premodern empires and kingdoms, modern states have the capacity to effectively control their borders. They also have strong incentives to use this capacity to restrict immigration because citizens overwhelmingly oppose open borders. Most modern states, especially democracies, are responsive to public opinion. So, popular opposition to immigration translates into restrictive immigration policies. More schematically, the important factors in my account are:

- (i) *Unilateral Control*. States have legal discretion over immigration—no other institutions, such as international institutions, significantly constrain their power to exclude foreigners.
- (ii) *State Capacity*. States have the capacity to enforce restrictive immigration laws.
- (iii) *Popular Opinion*. Immigration is unpopular and most citizens tend to oppose more immigration.
- (iv) *Responsiveness*. Governments are responsive to the popular opinion of their citizens about immigration to some extent. They are not responsive to the interests of foreigners.

These four factors seem to jointly explain why states heavily restrict immigration.

Suppose that my story is right. Powerful factors push states to enforce unjust immigration policies. In light of these factors, are more open borders feasible in the near term? In order for broadly open borders to be feasible, one or more of the above factors that explains why states close their borders must be weakened or counterbalanced. So, should we expect the forces that cause immigration restrictions to go away anytime soon? Of course, no one knows for sure what will happen. But I will now register my skepticism. I will argue that in the near-term—say, the next thirty years—it’s unlikely that states will admit substantially more immigrants as a share of their population than they do now. States will refuse to do what they ought to do. I hope that I’m wrong. But, sadly, I’m probably not.

State Capacity

Let’s start with state capacity. As we saw above, modern states restrict immigration in part because they have the power and capacity to do so. It’s unlikely that states will lose this capacity in the near term. If anything, their capacity to restrict immigration seems to be growing. This is because the surveillance powers of modern states are increasing. For example, governments now have the ability to monitor their populations by surveilling their data presence on the internet. States are now deploying new technologies, such as drones, to enforce their immigration restrictions as well. These developments might bolster states’ ability to track and block the movements of people across borders and remove them from their territories. I don’t mean to exaggerate. State control has always been imperfect. We know this because many people still succeed at migrating without state authorization. But immigration restrictions do keep out most potential immigrants.¹³ And there’s little evidence that that immigration restrictions are becoming less effective over time.

Popular Opinion

Public opinion could become friendlier toward immigration. Crazy things have happened. Consider some lessons from history. At one time, many people—perhaps most people—supported slavery, aggressive war, the routine torture of criminals, sexism, racism, colonialism, and despotism.¹⁴ Perhaps we will someday add immigration restrictions to this list.

I hope so. Yet it seems false that immigration restrictions are becoming more unpopular. Public opinion about immigration remains relatively stable. Some progress has occurred in certain countries, like the United States. More American citizens now have a more favorable view of immigration than they did in the recent past, although majorities still favor either the status quo or more immigration restrictions.¹⁵ In contrast, public opinion in Europe is increasingly hostile to immigration.¹⁶ When you take a broader view of public opinion about immigration across societies, it's difficult to detect any significant trend toward pro-immigration attitudes over time.¹⁷ One possible ray of light is that young people tend to have more favorable views of immigration, although the difference between young and old is relatively small.¹⁸ But there's certainly no movement towards anything resembling open borders. Perhaps most people will one day reject immigration restrictions. It's just hard to see any sign that this day is coming soon.

This state of affairs is unsurprising. Powerful factors push public opinion to oppose immigration (§3.3). Progress is possible. For example, humanity has made progress in suppressing biases against racial out-groups. Sometimes progress comes astonishingly quickly. For instance, people in the West went from endorsing racial hierarchy to racial equality within about a hundred years (in principle anyway).¹⁹ Anti-foreign bias could be next on the agenda. But

progress in reducing out-group biases is more often slow, costly, and uncertain. At least, there are large impediments to changing public opinion about immigration, and little evidence that we're currently overcoming these impediments.

Unilateral Control and Responsiveness

Perhaps the most promising way to arrive at more open borders is through institutional constraints on state power. Here I'll discuss two examples: international organizations and constitutions. If implemented, these institutions would reduce the importance of two key factors that cause states to close their borders: Unilateral Control and Responsiveness.

International organizations can constrain states' powers to restrict immigration. Let's return to an example I mentioned earlier: the European Union. Here we have a genuine and remarkable case where states have substantially removed their immigration restrictions, and created the largest international free movement zone in the world. Several members of the European Economic Community signed the Schengen Agreement in 1985, which helped established freedom of movement between signatories. The rules of the Schengen Agreement later became incorporated into the European Union in the 1999 Treaty of Amsterdam. The supranational institutions of the European Union, such as the European Court of Justice, have played a key role in curtailing the ability of member states to restrict freedom of movement.²⁰

So, supranational institutions enforce free movement within the Schengen Zone. Free movement in the EU has allowed large-scale migration. For instance, the number of Polish migrants in the United Kingdom increased from 100,000 to nearly 750,000 between 2004, the year Poland became a member of the European Union, and 2014.²¹ However, the scale of the migration between member states has been less than many have feared and hoped. The

overwhelming majority of Europeans choose to stay in their countries of birth. Furthermore, the European Union still excludes most foreigners from outside of the European Union. Some observers argue that the European Union has restricted external migration more as member states have liberalized immigration laws within the Union.²²

Although the European Union is an especially dramatic example, other international institutions have promoted freedom of movement too. Another example is Mercosur, a regional economic association in South America that includes Argentina, Brazil, and several other countries. In 2002, the member countries adopted the 2002 Mercosur Resident Agreement, which gave citizens of member states the right to work and reside in other states for a period of two years if they lack a criminal record and have appropriate identification. This agreement created a broadly free movement zone in South America, although Mercosur is much weaker than EU institutions. Unlike the EU, Mercosur lacks supranational courts that exercise oversight over the immigration policies of member states. Mercosur instead relies on elite consensus and regional policy networks to secure compliance. Nonetheless, it seems to constrain state discretion over immigration policy somewhat.²³

Thus, international institutions can reduce states' unilateral authority over immigration. Another possible institutional innovation that could reduce state power is constitutionalizing the right to immigrate. If a state's constitution enshrined the right to immigrate and courts enforced this right, then this could limit this state's ability to restrict immigration. This may sound like a crazy idea. But some states have already constitutionalized the right to immigrate.

The 1811 Venezuelan Constitution has a clause that says: "All foreigners of any nation will be admitted into the State."²⁴ The current Ecuadorian constitution also says that foreigners have rights to immigrate. The 1853 Argentinian constitution holds: "The Federal Government

shall encourage European immigration, and it may not restrict, limit, or burden with any tax whatsoever the entry into Argentine territory of foreigners whose purpose is tilling the soil, improving industries, and introducing and teaching the sciences and the arts.”²⁵ Argentina’s constitutional history might be part of the reason it currently has a relatively open immigration system. Argentina does not have open borders. But Argentina’s immigration system seems to be more liberal than that of most states.

There’s a strong case for both international institutions and constitutions that protect the right to immigrate. If majorities threaten individual rights, then we have strong reasons to implement safeguards that protect these rights from the tyranny of the majority. This is the classic rationale for enshrining rights in constitutions and enforcing these rights through an independent judiciary. Consider rights to free speech. Many people also support restricting freedom of speech, especially the unpopular speech of minorities. Thus, majorities pose threats to rights to freedom of speech. So, we have good reason to insulate the right to free speech from the political process by constitutionalizing it. This justification extends to international institutions too. International institutions can help bolster the rights of unpopular minorities by protecting them from their own governments.

Majorities pose threats to the rights of foreigners. They support restricting immigration and deporting immigrants. Institutions should insulate the rights of foreigners from the political process. Constitutions and international institutions are ways to shield the right to immigrate from majorities. The European Union, Mercosur, and constitutions in Latin and South America suggest that it’s sometimes possible to protect the right to immigrate in this way. Let’s call this argument for creating international institutions or constitutions that constrain state authority over immigration: *the insulation argument*.

I am sympathetic to the insulation argument. Novel institutions that curtail state power seem more promising than other ways of expanding immigration. Sadly, though, there are key problems with the insulation argument. The fundamental problem is that the same factors that explain why states restrict immigration also explain why they will resist giving up their discretion over immigration. If immigration is unpopular, then why would politicians create institutions that would tie their hand and ultimately result in more immigration? As leaders evidently lack incentives to open their states' borders, it's unlikely that they have good prudential reasons to create institutions for this end either. Even if one set of leaders succeeds at insulating the right to immigrate from majority preferences, other leaders might reject this insulation and undo it at a later date.

Suppose though that political leaders somehow manage to constitutionalize the right to immigrate or join an international organization that institutes free movement. There's still a problem. Constitutions and international institutions don't enforce themselves. We need people need to enforce them. Judges, police officers, and administrative agencies must be motivated to apply the rules of a constitution or international organization. These people are vulnerable to pressure from politicians and electorates. If large majorities oppose immigration, then protections for the right to immigrate might gradually erode, even if they officially remain on the books.

This is a more general worry about institutional constraints on state power. The American founding father James Madison speculated that constitutions were mere "parchment barriers."²⁶ Madison argued that it was insufficient to just list a set of rights in a constitution. This wouldn't be enough to protect the rights of the "more feeble" against "the more powerful members of the government." A large body of evidence in the social sciences confirms Madison's worry.

Constitutions and international institutions tend to be ineffective unless public officials have strong incentives to enforce their provisions.²⁷ The constitution of the Soviet Union contained rights to freedom of speech and assembly. Did this stop the Soviet Union from routinely violating these rights? No. So, it's unclear whether enshrining the right to immigrate in constitutions or international institutions will be sufficient to protect them in the absence of other incentives.

Let's apply these concerns about the insulation argument to the European Union. As I write this book, more and more Europeans are rejecting free movement. The refugee crisis has strained their commitment to the free movement Schengen Zone. Hundreds of thousands of Syrians and other refugees from the Middle East and Africa have streamed across Europe in order to escape war, poverty, and oppression in their home countries. But many Europeans want to keep refugees out. Populist movements are gaining steam throughout Europe and populists almost universally reject immigration. So, their governments have begun to reintroduce border checks in order to prevent refugees from entering. People must sometimes wait for hours in order to cross European borders. As a consequence of these changes, freedom of movement is being eroded within the European Union.

There's a more serious threat to the EU's freedom of movement. Other states may simply leave the European Union in order to regain their power to control immigration. Take Brexit, the United Kingdom's decision to leave the European Union. Concerns about immigration played perhaps the major role in motivating Brexit.²⁸ Many British citizens resent immigration and voted for Brexit in order to reduce it. The leaders of European states like Hungary, Poland, Italy, and Austria are now talking openly about following Britain's example and withdrawing from the EU. The lesson is that, while the EU does constrain the power of states to restrict immigration,

states might just ignore the legal constraints or simply withdraw from the EU altogether. Time will tell whether free movement is a stable equilibrium in Europe. Yet the institutions of the EU may ultimately be unable to counterbalance the factors that lead states to restrict immigration. If the relatively robust institutions of the European Union fail to protect freedom of movement, then this is more evidence that the insulation argument is not a promising path to more open borders.

4. Entrenched Injustices and Individual Ethics

In a sense, more open borders are feasible. States *could* open their borders if they wanted to do so. States had open borders in the past and there are zones of free movement in the world today. Free international movement avoids violating any law of physics. The main problem is that governments and their citizens don't want to abolish or even liberalize their immigration restrictions. Improvements are possible. According to some measures, states have modestly liberalized immigration restrictions for skilled workers in recent decades.²⁹ Novel institutional innovations might also push states to liberalize their immigration restrictions. But I'm not getting my hopes up. Most people dislike the idea of more immigration. As long as that's true, we can expect states to enforce unjust immigration restrictions. There's little reason to think that these conditions will change soon.

Immigration restrictions constitute an *entrenched injustice*. I'll call a practice an "entrenched injustice" if (a) observers are capable of recognizing that this practice is seriously unjust and yet (b) this practice is reliably resistant to reform or rectification. Immigration restriction meet both criteria. The injustice of immigration restrictions is accessible to people. That is, most people can understand, evaluate, and appreciate the arguments for open borders. If

these arguments are sound, then people should be able to recognize that broadly open borders are morally mandatory. Yet immigration restrictions are resistant to abolition or even reform.

So why care about the ideal of free movement if exclusion is an entrenched injustice? If states will refuse to open their borders, then why bother defending an ideal of more open borders? The case for open borders might seem idealistic in a pejorative sense. Maybe the ideal of free movement belongs like other nice-sounding and unrealistic ideals like, say, pacifism, socialism, or universal love and brotherhood. Many realist thinkers scoff at idealistic theorizing. Niccolò Machiavelli famously criticized philosophers who “have constructed imaginary republics and principalities that have never existed in practice and never could.”³⁰ According to Machiavelli, it’s harmful to spend your time theorizing about ideal republics because this theorizing gives you bad advice in non-ideal situations. A long line of authors echo Machiavelli’s concerns and contend that utopian theorizing fails to help us solve problems that confront us in real life. So, you might think that, if free movement is a utopian ideal, that’s a major strike against it. At least, the infeasibility of free movement should limit our interest in this ideal. We’d be better off pursuing incremental and tractable ways to improve the world instead of unrealistic proposals like free movement.

Yet the open borders ideal has practical significance even if it’s institutionally infeasible. To flesh out this point, I want to draw an analogy with another injustice that was, at one point, entrenched—slavery. The goal of abolishing slavery was hopeless for centuries. But that doesn’t mean that the moral case for abolition was pointless. While the prospects for the abolition of slavery were dim for millennia, the truth of abolitionism mattered for personal ethics—that is, for how individual people should have interacted with the institution of slavery. The history of slavery can help us come to grips with how an ideal can matter for individual ethics despite the

fact that we're unable to institutionalize this ideal. The analogy with open immigration should be clear: although we probably can't institutionalize the ideal of free movement at this point in history, this ideal nonetheless has great practical significance because it can help serve as a guide for individual action.

An Analogy with Slavery

Slavery was universally practiced for much of history. In the ancient world, every society allowed slavery and slaves were often captured in war. The first law code that we possess, the Code of Hammurabi from ancient Babylon, contains various rules for the treatment of slaves. Among other provisions, the Code of Hammurabi instructs a master to cut off the ear of their slave if this slave denies the master's claim over him. Slaves were frequently branded with the same mark as livestock.³¹ Ancient Athens and the Roman Republic enslaved perhaps 20 to 40 percent of their populations.³² While some slaves in ancient societies held exalted positions and grew wealthy, most slaves lived brutal lives. According to one estimate, the life expectancy for slaves in Ancient Rome might have only been about seventeen years.³³

The Hebrew Bible accepted slavery too. Consider, for instance, the following striking passage from the book of Exodus: "When a slave-owner strikes a male or female slave with a rod and the slave dies immediately, the owner shall be punished. But if the slave survives for a day or two, there is no punishment; for the slave is the owner's property."³⁴ Leviticus counsels the Israelites to take slaves from neighboring nations to keep "as a possession for your children after you, for them to inherit as property for all time."³⁵ Hebrew prophets and scholars were hardly alone. Philosophers and wise men in antiquity defended slavery as natural and just. Most

famously, Aristotle claimed that some people were natural slaves and that slavery was good for them.

As slavery was so universal, it was hard for anyone in the ancient world to imagine how a society without slaves would function. For the most part, people didn't try. But even in antiquity there were dissenters. The Greek sophist, Alcidamas, might have been a critic of slavery.

Alcidamas may have intended his declaration "God has left all men free; nature has made no man a slave" as an objection to slavery.³⁶ Aristotle probably felt the need to defend slavery because slavery had critics. In discussing different opinions about slavery, Aristotle wrote that "others believe that it is contrary to nature to be a master (for it is by law that one person is a slave and another free, whereas by nature there is no difference between them), which is why it is not just either; for it involves force."³⁷ Sadly, we don't know who these "others" were or what they thought.

There were a few "proto" abolitionists in the ancient world. During the first century AD, Philo, a Jewish scholar who lived in Alexandria, described the views of an enigmatic sect of aesthetic Jews called the Essenes. Philo attributes the following beliefs to the Essenes:

There is not a single slave among them, but they are all free and serve each other mutually. They condemn slave masters, not only as unjust because they outrage equality, but also as men of impiety because they transgress the law of nature, which engendered all men alike and raised them as a mother, and turned them into legitimate brothers, not by name only, but as such in truth.³⁸

According to Philo, the Essenes objected to slavery on principled grounds. Philo describes another group that objected to slavery too, a Jewish sect in Alexandria called the Therapeutae. Philo writes: "They are not served by slaves, since they think that the possession of servants is

totally contrary to nature. Indeed [nature] engendered all men free, but the injustice and cupidity of certain supporters of inequality, which is the wellspring of evil, having subjugated the strength of the weakest, attached it to the strongest.”³⁹

Unfortunately, we lack any text from the Essenes and Therapeutae that described their anti-slavery beliefs and practices in their own words. But, if Philo’s description is accurate, the Essenes and the Therapeutae put their beliefs into practice: they refused to own slaves and they freed the ones that they possessed. This is a key point. Although the Essenes and Therapeutae were unable to abolish slavery in their own society, they could still refuse to participate in it. They could also establish communities where people treated each other as free and equal.

A few early Christians criticized slavery in strong terms as well. Most Christian theologians and philosophers accepted slavery as an inevitable expression of human sin. Paul encouraged slaves to “obey your earthly masters with fear and trembling, with a sincere heart, as you would Christ.”⁴⁰ But, in the third century AD, the Christian bishop Gregory of Nyssa condemned slavery as an affront against God. In one sermon, Nyssa says of slave owners: “You condemn man to slavery, when his nature is free and he possesses free will, and you legislate in competition with God, overturning his law for the human species.”⁴¹

Nyssa’s critique of slavery was part of a more sweeping criticism of greed and arrogance. Although Nyssa does not explicitly call for the abolition of slavery as a social institution, he does suggest that Christian slave-owners should free their slaves, as slaveowners have “forgotten the limits of [their] authority and that [their] power is limited to dominion over creatures without reason.”⁴² Once again, Nyssa’s critique of slavery reveals something interesting: even if it was infeasible to abolish slavery as an institution, it was possible for individual actors to recognize

the injustice of slavery. Dissenters like Nyssa could refuse to participate in slavery and persuade others to do likewise.

Apart from some isolated critiques, abolitionism never caught on. Slavery was too ingrained and it seemed too integral to the functioning of ancient societies. Even slaves who revolted and fought for their freedom sought to free themselves, never to abolish slavery as an institution.⁴³ Similarly, most reformers—both Christian and pagan—tried to improve the conditions of slaves, not to end slavery. At most, critics of slavery argued that people should free their slaves and refuse to participate in the slave trade. But there was never an abolitionist movement in the ancient world. This had to wait until the modern era.

Over time, extreme forms of slavery declined in much of Europe. One reason for this is that the Islamic empires in Northern Africa and the Middle East cut off the supply of slaves. Another reason is that the Catholic Church by-and-large discouraged the taking of Christian slaves. Slavery was also replaced by serfdom, another form of involuntary labor.⁴⁴ Yet chattel slavery was eventually revived in the New World. Europeans pressed millions of indigenous peoples and Africans into slavery. Perhaps as many as ten million slaves were transported from Africa to the Americas.

Chattel slavery in the Americas had critics. Some early critics of slavery only objected to the enslavement of certain groups. Bartolomé de las Casas, an influential champion of the rights of indigenous peoples in the sixteenth century, condemned the enslavement of Native Americans but endorsed the enslavement of Africans.⁴⁵ Yet criticisms of slavery gradually became more general and turned into principled abolitionism. I won't discuss the whole history of abolitionism here—this is far too great a project. I'll only discuss a tiny fraction of this history. I'll consider how a few early abolitionists thought people should respond to the evils of slavery.

Most of the earliest abolitionists in modern times were Quakers who lived in Britain, the Caribbean, and the United States.⁴⁶ Quaker opposition to slavery had its origins in their theology and history. Quakers rejected original sin, affirmed the moral equality of all humans, and endorsed pacifism, which implied that it was unjust to take slaves in war. Governments persecuted the Quakers and perhaps for this reason they could more easily sympathize with the plight of other oppressed peoples.⁴⁷ The founder of Quakerism, George Fox, criticized slavery and argued that slavery was incompatible with the Golden Rule. Although Fox refrained from arguing for the total abolition of slavery, other Quakers soon took this next step.

In 1688, Quakers in Germantown, Pennsylvania signed a petition (“The Resolution of Germantown Mennonites”) that protested slavery.⁴⁸ This was a radical document and one of the first to articulate a principled and thoroughgoing argument against slavery. The petition claimed: “to bring men hither, or to robb and sell them against their will, we stand against” on the grounds that all men have equal rights to liberty. Various Quaker and non-Quaker activists began to speak and write pamphlets against slavery during this period. The Puritan judge Samuel Sewall and the Quaker merchant John Hepburn wrote pamphlets that presented arguments against slavery.

One early anti-slavery activist was Benjamin Lay.⁴⁹ Lay was a hunchback and vegetarian, and a passionate abolitionist. With his wife, Lay opened up a shop in Barbados selling merchandise. There Lay witnessed the terrible brutality of slavery. He saw slaves being tortured and killed, and once saw a slave commit suicide in order to avoid another beating from his master. After this experience, Lay advocated against slavery in speech and deed. Lay wrote long, rambling tracts against slavery (some of which were anonymously published by Benjamin Franklin) and once disrupted a Quaker meeting by splattering fake blood on the Bible that symbolized the blood of slaves. Lay even briefly kidnapped a child in order to show his slave-

owning parents how Africans felt when slavers captured their children. He told the parents: “You may now conceive of the sorrow you inflict upon the parents of the negroe girl you hold in slavery, for she was torn from them by avarice.”⁵⁰ Like other anti-slavery radicals, Lay focused on personal complicity in slavery. He bitterly criticized Quakers who owned slaves or who were involved in the slave trade, and was disowned by the Quaker community as a result. Lay refused to buy any products that were created by slaves and he eventually rejected almost all forms of consumerism, choosing to live in a cave and make his own food and clothes.

While some doubted Lay’s sanity, his actions pushed others, like Benjamin Franklin, to question the legitimacy of slavery. Other early abolitionists were less confrontational but nonetheless effective. A Quaker merchant and tailor, John Woolman became an abolitionist after his master asked him to draw up a bill of sale for a slave woman. Woolman immediately regretted his actions. Soon afterward Woolman dedicated himself to abolitionism. Like Lay, Woolman refused to purchase goods that were created by slaves and traveled throughout the colonies trying to convince his fellow Quakers to reject slavery. He managed to persuade many to free their slaves.⁵¹ In an influential epistle presented to the Quakers in Philadelphia in 1754, Woolman condemned slavery as inconsistent with Christian doctrine and enjoined Quakers to “examine, whether the purchasing of a Negro either born here, or imported, doth not contribute to a further-Importation; and consequently to the unfolding all the Evils” involved in capturing new slaves.⁵² Woodman was instrumental in pushing the Quakers to reject slavery.

The early abolitionists knew that abolishing slavery was a tough sell. Although they engaged in political advocacy against slavery, many of the early abolitionists instead emphasized personal ethics. They tried to persuade other people to refrain from participating in the slave trade and to free their slaves. The Germantown petition likened owning slaves to theft and

argued “we who profess that it is not lawfull to steal, must likewise avoid to purchase such things as are stolen, but rather help to stop this robbing and stealing if possible...”⁵³ In other words, the Quakers of Germantown didn’t just condemned slavery on ethical grounds. They also argued that individual Quakers ought to refuse to participate in the slave trade and help free slaves. George Keith, a Scottish missionary, was another early abolitionist. In a pamphlet published in 1693, Keith wrote: “Therefore, in true Christian Love, we earnestly recommend it to all our Friends and Brethren, Not to buy any Negroes, unless it were on purpose to set them free” and he urged current slave-owners to free their slaves after a short period of service.⁵⁴ In this way, the early abolitionists argued that individuals should clean their hands of slavery and aid slaves in their escape to freedom.

A few early abolitionists endorsed a more radical strategy: active, and even violent, resistance to slavery. The Germantown petition was once again remarkably radical on this score. The authors of the petition suggested an argument in favor slaves’ right to engage in violent resistance against their masters:

If once the slaves (who they say are so wicked and stubborn men) should joint themselves, fight for their freedom and handle their masters and mistresses as they did handle them before, will these masters and mistresses take the sword at hand and war against those poor slaves, like we are able to believe, some will not refuse to do; or have these Negroes not as much right to fight for their freedom as you have to keep them slaves.⁵⁵

Quakers accepted pacifism and it’s unlikely that the signatories of the Germantown petition seriously intended to defend violent resistance. But an anonymous anti-slavery pamphlet published in London nearly a century later made this argument more explicit:

And so all the black men in our plantations, who are by unjust force deprived of their liberty, and held in slavery, as they have none upon the earth to appeal to, may lawfully repel that force with force, and to recovery their liberty, destroy their oppressors, and not only so but it is the duty of others, white as well as blacks, to assist those miserable creatures, if they can, in their attempts to deliver them out of slavery and to rescue them out of the hands of cruel tyrants.⁵⁶

The unknown author of this pamphlet affirmed the right of slaves to violently resist and the obligations of bystanders to assist slaves in escaping from their masters. Slave revolts and conspiracies occurred relatively frequently during the seventeenth century, although they were rarely successful (the Haitian Revolution was the major exception).⁵⁷ But other forms of resistance were effective. Hundreds of thousands of slaves resisted their masters by running away and many former slaves helped other slaves to reach freedom. Early abolitionists would sometimes aid these slaves by sheltering them, helping to transport them away from their masters, and filling legal “freedom” suits in their favor.⁵⁸

Abolitionism eventually became a viable political movement. One of the key figures in this transition was Anthony Benezet.⁵⁹ Benezet was a French-born Philadelphian merchant and educator, and in 1775 he founded what seems to be the first anti-slavery society in history, the Society for the Relief of Free Negroes Unlawfully Held in Bondage, which would go on to play a key role in the abolitionist movement. He founded schools for the education of free and slave black children to demonstrate that blacks could become educated. Benezet’s anti-slavery writings inspired a generation of abolitionist activists and he personally helped forged a transatlantic network of abolitionists. Benezet’s activism helped forge a nascent and effective political movement to end slavery.

Benezet convinced powerful men like Benjamin Franklin and Benjamin Rush to join the abolitionist cause, he developed ties with abolitionists in Britain and France, and he wrote influential tracts that celebrated African cultures and condemned slavery. Partly through the activism of Benezet and other abolitionists of his time, governments in Northern States began to curtail the slave trade and gradually abolish slavery. Across the Atlantic in Britain, a powerful anti-slavery movement emerged that ultimately abolished the slave trade within the British Empire. It would take a long time—and much blood and treasure—before slavery was finally abolished. But, by this point, abolitionism transitioned from a tiny group of dissenters who focused on personal ethics to a political movement that influenced governments. Abolitionist discourse no longer merely condemned complicity in slaveholding. Abolitionists increasingly engaged in political strategizing and started to achieve real reforms.

The Point of the Analogy

This history of early abolitionism is absurdly brief. But here are the key points. For a long time, slavery was an entrenched injustice. People could recognize that slavery was unjust. Even in ancient times, some groups, like the Essenes and the Therapeutae, might have developed principled objections to slavery. In more modern times, a few dissenters articulated abolitionist views as early as the sixteenth century. Yet slavery was resistant to abolition for most of its history and there were few principled abolitionists until the late seventeenth century. As a result, abolitionism was politically intractable. Early abolitionists thus confronted the following question: if slavery is unjust but the prospects of its abolition are dim, how should individuals respond to the institution of slavery?

To focus this question, let's imagine that you are an abolitionist in, say, the sixteenth century. Let's suppose that you're a free person. You think that slavery is unjust and you want to see it abolished. But a political movement to end slavery is unthinkable at this stage. There are only a tiny number of abolitionists in the world. Nonetheless, your objection to slavery has important implications. It can still matter to your personal conduct. You can refuse to be complicit in slavery. If you own slaves, you can free them. You can try to persuade other people around you to free their slaves and refuse to buy more of them. If you have the chance to rescue a slave from her master, you should do so. You can live in a righteous way even though you live in an unjust age.

Or consider matters from the perspective of the slave. Suppose that you're a slave long before abolition. If slavery is unjust, then this changes the nature of your moral obligations and permissions. The injustice of slavery entails that you can permissibly resist your master in various ways. Remember that Paul counseled slaves to obey their masters and refrain from resisting them. But, if slavery is unjust, this command rings hollow. Many early abolitionists would say that you're morally free to ignore your master's commands, run away, and even use defensive force against your master.

Here's the broader point: when you're living in the midst of an enduring injustice and you recognize this injustice, then this changes how you should understand your rights and obligations. Now, let's return to the ideal of free movement. For the record, I don't think that immigration restrictions are as bad as slavery. Slavery was worse. But slavery and immigration restrictions are similar in that they are (or were) both entrenched injustices. And, like the injustice of slavery, the injustice of immigration restrictions has implications for how individuals ought to behave.

Let's suppose for the moment that immigration restrictions will have a similar trajectory as slavery. In the beginning, only a tiny number of dissenters endorse open borders. Let's call this time: T1. Let's suppose that, like the abolitionist movement, a movement for open borders gradually gains steam and becomes politically effective in the future. This movement begins to make inroads and roll back immigration restrictions. Let's call this time: T2.

At T2, it probably makes sense to engage in political strategizing and advocacy. Open borders advocates at this stage could debate how to effectively abolish immigration restrictions and institute free movement. But these discussions are less important at T1. At T1, free movement is an infeasible ideal. There's little chance that states will institute free movement. While a political movement to abolish immigration restrictions is unlikely, resistance still has a point. The victims of unjust immigration restrictions have rights to resist these laws and the agents who uphold them, and bystanders should avoid complicity in unjust restrictions and aid their victims. Advocates of open borders should also begin to persuade others of the merits of their cause. These actions remain possible and permissible even in the face of entrenched injustice. Or so I'll argue.

My guess is that, as I write this, we're closer to T1 than T2. Open borders advocates are in an analogous situation to people like Benjamin Lay and John Woolman, if not the ancient Essenes. Lay, Woolman, and other early abolitionists could see that slavery was unjust and they could convince other people to refrain from contributing to this injustice. But they couldn't create a mass movement to abolish slavery. Similarly, advocates of open borders understand that immigration restrictions are a serious injustice. The problem is that a political movement to overturn these laws is unlikely. Open borders advocates might need to wait another century for

this movement to emerge. Or it may never happen. Yet the ideal of free movement can guide what individuals do now. I'll now explain how in more detail.

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² This account draws heavily on: Brian Opeskin, "The Influence of International Law on the International Movement of Persons," Human Development Reports Research Paper (United Nations Development Programme, 2009).

³ Matthew Gibney, "Beyond the Bounds of Responsibility: Western States and Measures to Prevent the Arrival of Refugees.," *Global Migration Perspectives* 22, no. 1 (2005): 1–23.

⁴ "Australian Officials 'Paid Smugglers,'" *BBC News*, October 28, 2015, sec. Australia, <https://www.bbc.co.uk/news/world-australia-34654629>.

⁵ Paul Farrell, Nick Evershed, and Helen Davidson, "The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention," *The Guardian*, August 10, 2016, sec. Australia news, <http://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention>.

⁶ Judith L. Goldstein, Douglas Rivers, and Michael Tomz, "Institutions in International Relations: Understanding the Effects of the GATT and the WTO on World Trade," *International Organization* 61, no. 1 (January 2007): 37–67.

⁷ Kamal Sadiq, *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries* (New York, NY: Oxford University Press, 2010).

⁸ James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, Conn.: Yale University Press, 1999).

⁹ Ian Goldin, Geoffrey Cameron, and Meera Balarajan, *Exceptional People: How Migration Shaped Our World and Will Define Our Future* (Princeton, NJ: Princeton University Press, 2012), p. 71-2. My account here relies on the narrative in this book.

¹⁰ Sadiq, *Paper Citizens*, p. 103.

¹¹ Haas Hein, Natter Katharina, and Vezzoli Simona, "Growing Restrictiveness or Changing Selection? The Nature and Evolution of Migration Policies," *International Migration Review*, Forthcoming, <https://doi.org/10.1111/imre.12288>.

¹² Margaret Peters, *Trading Barriers: Immigration and the Remaking of Globalization* (Princeton: Princeton University Press, 2017).

¹³ For evidence, see: Bryan Caplan and Vipul Naik, "A Radical Case for Open Borders," in *The Economics of Immigration*, ed. Benjamin Powell (New York: Oxford University Press, 2015), 180–209.

¹⁴ Michael Huemer, "A Liberal Realist Answer to Debunking Skeptics: The Empirical Case for Realism," *Philosophical Studies* 173, no. 7 (2015): 1983–2010.

¹⁵ Neil Esipova et al., *How the World Views Migration* (Geneva, Switzerland: International Organization for Migration, 2015), pp. 50-1.

¹⁶ Richard Wike, Bruce Stokes, and Kate Simmons, "Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs" (Pew Research Center, July 2016), <http://www.pewglobal.org/2016/07/11/europeans-fear-wave-of-refugees-will-mean-more-terrorism-fewer-jobs/>.

¹⁷ Gideon Skinner and Glenn Gottfrid, "Global Views on Immigration and the Refugee Crisis" (Ipsos, July 2017), <https://www.ipsos.com/en/global-views-immigration-and-refugee-crisis>.

¹⁸ Esipova et al., *How the World Views Migration*, p. 35.

¹⁹ Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined*, Reprint edition (New York Toronto London: Penguin Books, 2012), chapters 4 and 7.

²⁰ Sergio Carrera, "What Does Free Movement Mean in Theory and Practice in an Enlarged EU?," *European Law Journal* 11, no. 6 (2005): 699–721.

²¹ John Kennan, "Open Borders in the European Union and Beyond: Migration Flows and Labor Market Implications," Working Paper (National Bureau of Economic Research, January 2017), <https://doi.org/10.3386/w23048>, at p. 5.

²² Haas Hein, Natter Katharina, and Vezzoli Simona, "Growing Restrictiveness or Changing Selection? The Nature and Evolution of Migration Policies" at p. 4.

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- ²⁴ Diego Acosta, “Free Movement in South America: The Emergence of an Alternative Model?” (Washington, D.C.: Migration Policy Institute, 2016), <https://www.migrationpolicy.org/article/free-movement-south-america-emergence-alternative-model>.
- ²⁵ Barbara Hines, “The Right to Migrate as a Human Right: The Current Argentine Immigration Law,” *Cornell International Law Journal* 43, no. 3 (2010): 471–511 at fn. 29.
- ²⁶ James Madison, Alexander Hamilton, and John Jay, *The Complete Federalist Papers* (CreateSpace Independent Publishing Platform, 2016), p. 191.
- ²⁷ For a review of the literature, see: Adam S. Chilton and Mila Versteeg, “Do Constitutional Rights Make a Difference?,” *American Journal of Political Science* 60, no. 3 (2015): 575–89.
- ²⁸ Matthew Goodwin and Caitlin Milazzo, “Taking Back Control? Investigating the Role of Immigration in the 2016 Vote for Brexit,” *The British Journal of Politics and International Relations* 19, no. 3 (2017): 450–64.
- ²⁹ Haas Hein, Natter Katharina, and Vezzoli Simona, “Growing Restrictiveness or Changing Selection? The Nature and Evolution of Migration Policies.”
- ³⁰ Niccolo Machiavelli, *Machiavelli: Selected Political Writings*, trans. David Wooton (Indianapolis: Hackett Publishing Company, Inc., 1994), p. 48.
- ³¹ David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World*, (New York: Oxford University Press, 2008), p. 38.
- ³² Pinker, *The Better Angels of Our Nature* p. 170; Mary Beard, *SPQR: A History of Ancient Rome* (New York, NY: Liveright, 2016). 329.
- ³³ James Harper, “Slaves and Freedmen in Imperial Rome,” *The American Journal of Philology* 93, no. 2 (1972): 341–42.
- ³⁴ Quoted in Pinker, *The Better Angels of Our Nature*, at p. 170.
- ³⁵ Davis, *Inhuman Bondage*, p. 39.
- ³⁶ Quoted in Donald E. Brown, *Hierarchy, History, and Human Nature: The Social Origins of Historical Consciousness*, 2 edition (Tucson: University of Arizona Press, 1988), p. 152.
- ³⁷ Aristotle, *Politics*, trans. C. D. C. Reeve (Indianapolis: Hackett Publishing Company, 1998), p. 6.
- ³⁸ Quoted in: Sharon Weisser, “Philo’s Therapeutae and Essenes: A Precedent for the Exceptional Condemnation of Slavery in Gregory of Nyssa?,” in *The Quest for a Common Humanity: Human Dignity and Otherness in the Religious Traditions of the Mediterranean*, ed. K Berthelot and M Morgenstein (Leiden: Brill, 2011), 289–310 at p. 304.
- ³⁹ Weisser, p. 305.
- ⁴⁰ See: <http://biblehub.com/ephesians/6-5.htm>
- ⁴¹ J. Robert Wright, ed., *Ancient Christian Commentary on Scripture, Old Testament IX: Proverbs, Ecclesiastes, Song of Solomon*, 1st edition (Downers Grove, Ill: IVP Academic, 2005) at p. 210.
- ⁴² Weisser, “Philo’s Therapeutae and Essenes: A Precedent for the Exceptional Condemnation of Slavery in Gregory of Nyssa?” p. 301.
- ⁴³ Beard, *SPQR*, p. 248.
- ⁴⁴ Seymour Drescher, *Abolition: A History of Slavery and Antislavery* (New York: Cambridge University Press, 2009), chapter. 1.
- ⁴⁵ De Casas came to regret this. He later realized that “black slavery was as unjust as Indian slavery.” Peter Stamatov, *The Origins of Global Humanitarianism: Religion, Empires, and Advocacy* (New York, NY: Cambridge University Press, 2015), p. 81.
- ⁴⁶ Manisha Sinha, *The Slave’s Cause: A History of Abolition* (Yale University Press, 2017), chapter 1.
- ⁴⁷ This explanation is emphasized in: Maurice Jackson, *Let This Voice Be Heard: Anthony Benezet, Father of Atlantic Abolitionism* (University of Pennsylvania Press, 2010).
- ⁴⁸ Gerret Hendricks et al., “Resolution of Germantown Mennonites,” in *American Antislavery Writings*, ed. James Basker (New York: Library of America, 2012), 1–3.
- ⁴⁹ The following draws on: Marcus Rediker, *The Fearless Benjamin Lay: The Quaker Dwarf Who Became the First Revolutionary Abolitionist* (S.I.: Beacon Press, 2018).
- ⁵⁰ Rediker, p. 146.
- ⁵¹ Sinha, *The Slave’s Cause*, p. 19-20.
- ⁵² Jackson, *Let This Voice Be Heard*, p. 53.
- ⁵³ Hendricks et al., “Resolution of Germantown Mennonites.”

⁵⁴ George Keith, “An Exhortation and Caution to Friends Concerning Buying or Keeping of Negroes,” in *American Antislavery Writings*, p. 5.

⁵⁵ Hendricks et al., “Resolution of Germantown Mennonites.” at p. 2.

⁵⁶ Quoted in Kenan Malik, *The Meaning of Race: Race, History, and Culture in Western Society* (New York: NYU Press, 1996), p. 65.

⁵⁷ Sinha, *The Slave’s Cause*, pp. 47-64.

⁵⁸ Fergus M. Bordewich, *Bound for Canaan: The Epic Story of the Underground Railroad, America’s First Civil Rights Movement*, (New York: Amistad, 2006), chapter 3.

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Chapter 5: Resistance at the Border

1. Introduction

Melilla is a Spanish city on the northern coast of Africa. People from throughout Africa and the Middle East travel to the outskirts of Melilla in order to reach Spanish territory, which they see as a gateway to Europe. But the city is surrounded by a fence that is topped with razor-sharp barbed wire, and border agents patrol the fence. Migrants often try to storm the fences and evade patrols, but they rarely succeed. The migrants cut themselves on the razor wire and Spanish border agents use pepper spray on them, beat them, taser them, and have even shot them with rubber bullets. Many of these migrants live in the forests near Melilla in conditions of extreme deprivation. They wait for their next chance to scale the fences. If migrants do reach Spanish territory, they are kept in detention until their claims to asylum are processed. Spanish officials sometimes keep them in detention for years.

One migrant, Jean-Luc, was a twelve year old boy from Cameroon who wanted to reach Melilla. Jean-Luc tried to scale the fences, but the Guardia Civil, the Spanish border force, and Moroccan agents, stopped him. In an interview, Jean-Luc said: “The Guardia Civil hit me; they shocked me with a neutralizer [apparently a Taser]. Both times I was hit with boots and belts.... They didn’t ask me anything and gave me back to the Moroccans.”¹ Omar, a Nigerian migrant, described his experience:

My first attempt [to cross from Morocco to Melilla] was in April 2012 around 2 a.m., but the police used teargas and beat us on our joints. I was able to run away and hid in the forest [in Morocco]. My second attempt was in July, during Ramadan. We succeeded in jumping over the fence but the Guardia detained us before arriving to the camp where migrants live. We were 27 people. [The Guardia Civil] beat us with sticks and handcuffed

our hands. They made us walk to the border gate and handed us over to the Moroccans.² Other migrants report similar experiences in interviews with human rights groups.

Yet some migrants succeed despite the odds. The popular radio program, *This American Life*, reported a striking interview with David, a migrant from Cameroon.³ David lived near Melilla for a year and tried to cross the border over twenty or thirty times. But the guards were effective at blocking the migrants and sending them back to Morocco. He felt frustrated and defeated. Eventually though he made progress. David and a group of migrants tried a new strategy that involved them crossing the border near the ocean. They swam through the ocean and climbed on a rock. Finally, the migrants reach Spanish soil and the border agents placed them in detention. David says: “When we are in Morocco, we think that, whenever I manage to get [to Europe], I’m going to be very happy. But once you make it you don’t feel anything.”

Although states try to keep foreigners out, many people like David try to cross borders without official authorization every year. How do people cross borders without official sanction? Migrants use different strategies. David tried to evade border patrols, scale walls, and swim around fences. Other migrants travel through unpopulated deserts and mountainous regions, cut through border fences, or tunnel under borders. They travel over bodies of water on boats and rafts. Unauthorized migrants deceive state employees as well. These migrants use false identification and documentation to find work and avoid detection and deportation. Some migrants enter into “sham” marriages with citizens to gain permanent residency and then lie to immigration agents about the nature of their marriages. More dramatically, migrants occasionally use violence to resist border agents. At the Mexico-United States border, migrants have thrown rocks and other objects at border agents in order to distract and escape these agents.⁴ Migrants have attacked border agents during attempts to enter the European Union as well. On some

occasions, migrants at Melilla and another Spanish enclave, Ceuta, throw rocks and burning clothes at border agents and these attacks have injured dozens of border agents.⁵

What can migrants permissibly do in order to exercise their rights to cross borders? In this chapter, I'll argue that migrants can permissibly resist immigration restrictions.⁶ In particular, migrants can evade, deceive, and use force against state officials to avert the threat these agents pose when these officials enforce unjustified immigration restrictions. Since most immigration restrictions are unjust, resistance to unjust immigration restrictions is usually justified.

2. Defensive Rights and Permissible Resistance

Defensive Rights

Almost everyone agrees that you can defend yourself from unjust threats. Consider a case. Suppose that you're taking a hike by yourself in a forest. Suddenly, a man grabs you from behind and tries to drag you to his car. You manage to escape and run away down the only available path. Unfortunately, this man has an accomplice who tries to block your escape down this path. You manage to evade the accomplice and, when he tries to catch you, you forcibly push him the ground, injuring in the process. Call this case: *Assault*.

In *Assault*, it's obviously permissible for you to evade your attackers. You can permissibly try to avoid the threat that they pose to you by circumventing them or running away from them. You can also deceive them. Honesty is a virtue and it's often wrong to deceive people. Deception subverts people's rational capacities and prevents them from consenting to your interactions with them. But deception is justified in the face of unjust aggression. Suppose

that, if you lie and tell them that you've already called the police and that they're on their way, your attackers will run away. This deception is clearly acceptable.

Finally, you have the right to use defensive force against your attackers. Of course, it's normally wrong to use violence against people. It would be wrong for you to randomly tackle a bystander on the street and push her to the ground. Yet our rights against attack are dependent on a relationship of reciprocity. You have a duty to refrain from harming another person only insofar as this person avoids posing an unjust threat to you. This relationship of reciprocity breaks down when someone poses an unjust threat. That is, when someone poses an unjust threat to you, they forfeit their rights against attack.⁷ For that reason, it's permissible to harm an aggressor as long as your defensive actions is proportionate and necessary. In Assault, your attackers forfeit their rights against defensive force by trying to kidnap you. So, you gain the right to harm these aggressors if your actions are proportionate and necessary to avert the threat that these aggressors pose.

Notice that we also have defensive rights against unjust threats from state authorities, not just private aggressors. Let's take another case. Imagine you live under an oppressive government, like the North Korean government or the East German state when it was communist. Your government oppresses you and your fellow citizens. The government violates their basic rights to freedom of speech, association, and occupational choice. The government also implements policies that keep its citizens poor. So, many citizens live on the edge of subsistence. If you protest this treatment, the government will send you to a work camp.

Suppose that you decide to try to escape to a neighboring country where your standard of living will be much better and you will enjoy basic liberal rights and freedoms. Yet your government forbids emigration for most citizens. With the help of a smuggler, you manage to

evade soldiers and secure fake documentation that allows you to deceive the guards at the border. Just as you are going to cross the final bridge into the neighboring country, a guard notices you, realizes that something is wrong, and tries to stop you. Thinking quickly, you pick up a rock and strike the guard on the head, wounding him and giving yourself enough time to run across the border. You escape.

Call this case: *Defector*. Defector resembles real cases. As a matter of fact, there were several occasions when would-be emigrants attacked and injured border guarders at the East-West German border before the fall of communism.⁸ What should we think about your actions in Defector? Most observers in the West seem to think that refugees from, say, North Korea are entirely justified in resisting state officials. When people escape from totalitarian regimes, they're widely praised for their courage and love of freedom. So, your actions in Defector seem permissible.

Let's now try to explain this intuition in deeper way. In Defector, your government poses an unjust threat to you. It restricts your liberty and prohibits you from emigrating. If you try to emigrate, your government will harm you. Furthermore, your government already harms you by trapping you in conditions of poverty and oppression. It's wrong for the government to do these things to you. If an agent poses an unjust threat to your life and liberty, then the structure of your moral entitlements changes. You can now permissibly evade the aggressor, lie to him, and even use defensive force against him. The same goes for unjust aggressors who happen to be state officials. Consequently, you can evade state officials, deceive them, and use defensive force against them in order to avert the threat they pose to you.

Resistance to Border Coercion

Now, let's return to immigration restrictions. In the documentary *The Land Between*, filmmakers interview migrants who live in the Gourougou Mountains, which overlook Melilla.⁹ One of these migrants is Yacou, a young man from Mali. Yacou left Mali in order to escape poverty and help support his family.

In an interview, Yacou says:

I left Mali because the work I had was in agriculture. We don't get money, it doesn't rain. My friends and brothers...I left all of them. We have no money, we work hard, but at the end of the harvest there is nothing. That's why we decided to leave for any place so that we can make our future. No member of my family has anything.

Yacou lives in conditions of poverty and vulnerability in the mountains while he hopes to find a way to reach Spain. He laments, "We have to go search for food in the Moroccan's rubbish. We go to collect things and they chase us away. The bandits also assault us." Yacou lives in a ragged tent with a group of other Malian migrants.

Yacou's dream is to reach Europe, quite literally: "When I sleep, I dream that I am inside Spain. And my thoughts are always to enter." He's tried to scale the fences into Melilla several times and each time he's been rebuffed by the Spanish border guard or the Moroccan military. Yacou comments that the Moroccan military "beats us, they bear our arms, break some people's legs and heads. When they beat you, they take away your dignity." Soldiers burn their tents during raids. Yacou remarks that "I am very tired. Very tired indeed." Another migrant comments: "This place is unlivable. That's why we're searching to immigrate to Europe."

On my view, Yacou has a moral right to immigrate to Spain and the European Union. He wants to exercise important freedoms, such as freedom of association and occupational choice, by immigrating. Moreover, Yacou needs to immigrate to Europe in order to escape poverty and

his vulnerable conditions. Let's assume for the moment that, if he could immigrate, Yacou would eventually find work in Spain and refrain from imposing any significant costs on Spanish citizens. It's unlikely that his right to immigrate is defeated by other considerations in this case. So, the restrictions that bar Yacou's entry are unjust. If you reject my arguments against immigration restrictions in earlier chapters, you may disagree. You may think that only "true" refugees, such as people who are fleeing political violence, have rights to immigrate. That's fine. Other migrants near Melilla are escaping violence, persecution, and war. Even if you don't think that Yacou has a good claim to migrate, you should accept that these other people do.

So, let's assume that it's wrong for the Spanish government to bar Yacou from immigrating. And, if it's wrong for the Spanish government to restrict his movement, then it's unjustified for border agents to do so as well. Spanish and Moroccan border agents thus pose an unjustified threat of violence to Yacou. They cause harm to him and other migrants by preventing them from avoiding bad conditions, like violence from bandits and extreme poverty. The cases Assault and Defector show that, if someone poses an unjust threat of violence to you, then you can permissibly use defensive resistance against this person. Yacou also has defensive rights against unjust aggression. Yacou can permissibly undertake a range of defensive actions to resist the threat that Spain's immigration restrictions pose to him.

What exactly can Yacou do to resist unjust immigration restrictions? Let's start with evasion. Suppose that Yacou can reach Spain if he circumvents the border fences at Melilla and instead travels to Spanish territory on a boat. Or perhaps Yacou can cut through part of the border fences in an unguarded location and reach Melilla that way. These forms of evasion are permissible, despite the fact that Yacou must violate immigration law to avoid border agents. Yacou can permissibly deceive immigration officials as well. Suppose that Yacou can use a fake

passport to reach Spain and to avoid deportation once he arrives. Or perhaps Yacou can find a sympathetic Spanish citizen who is willing to marry him just so that Yacou can immigrate by taking advantage of family reunification laws. Yacou would then mislead immigration officials about the nature of this marriage. These activities involve deception. But, in posing unjustified threats to Yacou, immigration agents render themselves liable to this deception.

More controversially, Yacou can rightfully use defensive force against government agents. Imagine that Yacou and other migrants storm the fences around Melilla and throw rocks at border agents. This rock-throwing imposes a risk of injury on border agents, but it also distracts these agents and deters them from capturing Yacou and other migrants. This gives Yacou and other migrants a chance to avoid these border guards and reach Spanish territory. Yacou's use of force against border agents satisfies the conditions of permissible self-defense. For one thing, the border agents that enforce unjustified immigration laws are liable to attack in virtue of the fact that they pose unjustified threats to Yacou. Yacou thereby avoids wronging these agents when he uses proportionate and necessary force against them.

Yacou's use of force may also satisfy the necessity requirement on permissible self-defense. Roughly speaking, the necessity requirement holds that defensive harm is necessary to avert a threat if the defending agent cannot avert this threat by risking less harm, including less harm to the defending agent.¹⁰ To illustrate, suppose that Yacou could avoid the border agents at Melilla by traveling to Spain via boat. But imagine that this voyage would be extremely risky. There's a high probability that the boat would capsize and Yacou would drown. It would be less risky for Yacou to attempt to enter Spanish territory by storming the border fences at Melilla. In this case, Yacou's use of defensive force would satisfy the necessity requirement because this

force is necessary for Yacou to avoid the greater risk of harm that he would confront by using alternative routes.

Finally, defensive force against border guards can be proportionate. The principle of proportionality holds that force is proportionate only if the good that this force brings about outweighs the bad that this force causes. But we should discount the harms caused to liable aggressors in proportionality calculations. For instance, suppose that aggressor culpably threatens to cut off the arm of an innocent person, you. It's proportionate for you to kill this aggressor in self-defense, even though death is a worse harm than the loss of a limb. The reason that your actions would nevertheless be proportionate is that the aggressor is liable to attack: he has done something to forfeit his right against attack from you. Consequently, we can discount the harm that you inflict on your aggressor in self-defense to some degree.

Assume that the risk of harm that Yacou imposes on border agents is greater than the risk of harm that Yacou faces if he refrains from attacking these agents. But it nonetheless seems proportionate for Yacou to impose some risk of injury on the border agents if they are culpable aggressors and their actions enable a significant risk of harm to Yacou. If these agents are enforcing unjust immigration restrictions, then it's plausible that Yacou's use of defensive force satisfies the requirement of proportionality. As Yacou's defensive force satisfies the other conditions of permissible self-defense, his use of defensive force against border guards is permissible.

How much harm can migrants permissibly inflict on border agents? Can he, say, kill one of these agents? The answer is yes, migrants can in principle inflict lethal violence on border guards. To see why, let's return to the first case, Assault. Recall that, in this case, you are fleeing a kidnapper and this kidnapper has an accomplice who blocks your escape. Let's now change the

case a bit. Suppose that everything in the case is the same except the person who is blocking your path is not the kidnapper's accomplice. This person is just obstructing your path for unrelated reasons (call this person "the obstructer"). Imagine that, in order to escape your attacker, you need to run into the obstructer's neighborhood. Yet the obstructer wants to keep you out of his neighborhood without a good justification. The obstructer saw what happened to you and knows that you're running for your life. But he worries that you'll trample the flowers that he's planted if you continue along your path. So, he attempts to block your escape.

It seems to me that you can permissibly use lethal force against this obstructer. The obstructer poses an unjustified threat of harm to you. In particular, the obstructer threatens to enable serious harm to you by preventing you from escaping your attacker. Although the obstructer does not intend to cause you harm, he will foreseeably enable grave harm to you. This makes the obstructer liable to attack. Suppose that there is no other way to escape your attack except by inflicting lethal harm on the obstructer. He just won't budge unless you cause him serious harm. Thus, it's necessary to use lethal defensive force against him. Lethal force is also proportionate. Remember that we should discount harms to the aggressor in proportionality calculations. For this reason, it can be proportionate to use deadly force against a liable aggressor in order for you to avoid a lesser harm, such as involuntary confinement. So, the use of deadly force against the obstructer likely satisfies the conditions of permissible self-defense.

The same goes for refugees who are fleeing serious threats of harm. If a refugee must cross a border or he will suffer grave harm and border agents stop him, then he can in principle inflict lethal harm on these agent. Imagine that, if Yacou is unable to reach Spanish territory soon, Moroccan bandits or the military will seriously harm him. That's hardly a remote possibility. Moroccan soldiers have killed several migrants in the Gourougou Mountains by

beating them to death and setting them on fire. This threat to Yacou's life explains why lethal defensive force against Spanish border agents proportionate. Let's suppose that, if Yacou use defensive violence against Spanish agents by, say, throwing rocks at them, this would disorient them and allow Yacou to sneak by, but this action would also impose risks of grave injury on the border guards. Let's also assume that crossing the border is the only viable way for Yacou to avoid imminent and grave harm. So, Yacou's use of lethal force against border agents seems to satisfy conditions of necessity and proportionality.

My broader point is that migrants can permissibly resist immigration restrictions by evading them, deceiving border agents, and using defensive force against border guards. These are controversial conclusions. Many people reject them. So, it's important to consider objections to my arguments in detail. I'm interested in considering objections to the defensive argument that grant that some immigration restrictions are unjust. These objections aim to show that, even if immigration restrictions are unjust, it's still wrong for migrants to illegally resist the officials who enforce these restrictions.

3. External Legitimacy

Most people think that it's wrong to resist state officials even if these officials are enforcing problematic laws. Suppose that Canada has established reasonably just political institutions. But the Canadian government requires some citizens to pay somewhat more than their fair share in taxes. Imagine that Canadian state employees tax one Canadian citizen, Tim, more than they should. So, Canada's tax laws are impermissible. Nonetheless, it seems wrong for Tim to physically assault tax collectors, even if these actions were necessary and proportionate to prevent these officials from imposing unfair taxes on him. You might accept that resistance to

state authority is justified in extreme cases. If the Canadian government were tyrannical, then it would be permissible for Tim to take up arms against it. Yet Tim cannot permissibly resist state tax collectors merely because they are enforcing laws that are somewhat unjust.

Why would it be wrong for Tim to resist state officials? One plausible answer is:

Internal Legitimacy. The citizens of a legitimate state have content-independent duties to obey the laws of this state or, at least, duties to refrain from interfering with a legitimate state's enforcement of its laws.

By "content-independent" duties, I mean that people could have duties to obey or refrain from interfering with the laws of other states irrespective of the content of these laws. Philosophers disagree about when a state is legitimate. But they usually claim that a state is legitimate if it satisfies some minimal moral standards. Perhaps a state is legitimate if, say, it adequately protects human rights. I'll remain agnostic about the conditions of legitimacy, but I'll assume that states that enforce some unjust laws can satisfy these conditions, whatever they are.

Now, let's return to the case of Tim. If Tim has an obligation to obey the law, then Tim would violate this obligation by resisting state employees. So, Tim should comply with Canadian law and pay his taxes. Perhaps something weaker is true of Tim's obligations. Maybe Tim only has an obligation to refrain from interfering with the Canadian state's enforcement of its laws. Either way, Tim would do something wrong by resisting state officials who are enforcing unjustified laws. Many philosophers have defended Internal Legitimacy for reasons that I will explain below.

Can we give a similar explanation for why it's wrong for foreigners to resist the immigration laws of other states? Consider:

External Legitimacy. Foreigners have content-independent duties to comply with the immigration laws of other legitimate states or content-independent duties to refrain from interfering with these states' enforcement of their immigration laws.¹¹

If External Legitimacy is true, then we can explain why it's wrong for migrants to resist border agents. Foreigners violate their obligations to respect immigration law by resisting state officials. If prospective immigrants have duties to comply with the laws of other states or duties to avoid interfering with the enforcement of these laws, then these foreigners should refrain from violating these immigration laws by resisting border agents, even if these laws are unjust to some degree. Thus, if External Legitimacy is true, then the defensive argument is unsound. But is External Legitimacy true?

4. Political Obligations

One natural thought is that, if Internal Legitimacy is true, then the same considerations that justify Internal Legitimacy also support External Legitimacy. Over the centuries philosophers have given different arguments for the view that people have obligations to obey the law. They've argued that citizens have these duties because they have (a) consented to obey the law, (b) duties of fair play to contribute to cooperative schemes from which they have benefited, (c) associative duties to their compatriots, (d) natural duties to support just institutions, (e) obligations to obey the law out of respect for the participants in democratic procedures, and (f) duties to defer to political institutions that have epistemic value. Can one of these arguments for Internal Legitimacy justify External Legitimacy as well?

Fair Play, Consent, and Associative Duties

Some political theorists argue that citizens have obligations of reciprocity to obey the law.¹² Remember that some political theorists believe that, if you benefit from public goods and your compatriots contribute to these goods, then you owe an obligation of reciprocity to your compatriots (some authors also refer to these obligations as duties of “fair play”). A system of law is a beneficial, cooperative enterprise. If citizens benefit from a system of law, they have obligations of fair play to bear a share of the burdens of this system. Some authors contend that, to bear their fair share, citizens must obey the law.

But fair play accounts of political obligation hold that a person only have duties of fair play to contribute to a cooperative scheme if this person receives a (reasonably) fair share of the benefits from this scheme. If the participants in a cooperative scheme refuse to provide you with your fair share of benefits, this releases you from your duty to contribute your fair share. Consider the case of Yacou again. The Spanish government denies Yacou the benefits of Spain’s institutions, including the rule of law. By hypothesis, the immigration restrictions that exclude Yacou are impermissible. As the Spanish government denies Yacou a fair share of the benefits of Spanish institutions, Yacou consequently lacks a duty of fair play to comply with the laws of the Spanish government.

A similar issue confronts consent theories and associative accounts of political obligations. One famous theory of political obligation—the social contract account—holds that political obligations are contractual obligations. On this view, citizens consent to obey the law and this consent obligates citizens to obey. Another prominent view invokes associative duties, like the special obligations between compatriots that I discussed earlier (§2.2). Most people think that they have associative duties to benefit and protect their friends and family members in virtue of the valuable relationships that they share with one another. Some philosophers contend that

the relationship between compatriots grounds associative duties and that, to satisfy their associative duties, citizens should obey the law and recognize the authority of their government.¹³

Both consent and associative accounts of political obligation fail to explain why foreigners have obligations to comply with the immigration laws of other states. On any reasonable understanding of consent, most prospective immigrants never consented to obey the laws of foreign states. Migrants who cross borders illegally also do not normally consent to obey the laws of the state that they immigrate to. Theorists who defend associative accounts of political obligations hold that only the *members* of a society have associative duties to obey the law.¹⁴ I argued earlier that we lack associative duties to our compatriots. But, even if people do have associative duties to their compatriots, prospective immigrants want to immigrate to states where they are not members. So, before they become members, prospective immigrants lack associative duties to recipient states to obey their laws.

Natural Duties

Some philosophers argue that we have natural duties to comply with and support just institutions.¹⁵ Natural duties are general duties: they apply to all moral agents irrespective of their institutional relationships. According to proponents of natural duty accounts of political obligation, we have natural duties to obey the laws of reasonably just states because obeying these laws contributes to upholding just institutions. Furthermore, sometimes we should comply with unjust laws in order to contribute to justice. John Rawls points out that “our natural duty to uphold just institutions binds us to comply with unjust laws and policies, or at least not to oppose

them by illegal means as long as they do not exceed certain limits of injustice.”¹⁶ In other words, we should comply with unjust laws because non-compliance damages just institutions.

Consider the case of Tim and the Canadian tax collectors again. Let’s assume that Canada’s political and legal institutions are just overall. In this context, Tim should probably comply with tax rules because non-compliance might undermine Canada’s just institutions. This compliance would uphold and help maintain Canada’s decent institutions.

But natural duty accounts of political obligation cannot rule out the permissibility of breaking unjust laws in cases (1) where law-breaking has no discernable effect on the justice of a state’s institutions and (2) where law-breaking contributes to justice on net. Let’s suppose that, if Yacou resists a state’s immigration restrictions, this will have few noticeable effects on the justice of the institutions that authorized these restrictions. Yacou manages to evade and deceive Spanish border agents and settle in Spanish society, but few people know that Yacou broke the law and his behavior does not encourage anyone to refrain from supporting just institutions. It’s hard to see how Yacou’s natural duty to uphold just institutions could explain why his behavior is wrong.

Even if violating the law damages just institutions in some respects, it may improve them in other respects. It’s possible that, if Yacou immigrates to Spain, he will contribute on net to just institutions by participating in civil society, protecting other migrants, and seeking to reform the unjust immigration restrictions that sought to exclude him. People can sometimes contribute to just institutions in the aggregate by violating the law. Again, natural duties fail to explain why this kind of law-breaking is problematic. While perhaps the natural duties of foreigners can ground an objection to resisting border agents in some cases, natural duties fall short of justifying a general objection to this resistance.

Democratic Authority

Some philosophers argue that political obligations are grounded in the value of democracy.¹⁷ They argue that we should treat other people with equal consideration and regard. To treat people as equals, we need to respect the outcomes of democratic procedures. Otherwise, we place our own judgments above the judgments of our fellow citizens and thereby treat them as inferiors. In disobeying the laws that democratic procedures authorize, we treat the participants in these procedures with disrespect. So, we ought to obey laws that are democratically authorized in order to respect the moral equality of the citizens who participate in democratic procedures.

Thomas Christiano defends this argument. Interestingly, Christiano thinks that the value of democracy also imposes duties on foreigners to refrain from interfering with the laws of a democratic state.¹⁸ Foreigners should respect the laws that democratic states authorize in order to respect the participants in their democratic procedures. So, theories of democratic authority potentially explain why foreigners should avoid resisting the immigration laws of other states.

But defenders of this democratic account of political obligation acknowledge that citizens lack duties to obey unjust laws in certain cases. Democratic authority is grounded in the requirement to express respect for other people and to show equal consideration of their interests. We disrespect the participants in democratic procedures by disobeying their directives. Yet we also disrespect people when we disregard their urgent interests or violate their rights. For this reason, adherents of democratic accounts of political obligations concede that citizens lack duties to comply with laws that democratic procedures authorize if these laws violate liberal or democratic rights. In authorizing the violation of rights, a democratic assembly impinges on the

same values that justify democratic procedures in the first place and thereby undercuts the authority of this procedure.

Immigration restrictions offend against the same values of equal respect and consideration that ground democratic authority. Christiano claims that citizens lack obligations to obey the law if the law violates basic rights. But, on my view, people have rights to immigrate to other states.¹⁹ The right to immigrate protects fundamental interests, such as our interests in economic mobility and freedom of association. So, immigration restrictions express disrespect for foreigners by disregarding their fundamental interests. Let's suppose though that it's false that people have general rights to immigrate to other states. Nonetheless, it remains plausible that some immigration restrictions treat some foreigners with disrespect and disregard. Immigration restrictions prevent refugees from securing core liberal and democratic rights.

Take the migrants outside of Melilla. Some of these migrants should almost certainly qualify for refugee status. Consider Aicha, a mother of four small children who wait with her in the mountains aside of Melilla.²⁰ Aicha fled the Ivory Coast to escape war. Soldiers tortured and killed her husband. She says: "They came to search for my husband in the house and severed his veins. He lost a lot of blood, and I saw how they were torturing him. I decided to run away with my three children until we arrived in Morocco." She had her fourth child in Morocco and lives with them in a tent in the mountains with the other migrants. She remarks about her treatment at the hands of the Moroccan military and the Spanish border guards: "We are not animals, we are human beings." Christiano claims that, if a law infringes on liberal or democratic rights, then this law lacks authority because this law expresses disrespect for people's equal moral status. State officials are treating Aicha and her children with contempt and disregard by denying her basic human rights. For this reason, immigration laws fail to impose any obligations to obey on her.

Epistemic Value

One account of the obligation to obey the law invokes the epistemic value of democratic procedures. This account of political obligation holds that citizens have duties to defer to political institutions, at least in certain domains, because these institutions tend to be reliable.²¹ David Estlund gives an analogy with the criminal justice system to help motivate a theory of political authority along these lines. Suppose that a jailor believes an inmate is innocent of the crime for which he was convicted. Assume that the jailor has the ability to secretly free this inmate. Nonetheless, it would be wrong for the jailor to free the inmate. The jailor should defer to the criminal procedures that convicted the inmate because these procedures have epistemic value. These procedures tend to be reliable and justified from all reasonable points of view. So, the jailor should refrain from relying on his own judgment and he should instead respect the outcome of reliable criminal procedures.

Estlund argues that certain democratic procedures that involve open, free, and extensive debate and deliberation tend to result in correct political decisions and, furthermore, citizens should comply with the outcomes of these procedures even if these procedures occasionally make mistakes. Perhaps we can adapt Estlund's account to support External Legitimacy. Certain political procedures may have a tendency to reach substantively correct decisions about immigration policy. So, prospective migrants should defer to these procedures. That is, foreigners should respect the outcomes of other states' democratic procedures if these procedures have epistemic value. Even if these procedures occasionally enforce unjust immigration restrictions, foreigners should comply with these restrictions because the procedures that authorized them tend to get things right.

Estlund holds that we should defer to democratic procedures only if these procedures have a tendency to arrive at correct decisions. However, democratic procedures may be reliable in certain domains and unreliable in others. To establish that foreigners should respect the immigration laws of other states, we need to show that the procedures that authorize these laws have a tendency to be reliable with respect to immigration policy in particular. For example, I have good reason to defer to my doctor about what medications I should take. But I lack a reason to defer to my doctor about who I should marry, as I have no reason to think my doctor is reliable in this domain. The same point applies to democratic procedures. People should respect a state's immigration laws only if we have good reason to think that democratic procedures are reliable with respect to immigration law.

But we should reject the view that actual democracies are reliable when it comes to immigration policy. Here's my argument:

1. Immigration restrictions are generally unjust.
2. Democracies enforce immigration restrictions.
3. If democracies enforce unjust immigration restrictions, then democracies are unreliable with respect to immigration policy.
4. So, democracies are unreliable with respect to immigration policy.

I've defended premises 1 and 2 in previous chapters. Premise 3 is just a description of what it means for a state to be unreliable. A state seems unreliable to the extent that this state enforces morally unjustified policies. So, if my arguments in the earlier part of this book are correct, then we should conclude that democracies are unreliable about immigration policy.

The unreliability of democracies should be unsurprising. Most democratic theorists agree that democratic procedures are less likely to be reliable when these procedures authorize laws

that affect the interests of people who are unable to participate in this procedure or who lack effective representation in this procedure. Political procedures that exclude affected groups (or at least affected, competent adults) tend to neglect the interests and rights of these groups because these groups lack the political influence that would give officials incentives to protect their interests.²² If political procedures ought to authorize laws that are responsive to the interests and rights of the group in question, then these procedures will tend to be unreliable if this group is excluded.

Many of the people that immigration policy affects are excluded from participating in the democratic procedures that select immigration policy. Prospective migrants lack effective representation in democratic assemblies because prospective migrants usually do not have formal political influence in the decision-making of foreign states. Thus, we can expect that actual democratic procedures will tend to be less reliable when it comes to immigration policy than they are with respect to other policy areas. And this is pretty much what happens.²³ If democratic procedures are insufficiently reliable in a certain domain, then it's a mistake for individuals to defer to these procedures when they authorize laws in this domain. So, at first glance, the epistemic value of democratic institutions falls short of showing that it's wrong for foreigners to resist the immigration laws that these institutions authorize.

5. Non-Interference and Self-Determination

Let's sum up. Standard arguments for political obligations fail to justify External Legitimacy. That's probably unsurprising on reflection. Philosophers who appeal to (a-f) to defend political obligations usually aim to explain why the citizens of a legitimate state have obligations to obey this state's laws. These arguments aren't meant to apply to foreigners.

But, even if migrants lack obligations to comply with the immigration laws of another state, they could have obligations to refrain from interfering with that state's enforcement of its laws. According to a common view, states have rights against external interference in virtue of the fact that they have rights to self-determination (§2.3).²⁴ On this view, it's valuable for a political community to decide for itself which laws and rules to implement without external interference. If there is value in a society deciding law for itself, then external interference undermines this value. So, the importance of self-determination imposes duties on outsiders to refrain from interfering with a community's enforcement of its own laws and policies, even if some of these laws and policies are morally problematic. Christopher Wellman and Andrew Altman write that the decisions that legitimate states make may not "be morally optimal or even beyond serious moral criticism. But even if they could in practice be countermanded, the decisions should be respected" in order to honor a state's claim to self-determination.²⁵

Migrants who evade, deceive, or violently resist immigration agents might violate a state's right against external interference. Resistance to immigration restrictions interferes with a state's capacity to enforce its immigration laws. So, this resistance might be wrong because it fails to respect a state's right against external interference. This argument for External Legitimacy goes:

1. Foreigners have obligations to refrain from interfering with a legitimate state's acts of making and enforcing immigration law in order to respect this state's right to self-determination, even if this state's immigration laws are morally unjustified.
2. If foreigners have obligations to refrain from interfering with a legitimate state's acts of making and enforcing immigration law, then it is wrong for foreigners to resist the immigration laws of these states.

3. So, it is wrong for foreigners to resist the immigration laws of legitimate states. Call this: the *interference argument* for External Legitimacy. We might challenge premise 2 on the grounds that states' rights against interference only apply to certain public actors, such as other states or international organizations. Perhaps states lack rights against interference from private actors, such as ordinary migrants. Alternatively, we might worry that some forms of resistance to immigration law fail to constitute "interference" in the relevant sense. It sounds a bit overblown to claim that unauthorized migrants interfere with a state's sovereignty by evading or deceiving its immigration agents. But I'll bracket these concerns here. I'll assume that premise 2 is true.

However, premise 1 is problematic. To see why, note that states' rights to non-interference have limited scope. States are commonly thought to lack rights against external interference when they pose unjustified threats to outsiders. Imagine that the United States invades Mexico without provocation. Mexico responds launching attacks on military bases within the borders of the United States. It seems false that Mexico's military violates the United States' right to non-interference. Notice that we can reject the view that the United States has a right against interference without accepting that any form of resistance to America is permissible. It would be wrong for Mexico to annex large swathes of the United States in response to its attack. Yet the United States lacks a right against resistance from Mexico. Call this case: *Invasion*.

Consider another case. San Marino is an enclave of Italy. It's a tiny republic that's completely surrounded by Italian territory and it only has a population of about thirty-three thousand. Imagine that Italy one day decides to blockade San Marino. Although Italy refrains from violating San Marino's territorial integrity, Italy prevents supplies from reaching San

Marino and stops its citizens from emigrating. This blockade results in hardship for the citizens of San Marino. But the residents of San Marino resist the blockade by evading, deceiving, and using defending force against Italy's military and border agents in order to emigrate and import supplies from abroad. Let's assume that Italy's blockade of San Mario is unjustified. Do San Marino's citizens violate Italy's right against interference by resisting its blockade? It looks like the answer is "no." Italy poses an unjustified threat to the citizens of San Marino, even though Italy never violates its territorial integrity. San Marino's resistance to Italy is therefore permissible. Call this case: *Blockade*.

Invasion and Blockade reveal that states lack rights against interference when they pose unjust threats to foreigners. This is true even when governments don't violate the territorial integrity of other states. But immigration restrictions pose unjust threats to foreigners too. Return, once again, to the border coercion at Melilla. This coercion poses a grave threat to migrants and threatens to trap them in conditions of poverty and violence. So, if the aggressor state lacks rights against resistance in Invasion and Blockade, then the same should hold true for states that enforce unjust immigration restrictions. This means that premise 1 of the interference argument is false.

But maybe there's some relevant difference between Invasion and Blockade on the one hand and immigration restrictions on the other that would explain why it's wrong for migrants to resist border coercion. One possibility is that the aggressing agents in Invasion and Blockade *intentionally* cause harm or high risks of harm to the citizens of the victim state, while immigration restrictions only *foreseeably* causes harm to foreigners. Public officials do not intend to harm prospective migrants when they restrict immigration. Rather, harm to these foreigners is a foreseeable but unintended side effect of restrictions on immigration.

Yet it's unclear whether this fact would explain why resistance to immigration restrictions is impermissible. To illustrate, let's return to the modified case of Assault. Remember that, in this case, an obstructer stops you from escaping a kidnapper. This obstructer doesn't intend you harm. He just wants to stop you from trampling on his flowers. Although he only foreseeably threatens to cause you harm, the obstructer is culpable for posing a threat to you nonetheless. And that's enough to forfeit a right against your defensive resistance. The same goes for immigration restrictions. While states that enforce unjust immigration restrictions don't intend harm, they still lose their right against resistance.

So, it appears that premise 1 of the interference argument is false. States that impose unjust immigration restrictions are liable to resistance. More generally, we should reject External Legitimacy. Prominent theories of political obligation fail to explain why prospective migrants have obligations to respect the immigration laws of other states. Now I've shown that states' rights against interference also fall short of establishing that migrants should avoid resisting unjust immigration laws. In light of the failure of these two strands of arguments for External Legitimacy, we should conclude that this view is likely false.

6. Civil Disobedience?

Many people agree that sometimes it's okay to violate an unjust law. But they think that you must openly disobey the law and willingly submit to punishment. In his famous "Letter from Birmingham Jail," Martin Luther King suggests this view. King rejects covert disobedience and resistance to the law: "In no sense do I advocate evading or defying the law." Instead, King argues:

One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.²⁶

According to King, law-breakings must break the law publicly and be willing to accept punishment for their disobedience. This view was reflected in the Civil Rights Movement. Opponents of Jim Crow would openly defy segregationist laws and go quietly when the police arrested them. Other authors proposed additional requirements as well, such as the requirement that civil disobedience be conscientious or sincerely motivated. This general view of civil disobedience is popular in political philosophy.²⁷

At first blush, it looks like unauthorized migrants violate the conditions of civil disobedience. The migrants near Melilla call themselves “clandestines” because they, like most unauthorized migrants, seek to avoid publicity and punishment. They aren’t trying to awaken the community to injustice. Instead, they’re trying to escape poverty and other hardships. Some political theorists disagree with this analysis. The political theorist Luis Cabrera defends unauthorized migration on the grounds that this law-breaking actually satisfies the spirit of traditional civil disobedience.²⁸ How so? Unauthorized migrants are often “highly visible” in their communities and this, on Cabrera’s view, partly satisfies the publicity requirement of civil disobedience. Cabrera also contends that, although unauthorized migrants may be unwilling to accept punishment, their law-breaking is analogous to civil disobedience because it promotes the reform of immigration laws and highlights the exclusionary nature of states’ membership.

Cabrera seems to think unauthorized migration is justified in virtue of the fact that unauthorized migrants is similar to traditional civil disobedience.

I disagree. My view is that resistance to unjust immigration law is often permissible even when it violates the requirements of civil disobedience. In the next two chapters, I'll defend other kinds of law-breaking too, like people smuggling. I reject the view that these disobedients must engage in traditional civil disobedience either. Here's why.

Let's start with the claim that disobedients must be conscientious or morally motivated. This looks false as a general requirement of permissible action. As I'll argue later (§6.4), you don't need to be morally motivated for your actions to be permissible. For example, it's obviously permissible for you to run away from an aggressor even though this action isn't born out of moral conviction. Perhaps you exhibit a morally better character if you do something that's permissible for moral reasons, but this doesn't show that your action is wrong. And, if it's false that permissibility requires moral motivation, then we should doubt whether resistance to immigration law must be morally motivated.

What about publicity? It's unclear why publicity would be a necessary condition for permissible disobedience. Consider Assault. Imagine that you secretly hide from the kidnapper and covertly escape. Your actions aren't public. Yet that's entirely fine. In fact, I'd say that it's good that your actions aren't public because that allows you to escape unjust aggression. The same point applies to unauthorized migrants. If unauthorized migrants satisfied the publicity requirement, this would defeat the very purpose of their actions. Immigration agents would promptly arrest them if they declared their actions to the world. I'm glad that their actions are covert, as this raises the chances that migrants can exercise their rights to immigrate.

Finally, let's turn to the willingness to accept punishment. On its face, this requirement means that a disobedient must have both certain attitudes and behaviors. Disobedients must recognize punishment as legitimate and they should not evade this punishment by trying to escape arrest and incarceration. Like Socrates after his trial and conviction, good disobedients should decline the chance to flee and wait for their punishment. But this requirement once again seems to rule out the actions of most unauthorized migrants because they actively try to avoid detection and punishment. And it's hard to see what would motivate this requirement in the first place. For one thing, it's extremely costly for disobedient or unauthorized migrants in particular to submit to punishment. In the United States, unauthorized migrants are liable to criminal penalties if they violate immigration law multiple times. They can serve more than a year in prison for immigration offenses, followed by deportation. Why should people who resist immigration law be required to bear these immense costs?

People who like the traditional requirements of civil disobedience might respond in several ways. They'd say that disobedients should demonstrate respect for the laws of legitimate states by making their disobedience public and accepting punishment. Like Tim and the Canadian government, disobedients should honor the fact that legitimate states do reasonable jobs of protecting human rights and implementing decent laws by demonstrating fidelity to the law. On top of that, disobedients who satisfy these requirements would be more effective at spurring reform. The public will sympathize with them and understand the reasons for their action, which could spark a drive for change.

But these arguments seem weak to me. I deny that we are obligated to show respect for even the laws of legitimate states, provided that the laws in question are unjust. Consider an analogy. Imagine that a police officer, Bradley, who never uses physical force against citizens

without adequate justification. Bradley is extremely reliable and takes great pains not to violate people's rights. But one day Bradley loses his temper and tries to attack an innocent citizen, Joel. Can Joel permissibly resist Bradley by evading him or fighting him off? It seems like he can. Although Bradley's conduct is nearly perfect, it doesn't follow that Joel must show respect for Bradley's track record by submitting to a beating. Similarly, legitimate states may be morally reliable. They can implement just laws in almost all cases. But, when they enforce unjust laws, there's no requirement for unauthorized migrants to show respect for these legitimate states by accepting punishment, say, or publicly declaring their disobedience.

Likewise, I grant that people who engage in civil disobedience might help promote the reform of unjust laws. So, it might a good thing for people to communicate their moral motivation, demonstrate respect for the law, accept punishment, and so on. Yet covert disobedience can also promote reform. The political scientist James Scott argues that invisible, covert, and non-public resistance helped end unjust wars and bring down systems of oppression, like Jim Crow.²⁹ For instance, mass desertions contributed to ending the Napoleonic Wars and the Vietnam War. Scott claims that quiet and anonymous disobedience is the preferred method of resistance of the "subaltern" classes because public disobedience is too costly. If Scott is right, then there are other kinds of disobedience that can effectively end injustice besides traditional civil disobedience. So, it's possible that the covert and quotidian subordination of unauthorized migrants has a similar effect by, say, eroding states' power to exclude foreigners.

In this respect, I agree with Luis Cabrera that unauthorized migration can have beneficial effects. But I don't think that unauthorized migration must have beneficial effects in order to be justified. We're unable to establish that disobedients should engage in traditional civil disobedience from the fact that it would have good consequences if they did. It would probably

produce good results if I gave most of my income to charity or donated a kidney to a stranger. It's false though that I'm morally required to do these things. In the same way, unauthorized migrants and other disobedients lack the duty to fulfill the conditions of civil disobedience. Instead, they can permissibly forbear the costs of punishment by covertly evading authority.

7. The Unfairness Argument

Another common objection to illegal or unauthorized immigration is that this migration treats other immigrants unfairly. David Miller raises this objection. According to Miller, unauthorized migrants unfairly "cut in line" ahead of law-abiding immigrants. He writes:

[Unauthorized migrants'] behavior may be regarded as in certain respects unfair, since by entering without permission they are at the very least engaging in a form of queue-jumping with respect to all those who are attempting to enter through legal channels, with the delays, costs and bureaucratic procedures that this will usually involve...³⁰

Miller later says: "by evading border controls [unauthorized migrants] have acted unfairly in relation to those who submitted applications either as economic migrants or as asylum seekers, and therefore ran the risk that their applications would be turned down."³¹ Miller's argument seems go like this:

1. There is a queue for admissions into other states.
2. People who immigrate without official authorization cut ahead in the queue over law-abiding applicants.
3. People who cut ahead in the queue over law-abiding applicants behave unfairly.
4. So, unauthorized migrants behave unfairly.

Let's call this *the unfairness argument* against unauthorized migration.

There are many problems with the unfairness argument. One problem with this argument is premise 3. It's unclear whether we're obligated to obey the rules of a queue if the rules are unfair. Suppose you're waiting in line at the supermarket. But you notice that the supermarket has the following rule: white males get to skip to the front of the line. And suppose you're not a white male. Would you be obligated to respect this queue? Or could you skip ahead? White males at the front of the queue seem to lack genuine moral claims to automatically skip to the front of the line. So, it at least wouldn't be wrong of you to cut in front of them in line. The analogy is that, if a state's immigration policies are sufficiently unfair, then prospective immigrants might lack duties to respect it.

Imagine, for instance, that a state's immigration policy favors skilled immigrants to the exclusion of all other potential immigrants. This state wants only to admit computer programmers and doctors, and not any low-skilled migrants or refugees. But let's assume for the sake of argument that some low-skilled migrants and refugees have stronger moral claims to admission than skilled migrants, although the strength of these claims are not reflected in the law. If some unskilled migrants or refugees "cut in line" by immigrating without authorization, then these migrants wouldn't be wronging the skilled migrants because the unauthorized migrants are the ones with the stronger claim to admission. In this respect at least, they wouldn't be guilty of unfairness. And this example resembles real life to some extent. Many foreigners can't get in line because there is no line for them. For instance, it's almost impossible for low-skilled workers to immigrate legally to the United States unless they have familial connections there.³² But low-skilled workers often have strong claims to admission, perhaps stronger than the claims of many other immigrants, such as highly skilled immigrants.

A defender of the unfairness argument might respond by arguing that claims to a place in a queue are conventionally defined. Your moral claim to a place in a line just is constituted by a convention that specifies the rules of the line. So, if the convention says that unskilled migrants need to wait your turn in line, then that's what they ought to do—follow the convention. But that can't be right. If claims to a place in line are purely conventional, then there wouldn't be anything wrong with the racist supermarket queue. And there's something wrong with it. Or consider another example. There's a waiting line for kidney transplants. Imagine that we had the following rule: whomever can sing the best rendition of Prince's "When Doves Cry" gets a kidney first. Obviously, that would be grossly unfair because many people have stronger antecedent moral claims to kidneys. Thus, there are facts about who has the strongest moral claim prior to the convention. The same goes with immigration policy.

There are other problems with the unfairness argument. For one thing, it's not clear that unauthorized migrants actually cut ahead in a queue for admission—premise 2 looks false. Suppose I'm waiting in line for movie tickets and I cut ahead of other people in front of me. What explains why my actions are wrong? Part of the answer is that I made everyone else worse off. Now they need to wait longer for their tickets. But here's a problem with moving from cases like this one to immigration: it's false that there is a literal queue in admissions such that, if someone immigrates without authorization, this migrant takes another person's place in line. Instead, legal applicants are usually unaffected by illegal immigration.

Take Yacou. If Yacou immigrates to Spain, he doesn't necessary make any other migrants worse off. Return to the analogy with the line for movie tickets. Unauthorized immigration is not like cutting in line for tickets. It's more like sneaking through the back door to watch a movie in an uncrowded theater. In general, legal applicants for admission won't be

displaced in line. So what's their complaint exactly? A defender of the unfairness argument might claim that illegal immigration makes a society less willing to admit more legal applicants for some reason. This claim though is mere speculation at present. I have yet to see systematic empirical support for it. It could easily go the other way: after a certain point, more immigration (either legal or illegal) can make societies more willing to accept immigrants (§3.5). If unauthorized migrants refrain from making legal applicants worse off, it's hard to see why these legal applicants have a valid complaint.

8. Conclusion

I noted in chapter 4 that some early abolitionists argued that slaves could rightfully resist their masters. Some went so far as to argue that, since slaves were the victims of unjust coercion, morality permits them to “repel that force with force” and that was the duty of others to “assist those miserable creatures... in their attempts to deliver them out of slavery and to rescue them out of the hands of cruel tyrants.” According to this radical abolitionist view, slaves had the right to resist their masters and bystanders were obligated to aid them in their escape to freedom.

I've defended a similar claim about the victims of modern-day injustice: people who are unjustly prevented from immigrating. Although their plight is not usually as bad as that of slaves, these migrants are the victims of unjust coercion as well. As such, migrants have a right of resistance against unjust immigration restrictions. But in this chapter I've focused almost entirely on the migrants themselves and I've defended resistance as a kind of self-help. I'll now move from the question of what migrants can do for themselves to the question of what bystanders can do in assisting them to cross borders.

¹ Human Rights Watch, *Abused and Expelled: Ill-Treatment of Sub-Saharan African Migrants in Morocco* (New York, NY: Human Rights Watch, 2014), pp. 42-3.

² Human Rights Watch, pp. 43.

³ This story is from: This American Life, *The Walls*, March 18th 2018, accessed June 1, 2018, <https://www.thisamericanlife.org/641/the-walls>.

⁴ Sarah Wheaton, "U.S. Border Patrol Instructed To Show Restraint," *New York Times* (March 7th, 2014), available at: http://www.nytimes.com/2014/03/08/us/border-patrol-instructed-to-show-restraint.html?_r=0 (accessed August 02, 2014).

⁵ Ciaran Giles, "Migrants Make Violent Border Crossing Bid," *Associated Press* (February 24, 2014), available at <http://globalnews.ca/news/1169550/hundreds-of-african-migrants-make-violent-attempt-to-storm-border-fence-at-melilla-enclave/> (accessed August 02, 2014).

⁶ We should distinguish "resistance" from mere law-breaking. Law-breaking may be entirely passive. For example, if the law requires that I pay a fine and I fail to do so, I break the law. But I resist the law if I actively work to prevent state employees from collecting the fine or from punishing me for my failure to pay it.

⁷ David Rodin, "War and Self-Defense," *Ethics and International Affairs* 18, no. 1 (2004): 63–68.

⁸ Hans-Hermann Hertle, *The Victims at the Berlin Wall, 1961-1989: A Biographical Handbook*. Hans-Hermann Hertle, Maria Nooke (Berlin: Christoph Links Verlag, 2011).

⁹ David Fedele, *The Land Between*, 2014, <http://thelandbetweenfilm.com/>.

¹⁰ For an analysis of the necessity requirement, see: Seth Lazar, "Necessity in Self-Defense and War," *Philosophy & Public Affairs* 40, no. 1 (January 1, 2012): 3–44.

¹¹ This might be an idiosyncratic use of the phrase "external legitimacy." This phrase is commonly used to refer to the conditions under which foreigners have duties to refrain from interfering with the affairs of legitimate states. Here I am using the phrase more expansively to refer to these duties as well as duties to comply with a state's immigration laws.

¹² George Klosko, *Political Obligations* (Oxford University Press, 2008); Richard Dagger, *Civic Virtues: Rights, Citizenship, and Republican Liberalism*, First Edition edition (New York: Oxford University Press, 1997).

¹³ John Horton, *Political Obligation*, 2 edition (New York: Palgrave Macmillan, 2010).

¹⁴ John Horton, "In Defence of Associative Political Obligations: Part Two," *Political Studies* 55, no. 1 (March 1, 2007): 1–19.

¹⁵ John Rawls, *A Theory of Justice*, Revised edition (Cambridge, Mass: Belknap Press, 1999). 308-312.

¹⁶ *Ibid.*, p. 311.

¹⁷ Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (New York: Oxford University Press, 2010); by Allen Buchanan, "Political Legitimacy and Democracy," *Ethics* 112, no. 4 (July 1, 2002): 689–719.

¹⁸ *Ibid.*, pp. 248-9.

¹⁹ Joseph Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013).

²⁰ Aicha's story is also described in David Fedele's *The Land Between*.

²¹ David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton University Press, 2007); David Estlund, "On Following Orders in an Unjust War*," *Journal of Political Philosophy* 15, no. 2 (June 1, 2007): 213–34; David Lefkowitz, "Debate: Legitimate Authority, Following Orders, and Wars of Questionable Justice," *Journal of Political Philosophy* 18, no. 2 (June 1, 2010): 218–27.

²² John Stuart Mill wrote: "in the absence of its natural defenders, the interest of the excluded is always in danger of being overlooked: and, when looked at, is seen with very different eyes from those of the persons whom it directly concerns." John Stuart Mill and John Gray, *On Liberty and Other Essays* (New York: Oxford University Press, 1998). 246.

²³ I have refrained from discussing two prominent accounts of political obligation in this section: theories that appeal to duties of gratitude and samaritan duties. I have omitted discussion of these accounts because it seems clear that they are unable to justify External Legitimacy. Prospective immigrants usually lack duties of gratitude to foreign states because they normally have not received the requisite benefits from these states to activate these duties before they immigrate. Prospective immigrants lack samaritan duties to obey immigration laws because immigration restrictions are not generally necessary to rescue people from grave harms. So, these accounts of political obligation also fail to justify External Legitimacy. For a discussion of these accounts of political obligation, see: A. D. M. Walker, "Political Obligation and the Argument from Gratitude," *Philosophy & Public Affairs* 17, no. 3 (July 1, 1988): 191–211; Christopher Heath Wellman, "Toward a Liberal Theory of Political Obligation," *Ethics* 111, no. 4 (2001): 735–59.

²⁴ Andrew Altman and Christopher Heath Wellman, *A Liberal Theory of International Justice* (Oxford University Press, 2009); Bas van der Vossen, “The Asymmetry of Legitimacy,” *Law and Philosophy* 31, no. 5 (September 1, 2012): 565–92.

²⁵ Altman and Wellman, *A Liberal Theory of International Justice*, p. 7.

²⁶ Martin Luther King, “Letter from Birmingham Jail,” available at: https://web.cn.edu/kwheeler/documents/Letter_Birmingham_Jail.pdf (accessed July 10th 2018).

²⁷ For an overview of the literature, see: Candice Delmas, “Civil Disobedience,” *Philosophy Compass* 11, no. 11 (2016): 681–91.

²⁸ Luis Cabrera, *The Practice of Global Citizenship* (New York: Cambridge University Press, 2010), chapter 5.

²⁹ James C. Scott, *Two Cheers for Anarchism: Six Easy Pieces on Autonomy, Dignity, and Meaningful Work and Play* (Princeton: Princeton University Press, 2014), chapter 1.

³⁰ David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016), p. 117.

³¹ Miller, p. 126.

³² For evidence, see: Bryan Caplan and Vipul Naik, “A Radical Case for Open Borders,” in *The Economics of Immigration*, ed. Benjamin Powell (New York: Oxford University Press, 2015), 180–209 at p. 181.

Chapter 6: People Smuggling

1. Introduction

In her book *Enrique's Journey*, the journalist Sonia Nazario describes the quest of a Honduran adolescent, Enrique, to reach the United States.¹ Enrique's mother left him when he was five years old to order to immigrate to America. She wanted a higher standard of living for herself and her family. Yet Enrique's mother never returned. Instead, she stayed in the United States, working odd jobs, and had a daughter. When Enrique is sixteen, he decides to try to move to America to join her. He risks the dangerous trip through Mexico to achieve his goal. Along with other migrants, Enrique rides on the tops of trains to traverse Mexico. He endures hellish conditions, evading gangsters and Mexican immigration agents, as he makes his way to the United States-Mexico border. At one point, gangsters beat Enrique so badly that he nearly dies. Despite this, he eventually reaches the Rio Grande, the river that divides Mexico and the United States.

But Enrique is now unsure about what to do. If he crosses the border and immigration agents catch him, they might detain him for months or deport him back to Honduras. All of his effort to reach the border would be wasted. Also, migrants die trying to cross the Rio Grande unaided. While Enrique figures out what to do, he lives in destitution in the border town Nuevo Laredo where other migrants congregate to attempt the crossing.

One day Enrique meets a smuggler. The smuggler's real name is Diego Cruz Ponce, but he goes by the nickname "El Tiríndaro" (I'll refer to him by his real name). Diego helps coordinate a smuggling network to transport migrants across the border. He is experienced and successful. According to one migrant, Diego "has studied the movements of the Border Patrol so long... that he knows what each agent does every eight hours, during the shift change."² Diego

gives a cut of his earnings to the Mexican police and they in turn allow his operations to continue. Enrique's mother pays Diego \$1200 to smuggle Enrique into the United States. In the middle of the night, Diego puts Enrique on an inner tube and paddles him along other migrants across the river. At one point, the border patrol nearly spots them, but they manage to hide in time.

After reaching the other side of the river, Diego says "this is the hard part" and his group runs in the open to a residential street where his associates are waiting. The migrants load into a car, circumvent an immigration checkpoint, and reach the interior of the United States. Enrique eventually reunites with his mother. Diego receives \$100 per client after the money is divided among his associates.

Shortly after helping Enrique to cross the border, Diego is murdered. He was blindfolded, tortured, and executed, and his body is dumped near the road to Nuevo Laredo airport. Why? That's unknown. Perhaps it has something to do with Diego's drug habits—he is addicted to heroin. Or maybe it's related to crime in the area. The region where Diego operates is increasingly dangerous. Organized crime rules the region and violent firefights between the police and drug cartels are common.

People smugglers like Diego Cruz Ponce assist migrants in crossing international borders without official authorization and in return for compensation. People smugglers are guides who escort migrants to and from specific points, drivers who transport migrants in trucks or boats, staff who operate safe houses for migrants, guards who protect migrants on their journeys, or coordinators who handle the logistics of smuggling operations.³ Every year millions of migrants hire people smugglers like Diego to help them to move across borders.⁴

What should we think about the morality of Diego's actions? Many observers would condemn Diego. After all, many people object to people smuggling in general. Over a hundred countries have signed a United Nations protocol that commits signatories to criminalizing people smuggling.⁵ The European Union has even initiated military operations against smugglers in order to disrupt their activities in the Mediterranean. The illegality of people smuggling reflects widespread moral condemnation of the practice. The Australian Prime Minister Kevin Rudd expressed a common view when he remarked: "People smugglers are engaged in the world's most evil trade and they should all rot in jail because they represent the absolute scum of the earth. People smugglers are the vilest form of human life."⁶

So, many people would claim that Diego Cruz Ponce and other smugglers are acting wrongly. I disagree. While some smugglers abuse and exploit migrants, other smugglers act permissibly and their actions are morally admirable. People smuggling is a permissible and morally laudably defense of others. If immigration agents pose unjust threats to migrants, then third-parties, such as people smugglers, can permissibly defend migrants from this threat by helping them to resist unjust coercion. In some cases, people smuggling is even morally required because smugglers discharge general positive duties when they transport migrants across borders. I'll also argue that common objections to people smuggling only show that people smugglers sometimes act wrongly. They don't show people smuggling per se is objectionable.

2. The Case for People Smuggling

I'll now argue that people smuggling is in principle permissible and sometimes morally obligatory. I'll also show that, according to the available evidence, people smugglers often act permissibly in practice.

People Smuggling is In Principle Permissible

To make my argument for people smuggling, I'm going to use the case of Diego and Enrique as an illustration. One caveat: I don't know all of the facts about their lives and situations. So, I'm going to stylize the case to some extent. But my narrative is consistent with the facts I know.

To recap, Diego is part of a smuggling network who operates along the United States-Mexico Border. Diego is a coyote who helps people to immigrate by pushing them across the Rio Grande on an inner tube. Diego is no moral exemplar. He's addicted to heroin and spends much of his income on his habit. He occasionally engages in petty theft and some of his friends are members of gangs. But Diego also leads a camp of migrants where they can find shelter from the police. He takes Enrique under his wing and helps him to survive in Nuevo Laredo. Diego seems to treat his clients fairly. He avoids coercing or pressuring Enrique to hire him and, as far as I know, he doesn't extract large profits from his clients.

It seems to me that Diego's smuggling operation is permissible. My argument for this conclusion begins with the premise that it's permissible for Diego to refrain from smuggling migrants altogether. Here's the rationale for this claim. It's good for Diego to help migrants out, but he wouldn't be doing anything wrong if he decided to pursue another line of work. It's implausible that bystanders are morally required to smuggle migrants across borders. One reason for this is that our duties to aid other people are sensitive to costs.⁷ Becoming a people smuggler is risky and costly. This releases most bystanders from a duty to smuggle migrants across borders.

To illustrate how our positive duties are sensitive to costs, let's consider some cases. Suppose that I could do more good in the world if I quit my job as a professor and became an aid worker in a poor country. I'd do more to help the disadvantaged if I were an aid worker. But, to become an aid worker, I'd need to give up my career as a professor. I'd also need to spend a long time away from my family. These are major costs to me. Am I nonetheless obligated to bear these costs in order to bring about greater good in the world? It seems that the answer is "no." While becoming an aid worker would perhaps be admirable, it's false that it's morally required because the costs are so great. Here's another illustration. Imagine that you could donate one of your kidneys to a stranger. This donation would extend the recipient's life for a few years. Donating a kidney would be a great thing to do. But I doubt that it's obligatory. It seems permissible for you to forgo the risks of surgery and the costs of recovery for the sake of a stranger.

These examples suggest that positive duties to aid others are sensitive to costs. If it's too costly or risky for you to aid other people, then you're released from an obligation to aid them. People disagree about what counts as an unreasonable or excessive cost. But, while it may be controversial where the threshold lies, there's some threshold of cost that undercuts duties of assistance. If that's true, then it's permissible to refrain from helping other people when aiding them generates sufficiently large costs to the duty-bearer.

Let's return to the case of Diego. It's costly for Diego to smuggle migrants into the United States. Diego incurs financial costs in transporting migrants. He needs to pay for supplies and bribes the police to protect migrants from harassment. Diego also confronts risks of punishment from the authorities because people smuggling is illegal. If American officials catch Diego, they could imprison him for years. And Diego might suffer injuries or die along the way

from accidents, violence, and so on. It's even possible that Diego was murdered because he smuggled migrants. Gangs and drug cartels were consolidating power in the region and driving small-time smugglers out of business. Perhaps a gang decided to kill Diego in order to scare other smugglers into cooperating with them. Even if that's not why Diego was killed, it's clear that his profession has major risks. So, Diego lacks has a duty to unconditionally aid migrants by transporting them across borders. He can reasonably refuse to bear the costs of aiding migrants without compensation.

Suppose you accept that Diego could permissibly refuse to smuggle migrants. Now, if it's permissible for Diego to refrain from engaging in smuggling without compensation altogether, then it seems *prima facie* permissible for him to participate in smuggling insofar as migrants consent to his assistance and this assistance benefits these migrants. The basic thought is this: given that it's fine for Diego to abstain from benefiting Enrique at all, what could be wrong with benefiting Enrique for a price?

Suppose that you're a professional mountaineer. You guide people to the top of the tallest mountains in the world. This is a dangerous and costly affair and it's understandable if you'd prefer to seek out a different line of work. Imagine though that a client wants to climb to the top of Everest and wants you to guide him. If it's acceptable for you to refuse to guide this client to the summit of Everest, then it seems permissible to guide him to the top in return for compensation as long as the client can expect to benefit from this transaction, he consents, and you avoid harming other people while scaling Everest. We can tell a similar story about most commercial transactions. Given that it's permissible for people to refrain from performing services for others for free, then it's hard to see why it could be wrong to charge for these services. This is true of Diego as well.

My argument here relies on the following implicit principle:

If it is permissible for person A to refrain from interacting with person B, then it is permissible for A to interact with B if (i) A and B consent to this interaction, (ii) this interaction can expect to benefit B, and (iii) this interaction avoids violating the rights of third-parties.

Let's call this: preservation principle.⁸ The thought that motivates this principle is that voluntary and beneficial exchange preserves permissibility. If it's permissible for you to refrain from interacting with someone, then it must be permissible for you to interact with her, provided conditions (i-iii) are met. This interaction preserves the permissibility of the relevant counterfactual—the counterfactual in which you refrain from interacting with the person in question. After all, how could someone complain about receiving benefits above and beyond what they are owed? It's hard to see what a person's ground for complaint could be.

Although the preservation principle seems self-evidence, it's actually the controversial. Consider a possible counterexample. Suppose that Susan is someone who lives in desperate poverty. But let's assume that you are within your rights to refrain from interacting with Susan. You've already given a large sum to charities that benefit the poor and thereby satisfied your duties to aid other least advantaged. So, you lack a duty to aid Susan. But imagine that you offer Susan the following deal. If Susan agrees to become your slave, you'll provide her with food and shelter. You get to have unlimited despotic power over Susan and, in return, she gets to avoid starvation. Imagine that this deal would benefit Susan and she agrees to it. Would this contract be permissible? It seems to satisfy the preservation principle. But it's wrong to own slaves. Thus, the preservation principle must be false. This seems to be a counterexample to this principle.

To avoid this problem, I'm going to adopt a weaker interpretation of the preservation principle. It's merely a presumptive principle. It may be false that the interactions that satisfy the preservation principle are *necessarily* permissible. Instead, the fact that an interaction satisfies the preservation principle is *strong evidence* that this interaction is permissible. The reason for this claim is inductive. Most interactions that satisfy the preservation principle, including most ordinary commercial interactions, are permissible. This is a compelling reason to believe that people smuggling is morally acceptable insofar as it satisfies the conditions of this principle. Yet this reason is defeasible. I'll leave open the possibility that there could be a special reason why an interaction is still wrong even though it meets these conditions, and consider some possible defeaters later in this chapter.

Now, let's return to the case of Diego. Diego's interactions with migrants satisfies the conditions of the preservation principle. Diego benefits migrants by helping them to cross borders. More precisely, his interaction with migrants can expect to benefit them. It's impossible to know for sure whether migrants will ultimately benefit *ex post* by immigrating. But there's a reasonable probability that they will benefit. If they can immigrate, many of their rights will be more secure human rights, they'll have a higher income, they'll be closer to friends and family members, and so on. For example, Enrique wants to reunite with his mother who he has not seen since he was a child. And the United States is far safer than Honduras. Drug dealers were threatening Enrique's life when he left. Immigrating to the United States is not a panacea. But Enrique's life does seem to get better after he immigrates. Enrique also consents to Diego's assistance. Enrique agrees to pay him in return for his help in smuggling him across the border and tells his mother that he trusts Diego.

The fact that migrants consent to Diego's services is important because he exposes migrants to risks. Crossing the border is dangerous. It's normally wrong to expose people to large risks. But we can waive our rights against these risks. If someone imposes risks on you but you consent to their behavior, then it may be permissible for this person to expose you to these risks. For this reason, migrants can waive their rights against the risks Diego imposes on them.

You might worry that the migrants who hire Diego are in a desperate position. Many migrants from Central America are fleeing violence and poverty. For example, a large proportion of migrants are trying to escape organized crime and gang violence in places like Honduras, which has a higher death rate from violence than some war zones.⁹ Migrants might face the option of risking a dangerous border crossing or continuing to live under the threat of violence.

But a person's consent can be morally transformative even if this person has only bad options. Suppose that you're suffering from a life-threatening condition. You have two options. First, you can undergo a risky surgery that might cure you, but it might also kill you. Second, you can forgo surgery and face a high probability of death in the next year. If you takes the first option and consent to surgery, then it seems permissible for the surgeon to operate on you. Although you have terrible options, you remain capable of waiving your right against the risks that the surgeon imposes on you.

Despite their constrained options, migrants and refugees also retain the normative power to waive their rights against the risks to which smugglers exposes him. Perhaps it would still be wrong to expose migrants to the risks of a dangerous border crossing if the risks of harm from smuggling substantially outweighed the benefits. Along similar lines, some people think that it's wrong for a surgeon to expose you to high risks of harm if the expected benefits of the surgery were low, even if you consented to these risks. But I'm assuming that the expected benefits of

smuggling migrants outweigh the risks of harm in the case that I'm describing. So, Diego avoids wronging his clients by smuggling them to the United States.

Let's now turn the third condition of the preservation principle, the condition that the smuggler's interaction with migrants avoids violating the rights of third-parties. Here my argument draws on my argument in the previous chapter. To recap, the argument for resistance goes like this:

1. Immigration restrictions pose unjust threats to migrants.
2. People can permissibly evade, deceive and use defensive force against aggressors (provided that conditions of necessity and proportionality are met).
3. So, migrants can permissibly evade immigration agents, deceive them, and use defensive force against them.

But notice that self-defense and other-defense are, in important respects, symmetrical. If you have a right to defend yourself, then others have a right to defend you too.

Let's return to a case that I discussed in the last chapter: Assault. In this case, you are walking along in the forest and a man tries to forcibly abduct you. You escape and run away down the only available path. Yet the man's accomplice is waiting for you and tries to block your escape down this path. It would be permissibly you to defend yourself against these aggressors. But notice that it would also be permissible for a bystander to defend you as well. Imagine that a bystander sees what's happening and rushes to your aid. Suppose that the bystander knows the terrain well and can direct you onto a hidden path where you can safely escape. Or suppose that the aggressors ask the bystander where you've gone and he lies to them, pointing them in the wrong direction. Finally, assume that the bystander happens to have a gun on him, shoots one of the kidnapers in the leg, and the other runs off. The bystander's actions

are permissible in each of these cases. Just as you can permissibly defend yourself, the bystander can defend you as well.

Now, consider Diego. Diego helps migrants to evade what are arguably unjust immigration restrictions. This isn't the place to defend this thesis in detail. But, if the rest of my argument in earlier chapters is correct, then it's plausible that many of the United States' immigration restrictions are unjust. Take the exclusion of Enrique. The United States government refuses to allow Enrique to immigrate. Yet Enrique has strong interests in escaping the poverty and violence that he confronted in Honduras, and reuniting with his mother. In any event, Enrique faces grave threats to his life and basic needs in Mexico. So, on its face, America's exclusion of Enrique looks unjust. In what follows, I'm going to assume that Enrique's exclusion is unjustified.

Thus, Enrique can permissibly resist border agents and he avoid violating any rights of the United States or its citizens in doing so. By posing unjust threats to migrants, immigration agents become liable to resistance and migrants do not wrong them by evading, deceiving, or using force against them. If self- and other-defense is morally symmetrical, then Diego can do the same on behalf of migrants. Diego can permissibly help migrants resist immigration agents and, moreover, he avoids violating anyone's rights when he smuggles migrants across borders. Diego satisfies the final condition of the preservation principle.

I can now state my argument for the permissibility of people smuggling. It goes:

1. It's permissible for Diego to refrain from smuggling migrants across borders.
2. If it is permissible for person A to refrain from interacting with person B, then it is *prima facie* permissible for A to interact with B if (i) A and B consent to this interaction, (ii)

this interaction can expect to benefit B, and (iii) this interaction avoids violating the rights of third-parties.

3. So, it's *prima facie* permissible for Diego to transact with migrants by transporting them across borders insofar as this transaction satisfies conditions (i-iii).
4. These transactions satisfy conditions (i-iii).
5. So, it is *prima facie* permissible for Diego to smuggle migrants across borders.

This argument shows that people smuggling is permissible in principle. But I now want to defend a stronger claim: people smuggling can actually be morally required.

People Smuggling Can Be Morally Required

To show that people smuggling can be morally required, let's consider another scenario.

The Syrian civil war has generated enormous violence and deprivation. The war began in 2011 during the so-called Arab Spring. A conflict started between the government of President Bashar al-Assad and various rebel groups that opposed him. This conflict devolved into a brutal struggle. The different sides have massacred civilians, used chemical weapons against each other, and bombed cities. The war displaced about half of the Syrian population and kills hundreds of thousands. Four million Syrians have fled the country as refugees. Many of them were aided by people smugglers.

Mohammed is one of these refugees. In their book *Migrant, Refugee, Smuggler, Savior*, Peter Tinti and Tuesday Reitano tell his story.¹⁰ Mohammed is a Syrian human rights activist who worked in the area near Damascus. After the civil war broke out, an extremist rebel group took over the area where he lived and kidnapped a member of his organization. The Assad regime also hated Mohammed's group. To escape these threats, Mohammed decided to leave

Syria. In an interview, he remarked: “I had to flee in order to save my life.” Mohammed walked for three days to reach Darayya, a suburb of Damascus, through active battlefields: “For one day we were stuck in the middle of some battles. One of my friends was badly wounded. We had to carry him the rest of the way.”

Mohammed and his group hired a smuggler once they reached Darayya. This smuggler drove them along with two hitchhikers to the Turkish border and through multiple government and militia checkpoints. But border guards wouldn't allow Mohammed to cross. Another smuggler then offered to help Mohammed cross the border in return for \$20. The smuggler spoke to the soldiers and they allowed Mohammed to pass. Mohammed reached Turkey. Eventually, Mohammed manages to immigrate to Germany where he continues his work as a human rights activist. He says: “I hate my homeland. Everyone is converting to extremism, joining militias, and killing each other.”

I'm going to make some assumptions about the smugglers who aided Mohammed for purposes of illustration. I don't know if these assumptions are true, although they strike me as credible. Let's suppose that, without the aid of these smugglers, Mohammed would never have escaped Syria and would have suffered grave harm at the hands of the local militias or Assad's regime. I'm also going to assume that these smugglers did not ruthlessly exploit Mohammed. They only earned a modest profit for smuggling Mohammed and his friends. While these are just assumptions, they're also consistent with the available evidence about people smugglers, as I'll discuss later.

It's plausible that the smugglers who aided Mohammed were morally required to engage in people smuggling. To see why, consider the conditions under which we are obligated to aid other people. As a first pass, it seems that you're morally required to take actions to aid another

person if these actions are necessary to provide benefits to this person, the benefits are crucial for his or her well-being, and providing these benefits avoids imposing unreasonable costs or risks on you.¹¹ This rough analysis seems to capture our intuitions about the duty to rescue other people.

Here's a famous case to illustrate.¹² Imagine you are walking along and see a child drowning in a pond. You can easily jump into the pond and rescue the child, although you'll ruin your clothes. No one else is around. It seems that you're morally required to rescue the child by jumping into the pond and dragging the child out. This action is necessary to provide crucial benefits to this child. If you refuse to rescue the child, he'll drown. The costs of rescuing the child are also reasonable. While it's a cost to ruin your clothes, the life of a child is worth much more. So, you're required to save the child. Other people can appropriately blame you if you fail to rescue him.

Let's return to the case of Mohammed. The smugglers who aided Mohammed were plausibly morally required to do so. Their actions were necessary to assist Mohammed and his friends. Moreover, their actions deliver crucial benefits to refugees. They help them to escape war and violence. The costs for many smugglers are also reasonable. Suppose that there's little chance that the authorities will catch and punish Mohammed's smugglers. On top of that, Mohammed and other refugees compensates these smugglers for his help. Perhaps smugglers wouldn't be required to help people to escape Syria if they had to do it for free. Suppose that Mohammed's smugglers would become impoverished if they smuggled people out of Syria without compensation. But, because these smugglers are compensated, the costs that these smugglers bear in helping refugees are reasonable. Thus, the smugglers are morally required to engage in people smuggling.

This may seem like a surprising conclusion. You might object to the requirement argument on the following grounds. If you have an obligation to rescue someone, then you have an obligation to rescue this person for free.¹³ For example, it would be wrong for you to make saving the drowning child conditional on receiving payment. You couldn't say: "I'll save you. But first you need to give me your lunch money." Similarly, it's false that smugglers can permissibly accept payment if it's really true that these smugglers have obligations to rescue people from harm. They should instead rescue refugees unconditionally.

But this objection is unsound. There's a difference between two claims:

(A) It is wrong for you to demand compensation for satisfying an obligation to aid someone if you already have this obligation to aid her.

(B) In certain cases, you only have an obligation to aid a person if this person compensates you.

In the drowning child case, (A) seems right. You have an antecedent obligation to save the child. So, given that you have this obligation, it would be wrong to demand payment in return for satisfying it. But consider the smugglers who helped Mohammed. These smugglers only had the obligation to help Mohammed and other refugees conditional on receiving payment for their aid. Otherwise, it would be unreasonable to expect them to bear the costs of smuggling migrants. Claim (B) seems to more accurately describe their situation. Thus, the obligation to aid someone is compatible with requiring the beneficiary to compensate the rescuer.

Notice that a similar analysis applies to other "helping" professions. We generally don't expect surgeons, paramedics, or lifeguards to work for free even though they rescue people. This is so because it can be unreasonable to expect people to aid others without compensation.

Imagine that Emily is a phenomenally talented surgeon. She saves lives in cases where other

surgeons would have failed. While Emily's job is stressful and has long hours, she earns a high income and this amply compensates her for the demanding nature of her job. In my view, Emily is plausibly obligated to continue working as a surgeon because she's so effective. Yet Emily would lack this obligation if hospitals decided to stop paying her. If that happened, the costs of being a surgeon would be excessive and this would release Emily from her duty to stay at her job. Thus, Emily has a duty to remain a surgeon partly *because* she's compensated for her work.

These reflections suggest that there's nothing paradoxical about claiming that bystanders are sometimes obligated to aid people in return for compensation. But you may be wondering how my argument for the duty to engage in people smuggling is compatible with my earlier argument for the permissibility of people smuggling. I argued earlier that it's sometimes permissible for people to refrain from smuggling migrants. I then used this claim to support the premise that, if it's permissible for someone to refrain from smuggling migrants, then it's almost certainly permissible for this person to smuggle migrants insofar as he secures their consent, benefits them, and avoids violating other rights. This argument looks inconsistent with my argument for the duty to engage in people smuggling. After all, if it's permissible for a person to refuse to smuggle migrants, then it must be false that it's obligatory to smuggle them. It's impossible for you to be obligated to perform some action *and* for it to be permissible for you to refrain from performing it.

But my arguments are consistent on closer inspection. The prosaic resolution is that, in certain cases, people smuggling is merely permissible and in other kinds of cases it's required. It's merely permissible to engage in people smuggling if (1) smuggling is not necessary to provide people with urgent benefits and (2) the risks and costs of smuggling are too great to make it obligatory.

Consider Diego again. Suppose that many of Diego's clients are "economic" migrants who just want to raise their standard of living and who are not fleeing threats to their lives or basic needs. And suppose that there are many smugglers operating along the Mexico-United States border such that, if migrants refrain from hiring Diego, other smugglers will help them to cross the border instead. In this case, it's not necessary for Diego to smuggle migrants across the border in order to provide them with urgent benefits. If it's not necessary, then it's false that Diego has a duty to smuggle migrants. Alternatively, we can imagine that transporting migrants across the border would impose unreasonable costs or risks on Diego even with compensation. These costs would release Diego from a duty to smuggle migrants.

My arguments for people smuggling apply in different circumstances. The argument for the permissibility of people smuggling applies when a bystander lacks a duty to engage in people smuggling. The argument for the claim that people smuggling is required applies when someone has a duty to engage in people smuggling conditional on receiving compensation. Both arguments are sound, but they're sound in different contexts.

People Smuggling in the Real World

People smuggling is in principle permissible and can even be required. But some smugglers act wrongly in practice. These smugglers deceive migrants, negligently expose them to risks, kidnap them, and abuse them in other ways. Here's another real example. Hanan al-Hasan is a Palestinian who lived in Syria and became a refugee during the war. Hanan fled to Lebanon along with over a million other refugees. But Hanan wanted a better life for her children than they could find in Lebanon. She paid smugglers more than \$20,000 for transit to Europe. However, the smugglers tried to swindle her. They first tried to get her to travel on a

flimsy raft. Later, they told her that only seventeen people would travel on the boat to Europe. Instead, the smugglers loaded thirty-two people on board. One smuggler robbed her eldest daughter. When Hanan refused to get on the boat, the smugglers threatened her and the other passengers. They said: “if you return, we will kill you all.” Hanan and her family boarded the boat.¹⁴

These smugglers engaged in serious wrongdoing. There are widespread reports of similar and worse abuses in places like Libya and Eritrea. Furthermore, this misconduct is predictable. People smugglers operate in black markets. Participants in black markets are often unable to appeal to courts or other legal institutions to resolve conflicts or report abuse. This gives participants in black markets incentives to use violence to settle disputes. Consider the market for illicit drugs. This market generates violence because dealers and customers lack access to legal dispute resolution mechanisms.¹⁵ Customers in black markets do not have effective recourse if smugglers defraud or exploit them. The same lessons hold for people smuggling. The bad incentives of black markets explain why many smugglers violate the conditions of permissible smuggling.

But we have reason to believe that many smugglers do act permissibly. People smugglers often have incentives that lead them to behave decently. Most people smugglers want to make money and their capacity to make money depends on their reputations. It’s a bad business strategy to acquire a reputation for abusing clients and violating their rights. So, the profit motive can push smugglers to treat their clients well.

Sociologists and anthropologists who study people smugglers find that, at least in certain contexts, people smugglers want to protect their reputations for honesty and fair dealing. After

interviewing smugglers (or “coyotes”) on the Mexico-United States border and the migrants who employ them, the sociologist David Spener reports:

Migrants typically chose their coyotes based on information they obtained by word of mouth in their social networks.... Thus, to the extent that they need to attract customers, coyotes needed to be concerned with their reputations ‘on the migrant street,’ since word of failure, imposition of hardships, or malfeasance on their part was likely to travel throughout the region in which they operated.¹⁶

Studies of smugglers operating in Europe and Australia arrive at similar conclusions.¹⁷ In their research on migration to Austria, Veronika Bilger, Martin Hofmann, and Michael Jandl report that: “the commonly held view of smuggled migrants being fully at the mercy of their smugglers in many cases does not correspond to reality.”¹⁸ Besides a concern to maintain their reputations, smugglers have other reasons to respect the rights of their customers. They want to avoid social stigma and some of them are morally motivated to help their clients. Some smugglers respond to these incentives by protecting the welfare of their customers and securing their voluntary consent.

Smugglers also avoid violating the entitlements of recipient states in practice. If justice requires much more immigration than states currently allow, then states lack rights to exclude many of the people that they currently keep out. People smugglers are merely forcing states to admit the people who they should have admitted anyway. Remember: defensive rights are symmetrical between self- and other-defense. People smugglers are exercising defensive rights against unjust border coercion on behalf of migrants.

Maybe you reject open borders. Nonetheless, we’ve seen that there’s ample room to criticize the status quo. Even if most political theorists who defend immigration restrictions think

that states should admit some refugees and that richer and more stable states should admit a greater number of refugees. The thing is: they don't. Rich democracies host a relatively small fraction of the global refugee population. Most refugees in the world live in poor and middle-income states, such as Ethiopia, Pakistan, and Turkey.¹⁹ At the time that I'm writing, Lebanon and Jordan currently host more refugees from the Syrian civil war than do all European countries combined.²⁰ It seems unfair for relatively poor countries to shoulder the burden of hosting and resettling most of the world's refugees. Yet the international refugee regime lacks mechanisms to compel rich states to admit more refugees. The international regime is unable to spread the burden around (insofar as refugees are a burden—which they might not be).

People smugglers can help compensate for these defects in the international refugee regime. People smugglers can transport refugees from states that host a disproportionate number of refugees to rich states that host relatively few. In fact, to evade the border restrictions and immigration agents of rich states, refugees often need to rely on the expertise of smugglers. This explains why perhaps a majority of refugees in high-income democracies employed smugglers in order to immigrate. According to some estimates, over 50 percent of asylum-seekers in European states, such as the Netherlands and Germany, were smuggled there.²¹ So, it seems likely that smugglers who transport refugees to rich states are compelling forcing these states to bear their fair share of the global refugee population.

3. Exploitation

Let's now examine some objections to my argument for people smuggling. One common objection to people smuggling is that smugglers take unfair advantage of vulnerable migrants. Dimitris Avramopoulos, the European Union's Commissioner for Migration, Home Affairs and

Citizenship, says that the European Union “cannot allow ruthless smugglers to make a fortune through criminal acts, exploiting migrants looking for a safe passage to Europe” and that “smugglers are finding new routes to Europe and are employing new methods in order to exploit desperate people who are trying to escape conflict and war.”²² On this view, people smuggling is objectionable in virtue of the fact that people smuggling is wrongfully exploitative.

I agree that people smuggling can be wrongfully exploitative. To illustrate, let’s return to the case of Mohammed, the Syrian human rights activist. Remember that Mohammed desperately needs to escape Syria. If he stays, he will likely be put to death. I’m now going to fictionalize this case somewhat. Suppose that Mohammed locates a smuggler, Anas, who is willing to smuggle Mohammed out of Syria. Anas is the only smuggler in the area who can help Mohammed flee. Anas could smuggle Mohammed across the border to Turkey for about \$500 without bearing any major costs. But Anas decides to charge Mohammed \$5,000 for his services. Mohammed is willing to pay this amount out of desperation, although he is penniless after doing so. Anas makes a significant profit from this exchange. Call this case: *Exploitative Smuggling*. It seems to me that Anas wrongfully exploits Mohammed in this example. Anas takes advantage of Mohammed’s desperation by extracting excessive benefits from him. As this example illustrates, people smugglers can wrongfully exploit migrants.

But it’s just false that people smuggling is necessarily or generally exploitative. Let’s consider another variation on the above case. Suppose that, instead of holding a monopoly on smuggling in the region, Anas is merely one of many smugglers who can assist Mohammed in reaching Europe, and these smugglers compete against each other for customers. Anas offers to smuggle Mohammed to Turkey for \$1000, which is about the competitive market price for this service. At this price, Anas will make a small profit, although he would also incur significant

risks and costs by smuggling Mohammed. If Mohammed declines Anas's offer, he can easily find another smuggler to help him to reach Turkey. Call this case: *Fair Smuggling*. In this case, it appears that Anas avoids exploiting Mohammed. Cases like this one are possible. Therefore, it's certainly false that smugglers necessarily exploit migrants.

What is the difference between Exploitative and Fair Smuggling? I lack the space to develop a full theory of exploitation here. But we can take a prominent theory of exploitation off the shelf and use it to explain the difference between Exploitative and Fair Smuggling. One influential theory of exploitation says that you wrongly exploit another person if and only if you extract excessive benefits from this person when she cannot reasonably refuse your offer. Versions of this theory have been developed by Alan Wertheimer²³ and Michael Valdman.²⁴

This theory has two important elements. First, exploitation occurs when a person lacks reasonable alternatives. Take a stock example. Imagine that Susan is drowning and I have a life preserver. I'll throw it to her if she immediately pays me \$10,000. No one else is in a position to aid Susan. Susan reluctantly agrees to pay me. One relevant feature of this situation is that Susan lacks reasonable alternatives to making a deal with me. This is a situation ripe for exploitation. Second, I extract unfair or excessive benefits from Susan. I charge way more for my services than Susan would pay in a competitive marketplace with many vendors of life preservers. A fair deal would be near the competitive market price for the good that Susan wants. When we put these two elements of the theory together, we can explain why I exploited Susan: she lacked reasonable alternatives and I charged much more than the competitive market price.

Now let's return to the difference between Fair and Exploitative Smuggling. In Exploitative Smuggling, Mohammed is unable to reasonably refuse Anas's offer because Mohammed will suffer severe harm if he stays in Syria. On top of that, Anas is the only person

who can help him to escape. So, Anas has an effective monopoly over a service that is necessary for Mohammed to secure his basic rights. Anas also uses this monopoly to extract benefits from Mohammed. The market for smuggling services is uncompetitive because there are few providers in the market. As a result, Anas can charge Mohammed more than the competitive market price. So, Anas reaps excessive benefits from the exchange.

Contrast this analysis with what happens in Fair Smuggling. In this case, Mohammed can reasonably refuse Anas's offer because Mohammed can easily hire another smuggler to assist him. Anas lacks a monopoly on essential services. Anas also charges the competitive market price for his assistance. So, Anas refrains from extracting excessive benefits from Mohammed. Their interaction thus qualifies as non-exploitative.

It's a difficult empirical question whether actual smuggling markets more closely resemble Exploitative Smuggling or Fair Smuggling. But we have some reason to believe that, in at least *some* cases, the interactions between smugglers and migrants resembles Fair Smuggling. Social scientists who study human smuggling find that smuggling markets are sometimes fairly competitive. There are typically low barriers to entry for engaging in smuggling, and the large potential supply of smugglers might make the smuggling market competitive. In his fieldwork on smugglers, Spener observes that no single smuggler or group of smugglers monopolized the market along the United States-Mexico border.²⁵

Bilger, Hofmann, and Jandl report that the smuggling market in Europe is characterized by "intense rivalry between smugglers competing for the same pool of clients."²⁶ Competition reduces the bargaining power of smugglers. Economists have documented how people can develop mechanisms to mitigate market failures even in the absence of legal regulation.²⁷ These mechanisms are present in smuggling markets. For example, while there are information

asymmetries between smugglers and migrants, smuggling markets evolve mechanisms that compensate for these asymmetries. Smugglers offer insurance and “money back” guarantees, and they rely on social ties and reputations to signal information about their trustworthiness.²⁸ If smuggling markets are sometimes reasonably competitive, then it’s less likely that these markets involve significant exploitation.

So far, I have been relying on just one theory of wrongful exploitation in order to show that it’s false that people smuggling is necessarily exploitative. I happen to this theory is pretty plausible and gets the right extensions. But maybe this theory of exploitation is incorrect for some reason. Even if this theory turns out to be wrong, we still have reason to doubt whether people smuggling is exploitative.

To see why, consider legal analogs to people smuggling, such as commercial airlines, busing companies, and shipping companies. It seems that these services are often non-exploitative. Few people argue that commercial airlines are inherently unjust because they exploit their customers. Yet it’s hard to see how people smuggling is fundamentally different from these legal services. Both people smuggling and commercial airlines or busing companies involve transporting people to new locations in return for compensation, but people smuggling just happens to be illegal. At first glance, if people smuggling is necessarily exploitative, then it seems that we must conclude that airlines or busing companies are necessarily exploitative too. It’s unlikely that any theory of wrongful exploitation can show that people smuggling is necessarily or generally exploitative without implying that many ordinary commercial transactions are wrongfully exploitative as well. As it’s implausible that airlines and busing companies are necessarily exploitative, we should also reject the view that people smuggling must be exploitative.

4. Defective Motives

People often level a related objection against people smuggling. This is the objection that people smugglers are selfish. Commentators in popular discourse criticize people smugglers on the grounds that they are solely motivated by greed. Gerhard Øverland says that smugglers “help desperate people solely for the money” and that “smugglers might be liable to condemnation for profit maximization.”²⁹ In other words, people smugglers have morally defective motivations and this fact explains why people smuggling is impermissible. This objection seems to go:

1. If person A helps person B for the wrong reasons, then A acts impermissibly.
2. People smugglers help needy migrants for the wrong reasons, such as profit-seeking rather than other-regarding concern for the welfare of these migrants.
3. So, people smugglers act impermissibly.

Let’s call this *the motivational objection* to people smuggling.

One problem with the motivational objection is that it’s unclear why bad motivations would transform actions that would otherwise be permissible into impermissible actions. Many philosophers argue that we should distinguish between the moral status of actions and the status of motives.³⁰ Your motives can be defective while your actions are permissible. If you aid people in need solely for selfish reasons, then this impeaches your character and motivations. Your motivations are worse than they ought to be. Yet your actions can still be morally justified.

Consider the following fictional variations on the case of Enrique and Diego. In Variation 1, Diego aids needy migrants like Enrique solely in order to make a profit and he tries to make as much money as possible. So, Diego only helps Enrique to cross the border to the United States for selfish reasons. In Variation 2, Diego wants to make a sufficient income to support himself,

but he also assists migrants because he cares about protecting them from harm. Let's stipulate that Diego's activities in Variation 1 and 2 are otherwise identical.

Diego's character and motivations are morally worse in Variation 1 than in Variation 2. His character would be better if he were motivated to assist migrants like Enrique for other-regarding reasons. But it's difficult to see why this fact would entail that his actions are objectionable. It's more natural to say that Diego's actions are permissible and his motivations are faulty. People can do good things for bad reasons. If we can distinguish between moral evaluations of a person's character and evaluations of their conduct, then my argument in this chapter is compatible with the claim that "smugglers might be liable to condemnation for profit maximization." This is so because we can condemn the motivations of people smugglers and nevertheless conclude that their actions are permissible. Thus, if a person can perform permissible actions for defective reasons, then premise 1 is false.

We should also reject premise 2. Premise 2 says that people smugglers assist migrants for the wrong reasons, such as the desire to maximize profits. The implication is that smugglers should help migrants for the right reasons, such as a concern for their well-being and a desire to protect their rights. That is, smugglers should act out of other-regarding concern, but smugglers fail to do so. However, while smugglers are generally motivated by the desire to make money, motivations for smuggling can be over-determined. To see how this is possible, consider an analogy. Suppose that someone wants to earn a high income and she trains to become a surgeon in part because surgeons are well paid. But this person also wants to save lives and this fact motivates her to become a surgeon as well. This person's motivations are over-determined. She is motivated both by financial considerations and other-regarding concerns.

The same can hold true for smugglers. The anthropologist Gabriella Sanchez interviewed “smuggling facilitators” and many of them report that they are motivated by a desire to help migrants. Many smugglers are unauthorized migrants or refugees and they say that they want to assist people like themselves. Sanchez writes:

Many were adamant that their participation contributes to the wellbeing of others. The recognition of similar experiences to their own among their clients was a constant theme in the interviews.... Among respondents, there was also an ethical element to their participation—namely the assistance provided to people who, as facilitators or clients, would otherwise face high levels of risk and vulnerability.³¹

These respondents might be exaggerating their moral motivations. Yet it’s surely the case that some smugglers are motivated by ethical considerations. Furthermore, many smugglers report that engage in smuggling because they have a family to support and they lack alternative employment options. These smugglers are motivated by other-regarding concerns and it’s for this reason that they desire a higher income.³² So, a desire to make money and other-regarding concerns are sometimes compatible. Some people smugglers may act for the wrong reasons. But it’s false that people smugglers generally act for the wrong reasons.

5. Deaths

Another common objection to people smuggling is that smugglers kill people. Most smugglers don’t literally murder migrants. Instead, smugglers take them along risky routes or sea journeys and, predictably, many migrants die en route. Their deaths, the thought goes, are on the heads of the smugglers who facilitated their journeys. Consider the rhetoric around smugglers who transport migrants and refugees to Europe across the Mediterranean. The Director of the

International Organization for Migration remarks of recent deaths in the Mediterranean: “It’s unacceptable that migrants should die while fleeing misfortune in hopes of a better life. We see in the latest tragedy that criminals mistreat migrants, cramming them into the holds of unsafe vessels.”³³

This criticism is sometimes valid. Thousands of migrants have died in the Mediterranean because smugglers provided them with unseaworthy boats. For people smuggling to be permissible, smugglers must interact with migrants in a way that benefits them *ex ante*. Yet smugglers who knowingly crowd migrants onto unsafe vessels usually fail to meet this requirement. Most migrants can’t reasonably expect to benefit from traveling on a boat that stands a good chance of capsizing. So, smugglers should take due care to ensure that their boats are seaworthy and reasonably safe. If smugglers violate this requirement, then they’re guilty of negligence.

But is it true that smugglers are morally responsible for the thousands of migrants who perish every year while crossing dangerous borders? The blame more clearly falls on governments that enforce immigration restrictions. These governments force migrants to take dangerous trips in order to exercise their moral rights. Governments are culpable for their deaths as well.

Consider a thought experiment. Suppose that your government outlawed appendectomy, the surgical removal of the appendix in order to treat appendicitis. As a result, people have few options for dealing with appendicitis and more people die from it. Some people, however, illicitly hire black market surgeons to remove their appendixes. But, because many of these black market surgeons lack access to hospitals and the appropriate equipment, a significant fraction of

their patients die. Some surgeons also negligently kill their patients. In this thought experiment, who's responsible for all of these deaths?

It's mostly the government's fault. By making appendectomies illegal, the government indirectly kills people. While some surgeons are responsible for negligence, the bigger picture is that the government creates the conditions in which patients must resort to the black market in order to survive. Similarly, because migrants are unable to immigrate legally, they must resort to people smuggling and the risks that this involves. While some smugglers are irresponsible and even malicious, the governments that enforce immigration restrictions are the agents that bear most of the blame for the thousands of migrants who perish while trying to evade these restrictions.

6. Law-Breaking

A final objection to people smuggling is that smugglers violate the law. People smuggling is illegal and states often impose significant criminal punishments on people smuggling. Many people think that it's wrong to break the law. If it's impermissible to break the law, then people smuggling is also wrong.

Let's distinguish between different ways in which it might be wrong for smugglers to break the law. First, it may be wrong for smugglers to violate immigration laws because doing so violates an obligation to the state to which people migrating. On this view, Diego wrongly infringes on the immigration laws of the United States by transporting Enrique to its territory. Diego owes a duty to the United States or its citizens and he violates this duty by engaging in people smuggling. But my argument in chapter 5 cuts off this objection. If the United States is enforcing unjust immigration restrictions, then Diego is merely helping Enrique to resist

unjustified border coercion. And, just as Enrique would not be bound by political obligations to the United States, neither would Diego. I won't repeat my arguments for this conclusion here.

There's another possible explanation for why smugglers do something wrong when they violate the law. Perhaps the explanation is that they violate the laws of their own society or the society where they currently operate. Smuggling is illegal almost everywhere. So, Diego may be doing something impermissible by violating the laws of Mexico. My argument for the view that migrants lack political obligations to recipient states might not apply in this case. For example, maybe Diego lacks an obligation to respect the immigration laws of the United States because the United States enforces unjust border restrictions. However, Diego might still have a duty to respect the laws of Mexico. This is certainly a possibility. This objection fails too, but I'll need to postpone a full explanation for why. I'll consider and respond to this objection in chapter 7.

7. Why People Smugglers Are Praiseworthy

According to a common view, people smuggling is an evil trade. But my argument in this chapter show that an indiscriminate condemnation of people smuggling is mistaken. People smuggling can be a permissible or even required means of assisting migrants.

In fact, people smugglers are often *praiseworthy* for their actions. Consider common attitudes toward workers in other professions who benefit others, such as firemen, police officers, soldiers, and health workers who treat people with highly infectious diseases. We tend to think that these people are praiseworthy in virtue of the fact that they bear personal risks in order to benefit others. Few people would argue that we shouldn't admire health workers or soldiers because they are compensated for their work. Of course, some workers in these professions are not praiseworthy. Some of them are negligent or abuse the people that they are supposed to help.

But, when nurses or firemen benefit others at personal risk without violating any moral constraints, we rightly praise them.

Now, consider the parallel with people smugglers. Many of them benefit others in dire need, such as refugees, and do so at great personal risk. People smugglers may be imprisoned or killed for doing their jobs. True, their actions are illegal. But that fails to disqualify people for praise. Some people who engaged in praiseworthy behavior were acting illegally as well. For example, the members of the Underground Railroad were acting in a praiseworthy fashion when they illegally smuggled slaves out of the Southern United States (and, contrary to popular belief, some members of the Underground Railroad were compensated for helping slaves).³⁴ If anything, the fact that the actions of the Underground Railroad were illegal is grounds for stronger praise because their actions were especially risky.

I thus conclude that, if it's fitting to praise other professionals for benefiting others at risk to themselves, then it's just as fitting to praise people smugglers. Smugglers help compel rich states to bear their fair share of the world's refugee population and assist refugees in evading threats to their human rights. People smuggling can be a weapon of the weak against immigration restrictions that prevent refugees and other migrants from avoiding threats to their lives and liberties. For that, we owe people smugglers our esteem and thanks.

¹ Sonia Nazario, *Enrique's Journey: The Story of a Boy's Dangerous Odyssey to Reunite with His Mother* (New York: Random House, 2007).

² Nazario, p. 168.

³ For a description of the different activities that people smugglers engage in, see: Gabriella Sanchez, "Crimes of Mobility: Human Smuggler Facilitators in the US Southwest," in *Routledge Handbook on Crime and International Migration*, ed. Sharon Pickering and Julie Ham (London, UK: Routledge, 2015), 275-286 at p. 69.

⁴ Khalid Koser, "The Smuggling of Refugees," in *Global Human Smuggling: Comparative Perspectives*, ed. David Kyle and Rey Koslowski, Second Edition (Baltimore: Johns Hopkins University Press, 2011), 256-272.

⁵ United Nations. 2011. *Protocol Against the Smuggling of Migrants By Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime*, available at:

https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf

⁶ Antje Missbach and Frieda Sinanu, "'The Scum of the Earth'? Foreign People Smugglers and Their Local Counterparts in Indonesia," *Journal of Current Southeast Asian Affairs* 30, no. 4 (2011): 57-87 at p. 58.

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- ⁷ For defenses of the claim that general positive duties are sensitive to costs, see: Christopher Heath Wellman, “Toward a Liberal Theory of Political Obligation,” *Ethics* 111, no. 4 (2001): 735–59; Christian Barry and Gerhard Øverland, “How Much for the Child?,” *Ethical Theory and Moral Practice* 16, no. 1 (2013): 189–204; Cecile Fabre, *Whose Body Is It Anyway?: Justice and the Integrity of the Person* (Oxford University Press, 2008).
- ⁸ Others call this the non-worseness principle. For discussions and defenses of this principle, see: Alan Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens* (New York: Oxford University Press, 2010), chapter 6; Benjamin Powell and Matt Zwolinski, “The Ethical and Economic Case Against Sweatshop Labor: A Critical Assessment,” *Journal of Business Ethics* 107, no. 4 (2012): 449–72.
- ⁹ Michael Clemens, “Violence, Development, and Migration Waves: Evidence from Central American Child Migrant Apprehensions” (Working Paper 459, 2017), <https://www.cgdev.org/publication/violence-development-and-migration-waves-evidence-central-american-child-migrant>.
- ¹⁰ Peter Tinti and Tuesday Reitano, *Migrant, Refugee, Smuggler, Savior* (New York, NY: Oxford University Press, 2017), pp. 13–4.
- ¹¹ I’m also assuming that you don’t violate anyone else’s rights in rescuing someone and that you secure the beneficiaries consent.
- ¹² Peter Singer, “Famine, Affluence, and Morality,” *Philosophy & Public Affairs* 1, no. 3 (1972): 229–43.
- ¹³ For an argument along these lines, see: Mark Wells, “Markets with Some Limits,” *Journal of Value Inquiry* 51, no. 4 (2017): 611–618.
- ¹⁴ This story is recounted in: Charlotte McDonald-Gibson, *Cast Away: True Stories of Survival from Europe’s Refugee Crisis* (New York: The New Press, 2016), pp. 99–103.
- ¹⁵ For an analysis of how black markets can generate violence, see: J. A. Miron, “Violence and the U.S. Prohibitions of Drugs and Alcohol,” *American Law and Economics Review* 1, no. 1 (1999): 78–114.
- ¹⁶ David Spener, *Clandestine Crossings: Migrants and Coyotes on the Texas-Mexico Border* (Ithaca: Cornell University Press, 2009), p. 187.
- ¹⁷ Ilse van Liempt and Stephanie Sersli, “State Responses and Migrant Experiences with Human Smuggling: A Reality Check,” *Antipode* 45, no. 4 (2013): 1029–46; Antje Missbach and Frieda Sinanu, “‘The Scum of the Earth’? Foreign People Smugglers and Their Local Counterparts in Indonesia,” *Journal of Current Southeast Asian Affairs* 30, no. 4 (2011): 57–87.
- ¹⁸ Veronika Bilger, Martin Hofmann, and Michael Jandl, “Human Smuggling as a Transnational Service Industry: Evidence from Austria,” *International Migration* 44, no. 4 (2006): 59–93 at p. 87.
- ¹⁹ United Nations High Commissioner for Refugees, *The 2014 Statistical Yearbook* (Geneva, Switzerland: United Nations, 2015), p. 9.
- ²⁰ Phillip Connor, “Most Displaced Syrians Are in the Middle East, and about a Million Are in Europe,” *Pew Research Center* (blog), January 29, 2018, <http://www.pewresearch.org/fact-tank/2018/01/29/where-displaced-syrians-have-resettled/>.
- ²¹ Koser, “The Smuggling of Refugees,” pp. 260–2.
- ²² Dimitris Avramopoulos, “Recent Smuggling Incidents in the Mediterranean.” The European Commission Press Release Database 2015, available online at: http://europa.eu/rapid/press-release_SPEECH-15-3262_en.htm
- ²³ Alan Wertheimer, *Exploitation* (Princeton (N.J.): Princeton University Press, 1999).
- ²⁴ Mikhail Valdman, “A Theory of Wrongful Exploitation,” *Philosophers’ Imprint* 9 (2009): 1–14.
- ²⁵ Spener, *Clandestine Crossings*, p. 174.
- ²⁶ Bilger, Hofmann, and Jandl, “Human Smuggling as a Transnational Service Industry,” p. 65.
- ²⁷ Peter T. Leeson, *Anarchy Unbound: Why Self-Governance Works Better Than You Think* (New York: Cambridge University Press, 2014); Edward Stringham, *Private Governance: Creating Order in Economic and Social Life* (New York: Oxford University Press, 2015).
- ²⁸ Bilger, Hofmann, and Jandl, “Human Smuggling as a Transnational Service Industry.”
- ²⁹ Gerhard Øverland, “The Illegal Way In and The Moral Way Out,” *European Journal of Philosophy* 15, no. 2 (2007): 186–203 at p. 182. It is unclear whether Øverland actually endorses this objection to smuggling or is merely entertaining it for the sake of argument.
- ³⁰ John Stuart Mill, *Utilitarianism*, 2 edition, eds. George Sher (Indianapolis: Hackett Publishing Company, Inc., 2002); Thomas Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Harvard University Press, 2010).
- ³¹ Gabriella Sanchez, *Human Smuggling and Border Crossings* (New York: Routledge, 2014), p. 77.
- ³² In fact, people smuggling is not particularly lucrative. According to Sanchez, most smugglers engage in smuggling on the side in order to supplement their incomes and few of them experience upward economic mobility. See: Sanchez, pp. 74–5.

³³ See: <http://missingmigrants.iom.int/iom-condemns-people-smugglers-who-send-migrants-fleeing-hardship-their-deaths-mediterranean>

³⁴ For example, see: Fergus M. Bordewich, *Bound for Canaan: The Epic Story of the Underground Railroad, America's First Civil Rights Movement*, (New York: Amistad, 2006), pp. 249-250.

Chapter 7: Complicity and the Duty to Resist

1. Introduction

The *New York Times* publishes an advice column called “The Ethicist.” People write in with ethical quandaries and the columnist gives them advice. The ethicist on call happens to be Kwame Anthony Appiah, a famed and influential philosopher who is currently a professor at New York University.

One day someone wrote in with an ethical dilemma about immigration law. The person (let’s call her “the letter writer”) who wrote in had the following dilemma.¹ The letter writer is living abroad working as a consultant for the U.S. government and was invited to a wedding by a local acquaintance who was marrying an American citizen. The letter writer missed the ceremony but ran into the acquaintance later. The writer recounts what happened: “When I congratulated her, she explained to me that the recent marriage was a fraud, one she’d entered into only in order to gain U.S. citizenship. She then introduced me to her ‘real’ boyfriend.” The letter writer felt troubled about this information. The writer asked Appiah: “Do I have an ethical obligation to speak out about marriage fraud when it is used to gain U.S. citizenship, particularly if my current work [as a consultant] is funded by the US. Government?”

Appiah responded that “it would be a good thing” if the letter writer reported her acquaintance to the authorities. Why? Because “it is the nature of the nation-state arrangement that states have a right to regulate who crosses their borders.” By subverting the system, the letter writer’s acquaintance is “not only breaking the law” but also “jumping a queue that millions of other people have formed by applying properly and then waiting their turn.” Appiah even gives the letter writer specific advice on what to do next: “U.S. Immigration and Customs Enforcement has a website where you may report anonymously.” This was not an isolated piece of advice. In

another column on a similar topic, Appiah says that someone is “perfectly entitled” to inform on her neighbor for violating immigration laws by employing an immigrant who lacks the appropriate authorization to work in the country.²

Appiah’s advice raises an important set of questions. How should ordinary citizens interact with the immigration laws of their state? Appiah assumes that immigration restrictions are permissible. But what happens if it’s false that “states have a right to regulate who crosses their borders”? If immigration restrictions are morally problematic, how should citizens respond to their injustice? To anticipate my conclusion, Appiah’s advice is not merely in bad taste. It’s positively immoral. More generally, this chapter will focus on the ethical responsibilities of citizens who live in states that enforce unjust immigration restrictions. I’ll argue that the primary ethical responsibility of citizens is to refuse to comply with or assist the states’ efforts to exclude immigrants. To discharge this duty, citizens should, among other things, disobey the law. I’ll also examine the moral obligations of street-level state officials, like border agents, and high-ranking political leaders. I’ll make the case that state officials often have reparative duties to immigrants that require them to aid immigrants and undermine the enforcement of restrictions.

2. The Moral Responsibilities of Ordinary Citizens

An Analogy

I’m going to start with a historical analogy to motivate my argument. Bear with me.

From the 1880s to the 1960s, much of the United States enforced Jim Crow laws against blacks, Hispanics, and other groups, although these laws were concentrated in the South. Jim Crow laws segregated whites from racial and ethnic minorities in public facilities. Most famously, states required black and white students to attend different public schools. In Virginia,

where I live, the state constitution simply declared: “White and colored children shall not be taught in the same school.” Prominent officials and educators argued against any formal education for blacks on the grounds that it made “some Negroes idle and vicious” and “able to compete with whites.”³

Predictably enough, public facilities for blacks were much worse than those for whites. This was explained by another feature of Jim Crow: voter suppression. Jim Crow laws and private threats of violence disenfranchised most blacks, rendering them unable to contest their treatment through the ballot box. As blacks lacked access to political power, they were unable to push for better treatment. The overall effect of Jim Crow was devastating. Blacks had much less education and their life expectancy of blacks was far lower than that of whites. In 1910, the life expectancy of blacks was only 36 years.⁴

Almost everyone agrees that Jim Crow was an unjust and evil system. But here’s the point of the analogy: the state conscripted ordinary citizens into helping enforce Jim Crow and, for this reason, Jim Crow depended on the compliance of ordinary citizens.

Here’s an illustration. Before governments forced them to segregate, streetcar operates in the South refused to segregate their passengers by race. Governments had to force them to segregate. Why? Streetcars were owned by private businesses and it wasn’t profitable to segregate their clients. Businesses would need to provide more streetcars to seat black and white people separately and that was expensive. After segregation ordinances outlawed integrated streetcars, many of the companies ignored these laws and contested them in the courts. Eventually though the streetcars obeyed and segregated people by race.⁵

We can tell a similar story about other private business, like restaurants that were forced to seat black and white patrons in different locations. But Jim Crow laws did not just apply to

private businesses. They forced ordinary people to be complicit. Consider anti-miscegenation laws, laws that forbade whites and blacks from marrying or having sex. These laws placed legal obligations on individuals to regulate their sexual behavior in order to prevent racial mixing. Because Jim Crow laws conscripted ordinary citizens, the injustice of Jim Crow was transmitted through the actions of private individuals. By complying with these laws, citizens helped sustain Jim Crow. Imagine that private businesses and individuals had disobeyed instead. Jim Crow laws would have been much less effective.⁶ For example, private streetcars helped segregate racial groups and contribute to the unequal treatment of blacks when they acquiesced to segregation. This compliance helped firm up an unjust social order.

There's an analogy between Jim Crow and modern immigration restrictions. When people think of immigration restrictions, they think of border patrols and immigration agents deporting people. In other words, we think of state actors and public officials. But, like Jim Crow, immigration restrictions are not merely enforced by state officials. States compel ordinary citizens to advance their aims. Governments impose legal duties on citizens to deny unauthorized migrants access to employment, housing, and other benefits, and to monitor unauthorized migrants.⁷ I'll refer to these as *forced complicity laws*.

Let's consider some examples. To my knowledge, rich democracies universally forbid employers from knowingly hiring unauthorized immigrants.⁸ They require employers to determine the immigration status of their applicants and refuse to hire them if they are illegal. If employers discover that their workers are unauthorized migrants, they're obligated to fire them. In these ways, forced complicity laws deputize employers to help deter illegal immigration and deny unauthorized migrants access to the labor market. Although these laws are widely flouted, they still have teeth. To take just one example, Chipotle, the popular restaurant chain in the

United States, has fired thousands of unauthorized migrants in response to government probes.⁹ And some employers follow the law even in the absence of a credible threat from state officials.

Forced complicity laws extend beyond employment relationships. Some governments prohibit private citizens from renting to or even sheltering unauthorized migrants. Landlords in Britain are required to check the immigration status of their tenants and evict them if they are unauthorized.¹⁰ The government has penalized hundreds of landlords for failing to satisfy these legal obligations. The French government mandates that citizens who house migrants must report their departure to the authorities.¹¹ In the United States, government officials have prosecuted citizens under the harboring doctrine, which says that any “person who . . . knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation . . . shall be punished.”¹² Dozens of local municipalities have passed housing ordinances that forbid people from renting to unauthorized migrants and require landlords to report undocumented residents. Courts have struck down some of these ordinances, but local governments are still trying to punish landlords for sheltering unauthorized residents.¹³

Another place where the government imposes legal obligations on private companies is the transportation industry. Companies in the United States and most of Europe are forbidden from transporting unauthorized migrants and sometimes need to screen their passengers to satisfy this requirement.¹⁴ It’s illegal for airlines to fly migrants across borders if they lack the proper documentation and busing companies may be obligated to refuse to sell tickets to anyone that they know or believe to be an illegal alien, which includes tickets for transportation within the United States.¹⁵ In response to legal concerns, Greyhound Lines, a major bus carrier, adopted

guidelines that warned employees not to sell tickets to “anyone you know or believe to be an illegal alien” and to “beware of people in large groups, moving in single file and traveling with little or no luggage.” To comply with the law, Greyhound routinely allows border agents to board their buses and search for unauthorized migrants.¹⁶

There are plenty of other examples where governments force private citizens or businesses to participate in immigration restrictions. Here are a few more. Banks in Britain are required to check the immigration status of customers and deny access to bank accounts to people who are unable to prove their regular status.¹⁷ Universities in the United Kingdom must monitor the immigration status of their students and report them to the government if they miss more than ten consecutive working days.¹⁸ Registrars are obliged to report ‘sham’ marriages to immigration agents if they suspect that people are getting married solely in order to secure residency in a country. The list goes on.

So, modern immigration restrictions and Jim Crow laws are similar in a respect. Like Jim Crow, modern immigration laws compels private parties to become complicit in their enforcement. What implications does this have for the ethical responsibilities of ordinary citizens?

The Duty to Avoid Complicity

Suppose that you are a restaurant owner somewhere in the American South in 1950. Imagine that you live in Alabama, for instance. The laws of the state of Alabama hold: “It shall be unlawfully to conduct a restaurant or other place for the serving of food in the city, at which white and colored people are served in the same room, unless such white and colored persons are effectually separated by a solid partition extending from the floor upward to a distance of seven

feet or higher, and unless a separate entrance from the street is provided for each compartment.”¹⁹ Now, imagine that a black couple wants to sit in the white section of your restaurant. Should you tell them no? It’s understandable that you might fear punishment if you disobey Jim Crow laws. But, to bracket this concern for the moment, let’s suppose for the moment that it’s unlikely that any of your customers will report you if you integrate them.

Here’s my claim about this case: it would be wrong for you to segregate your customers. For one thing, segregating your customers is in itself an offensive form of discrimination. But it also contributes to a system of racial oppression. If you segregate your customers, you help facilitate a social order that enforces unequal treatment. It’s wrong, at first glance, to contribute to injustice in this way, at least if you can get away with disobedience. I’d say: citizens in the Jim Crow South should have freely disobeyed forced complicity laws whenever feasible. More strongly, ordinary citizens were morally required to disregard these laws. The same thing applies to forced complicity laws. My argument for this conclusion depends on two claims: (1) you culpably contribute to an unjust social system when you comply with forced complicity laws and (2) it’s wrong to contribute to an unjust social order.

Let’s start with (1). Forced complicity laws are unjust. To see why, remember why many immigration restrictions are morally problematic in the first place. They infringe on important liberties of citizens and migrants, like freedom of association and occupational freedom. Immigration restrictions stop foreigners from choosing the occupations of their choice and voluntarily associating with the residents of other states. Immigration restrictions also make foreigners much worse off by denying them access to the labor markets of rich states.

Forced complicity laws are unjust for the same reasons. They use coercion to forbid migrants and citizens from interacting on their own freely chosen terms. Forced complicity laws

interfere with the economic liberties of employers, landlords, and the members of other private organizations. They prevent them from engaging in beneficial transactions with willing customers and workers. Some political philosophers deny that freedom of contract and the economic liberties of private business are important. But you don't need to accept that economic liberties are as important as other liberties, like freedom of speech, to think there's *some* reason to refrain from restricting freedom of contract. Even if you don't care much about the claims of private businesses or landlords, you should care about the impact that forced complicity laws have on immigrants. These laws violate the rights of unauthorized migrants too.

Consider an analogy. Suppose, for the purposes of illustration, that you think that women have rights to have abortions. If you accept that assumption, notice that there are two ways in which states could violate these rights. First, states could violate the right to have an abortion by penalizing women who have abortions. Second, governments could forbid anyone, such as doctors and clinics, from helping women to have abortions. In fact, governments that want to curtail abortions often go with the second option. They make it too costly and difficult to operate abortion clinics. Even though public officials are not directly constraining the behavior of women, they are indirectly infringing on their rights by forbidding other people from cooperating with them to exercise their rights. This strategy looks less draconian than throwing women in prison for having abortions. But the effect is roughly the same: women are now unable to exercise their rights to have abortions (again, on the assumption that women have these rights).

We can tell a similar story about other rights. Imagine that you've written up a fiery anarchist manifesto and you want to publish it. But public officials disapprove of anarchism. So, they threaten anyone who publishes your manifesto with severe penalties. Your manifesto thus goes unpublished (Routledge would have published it but for government threats). Government

officials never directly harmed or threatened you. Still, they've violated your right to freedom of speech. Officials have unjustly prevented you from expressing and communicating your views despite the fact that they've never laid a hand on you. This is another case where the government violates your rights by coercively stopping you from cooperating with other people in ways that are necessary to exercise these rights.

And this is what governments do with unauthorized migrants. When the government prohibits employers from hiring them and landlords from renting to unauthorized migrants, the government violates their rights to occupational freedom and housing. You can't exercise your occupational freedom if the government forbids everyone from giving you a job. You can't exercise your right to adequate shelter or housing if no one can legally rent to you. In this way, forced complicity laws violate the rights of immigrants.²⁰

Yet the injustice of forced complicity laws is transmitted through the behavior of private citizens. For forced complicity laws to be effective, citizens must comply with their legal obligations to report, monitor, or refrain from interacting with migrants.²¹ Consider a more concrete example. Imagine that Sam owns a restaurant and he's hiring new workers. Leticia is an unauthorized migrant who is unemployed and wants a job. The government threatens Sam with fines if Sam knowingly hires unauthorized migrants. But Sam hires Leticia and only later discovers that she is an unauthorized migrant. After learning this, Sam then fires Leticia in order to comply with the law. It seems that Sam does something wrong. Sam is not merely culpable of an omission or failure to aid Leticia. Instead, he actively cooperates in the state's project of violating Leticia's rights.

How exactly? Remember that governments can violate rights by forbidding everyone else from interacting with you in a way that would exercise these rights. In this case, the government

tells Sam to stop associating with Leticia in a way that would curtail her occupational freedom and Sam helps the government carry out its plan, just like a restaurant owner in the Jim Crow South would help segregationists carry out their plans if the owner segregated his customers. Sam contributes to violating Leticia's rights in virtue of the fact that his actions foreseeably raise the probability that Leticia's rights will be violated. Moreover, Sam has good moral reasons to avoid unjustly harming Leticia—that is, he has good reason to refrain from contributing to a situation where her rights are violated. The only way for Sam to avoid contributing to this outcome is if he violates forced complicity laws. So, Sam has good moral reason to disregard and ignore these laws.

The point generalizes: the citizens of rich democracies generally have moral reasons to disobey these laws in order to avoid complicity in injustice. To refrain from contributing to violating the rights of immigrants, citizens should disobey forced complicity laws.²² But it's fair to say that the reasons against compliance with forced complicity laws vary depending on the magnitude of your contribution to injustice.

Contrast the case of Sam and Leticia with another one. Imagine that Rod owns a construction company that needs workers. But Rod refuses to consider hiring unauthorized migrants because he wants to comply with the law. Does Rod wrongfully contribute to injustice merely by not hiring unauthorized migrants? Rod's contribution to harming unauthorized migrants is fairly small. He just removes an employment option from migrants who work in construction. But his actions are wrong nonetheless. We can again use the same analogy with racial oppression to illustrate. If one business owner refuses to hire, say, Hispanics, then this person contributes to an injustice, even if the actual impact is tiny and perhaps unnoticed. True,

Sam's actions are morally worse than Rod because Sam's actions contribute in a bigger way to harming Leticia unjustly. But that doesn't let Rod off the hook.

To drive the point home, consider a famous thought experiment from the philosopher Derek Parfit.²³ Parfit asks us to imagine a case in which a thousand torturers each press a button. Following Parfit, let's call them "the harmless torturers." Each push of a button has the effect of turning a switch on an instrument that inflicts a small amount of pain on one helpless person. But this pain is imperceptible. However, by the time that all of the torturers press this button, the pain is immense. Here's the question: is it wrong for each individual torturer to press a button that inflicts imperceptible pain on the victim? It seems that the answer is yes. Even though each press of the button has only a minor effect on the victim, it's still wrong for each torturer to press the button.

What does this bizarre thought experiment have to do with forced complicity laws? In a way, ordinary citizens of rich democracies are like the harmless torturers. Each time that someone complies with forced complicity requirements they probably don't do much harm on average. Their actions may even be imperceptible to the victims. In most cases, citizens who comply only slightly disadvantage unauthorized migrants or remove a few of their options. But, if many people obey these laws, then they will seriously harm migrants and restrict their freedoms. If it's wrong for the harmless torturers to push each button, then it's wrong for ordinary citizens to obey forced complicity laws, even if the impact of each instance of compliance is minute. It can be impermissible for you to cause even minor harms if these harms add up.

In his famous essay on civil disobedience, the American philosopher Henry Thoreau claimed that we have duties to disobey unjust laws. Thoreau argued that, if "the machine of

government...requires you to be the agent of injustice to another, then, I say, break the law. Let your life be a counter-friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn.”²⁴ The background of Thoreau’s essay was slavery and unjust war. He refused to pay the poll tax because he thought it would make him complicit in slavery and the American government’s war against Mexico. We can easily adapt Thoreau’s argument to the subject of this book. The machine in this case is immigration restrictions and citizens ought to be the counter-friction to the machine. Citizens should refuse to lend themselves to the wrong of unjust exclusion.

Second-Order Duties

I’ve focused on forced complicity requirements because they are especially pervasive examples of how states attempt to conscript citizens into their unjust aim of harming immigrants. But morality requires more of us than disobedience to the law. The duty to disregard immigration laws is just one species of a more general requirement to avoid complicity in the injustice of immigration restrictions. People can obviously contribute to injustices towards immigrants in other ways too. They can vote for politicians who promise to restrict immigration and deport immigrants. They can personally discriminate against foreigners. They can spread falsehoods about immigrants in order to scare their fellow citizens into supporting tougher immigration laws. They can report people who violate immigration laws to the authorities, like Anthony Appiah recommends. These are wrongful actions because they facilitate injustice towards immigrants.

Our duties encompass more than our actions. They govern our attitudes and beliefs too. The philosopher Thomas Hill draws a distinction between first-order and second-order duties.²⁵

In the context of my argument, a first-order duty is a duty to refrain from contributing to the unjust treatment of foreigners. This is what you're morally obligated to do in light of unjust immigration restrictions. Yet we also have second-order obligations to take steps to ensure that you satisfy your first-order duty. According to Hill, we have a second-order responsibility to "make ourselves ready of mind and will to see what we must do and to follow through on our best judgment."²⁶ You ought to take precautions to both understand your first-order duties and motivate yourself to satisfy them.

What's the content of our second-order duties in this case? Here's a partial answer. Many of us have pro-authority biases. We defer to people in power and are disposed to follow their directives. The Milgram experiments are a famous illustration of this disposition.²⁷ These experiments showed that people are willing to administer painful and even lethal electric shocks to strangers as long as someone in authority tells them to do so. While the interpretation of the Milgram experiments is contentious, it appears that a substantial fraction of ordinary people will follow the directives of an authority even when these directives are obviously morally wrong.²⁸ In the same way, when the government tells us to disassociate ourselves from unauthorized migrants, many of us are inclined to obey. Our pro-authority dispositions are a kind of moral bias. They cause us to unjustly harm migrants. Other biases do this as well. Many of us have ethnocentric and nationalist biases that leads us to neglect the interests of foreigners (§3.4). These biases tempt us into violating the rights of immigrants when we perceive them as out-group threats.

So, various biases and dispositions can stop us from satisfying our first-order duties. Second-order duties direct us to remove obstacles to the fulfillment of first-order obligations. Thus, we have second-order duties to mitigate these harmful biases and dispositions, and reduce

their impact on our behavior. It's tough to say exactly how we should go about mitigating moral biases. The anarchist political scientist James Scott has a suggestion for overcoming pro-authority biases. Scott writes:

One day you will be called on to break a big law in the name of justice and rationality. Everything will depend on it. You have to be ready. How are you going to prepare for that day when it really matters? You have to stay 'in shape' so that when the big day comes you will be ready. What you need is 'anarchist calisthenics.' Every day or so break some trivial law that makes no sense, even if it's only jaywalking. Use your own head to judge whether a law is just or reasonable. That way, you'll keep trim; and when the big day comes, you'll be ready."²⁹

There may be something to Scott's suggestion. We normally get better at something through practice. If you practice intentionally disobeying trivial and unjust laws, then you'll be less likely to comply with forced complicity restrictions and other state efforts to harm migrants. If that's right, then we ought to engage in "anarchist calisthenics."

What about out-group biases? Perhaps we can learn to empathize more with the perspectives of immigrants and foreigners by forming social connections with them or spending time in communities with immigrants. This can help motivate us to come to their aid if necessary. Recent research suggest that, when people learn about the benefits of immigration, they have more pro-immigration attitudes (see §8.3). I'll have other suggestions in chapter 8 as well. The upshot is that, to prepare yourself to treat immigrants fairly, you should probably start by educating yourself about immigration and mitigating nationalist and pro-authority biases that distort your judgment about its effects.

3. State Officials

Moral Risks and Reparative Duties

Ordinary citizens are often complicit in immigration law. But their contributions pale in comparison with those of state officials. Many different officials cooperate in immigration enforcement. They include border agents, police officers, immigration judges, prison guards, the bureaucrats that staff immigration agencies, and others. What are the moral responsibilities of these officials?

Jobs related to immigration enforcement are morally risky. There's a big risk that, if you work in one of these jobs, you'll contribute to injustice. You'll likely end up violating the rights of immigrants. This is a strong reason to refrain from taking these jobs, and for quitting them. Moreover, if someone does work in immigration enforcement, then this person probably has reparative duties for the harm that he or she has done. They have debts to pay for their role in injustice.

To illustrate my argument, I'm going to use an extended example. This example is the story of Francisco Cantú as narrated in his memoir *The Line Becomes a River*.³⁰ Cantú studied immigration and border policy in college and he joined the border patrol afterward. Cantú was “tired of reading about the border in books” and “wanted to be on the ground, out in the field” to “see the realities of the border day in and day out.”³¹ The border patrol put Cantú to work tracking down and capturing migrants at the border. While he arrested a few drug traffickers, “[w]e mostly arrested the little people—smugglers, scouts, mules, and coyotes.... But mostly I arrested migrants... People looking for a better life.”³²

Here's an example. In one case, Cantú helped deport a pregnant migrant who was caught at the border. The woman spoke excellent English and Cantú asked her where she learned it. She

responded: “Iowa...I grew up there... I even got my GED.” She returned to Mexico to care for her younger siblings after her mother died. But she wanted to return to the United States because she was poor in Mexico and she wanted her “children to have a life here, like I did.” The woman’s husband pled with Cantú to return them to the border instead of taking them to detention facility. Cantú refused: “I have to bring you in, I told him. It’s my job.” He recounts: “The man took a deep breath and nodded and then climbed into the back of the transport van, holding out his arms to help his pregnant wife.”³³

Cantú came to realize that serving in the border patrol is “not the work for me.”³⁴ He became increasingly stressed and ambivalent about what he was doing. He had terrible nightmares. In his recounting, Cantú suffered from a kind of moral injury, an experience of “sorrow, remorse, grief, shame, bitterness, and moral confusion.”³⁵ He quit the border patrol.

After quitting, Cantú befriended José, an unauthorized migrant who worked in maintenance and as a gardener. José lived in the United States for over thirty years, but he was arrested by immigration agents and placed in detention. Cantú tried to assist José escape deportation. He served as a character witness and helped his family while they appealed José’s case to an immigration judge. At one point, an acquaintance (Ana) told José’s wife that Cantú used to work for “la migra.” Cantú writes:

That’s right, continued Ana—he saw what we go through at the border, and look, now he’s helping. I smiled and nodded, wondering if that’s what this really was, if I was merely being driven to make good for the lives I had sent back across the line, if I was seeking to dole out some paltry reparation.³⁶

Despite their efforts, Cantú’s friend, José, is deported. He can’t manage to immigrate back to the United States.

Cantú's story suggests several key lessons. One lesson is that the border patrol is morally risky. In his service, Cantú helped deport and incarcerate many migrants. He mainly arrested people "looking for a better life." This conduct was wrong. You might argue that Cantú did some good as a border agent. He rescued migrants who were stranded in the desert. He deterred some violent criminals from crossing the border. These seem like good results. But we need to balance these good outcomes against the harm that he inflicted, which was considerable. If Cantú was mostly arresting peaceful migrants, then it's unlikely that Cantú achieved something good on the whole. This is in keeping with Cantú's own account. He says that the border patrol does rescue people, but "the larger picture is the violence of this policy of enforcement through deterrence is what is putting people there in the first place."³⁷

Cantú's story also indicates that border agents have reparative duties. He contributed to unjustly harming others. When you culpably contribute to unjustly harming others, you acquire duties to repair this harm and atone for your wrongdoing. To satisfy their reparative duties, wrongdoers must take responsibility for what they've done, express repentance through meaningful regret and apology, and provide reparation.³⁸ Cantú seems to have recognized this. Perhaps he wanted to help José in order to "dole out some paltry reparation" and express his regret for his past actions. This may have also motivated Cantú to write a book about his experience. In an interview, he said that his book and message are about "the dehumanization of migrants."³⁹ People who have contributed to unjust immigration restrictions can satisfy their reparative duties in other ways too. They can engage in activism for the rights of immigrants, publicly blow the whistle on injustices that they've seen, or directly aid the victims of the immigration laws that they helped uphold.

You may think that my position is extreme. Do I claim that everyone is obligated to quit immigration agencies? In truth, this is my default recommendation. But I can imagine circumstances where it's permissible for immigration officials to stay. It can be permissible to commit a lesser evil if you can do much more good than they evil you inflict. And sometimes border agents can do a great deal of good that counterbalances the harm that they cause.

Consider the following cases. A few years ago, *The New York Times* ran a report on border agents "lured by the other side."⁴⁰ According to the report, some border agents smuggled migrants across the border secretly. One veteran border agent allowed hundreds of migrants to cross unimpeded in his lane at the border. Two other border agents who were brothers would contact migrants at the border and put them in their truck. The agents would then drive the migrants to a drop house in San Diego. These two agents helped an unknown number of migrants cross the border. Everyone in the article took a disapproving tone toward this conduct. Observers described the actions of these agents as an objectionable breach of trust.

Here's another gloss on this story: these agents were protecting the rights of migrants and satisfying their reparative duties to repair the harm that they've caused in the past. By subverting and refusing to enforce the law, border agents did a great deal of good for migrants. Sure enough, this behavior is extremely risky and I wouldn't recommend this course of action for most people. Yet there's something praiseworthy about immigration agents who bear grave risks to help migrants secure to their rights.

I also don't claim that most immigration agents who subvert the law are motivated by moral concerns. Perhaps these agents were motivated solely by financial concerns (several of them took bribes). I don't know what was going through their heads. Remember though that there's a difference between an evaluation of a person's actions and a person's character (§6.4).

We can praise a person's actions without admiring their motives. These agents were in effect acting to protect the rights of migrants, irrespective of their motivations for doing so.⁴¹ If immigration agents have reparative duties in virtue of their past participation in injustice, then these agents were satisfying these duties by covertly undermining immigration laws. This is a way of atoning for their prior role in injustice.

I've focused on immigration agents. But things are somewhat different with other state employees. Other jobs that are related to immigration enforcement may be less harmful on the whole than, say, border agents or deportation officers. If the moral risks of these jobs are less grave, then it can make sense for people to continue to work in them as long as they engage in harm minimization. For example, consider judges that handle immigration and asylum cases. Immigration judges grant asylum requests at dramatically different rates. Some judges are extremely generous, while others hardly ever grant asylum claims.⁴² This variation suggests that judges have considerable discretion in applying refugee law. They could use their legal discretion to grant asylum promiscuously. Immigration judges may still be required to do unjust things, like issuing deportation orders. But, if judges can make a big positive difference by bending the rules in favor of immigrants, then this good might counterbalance the evil that they must do.

High-Ranking Public Officials

Suppose that you're a high-ranking political leader, such as a mayor, governor, member of a legislature or city council, and so on. How should you respond to immigration law?

To narrow this question down, I'm going to focus on "sanctuary" cities. Sanctuary cities are jurisdictions where the local government forbids city officials and employees from

cooperating with immigration agencies. Prominent sanctuary cities in the United States include San Francisco, Philadelphia, and Los Angeles, and several hundred counties have policies that limit cooperation with immigration enforcement.⁴³ In the United States, sanctuary cities are now the subject of heated controversy. Several states have taken action to penalize sanctuary cities and federal administrators have threatened to “defund” them. For instance, the government of Texas has passed a “show me your papers” law that forbids localities from declining to cooperate with immigration enforcement.

But what exactly is a sanctuary city? One common policy in sanctuary cities is a directive that tells city police to avoid inquiring into the immigration status of residents or notifying immigration agencies if they suspect that someone is an unauthorized migrant. A more aggressive version of this policy is to refuse to turn over an unauthorized migrant to immigration agents even though local officials know this person’s immigration status. For instance, city officials may decline to tell immigration agents when they plan to release a prison inmate who is unauthorized. Let’s call these kinds of policies: *non-cooperation*.

Sometimes cities do more than just refuse to cooperate. They also take active measures to obstruct immigration laws. Call these kinds of policies: *obstruction*. For instance, some jurisdictions pay the legal fees of migrants who are threatened with deportation. This policy helps overburden the capacities of immigration courts and slows down the pace of deportations. Another example of obstruction is California’s law that prohibits immigration agents from raiding a workplace without a court order, which in effect hinders the ability of agents to enforce immigration laws. Public officials may also obstruct immigration enforcement on their own initiative. Libby Schaaf, the mayor of Oakland, tweeted that immigration agents would be

conducting a sweep in the area. This warned immigrants and gave them a chance to evade arrest.⁴⁴

My overall argument can be easily adapted to justify non-cooperation. For the most part, non-cooperation requires inaction. Officials merely refuse to assist immigration agents in enforcing the law. If a country's deportation policies are unjust, then it's presumptively wrong for local officials to facilitate these policies because doing so would contribute to impermissibly harming migrants. For this reason, a negative duty to refrain from causing unjust harm to migrants can justify non-cooperation. Negative duties are stringent and relatively insensitive to the costs of the duty-bearer (§1.3). So, negative duties are strong reasons in favor of non-cooperation.

Obstruction can be justified as well, although the reasons in favor of obstruction are less weighty. Obstruction is permissible as a means of shielding immigrants from unjust threats. But it's less clear whether local governments are morally required to engage in obstruction. You might think that a positive samaritan duty to aid the victims of injustice can explain why obstruction is justified. That's indeed the case when obstruction imposes reasonable costs on city officials and it's an effective way of aiding those in need. But, if obstruction is ineffective, then local governments may have better uses for their resources. Moreover, if obstruction is too costly, this can release local officials from the duty to aid immigrants. So, while non-cooperation is morally mandatory, obstruction is sometimes only permissible without being required.

Sanctuary cities have many critics. So, it's worth briefly pausing to consider some objections to them. One common objection to sanctuary cities is that they increase crime. Sanctuary cities sometimes refuse to help immigration agents deport immigrants who are convicted of criminal offenses. The thought is that, by allowing these immigrants to stay in the

country, sanctuary policies predictably result in more crime. An immediate problem with this objection is that it lacks empirical support. Social scientists who study sanctuary jurisdictions conclude that it's false that they have higher crime rates than comparable cities.⁴⁵ This finding makes sense on reflection. Many police chiefs of sanctuary cities argue that non-cooperation helps them to fight crime. If unauthorized migrants don't fear deportation when they interact with the police, they are more willing to report crime, serve as witnesses, and cooperate with the police in other ways. This might have the effect of lowering crime overall.⁴⁶

There's another problem with the objection that sanctuary policies are bad because they permit criminals to avoid deportation. The problem is that immigrants who are criminals have rights against deportation too.⁴⁷ Consider the parallel with citizens. Suppose that Harry is an American citizen and he happens to be a criminal. Harry steals, assaults, and defrauds other citizens. How should the United States government respond? One option is criminal justice. The government could fine or incarcerate Harry. Another option is exile. Imagine that Harry is a citizen of Canada too. So, the United States could deport him there. Which option should the government take? Governments rarely respond to crime by exiling criminals. There's likely a solid moral reason for this practice. Although the government should punish Harry, deporting him would be wrong. Deportation would violate Harry's rights to continue to live in the United States. The government should instead punish Harry through fines and incarceration.

The same goes for immigrants. If they have moral rights to live in a society, then it would be wrong to deport them even if they are criminals. Immigrants should be punished in the same way that any citizen should be punished—through fines, incarceration, and parole, and not through exile. Once they're punished, immigrants again have claims to liberal freedoms, such as freedom of association and occupational freedom, and these claims tell in favor of permitting

them to remain in a state. If local officials help immigration agencies deport immigrants who are criminals, they are still violating the rights of these immigrants. This creates a strong presumption in favor of non-cooperation. Thus, if the deportation of even criminal aliens violates rights and sanctuary policies don't significantly raise crime or cause other bad outcomes, then public officials should pursue a strategy of non-cooperation and, in some cases, obstruction.

4. Personal Risks and Costs

On my view, ordinary citizens and public officials should disobey immigration law and help undermine it. One worry about my argument is that disobedience and resistance to immigration law is risky. Here are some possible costs. States threaten to punish citizens who violate forced complicity laws. If state officials undermine the law, they sometimes risk removal and prosecution. For example, the mayor of Oakland who warned unauthorized migrants of an impending immigration raid currently faces an obstruction of justice investigation. In addition, immigration is often unpopular and elected officials who support the rights of immigrants face the prospect of electoral defeat. Maybe these costs release citizens and officials from their obligations to disregard and disobey the law. Perhaps the obligation to refrain from participating in injustice is sensitive to the costs to the duty-bearer. If there's a big risk that the someone will punish you for disobedience or resistance, then maybe it's permissible for you to comply with and enforce unjust laws.

Yet sometimes there's actually little risks to disregarding the law. Take forced complicity laws. These laws impose legal obligations on entire populations. But it's infeasible for state employees to punish more than a tiny fraction of violations. To illustrate, I'm going to focus on laws that prohibit employers from hiring unauthorized migrants. Only a small number of

employers pay fines for hiring unauthorized workers in the United States.⁴⁸ One reason that many employers flout the law is that the proliferation of counterfeit identity documents allows employers to claim that they were ignorant about the immigration status of their workers. Also, employers often hire workers through subcontractors. This permits employers to escape liability because the unauthorized migrants officially work for the subcontractor.⁴⁹ The availability of these legal defenses make it hard to prosecute employers for hiring unauthorized migrants.⁵⁰

Even when states do punish employers for hiring unauthorized migrants, these employers frequently incur only minor fines for violating interaction restrictions. Again, the case of the United States is illustrative. Employers in the United States usually pay relatively small fines for employing unauthorized migrants. It's also difficult for the state to collect these fines because employers have the right to dispute the penalties in administrative courts.⁵¹ The low probability of detection and the minor penalties attached to violations help explain why employers hire large numbers of unauthorized migrants in many jurisdictions. So, it's false that most citizens incur large risks of punishment by violating forced complicity laws.

Suppose though that citizens sometimes do face significant costs if they disobey or resist the law. Here's the thing though: morality can be demanding. Morality can require that you bear risks and costs in order to keep your hands clean. Consider the following case. Imagine that an evildoer threatens to shoot you in the foot unless you shoot another innocent person in the foot. Would it be morally acceptable to comply with the evildoer's demand? I'd say no. You ought to take the shot to the foot for morality's sake.

Why? Although this may raise the hackles of utilitarians, I think that there's plausibly a moral difference between doing and allowing. Remember Transplant (§2.2)? In this famous case, you're a surgeon who needs to decide whether to kill one patient and transplant his organs in five

other patients, thereby saving their lives. Most people say that it's wrong to kill the one to save the five. And surely part of the reason that's true is that it's worse to do something bad than it is prevent bad things from happening. But, if you shoot an innocent person in the foot, you cause something harmful to happen. In contrast, if you allow yourself to be shot, then you merely allow something bad to happen. The difference between doing and allowing can explain why you ought to refuse to harm an innocent, even at the cost of your foot.

You might be wondering what these theoretical reflections have to do with forced complicity laws. Here's the answer: you ought to bear the risks of undermining immigration law to avoid unjustly harming unauthorized migrants. If you do comply with forced complicity laws, you'll be contributing to eroding the freedoms of unauthorized migrants. Or you can refuse to obey and bear the risk of punishment or other costs, like removal from office. If there's a distinction between doing and allowing, then it can be worse to harm unauthorized migrants than it is to allow harm to something bad to happen to you (punishment) even if the harm that falls on you is worse than the harm that your actions would cause. So, it can be wrong to comply with forced complicity laws even when disobedience is risky.

Now, I don't insist that you disobey the law though the heavens may fall. If the state will ruin your life for your disobedience and your compliance would only contribute to injustice in a minor way, it can make sense for you to keep quiet and comply. Let's return to the case of Sam, the restaurant owner who is faced with the choice of hiring unauthorized migrants. Suppose that, if Sam hires unauthorized migrants, state officials will hit his business with steep fines. This will cause his restaurant to close, which means that he'll need to lay off all of his workers, including the unauthorized ones. The lesser evil in this case is compliance. The moral reasons to prevent this bad outcome can outweigh the reasons to cause harm if the outcome is bad enough. But my

point is that you should be willing to face considerable risks in order to avoid being an agent of injustice.⁵²

5. Political Obligation (Again) and Role Responsibilities

Another objection to my argument is one that we've seen before. This is the objection that citizens have duties to obey the law. If citizens are obligated to obey the law, then it may be wrong for citizens to disregard forced complicity requirements. A closely related objection is that state officials have role responsibilities that require them to bracket their private judgments about the justice or injustice of laws. Instead, their role responsibilities require them to enforce the laws whether they agree with them or not. Immigration agents and other public officials don't make the law, but they have to enforce it anyway.

Many of my arguments for the permissibility of migrants' disobedience to immigration law can apply again here (§5.3). Let me briefly recap. I went through different theories of political obligation and showed that each of them is unable to establish that migrants have obligations to obey immigration laws. Notice though that many of these arguments work here too. Take the argument that we ought to defer to democratic procedures because they're reliable. Democratic procedures tend to get things right—that is, authorize reasonably just laws—and so we should comply with the outputs of these procedures rather than relying on our own judgments. I argued in response that democratic procedures are unreliable when it comes to immigration. They tend to systematically enforce unjust laws and, for this reason, migrants lack duties to comply with them. This argument holds for citizens and state officials as well. If democratic institutions select unjust immigration laws, then citizens and state officials likewise have no moral obligation grounded in democratic legitimacy to defer to these institutions.

But there are some accounts of political obligation that apply to citizens differently than they apply to migrants. One reason that migrants lack obligations to obey the immigration laws of another state is that they don't interact with this state in the right way. For instance, take a social contract theory. On a social contract view, migrants lack duties to obey the laws of a state because they are not party to this state's social contract. They never consented to obey the laws. However, this argument won't work for citizens. Possibly citizens do consent to a social contract. So, maybe they do have obligations to obey the law. Even if ordinary citizens never consented to a social contract, agents of the state at least voluntarily choose to work for the government and, the argument goes, thereby take on role responsibilities that require them to enforce the law.

The same style of argument might work for at least two other theories of political obligation: a fair play view and an associative account. To remind you, a fair play theory holds that citizens have duties to comply with the law in virtue of the fact that they receive a fair share of the benefits from the rule of law. And an associative account says that citizens ought to obey the law because they are members of a valuable association and owe special obligations to other citizens that mandate compliance. Migrants don't stand in the right kind of relationships with the citizens of other states to activate these political obligations. They don't receive the benefits from another state's system of law and they in general lack valuable relationships with the citizens of other states that would activate associative duties.

But citizens might interact with their own state in way that would trigger political obligations. These arguments apply even better to state officials. For it's clear that state officials do interact with the state in a manner that would ground special obligations. They promise to

uphold the laws, they accept benefits from the state, and they are part of associations, such as the members of the border patrol, that might impose special obligations on them.

Can one of these theories show that citizens have political obligations to obey immigration law even if they fail to show that migrants do? I don't think so.

Let's start with the social contract theory. According to a dominant interpretation, social contract theory says that the duty to obey the law is a contractual duty. Contractual duties seem to be promissory duties, duties that are grounded in promises.⁵³ When I agree to a contract that requires me to work for my university for nine months out of the year, I promise to do this and this promise generates an obligation. Let me grant a big assumption and suppose that citizens do promise to obey the law. Can this justify compliance with forced complicity requirements?

That seems doubtful. Suppose that you promise someone that you'll punch me in the face, even though I've done nothing to warrant this treatment. Your promise is morally otiose—it fails to justify harming me. When citizens comply with forced complicity laws or state officials help enforce unjust immigration restrictions, they contribute to harming migrants and violating their rights. If promissory obligations are unable to justify harming others or violating their rights, then a social contract can't explain why you ought to obey forced complicity laws or enforce immigration law.

Let's now turn to a fair play theory of political authority. This theory says that, if a system of laws benefits citizens in a fair way, then the citizens have duties to bear their fair share of the costs of upholding this system, which requires them to comply with the law.⁵⁴ But defenders of fair play accounts of political obligation argue that political obligations are conditional on the fairness of a system of law. For example, it seems false that white citizens of South Africa were under duties of fair play to comply with laws that enforced apartheid even if

these citizens benefited from these laws. This is so because these laws were egregiously unfair. When is a system of law fair? George Klosko, a prominent defender of a fair play theory of political obligation, claims that citizens only have obligations of fair play to contribute to a cooperative scheme if the benefits and burdens of this scheme are fairly distributed.⁵⁵

Yet the benefits and burdens of states' cooperative schemes are massively unfair. States unjustly deny foreigners many of the rights and benefits that they are owed. If foreigners have rights to immigrate to a state, then these foreigners have rights to access and benefit from at least some of this state's institutions, such as the labor market, the court system, police protection, and other institutions. Modern states violate these rights. So, immigration restrictions deny foreigners a fair share of the benefits of states' cooperative schemes. The unfairness of a cooperative scheme releases us from our obligations to contribute to this scheme or, at least, substantially weakens these obligations. Thus, the unfairness of immigration laws undercuts citizens' obligations of fair play to obey them. What about state officials? If anything, the fair play argument works against their obligation to enforce the law. State officials, like immigration agents, receive benefits (salary, prestige, etc) from organizations that commit systematic injustices. The fact that state officials benefit from wrongdoing seems to magnify rather than weaken their obligations to resist and repair these injustices.⁵⁶

Finally, consider associative accounts of political obligations. These accounts hold that citizens have associative duties to one another grounded in their valuable relationships, such as their civic relationships or participation in a shared nationality, and that we owe our compatriots obedience as a fulfillment of these associative duties. Yet there are several problems with appealing to associative duties to justify compliance with forced complicity laws. There's good reason to doubt whether we have any associative duties to our compatriots. Earlier I argued that

the most parsimonious explanation of our ethical intuitions about interpersonal cases suggests that we lack associative duties to compatriots (§2.2). If that's true, then the associative account of political obligation never gets off the ground.

But let's assume that we do have these obligations. It's unclear whether associative duties can justify harming third-parties. Suppose that your friend tells you that he's currently broke and needs so money. He then asks you to rob an innocent person and give him the money, which would solve the problem. It's hard to believe that this theft would be permissible even though I have an associative duty to my friend. Why would things be different for my compatriots or co-workers?

To sum, political obligations are unable to defeat the prima facie obligation to disregard forced complicity laws. It also seems false that state officials have role responsibilities that prohibit them from refusing to enforce the law and actively undermining it.⁵⁷

6. Conclusion

This chapter has focused on complicity in injustice. I've argued that, in order to avoid complicity in injustice or repair the harm of this complicity, ordinary citizens, street-level officials, and political leaders ought to disobey or decline to enforce the law. They should refuse to become an accomplice to the injustices of immigration restrictions. But the duty to avoid complicity hardly exhausts the whole of our obligations. Apart from their duty to avoid complicity, citizens may also have moral reasons to try to end injustice and actively work towards more open borders. I'll examine how citizens should act on those moral reasons in the next chapter.

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- ¹ Kwame Appiah, “Should You Report a Green-Card Marriage?,” *New York Times*, January 25, 2017, <https://www.nytimes.com/2017/01/25/magazine/should-you-report-a-green-card-marriage.html>.
- ² Kwame Appiah, “Is My Neighbor Obligated to Report Me to Immigration?,” *New York Times*, n.d., October 7th, 2015 edition, <https://www.nytimes.com/2015/10/11/magazine/is-my-neighbor-obligated-to-report-me-to-immigration.html>.
- ³ James E. Ryan, *Five Miles Away, A World Apart: One City, Two Schools, and the Story of Educational Opportunity in Modern America* (New York: Oxford University Press, 2011), p. 26.
- ⁴ Leslie Brown and Anne Valk, *Living with Jim Crow: African American Women and Memories of the Segregated South*, 2010 edition (New York: Palgrave Macmillan, 2011), p. 173.
- ⁵ Jennifer Roback, “The Political Economy of Segregation: The Case of Segregated Streetcars,” *The Journal of Economic History* 46, no. 4 (1986): 893–917.
- ⁶ To be clear, private discrimination would still exist even in the absence of state enforcement, just like it does today. For one thing, private discrimination against blacks and other minorities was pervasive in the Jim Crow South. More dramatically still, private groups, such as the Ku Klux Klan, could threaten to lynch blacks with little fear of punishment. But it’s unclear whether Jim Crow would have been sustainable without state conscription of ordinary citizens. Private competition and individual disobedience would probably have eroded segregation to some extent. Governments imposed legal obligations on private citizens to prevent these things from happening.
- ⁷ Leanne Weber, *Policing Non-Citizens*, (London: Routledge, 2013).
- ⁸ Huyen Pham, “The Private Enforcement of Immigration Laws,” *Georgetown Law Journal* 96 (2008): 777–826; Huyen Pham, “When Immigration Borders Move,” *Florida Law Review* 61, no. 5 (2009): 1115–67.
- ⁹ David Bacon, “Undocumented Immigrants Stand up to Chipotle,” *Race, Poverty & the Environment* 18, no. 1 (2011): 13–14.
- ¹⁰ Joe Crawford, Sharon Leahy, and Kim McKee, “The Immigration Act and the ‘Right to Rent’: Exploring Governing Tensions Within and Beyond the State,” *People, Place, and Policy* 10, no. 2 (2016): 114–25.
- ¹¹ James P Walsh, “Watchful Citizens: Immigration Control, Surveillance and Societal Participation,” *Social & Legal Studies* 23, no. 2 (2014): 237–59.
- ¹² Sophie Alcorn, “Landlords Beware, You May Be Renting Your Own Room...in Jail: Landlords Should Not Be Prosecuted for Harboring Aliens,” *Global Studies Law Review* 7, no. 2 (2008): 289–305; Eisha Jain, “Immigration Enforcement and Harboring Doctrine,” *Georgetown Immigration Law Journal* 24, no. 2 (2010): 147–88.
- ¹³ John Syllaios, “The Future of Discriminatory Local Ordinances Aimed at Regulating Illegal Immigration,” *Washington and Lee Journal of Civil Rights and Social Justice* 16, no. 2 (2010): 639.
- ¹⁴ Virginie Guiraudon, “Enlisting Third Parties in Border Control,” in *Managing Borders in a Globalized World*, ed. Marina Caparini and Otwin Marenin (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2006), 79–97.
- ¹⁵ Pham, “The Private Enforcement of Immigration Laws,” p. 778.
- ¹⁶ Jason Grant, “ACLU Urges Greyhound to Keep Border Patrol Agents Off Buses,” *New York Law Journal*, April 3, 2018, <https://www.law.com/newyorklawjournal/2018/04/03/aclu-urges-greyhound-to-keep-border-patrol-agents-off-buses/>.
- ¹⁷ (Aliverti 2015).
- ¹⁸ (Walsh 2014, p. 245).
- ¹⁹ “List of Jim Crow Law Examples by State,” *Wikipedia*, July 6, 2018, https://en.wikipedia.org/w/index.php?title=List_of_Jim_Crow_law_examples_by_state&oldid=849126421.
- ²⁰ Maybe though there are reasons on the other side of the ledger that outweigh the reasons to respect the liberties of citizens and immigrants. It’s hard to see what they would be though if you also accept that many actual immigration restrictions are unjust. Advocates of forced complicity laws might argue that these laws are necessary to deter immigration and persuade migrants to leave. People often want to immigrate to find work. If states forbid employers from hiring unauthorized migrants, then foreigners will have less incentive to immigrate without authorization. But, if immigration restrictions are unjust, then it’s false that deterring immigration and getting migrants to leave are morally desirable aims. These are actually morally bad aims. If states don’t have rights to exclude outsiders in the first place, then states lack rights to use coercive measures to deter them from immigrating or to encourage them to leave.

²¹ Let's say that a person is complicit in wrongdoing if her actions causally facilitate the wrongdoing of another agent. Governments are the agents that are attempting to violate the rights of migrants. Public officials implement the plan of restricting the liberties of these migrants by enforcing interaction restrictions. But ordinary citizens contribute to and make the government's wrongdoing possible by complying with these laws. Some people use "complicity" more broadly than this usage. On a broader view, complicity can include inaction. Someone can be complicit in injustice if they fail to actively work to end this injustice. Here I'm opting for a narrower definition.

²² In a forthcoming book, Jason Brennan argues against the view that people have duties to resist injustice. He claims that resistance is often too costly to be obligatory and he critiques various arguments that philosophers have put forward to defend the duty to resist injustice. I mostly agree with Brennan's arguments. But his arguments don't rule out that we sometimes have stringent duties to resist injustice. Brennan's arguments are mostly directed against the view that we have strong positive duties to resist injustice or duties to take active steps to defend people against unjust threats. My position in this chapter is different. I argue that we have negative duties to avoid contributing to violating rights and these duties sometimes require us to disregard the law. Brennan's arguments seem compatible with this more modest position. See: Jason Brennan, *When All Else Fails: The Ethics of Resistance to State Injustice* (Princeton, NJ: Princeton University Press, forthcoming), chapter 8.

²³ Derek Parfit, *Reasons and Persons* (Oxford University Press, 1986), pp. 80-1.

²⁴ Henry David Thoreau, *Civil Disobedience and Other Essays* (New York: Dover Publications, 1993), p. 8.

²⁵ Thomas Hill, "Moral Responsibilities of Bystanders," *Journal of Social Philosophy* 41, no. 1 (2010): 28-39.

²⁶ Hill, p. 32.

²⁷ Stanley Milgram, *Obedience to Authority: An Experimental View* (Harper Collins, 2009).

²⁸ For a recent replication of the Milgram experiments, see: Dariusz Doliński et al., "Would You Deliver an Electric Shock in 2015? Obedience in the Experimental Paradigm Developed by Stanley Milgram in the 50 Years Following the Original Studies," *Social Psychological and Personality Science* 8, no. 8 (2017): 927-33.

²⁹ James C. Scott, *Two Cheers for Anarchism: Six Easy Pieces on Autonomy, Dignity, and Meaningful Work and Play* (Princeton: Princeton University Press, 2014), pp. 4-5.

³⁰ Francisco Cantú, *The Line Becomes A River* (New York: Random House, 2018).

³¹ Cantú, p. 22-3.

³² Cantú, p. 172.

³³ Cantú, p. 40.

³⁴ Cantú, p. 157.

³⁵ Cantú, p. 150.

³⁶ Cantú, p. 206.

³⁷ Hope Reese, He was a Border Patrol agent. What he saw gave him nightmares., February 14, 2018, <https://www.vox.com/conversations/2018/2/14/17009704/border-patrol-agent-immigration>.

³⁸ Seth Lazar, "Corrective Justice and the Possibility of Rectification," *Ethical Theory and Moral Practice* 11, no. 4 (2008): 355-68.

³⁹ Reese, He was a Border Patrol agent. What he saw gave him nightmares.

⁴⁰ Randal C. Archibold and Andrew Becker, "Border Agents, Lured by the Other Side," *The New York Times*, May 27, 2008, sec. US, <http://www.nytimes.com/2008/05/27/us/27border.html>.

⁴¹ And suppose that my arguments about the permissibility of people smuggling are right (§6.2). That means that it can be permissible and even obligatory to accept compensation for smuggling migrants. Am I saying that taking bribes is okay? Bluntly put, yes. There might be countervailing considerations that make accepting bribes wrong in certain cases. But, if my argument for people smuggling is sound, then we should accept that border agents that take compensation for helping to smuggle migrants can act permissibly, just as other bystanders can.

⁴² Rebecca Gambler, "Variation Exists in Outcomes of Applications Across Immigration Courts and Judges" (Washington, D.C.: U.S. Government Accountability Office, November 14, 2016), <https://www.gao.gov/products/GAO-17-72>.

⁴³ Benjamin Gonzalez, Loren Collingwood, and Stephen Omar El-Khatib, "The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration," *Urban Affairs Review*, 2017, 1-38.

⁴⁴ Libby Schaaf, "No, Mr. President, I Am Not Obstructing Justice," *The Washington Post*, May 18, 2018, https://www.washingtonpost.com/opinions/no-mr-president-i-am-not-obstructing-justice/2018/05/18/0d64e5cc-5ab5-11e8-b656-a5f8c2a9295d_story.html?noredirect=on&utm_term=.25dcff9e92ed.

⁴⁵ Gonzalez, Collingwood, and El-Khatib, "The Politics of Refuge"; Martínez Daniel E., Martínez-Schuldt Ricardo D., and Cantor Guillermo, "Providing Sanctuary or Fostering Crime? A Review of the Research on 'Sanctuary Cities' and Crime," *Sociology Compass* 12, no. 1 (2017): 1-13.

⁴⁶ Some possible support for these hypotheses is found in: Ricardo D. Martínez-Schuldt and Daniel E. Martínez, “Sanctuary Policies and City-Level Incidents of Violence, 1990 to 2010,” *Justice Quarterly*, 2017, 1–27.

⁴⁷ Here I draw on: Fabre Cécile, “Ethics of Immigration: The Issue of Convicted Criminals,” *Journal of Applied Philosophy* 33, no. 4 (2016): 428–34.

⁴⁸ Kitty Calavita, “Employer Sanctions Violations: Toward a Dialectical Model of White-Collar Crime,” *Law & Society Review* 24, no. 4 (1990): 1041–69; Darcy Pottle, “Federal Employer Sanctions as Immigration Federalism,” *Michigan Journal of Race and Law* 16, no. 1 (2010): 99–142.

⁴⁹ Massey Douglas S. and Gentsch Kerstin, “Undocumented Migration to the United States and the Wages of Mexican Immigrants,” *International Migration Review* 48, no. 2 (2014): 482–99.

⁵⁰ Douglas Massey, Jorge Durand, and Nolan Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2003), pp. 118–120.

⁵¹ Pham, “The Private Enforcement of Immigration Laws,” pp. 815–6.

⁵² Moreover, the threat of state punishment can excuse compliance without justifying it. If states threatens to impose severe punishments on citizens who violate the law, then states place these citizens under duress. Duress diminishes culpability for wrongdoing. This means that people who comply with forced complicity laws are less blameworthy than they would otherwise be, although their actions are still wrong.

⁵³ Daniel Markovits, “Contract and Collaboration,” *Yale Law Journal* 113 (2004): 1419–1518. For a dissenting view, see: Seana Shiffrin, “Are Contracts Promises?,” in *Routledge Companion to Philosophy of Law*, ed. Andrei Marmor (New York: Routledge, 2012), 241–58.

⁵⁴ Richard Dagger, *Civic Virtues: Rights, Citizenship, and Republican Liberalism*, First Edition edition (New York: Oxford University Press, 1997), chapter 5.

⁵⁵ George Klosko, *Political Obligations* (Oxford University Press, 2008), p. 6.

⁵⁶ Candice Delmas, “Political Resistance: A Matter of Fairness,” *Law and Philosophy* 33, no. 4 (2014): 465–488.

⁵⁷ You might argue that citizens or state officials should at least commit to public civil disobedience if they’re going to violate the law. But the same considerations that explain why it’s permissible for unauthorized migrants to forgo public civil disobedience seem to hold for citizens as well (§5.6).

Chapter 8: Promoting More Open Borders

1. Introduction

Michael Clemens is one of the most influential advocates for more liberal immigration policies around. He's an economist who works on international migration. Clemens received a PhD in economics from Harvard University and then went to work at the Center for Global Development, a thinktank in Washington DC that aims to reduce global poverty. There Clemens began to publish path-breaking research on immigration. His most famous paper is "Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?" where Clemens argued there are enormous economic gains from open immigration.¹ Drawing on prior research, he finds that open borders could potentially double the size of the world economy. This was a striking result and it was highlighted by *The Economist*,² *The New York Times*,³ and other high-profile outlets. The magazine *Vox* described his work as "hugely influential."⁴ Clemens' research has helped inspire both more scholarship on immigration and advocacy to bring about freer immigration.

But there's another striking thing about Michael Clemens: his actions have brought about tangible results.⁵ Here's an example. In 2010, a devastating earthquake struck Haiti. It caused widespread damage to Haiti's capital, Port-au-Prince, and ultimately killed at least 100,000 people. After the quake, Clemens and two consultants, Sarah Williamson and Royce Murray, lobbied to add Haiti to the list of countries that were eligible for temporary seasonal work in the United States. Clemens and his colleagues met with diplomats, Congressional staffers, and other officials over several months to convince the Department of Homeland Security of their plan.

They succeeded. In 2012, the Secretary of Homeland Security added Haiti to the list of countries eligible for temporary immigration to the United States. Unfortunately, only a relatively small number of Haitians could take advantage of this policy change in large part

because regulations made it difficult for employers to recruit and hire Haitian workers.

Nonetheless, an evaluation of the program was positive. Haitian workers reported large increases in incomes and satisfaction with the program, and wanted to continue to work in the United States.⁶ Sarah Williamson remarked: “Our program built more houses in Haiti than the Red Cross” because Haitian workers brought home relatively large amounts of money.⁷ Sadly though, the Trump administration ended the program.⁸

If you think that freer immigration is a desirable aim, then Clemens has done the world a service by pushing for more immigration in both theory and practice. While few of us can hope to be as influential as Clemens, we can still reasonably ask ourselves: if justice requires more open borders, how can I personally contribute to that goal? More than that, is there a way to *effectively* push more just immigration policies? It’s not enough to do something that sounds good but fails to meaningfully advance the cause of freedom of movement. You should aim to actually make a difference. In this chapter, I’ll sketch some answers to these questions. Before I begin, let me flag that my emphasis in this chapter is on the citizens of rich democracies. Like the previous chapter, my goal here is to clarify the moral obligations of the citizens of states that enforce unjust immigration restrictions. In chapter seven, I examined their negative duties to avoid complicity in injustice. Here my focus is on citizens’ moral reasons to promote more just immigration policies.

2. Background Assumptions

My assumption in this chapter is that citizens have moral reasons to bring about more just policies and laws. This is so because we have moral reasons to improve the well-being of other people and to ensure that their rights are respected. Unjust laws violate rights or make people

worse off. So our reasons to promote well-being and see that people are treated fairly are reasons to oppose unjust laws and support more just ones.

But I'll remain agnostic about whether we're all-things-considered morally required to promote more just laws and policies. It could be that we lack moral duties to engage in activism and advocacy for more just laws because these activities are too costly. Remember that you only have moral duties to aid other people if you can do so at reasonable costs to yourself (§6.2). If trying to change unjust laws imposes unreasonable costs on you, then it's false that you're morally obligated to do so. Also, there are many other ways of benefiting people that don't involve political change. For example, you could devote your time and resources to private philanthropy. You could discharge your obligations to help others in these ways instead. So, I'll refrain from claiming that citizens are morally required to promote more just laws and policies. Instead, my claim is the more modest one that that citizens have moral reasons to do these things. It's good if you and I effectively campaign for justice even if it's false that we're morally required to engage in this activism.

I'll also assume that the immigration laws of most states are unjust. So, we have moral reasons to reform these laws. In particular, we should aim to enact policies that allow more immigration and better protect the rights of migrants. But how can we do this? Let's return to my diagnosis for unjust exclusion from chapter 4. The main factors that lead states to unjustly restrict immigration are:

- (i) *Unilateral Control*. States have legal discretion over immigration—no other institutions, such as international institutions, significantly constrain their power to exclude foreigners.
- (ii) *State Capacity*. States have the capacity to enforce restrictive immigration laws.

- (iii) *Popular Opinion*. Immigration is unpopular and most citizens tend to oppose more immigration.
- (iv) *Responsiveness*. Governments are responsive to popular opinion about immigration to some extent.

To promote more just immigration policies, citizens need to change or offset these factors.

I'm skeptical that ordinary citizens can do much about (i). Most of us have little say over how international law is written or which international organizations our state joins. If anything, I'd expect international law to change only in response to a pro-immigration shift in public opinion and policy in powerful states. So, I'll focus on (ii-iv) and consider ways in which citizens can promote more just immigration policies by eroding state capacity, changing public opinion, and altering the responsiveness of governments. I stand by my pessimistic forecast in chapter 4: I doubt that states will open their borders anytime soon. Yet this pessimism is consistent with the possibility of marginal changes for the better. Let's now consider some possibilities for change.

3. Public Opinion

Public opinion is often the key to political change. Shifts in public opinion tend to predate policy changes, which suggest that these shifts are the ultimate cause of the change in policy. For instance, there's evidence that growing discontentment with Jim Crow was the precursor to the Civil Rights Movement in the United States.⁹ Interest groups and political organizations are much less effective at altering policy when public opinion is not on their side.¹⁰ Public opinion doesn't always translate into policy. States sometimes fails to implement popular policies. But, if public opinion is in favor of some policy change, this raises the probability that states will

implement it. This suggests a way forward for pro-immigration activists. They need to change hearts and minds.

And it's possible to change minds on immigration. The proof is that opinion has changed: the share of Americans who favor more immigration has steadily increased in recent years.¹¹ But, to date, there's only a small amount of research on how to influence people's views on immigration. I'll now survey some of this research.¹² First though, some background: the broad consensus in the literature is that people's beliefs about the desirability of immigration don't seem to be primarily driven by self-interest. Instead, beliefs about immigration are more strongly shaped by "sociotropic" concerns about the impact of immigration on their country or community.¹³ This suggests the following hypothesis: if people think that immigration has a positive effect, then they will be more likely to support it. Remember though that people tend to have false beliefs about immigration (§3.3). They think that immigration have negative effects on economies and disproportionately commit crime, and they vastly overestimate the number of immigrants in a population. If we correct these misconceptions, then maybe this will change their views about immigration.

Yet the evidence for this hypothesis is mixed. In one survey experiment, economists Alexis Grigorieff, Christopher Roth, and Diego Ubfal examined whether providing subjects with accurate information about immigration would change their attitudes.¹⁴ They randomly gave some subjects accurate information about the share of immigrants in the population, their incarceration rates, their unemployment rates, the share of illegal immigrants in the population, and the percent of immigrants who can't speak English. The researchers found that subjects who received accurate information became slightly more willing to increase legal immigration, but were not more disposed to sign a petition to this effect or donate to a pro-immigration charity.

While respondents had a more favorable view of immigrants, this had only a small effect on their policy preferences and political behavior. In another study, researchers corrected subjects' beliefs about the size of immigration populations.¹⁵ This failed to change subjects' attitudes towards immigration. These studies indicate that correcting factual misinformation might do little to budge people's beliefs about the desirability of immigration.

But other research suggests that providing people with true information can change their minds. For example, a survey experiment found that subjects who were randomly exposed to research about the wage impacts of immigration did change their views.¹⁶ These subjects were given an (accurate) description of the research that immigration has few net effects on wages or unemployment in recipient countries. Strikingly, the treatment made people more supportive of low-skilled immigration and significantly more willing to sign a petition in favor of legal immigration.

A well-designed study in Japan found more dramatic effects.¹⁷ Researchers exposed a large sample to information about the benefits of immigration for alleviating labor shortages and other problems associated with an aging society. Subjects didn't know that researchers were examining their views on immigration—they thought that they were evaluating the suitability of a text for reading comprehension and that this text just happened to be about immigration. Exposure to the treatment had big effects: it moved people in a pro-immigration direction by about 12.5 to 21 percentage points. Subjects also became more willing to sign a petition in favor of more immigration. A survey experiment in Britain also indicates that people oppose immigration less if they're told a narrative about how immigrants are assimilating into the dominant culture.¹⁸

What explains the conflicting results of different studies? One possibility is that merely learning general facts about immigration won't change people's minds because people fail to connect these facts to policy preferences. Suppose that you oppose immigration because you think it has bad effects on your country. Now, researchers inform you that the percentage of immigrants in the population is 10 percent, while you previously thought it was 30 percent. So what? You can with little cognitive effort maintain your opposition to immigration either by neglecting to do anything with the information presented or by thinking "that's not as bad as I thought—but immigration still has bad effects, so my opposition stands." But, if you present people with information about the *benefits* of immigration *and* connect these benefits to a policy of more immigration, that could have an effect.

Still, there's reason to worry that merely learning facts about immigration will fail to have an enduring impact on people. People often ignore or downplay information that contradicts their views. One reason for this is that people tend to hold beliefs that protect their identities and that signal their affiliation with their social groups. They are resistant to any new information that threatens their identity or their membership in a valued group.¹⁹ Political identities are connected to immigration. For example, nationalist and conservative political movements tend to be defined by their opposition to immigration. So, we can expect that a large number of conservatives and nationalists who are told accurate information about immigration will ignore, downplay, or forget it.

Accurate information can even provoke more exclusionary attitudes. Here's an illustration. Researchers in a survey experiment told American subjects that the United States admits far fewer Syrian refugees per capita than Germany, France, and Canada.²⁰ You might have reasonably predicted that this information would prompt Americans to become more

willing to accept Syrian refugees. But this information caused a backlash among some of the subjects. The survey actually made self-identified Republicans *less* willing to admit refugees. The researchers later asked participants to describe what they saw as the goal of the survey. One participant commented: “Bleeding heart Liberals trying to desensitize me into believing we should take any refugees legal or otherwise from anywhere. America is FULL.” Another wrote: “Liberal biased survey where some overly educated liberal ass is trying to justify their pathetic liberal idea of bringing in as many of the poor little Syrians as possible and totally fail to make any attempt at protecting the American people who have no desire to welcome terrorist with open arms and open borders.” It’s safe to say that accurate information failed to persuade these people of the merits of a more open refugee policy.

Is there another way of persuading people to support immigration in a more effective and lasting way? In a recent but already famous field experiment, political scientists David Broockman and Joshua Kalla found that “deep canvassing” produces enduring reductions in prejudice.²¹ Hoping to head off a backlash against transgender rights, LGBT organizations sent canvassers door-to-door in Los Angeles and South Florida. In cooperation with researchers, these canvassers were randomly assigned to households in the sample. But the canvassers took an unorthodox strategy. Instead of reading off a strict script, they engaged in conversation. The canvassers asked people to explain their views on transgender rights, showed them a video that gave reasons for and against laws that protect transgender people from discrimination, encouraged them to engage in “analogic” perspective-taking. Canvassers would often relate personal experiences to subjects and ask them about their experiences as well. They encouraged people to remember a time that they had been mistreated for being different and to connect this to the experience of transgender people.

These conversations lasted only about ten minutes on average. Yet this intervention had significant and apparently long-lasting positive effect on attitudes towards transgendered people. Broockman and Kalla's study is one of the only rigorous pieces of research on how to reduce prejudice against out-groups that was conducted in the field rather than in the lab. Why does it work? Deep canvassing seems to work in part by asking people to come their own conclusions rather than forcing a view down their throats. Encouraging perspective-taking also has an effect. Other research finds that inducing people to see things from the perspectives of stigmatized groups, such as the Roma in Europe, reduces prejudices toward that group.²² The study on attitudes toward Syrian refugees that I described earlier concludes that perspective-taking, not information, made Republicans more willing to write a letter to the president in support of refugees.²³

The evidence on deep canvassing is relevant to immigration more generally. Anti-immigration views are often motivated by antipathy toward foreigners and a failure to empathize with the perspectives of would-be immigrants. If deep canvassing works for combating prejudices against stigmatized minorities, then it might work for prejudices against immigrants too. So, here's a hypothesis on how to increase pro-immigration attitudes. Organizations could combat prejudices against immigration by having canvassers charitably listen to people's views on immigration, asking them to consider the arguments for and against their views, and encouraging them to see things from the perspectives of immigrants. It might help for the canvassers to be immigrants themselves. If I'm right that prejudices against immigrants are analogous to prejudices against other out-groups, this could be an effective strategy. The downside is that deep canvassing is time-consuming and expensive.

Most of us lack the capacity to reach large audiences or mobilize millions of dollars for information campaigns about immigration. But we can implement some of the lessons from deep canvassing in ordinary life. Suppose that you know someone who has anti-immigrant views. Instead of avoiding or berating this person, you should sympathetically listen to her perspective and ask her why she holds this views and why other people might disagree with her. Perhaps you could share a personal experience with this person that relates to immigration. For instance, you might share your experience (if you happen to be an immigrant) or the experience of someone you know. If possible, you should encourage this person to consider matters from the perspective of potential immigrants. How would a prospective migrant view this person's argument? This method is hardly foolproof. But engaging in sympathetic conversation with people who disagree with you appears to stand a good chance of genuinely persuading them relative to alternative approaches.

To conclude, I want to reiterate how little we know about how to change minds on immigration. As a result, we can only draw tentative conclusions from sparse research that exists. Here's my suggestion. The open borders movement should take a leaf from other movements that aim to overturn popular practices. Consider an analogy with the animal rights movement. As with open borders advocates, animal rights and vegan activists face an uphill battle. They are trying to persuade people to stop consuming animal products, which is an ancient and deeply entrenched practice. The vegan activist Tobias Leenaert observes: "To end the killing and suffering of animals at human hands may be one of the greatest challenges ever undertaken by a group of people."²⁴ Only a small number of radicals endorse the goal of ending animal consumption. These radicals have their work cut out for them.

For this reason, several animal charities dedicate a large amount of resources to studying advocacy and which approach is most effective. The Humane League, a nonprofit that aims to reduce the suffering of farm animals, routinely tests whether its advocacy changes people's behavior or attitudes. For instance, the Humane League is running a large-scale randomized controlled trial on leafleting, online ads, or direct mailing to determine which method impact the consumption of animal products.²⁵ Animal Charity Navigators, a meta-charity for animal organizations, conducts comprehensive analyses on different strategies for persuading people to eat less meat or support changes in the law.²⁶ These organizations aim to change minds but also to rigorously check whether their methods are working.

Pro-immigration advocacy needs similar organizations. The research I surveyed in this section include some of the only studies that have documented effective ways to change attitudes about immigration. This suggests that there's an opportunity here. An organization that is devoted to changing minds on immigration and rigorously testing the impact of different strategies could potentially have a high expected value. To my knowledge, no organization like this currently exists.²⁷

4. Elite Opinion

Public opinion matters for policy. Yet certain opinions matter more than others. Research in political science suggests that it may not be public opinion per se that matters much for policy. Instead, elite opinion is more important. The political scientist Martin Gilens finds that policy makers are much more responsive to the preferences of the affluent than most citizens.²⁸ When the preferences of the rich and poor conflict, the rich usually win out.²⁹ It's less clear why this is so. One possibility is that campaign contributions and lobbying transmit the preferences of the

rich to policy makers.³⁰ Elites matter in other ways. Take “political elites” like prominent party leaders, pundits, and activists. Parties can assert an independent role over policy, especially when one party has strong control over government. Activists have an impact too. Activists were the ones who brought attention to key issues like abortion, civil rights, gay rights, and other topics, and they helped galvanize partisan responses to these issues. If pro-immigration advocates can persuade elites of their cause, then maybe they can gain traction on policy even if the general public opposes them.

But how can pro-immigration activism influence elites? Let’s start with the affluent. There’s little rigorous evidence on the political views of the extremely rich and what explains them. Yet there’s some evidence that the affluent are receptive to pro-immigration views. One group of political scientists surveyed wealthy technology entrepreneurs in the United States.³¹ These researchers found that technology entrepreneurs are remarkably cosmopolitan in orientation. Majorities in the sample disagree that American trade policy should prioritize American citizens over the interests of foreigners. And, strikingly, 56 percent favor increasing immigration, which is far more than most Americans. You may decry the fact that the extremely rich wield a disproportionate influence over politics. But this could be good news for pro-immigration advocates because technology entrepreneurs make up an increasing share of the rich. Advocates for immigration might be able to influence policy in a liberal direction by persuading these receptive elites to favor more immigration.

Ideology seems to play a key role in influencing elites, especially political elites. The political scientist Hans Noel documents how conservative and liberal ideologies shaped which issues that activists brought to public debate.³² Ideological entrepreneurs like Herbert Croly, a progressive liberal, and William F. Buckley, a conservative, developed ideologies and the

popular platforms to advance them that in turn influenced activists and party members. Take racial inequalities. Liberal pundits started criticizing racial inequality in 1930s and 40s. This seems to have pushed activists and party leaders to focus on ending Jim Crow, despite the fact that they had few electoral incentives to do so.³³ In fact, party leaders and activists likely had strong electoral reasons to refrain from taking up this issue. Noel argues that ideological persuasion reshaped parties and political life. While it's hard to pin down the effects of ideology with precision, Noel's evidence suggests that ideology had an independent impact on the behavior of parties and activists. If ideology is important in influencing the behavior of elites and activists, then ideological arguments for more immigration might have an impact.

I'm now going to introduce a case study to illustrate how individuals can sometimes be effective ideological entrepreneurs for more open borders. Bryan Caplan is one of the persuasive and influential defenders of open borders. Caplan is an economist at George Mason University and he writes for the blog Econlog, a widely-read and influential blog about economics and society. Immigration is one of Caplan's most common topics. Caplan is a self-described open borders radical. He says that, if he could push a button that would open borders immediately, he'd do it: "My conscience wouldn't allow anything else."³⁴ Caplan aims to influence elite opinion. On the issue of trying to persuade elites versus the general public, Caplan says: "in terms of the optimal allocation of energy, I would think about 70 percent elites and 30 percent public...because of the trickle down from elites—the system just listens to elites more."³⁵

Caplan advocates in favor of open borders for many of the reason I've discussed in this book. He thinks that there's a presumption in favor of liberty and that immigration restrictions violate this presumption. On Caplan's view, we ought only to restrict liberty if doing so is necessary to avert seriously bad consequences. But Caplan rejects the view that open borders

would have these kinds of consequences. This is a fairly common position among open borders advocates. What's uncommon about Caplan is that he's been especially effective in persuading people to become more sympathetic to free movement. Caplan uses his blog to write pithy and insightful posts on the injustice of immigration restrictions; he regularly debates defenders of immigration restrictions in public forums; popular magazines feature Caplan on open borders; he's written more academic articles in defense of immigration; he appears on news programs where he defends open borders, and he's currently writing a graphic novel on immigration with Zach Weinersmith. Caplan has taken arguments for free movement that appear in academic circles and popularized them to new audiences.

What's the evidence that Caplan's been effective? Admittedly, it's rather sketchy. An informal poll of readers of his blog found that Caplan's arguments made them more supportive of immigration.³⁶ According to self-reports, his ideas have inspired action. For instance, one lawyer wrote in to describe how he became inspired to take on the asylum claims of refugees after reading Caplan's entries: "I seriously doubt I would have had the energy or inclination to take on such a case, pro bono, without coming in contact with your writings and philosophy. Thanks for unwittingly convincing me to do so!"³⁷

Here's an especially prominent case where Caplan has been influential. Vipul Naik is a mathematician and data scientist who was inspired by Caplan's advocacy.³⁸ Naik went on to create the website "Open Borders: The Case," a website that compiles the arguments for open borders and serves as a clearing house for open borders advocates. Naik also created the Open Borders Action Group, a page dedicated to advancing freedom of movement. So what? The Open Borders website has received hundreds of thousands of views and has attracted the

attention in the media. The Open Borders Action Group is currently organizing meetings and conferences in support of open borders.

Caplan's advocacy has had other downstream effects.³⁹ Consider this one. David Bennion is an immigration attorney who provided legal services to unauthorized migrants to resist deportation. While providing these services, Bennion formed ties with a loose coalition of immigration activists around the country. In 2013, Bennion became affiliated with the Open Borders website and met other open borders advocates. But he noticed that the open borders movement had little connection with grassroots immigrant rights activism. So, Bennion founded "The Free Migration Project," which, as far as I can tell, is the first and only advocacy group that focuses solely on open borders in the United States. This organization aims to bring together open borders advocates with immigrant rights activists in order to more effectively push for change. This is evidence that there's a small movement coalescing around the ideal of open borders.

Caplan's story is an example of how individuals can persuade people to endorse more open borders. He has probably had the biggest effect on elites such as intellectuals, journalists, and pundits. I asked Caplan why he's prioritized open immigration over other causes given that immigration is so intractable. He said: "I'm more likely to move the needle a little bit by going and writing a big radical book on how things should be totally different which in the hands of a more practical person becomes their motivation.... If I just get people that have sympathy for immigrants but who take for granted 'of course I don't favor open borders' [to think] maybe I should be in favor of open borders." The probability that Caplan will make a difference is low but, if he's successful at nudging policy in a good direction or motivating others to protect the rights of immigrants, the long-term impact is potentially large. But Caplan says: "when I think

about immigration, I'm grateful for the simple fact that I can make my voice heard. If one victim of immigration restrictions feels better knowing that someone somewhere stands up for his basic human right to accept a job offer from a willing employer, I'm glad."⁴⁰

5. Policy

Despite my pessimism about radically reforming immigration policy, major change does happen. There are rare moments in which political representatives can expand immigration. Perhaps the party in power is overwhelmingly popular. As a result, voters give them some slack and the party decides to use this slack to abolish immigration restrictions. Or maybe the public is just not paying attention. Or the public even supports expanding immigration for a time. When the opportunity presents itself, activists, pundits, and public officials can do a large amount of good by pushing for more immigration.

But the worry though about liberalizing immigration is that future governments will immediately repeal whatever liberalizers do. And, given that immigration is often unpopular, future governments will probably have incentives to close the door to immigrants once they're in power. The challenge for liberalizers is to prevent rollback even though popular opinion favors immigration restrictions.

This raises a question: what kind of policies should political leaders and activists support when they have the chance to liberalize immigration law? They should support policies that take advantage of the logic of collective action to stymie efforts to curtail immigration. This logic is familiar and goes like this. Suppose that the majority supports immigration restrictions. Yet most voters don't have strong personal interests in curbing immigration. They just support these laws in a mild and episodic way. Sure enough, they prefer that their government restricts immigration.

It's just that most people lack a personal stake in this outcome. In contrast, some people do have a stake in more immigration.

Take businesses who rely on immigrant labor. It matters a great deal to these businesses that governments allow them to recruit foreign workers especially when there are labor shortages. Or consider the family members of immigrants. Suppose that you're British and your spouse is Turkish. He wants to immigrate to Britain permanently to live with you. Policies that allow (or don't allow) family reunification will have a major impact on your life. So, you and others like you will be highly motivated to lobby for policies that allow family reunification. You'll be much more motivated to campaign for looser immigration restrictions than most people are motivated to campaign for tighter ones.

Now, here's the key point: a minority that cares passionately about an issue can have more political influence than an apathetic majority. You can see this point play out across a range of political issues. Consider debates about gun control in the United States. Many gun owners care passionately about protecting their rights to own a gun and they have consistently blocked unmotivated majorities who favor more gun control. The same can happen in immigration policy. But the key insight is that representatives need to craft policies that create entrenched and concentrated interests in favor of more immigration. If this happens, then future governments will find it difficult to curtail immigration because the people who have a stake in more immigration will mobilize to resist efforts at repeal.

Here's a historical example to illustrate my argument.⁴¹ From 1921 to 1965, the United States essentially had ethnic quotas for immigrants. The United States government allocated the permission to immigrate according to national origins. But the government allowed many more people from Northern and Western Europe to immigrate, and excluded Eastern Europeans,

Asians, and most everyone else. This system tried to engineer the racial composition of the United States. More plainly, it tried to make America whiter and more Western European. Moreover, the immigration regime in place radically curtailed immigration relative to what came before. The foreign-born share of the United States population was only 5 percent in 1965, compared to about 15 percent in 1900. The United States was no longer a nation of immigrants and the national origins system was largely to blame.

Yet, by the 1960s, the Civil Rights Movement began challenging laws that were overtly racist and the Democratic Party won large majorities in Congress. Civil rights activists opposed the racism of the old national origins system. The president, Lyndon Johnson, was also determined to carry out the ideals of his predecessor John F. Kennedy, who thought that the national origins system was unjust. In a speech given soon after he took office, Johnson spoke favorably of a world in which “all men, goods, and ideas can freely move across every border and every boundary.” This was a rare moment when one party had enough political slack to expand immigration. Under pressure from Johnson, Congress abolished the national origins system and replaced it with a formally non-discriminatory policy, the Immigration and Nationality Act, that admitted foreigners on the basis of their individual characteristics, like their family ties or skills.

Strangely, supporters of the Immigration and Nationality Act managed to persuade skeptics of the bill by convincing them that the new law would avoid changing the demographic composition of the United States or significantly increasing immigration. Regardless of whether this argument was made in good faith or not, that prediction turned out to be radically wrong. The 1965 law massively increased immigration to the United States and diversified the country.

The foreign-born population of the United States went from 5 percent when the bill passed to about 14 percent in 2017 and about 90 percent of these newcomers weren't from Europe.

One key achievement of the new regime is that it created vested interests in favor of immigration. The regime gave preferential admission to the family members of American citizens. So, American citizens who had foreign family members now had strong interests in preserving this law. Furthermore, the effect of the Immigration and Nationality Act was cumulative. Citizens could sponsor some of their family members, such as their parents and spouses. These immigrants could in turn sponsor their own family members. This initiated what's now called "chain migration." In this way, the act created a constituency in favor of more immigration. When public opinion swung against immigration again (as it usually does), legislators found it difficult to erode the provisions of the 1965 law. For decades now, concentrated pro-immigrant minorities triumphed over the weakly motivated anti-immigrant majority. Thus, the architects of the Immigration and Nationality Act made a major positive difference by permanently expanding immigration.

The lesson of the 1965 act is that, when representatives have a chance to liberalize immigration, they should fashion legislation that can defeat future anti-immigration majorities. Activists and representatives can take advantage of the logic of collective action by pushing to create constituencies that are highly motivated to preserve liberal reforms and expand immigration. There may be other possibilities along these lines. In their book *Radical Markets*, Eric Posner and Glen Weyl advocate in favor of a new immigration regime that centers on private sponsorships.⁴² Here's the rough idea: the citizens of rich democracies can privately sponsor the immigration of foreigners and they'd be obligated to help immigrants settle in their new countries by, say, finding them housing and access to health and other services. In return,

these citizens would be entitled to benefit from the labor of these immigrants. Posner and Weyl suggest that immigrants would work for the citizens who sponsored them. Another possibility is that citizens would simply be entitled to some fraction of an immigrant's income.

I won't defend an immigration system built around private sponsorships in detail here. But notice that this system has a key benefit: a large number of private citizens would have vested interests in immigration under this system. As a result, there'd likely be powerful support for expanded immigration such that, even if majorities opposed more immigration, minorities would be strongly motivated to defeat this opposition. Here's my fundamental point: if events present us with an opportunity to expand immigration, we should support laws that use the logic of collective action to counterbalance popular support for immigration restrictions. This strategy addresses cause (iv) of closed borders: responsiveness to public opinion. If a liberal immigration policy becomes less responsive to majority opinion, then it stands a better chance of survival.

6. Encouraging Disobedience

Another strategy for promoting better treatment of immigrant is to target cause (ii): state capacity. One factor that causes states to restrict immigration is simply that they can. Unlike the pre-modern empires of the past, modern states have the organizational capacity to monitor their borders and capture migrants who cross them. This control is imperfect, but it is nonetheless a major deterrent to more immigration.

One way to erode state capacity is through widespread disobedience. We could encourage more citizens to flout the law and interact with unauthorized migrants in legally prohibited ways. I argued earlier (§7.2) that employers should ignore laws that prohibit them from hiring unauthorized migrants. They should do this because they have a duty refrain from

contributing to violating the rights of unauthorized migrants. But perhaps this didn't go far enough.

Advocates for more open borders should perhaps encourage people to disobey forced complicity laws. For instance, we should actively encourage employers to hire unauthorized migrants. We might advocate in favor of employers committing to affirmative action for unauthorized migrants. This could also apply to other illegal interactions, like housing unauthorized migrants, transporting them, hiding them from the authorities, and so on. If this disobedience became more common, this would erode the state's ability to penalize and deter unauthorized migration. Employers and other citizens should disregard forced complicity laws in order to avoid participation in injustice *and* promote the reform of unjust immigration laws. The great advantage of disobedience is that it is within the power of ordinary citizens. Most of lack the ability to influence public policy or persuade large numbers of people to favor more immigration. But many of us are in a position to disobey immigration law.

Readers may think that this recommendation is tongue-and-cheek. But, as I briefly mentioned elsewhere (§5.6), this kind of prosaic resistance to authority has a long track record of facilitating change. Draft dodging, for instance, has historically helped end unjust wars, like the Confederacy's war efforts against the Union and the Vietnam War, by starving armies of manpower. Routine disobedience to Jim Crow laws and laws that discriminated against gay people set the stage for their eventual repeal. Government often simply stop enforcing laws because too many people violate them. James Scott notes:

Multiplied many thousandfold, such petty acts of refusal may, in the end, make an utter shambles of the plans dreamed up by generals and heads of state. Such petty acts of insubordination typically make no headlines. But just as millions of anthozoan polyps

create, willy-nilly, a coral reef, so do thousands upon thousands of acts of insubordination and evasion create an economic or political barrier reef of their own.⁴³

The same likely goes for disobedience to immigration law. If this disobedience is normalized, states may just give up trying to enforce them. For this reason, advocates for more open borders should publicly promote and encourage widespread violations of forced complicity laws. People should disobey these laws even if doing so fails to generate any political change. But the prospect that mass disobedience can also motivate reform is icing on the cake.⁴⁴

So, people should covertly disobey unjust immigration laws and open borders advocates should encourage them to do so. But what about traditional civil disobedience? Unlike covert resistance, traditional civil disobedience involves publicly and conscientiously breaking the law and accepting punishment for one's actions. Earlier I rejected the view that disobedients are morally required to engage in traditional civil disobedience in order to justify law-breaking. For one thing, traditional civil disobedience can be too costly. Officials sometimes impose severe punishments on disobedients. But, while it's false that traditional disobedience is morally required, it can be strategic. Non-violent and public civil disobedience has a record of sparking debate and shifting public opinion. Civil disobedience sends the message that people believe so strongly that a law is unjust that they're willing to suffer severe costs in order to protest it. This can attract sympathetic media attention and unsettle public opinion.

Unfortunately, there seems to be little empirical evidence on the effectiveness of traditional civil disobedience. It's undeniable that it has been effective in certain cases, perhaps mostly famously in India's resistance to British rule and the American Civil Rights Movement. But to my knowledge, we lack good information on the background rate at which people have tried traditional civil disobedience without success, which is crucial to determining its overall

effectiveness.⁴⁵ As a result, we may overestimate the importance of traditional civil disobedience relative to large-scale covert resistance. That said, there's some evidence on what kind of civil disobedience is comparatively effective.⁴⁶ Civil disobedience that is threatening, angry, and violent tends to generate opposition from the public. In contrast, non-violent civil disobedience that treats its opponents respectfully attracts more sympathy. Disobedients are also more persuasive when the public can see them bear grave costs for their cause.

Here's an illustration. In Austin, Texas, young unauthorized immigrants sat in the street in order to protest mass deportation and they were arrested. The protestors were peaceful and respectful of the police. But this was a serious risk. Since they are unauthorized, any contact with law enforcement could result in their deportation. Two of the protesters are siblings, a brother and sister, and they were both arrested. The brother, José, said: "we accomplished what we came for, which was basically to send a message to the American public [through] civil disobedience, and getting them to recognize that immigrants...contribute to this country." The sister, Catalina, commented: "The only way we will win is taking risks and being brave...Having that courage, because we just can no longer wait."⁴⁷ This kind of costly and disciplined civil disobedience is relatively likely to be effective.

7. The Effective Altruist Case Against Pro-Immigration Advocacy

I've surveyed some possible ways to promote more open borders in this chapter. But I now want to consider a serious challenge to my arguments. This is the objection that we should prioritize other causes over immigration. Here's why. Suppose you want to benefit other people and to help end injustice. Notice though that there many ways to achieve this end and some of them seem much more tractable than immigration. You can probably do more good by focusing

on these other areas instead. So, if you want to do the most good possible, you should refrain from promoting more just immigration policies.

Consider the following scenario. You only have a fixed amount of money and time to devote to making the world better. Suppose you have \$10,000 available. You could give your money to pro-immigration causes. You might send money to The CATO Institute, which promotes open immigration, or the Center for Global Development where Michael Clemens works. But you could instead donate your money to the Against Malaria Foundation (which provides anti-malarial bed nets mostly to people in Africa) or GiveDirectly (which gives people in extreme poverty cash transfers).

Where should you give? There's powerful evidence in favor of the Against Malaria Foundation. A large body of evidence suggests that anti-malarial bed nets improve health and save lives. According to GiveWell, a widely respected meta-charity, you can save a child's life for about \$4000 to \$5,000 if you spend that sum on distributing bed nets.⁴⁸ In contrast, there's little evidence that giving to a pro-immigration advocacy organization would make the slightest difference to public policy. More generally, you should prioritize other causes over immigration because you can do more good that way.

This is a powerful challenge to pro-immigration activism. I've grappled with it in my own life. I give some of my income to charity. But most of it goes to GiveDirectly and the Against Malaria Foundation. I give some to pro-immigration charities, but relatively little. I allocate my money in this way because I want to do the most good possible and I judge that I can do the most good by giving to effective international charities. How can I advocate in favor of pro-immigration activism if there are better ways of doing good?

Here's my response to this challenge. We have general positive duties to aid those who are in need if we can do so at reasonable cost. Suppose that I judge that donating 10 percent of my income to help people who are badly off is a reasonable cost. When satisfying my positive duties to aid others, I ought to do the most good possible. For instance, it would be wrong to save five people when I could save ten at the same cost. So, I should give to effective charities like the Against Malaria Foundation or Deworm the World Initiative when fulfilling my positive duties. However, it's false that we need to devote all of our lives to maximizing the good.⁴⁹ We have personal prerogatives to refrain from bring about the most good possible *after* we've satisfied our positive duties. In this morally protected sphere, we can permissibly engage in activities that are not maximally beneficent. One of these activities could be pro-immigration advocacy.

This is consistent with my earlier claim that we have moral reasons to promote just immigration laws. Even if pushing for more just immigration laws is sub-optimal, we still have reasons to do it. Here's an analogy to motivate this point. Suppose you give a substantial fraction of your income to highly effective charities, thereby satisfying your moral duties to aid people who are badly off. For the sake of argument, let's assume that you give 20 percent of your income away. Now, you'd like to give an additional 5 percent of your income to a less effective charity, such as a scholarship fund for children in your community. Let's suppose that your donation to the scholarship fund is less beneficial than another donation to the Against Malaria Foundation. Nonetheless, you have moral reason to donate to the scholarship fund and it's permissible to do so. More than that, your donation to the scholarship fund is admirable and praiseworthy. After all, you've already fulfilled your general positive duties. So, you're now acting in a supererogatory way.

The point is that, even if there's a more optimal use of your time and resources than open borders advocacy, you still have moral reason to pursue this advocacy. And it's also permissible to do so because you can permissibly devote some of your life to sub-optimal causes. Open borders advocacy is a sub-optimal but nonetheless worthwhile and admirable cause.

8. The Future

If you favor open borders, it's easy to feel despair. The issue is tractability. States probably won't lower their immigration restrictions anytime soon regardless of what a few individuals do. Why bother with immigration when the prospects of success look so bleak?

Bryan Caplan writes that “[s]ometimes I worry that if I spend too much time thinking about immigration, I’ll become bitter.”⁵⁰ In an interview with me, Michael Clemens reports something similar. Relative to almost everyone else, Clemens has been phenomenally effective at promoting the cause of more open immigration policies. Yet the program that he championed which gave Haitian workers the legal permission to immigrate was stymied by regulatory hurdles and ultimately scrapped. Clemens noted that it “took a tremendous upfront investment” to implement the program and convince public officials to allow it to proceed. And the Trump administration canceled the program for reasons that were factually dubious. Clemens commented: “that was incredibly frustrating.” When I asked him what an ordinary citizen could do to promote more immigration, he struggled to come up with a concrete answer and said “I feel like a fool talking about this.”

But I now want to conclude this chapter and book by making the case against despair. While open borders are intractable now, there's reason to think that this won't always be the

case. Here's why. First, there's a long-run—abet imperfect—trend towards liberalization.

Second, this liberalizing trend will probably erode the legitimacy of immigration restrictions.

Let's start with the liberalizing trend. By this, I mean that there's a growing respect for the rights of individuals and a reluctance to use violence against them.⁵¹ This trend is imperfect and there's always a risk of backsliding. Yet the broad strokes seem clear enough. Here's some evidence. Aggressive war used to be common. In both ancient and modern times, states would conquer and enslave neighboring populations. This was widely considered to be acceptable behavior. But aggressive war is now illegal and rare. Years now pass with no interstate wars occurring in the whole world. Slavery was once universally practiced and sanctioned (§4.4). Almost every country in the world permitted slavery a few centuries ago and perhaps a majority of the world's workers lived in some form of bondage. Slavery still exists, but it's now legally prohibited everywhere.⁵²

Despotism and authoritarian government was the norm for thousands of years. In 1800, 1 percent of the global population lived under a government that we might charitably call democratic. A majority of humanity currently lives under democratic rule.⁵³ States have gradually extended more rights to minorities. Political scientists Victor Asal and Amy Pate find that states around the world repealed laws that discriminated against ethnic minorities: “while there are important regional differences, everywhere the weight of official discrimination has lifted.... For the most part the prospects of minorities are markedly better in 2003 than in 1950.”⁵⁴ Majorities around the world say that it's important to treat people of different races and religions equally.⁵⁵ Witness the sea change in the treatment of gay people. The number of countries that have decriminalized homosexuality more than tripled just between 1960 and 2000, and progress has continued rapidly since then.⁵⁶ Stephen Pinker reports that “in every part of the

world, people have become more liberal” including conservative regions like the Middle East.⁵⁷ Other signs of liberalization include enormous advances in equality for women, the abolition of capital punishment and torture in much of the world, and the decline of corporal punishment for children.

Each of these liberal developments deserves much more detailed treatment than I can give here. But I hope this is enough evidence to motivate the claim that there’s a broad liberalizing trend throughout the world. What explains this trend? The full story is incredibly complex. Here though is a partial hypothesis. At some point, people started to believe that members of their own community have rights to liberty. Many Enlightenment thinkers argued that the main purpose of government is to protect rights and guarantee equal freedom.⁵⁸ Consider Enlightenment era documents like the Declaration of Independence or the Declaration of the Rights of Man. These documents proclaimed that men have rights to “life, liberty, and the pursuit of happiness” and that all men have rights to “liberty, property, security, and resistance to oppression,” respectively.

There’s a catch though: many observers first thought that these rights only apply to some groups, such as white men. But what’s so special about white men? A few intellectuals began to realize that there’s no morally important difference between white men and the members of other races, or men and women. As Jeremy Bentham noted in 1789: “the blackness of the skin is no reason a human being should be abandoned without redress to the caprice of a tormentor.”⁵⁹ Early feminist thinkers soon pointed out the inconsistencies in Enlightenment thought. For instance, Olympe de Gouges followed the Declaration of the Rights of Man with her famous Declaration of the Rights of Woman and of the Female Citizen. While bids for the equal rights for women and other races encountered fierce opposition, views that ascribed rights to equal

liberty only to men or Northern Europeans proved to be intellectually unsustainable. The explosion of literacy and book reading also encouraged the expanding circle of moral concern by allowing more people to take up the perspectives of others unlike themselves, such as slaves and servants.⁶⁰

The incoherence between early liberalism and the exclusion of women and non-white populations was gradually resolved in favor of more inclusion and universalism. These intellectual currents were partly responsible for the great emancipatory movements of the nineteenth and twentieth centuries, such as abolitionism and the feminist movement. There's an analogy here with immigration. The case for free movement is just the case for liberalism again (§1.3). You probably agree that your fellow citizens have rights to occupational freedom and freedom of association. To recognize these rights, you also need to recognize that people have rights to freedom of movement. But notice that your fellow citizens aren't the master race. Just as your fellow citizens have rights to free movement, so do foreigners. Moreover, there's no reason to think that these rights stop at national borders. Individual rights justify the freedom to move across borders too. In this way, intellectual consistency should induce people to extend liberal rights to foreigners.

This leads me to a prediction: the same liberalizing forces that have expanded liberty for out-groups and reduced their mistreatment will eventually lead people to support more open borders. When will this happen? No idea. But it seems like a reasonable extrapolation from past trends. If my prediction is correct, then I'd expect that the case for more immigration will become more tractable over time. This optimistic projection should provide hope and counsel us against despair. Although it sounds trite to say it, hope can motivate us to action and help us to

keep ready to act when the time is right.⁶¹ Hope for future emancipations can also give meaning to our actions now.

Let's return to an analogy that I've made much use of: the abolition of slavery. It was meaningful and heroic for the early abolitionists like Benjamin Lay and Anthony Benezet to resist slavery (§4.4). We can now weave their actions into a bigger narrative of struggle against injustice. This is why we can attribute great meaning and value to their actions. Their efforts were not futile or in vain. Instead, they were ultimately successful in their aims even if they didn't live to see it. We can also situate our own actions to oppose unjust immigration restrictions in a bigger narrative of moral progress. Taking this broader perspective can help us to ward off despair. If we're part of a larger and progressive struggle against injustice, then this can motivate us to be steadfast, to refuse to participate in injustice, and to be vigilant for opportunities to effectively advance the ideal of open borders.

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² "A World of Free Movement Would Be \$78 Trillion Richer - If Borders Were Open," *The Economist*, July 13, 2017, <https://www.economist.com/the-world-if/2017/07/13/a-world-of-free-movement-would-be-78-trillion-richer>.

³ Tyler Cowen, "The Egalitarian Tradition of Economics," *The New York Times*, March 16, 2013, sec. Business Day, <https://www.nytimes.com/2013/03/17/business/the-egalitarian-tradition-of-economics.html>.

⁴ Dylan Matthews, "The Case for Open Borders," *Vox*, September 13, 2014, <https://www.vox.com/2014/9/13/6135905/open-borders-bryan-caplan-interview-gdp-double>.

⁵ The following story is based on personal communication with Michael Clemens and the conversation notes posted online at the Open Philanthropy Project. See: <https://www.openphilanthropy.org/research/conversations> (accessed July 10th, 2018).

⁶ Michael A. Clemens and Hannah Postel, "Temporary Work Visas as US-Haiti Development Cooperation: A Preliminary Impact Evaluation," *IZA Journal of Labor & Development* 6 (2017): 4.

⁷ Marc Gunther, "Migration: The Oldest (and Most Effective) Anti-Poverty Program," *Nonprofit Chronicles* (blog), February 27, 2017, <https://nonprofitchronicles.com/2017/02/27/migration-the-oldest-and-most-effective-anti-poverty-program/>.

⁸ Jamie Ducharme, "Haitians Are No Longer Eligible for Temporary Work Visas in the U.S.," *Time Magazine*, January 18, 2018, <http://time.com/5107546/haiti-temporary-visa-eligibility/>.

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¹⁰ Paul Burstein and April Linton, "The Impact of Political Parties, Interest Groups, and Social Movement Organizations on Public Policy: Some Recent Evidence and Theoretical Concerns," *Social Forces* 81 (2003): 380–408.

¹¹ Neil Esipova et al., *How the World Views Migration* (Geneva, Switzerland: International Organization for Migration, 2015), p. 50.

¹² One word of caution: much of this research is unpublished.

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- ¹⁵ Daniel J. Hopkins, John Sides, and Jack Citrin, “The Muted Consequences of Correct Information About Immigration,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, March 26, 2018), <https://papers.ssrn.com/abstract=2798622>.
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- ¹⁸ Eric Kaufmann, “Can Narratives of White Identity Reduce Opposition to Immigration and Support for Hard Brexit? A Survey Experiment,” *Political Studies*, 2017, 1–16.
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- ²⁰ Claire L. Adida, Adeline Lo, and Melina Platas, “Engendering Empathy, Begetting Backlash: American Attitudes toward Syrian Refugees,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, May 30, 2017), <https://papers.ssrn.com/abstract=2978183>.
- ²¹ David Broockman and Joshua Kalla, “Durably Reducing Transphobia: A Field Experiment on Door-to-Door Canvassing,” *Science* 352 (2016): 220–24.
- ²² Gábor Simonovits, Gábor Kézdi, and Péter Kardos, “Seeing the World Through the Other’s Eye: An Online Intervention Reducing Ethnic Prejudice,” *American Political Science Review* 112, no. 1 (2018): 186–93.
- ²³ Adida, Lo, and Platas, “Engendering Empathy, Begetting Backlash.”
- ²⁴ Tobias Leenaert, *How to Create a Vegan World: A Pragmatic Approach* (New York: Lantern Books, 2017), p. 1. Full disclosure: I share this aim.
- ²⁵ For reports on the Humane League’s research, see: <http://www.humaneleaguelabs.org/reports/>
- ²⁶ For a description of Animal Charity Navigator’s research, see: <https://animalcharityevaluators.org/advocacy-interventions/evaluating-interventions/>
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- ³⁴ Shaun Raviv, “If People Could Migrate Anywhere, Would Poverty Be Eliminated?,” *The Atlantic*, April 26, 2013, <https://www.theatlantic.com/international/archive/2013/04/if-people-could-migrate-anywhere-would-poverty-be-eliminated/275332/>.
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- ⁴¹ The following account relies heavily on: Tom Gjelten, *A Nation of Nations: A Great American Immigration Story* (Simon & Schuster, 2015), chapters 9 and 10.
- ⁴² Eric A. Posner and E. Glen Weyl, *Radical Markets: Uprooting Capitalism and Democracy for a Just Society* (Princeton, NJ: Princeton University Press, 2018), chapter 3.
- ⁴³ James C. Scott, *Two Cheers for Anarchism: Six Easy Pieces on Autonomy, Dignity, and Meaningful Work and Play* (Princeton: Princeton University Press, 2014), pp. 7-8.
- ⁴⁴ This is what Bryan Caplan also advocates. In an interview, he said: "my main answer for people is to break unjust laws and don't try to get caught. That's the main thing that people do for illegal immigrants is just ignore the law."
- ⁴⁵ Probably the most comprehensive study on the effectiveness of civil resistance is: Erica Chenoweth and Maria Stephan, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict* (New York, NY: Columbia University Press, 2012). They find that non-violent resistance movements are considerably more effective than violent ones. However, the kind of resistance that they examine is much broader than traditional civil disobedience and includes things like protests and some forms of legal resistance.
- ⁴⁶ See, for instance: Courtney Dillard, "Civil Disobedience: A Case Study in Factors of Effectiveness," *Society & Animals* 10, no. 1 (2002): 47–62.
- ⁴⁷ Carla Javier, "Talking to Two Undocumented Siblings After Their Arrest for Their Militant Resistance to ICE," *Splinter* (blog), July 28, 2017, <https://splinternews.com/talking-to-two-undocumented-siblings-after-their-arrest-1797313175/amp>.
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- ⁵⁵ Steven Pinker, *Enlightenment Now: The Case for Reason, Science, Humanism, and Progress* (New York, NY: Viking, 2018), pp. 221-2.
- ⁵⁶ Pinker, *The Better Angels of Our Nature*, p. 450.
- ⁵⁷ Pinker, *Enlightenment Now*, p. 227.
- ⁵⁸ John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Indianapolis, Ind: Hackett Publishing Company, Inc., 1980); Immanuel Kant, *Kant: The Metaphysics of Morals*, ed. Lara Denis, trans. Mary Gregor, 2 edition (New York: Cambridge University Press, 2017).
- ⁵⁹ Jeremy Bentham, *The Principles of Morals and Legislation* (Buffalo, N.Y.: Prometheus Books, 1988), p. 311.
- ⁶⁰ Pinker, *The Better Angels of Our Nature*, chapter 4.
- ⁶¹ James M. Jasper, "Emotions and Social Movements: Twenty Years of Theory and Research," *Annual Review of Sociology* 37, no. 1 (2011): 285–303.