

SYMPOSIUM
MIGRATION AND JUSTICE FOR PEOPLE ON THE MOVE



THE “GENERIC” UNAUTHORIZED

BY
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The “Generic” Unauthorized*

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How to respond to unauthorized migration and migrants¹ is one of the most difficult questions in relation to migration theory and policy. In this commentary on Gillian Brock’s discussion of “irregular” migration, I do not attempt to give a fully satisfactory account of how to respond to unauthorized migration, but rather, using Brock’s discussion, try to highlight what I see as the most important difficulties in crafting an acceptable account, and raise some problems with the approach that Brock takes. Many factors come

* Thanks to Luara Ferracioli, Ayo Gansallo, and Chris Bertram for helpful discussion of the topics in this paper.

¹ The proper choice of terminology here is not always obvious. Brock, in her chapter, says that she is interested in discussing “irregular, undocumented, or illegal” migration. To my mind, “unauthorised” is the most general term (most clearly applying to all the cases we are interested in) and the most neutral. It can also accurately be applied to both migration and migrants, without distortion, unlike some other terms, so I will generally use “unauthorized” in this article as opposed to Brock’s “irregular”, although I do not think this choice is of great importance for the differences between us.

together in the case of unauthorized migration, each of which is on its own difficult. Examples of relevant considerations include whether migrants have any moral obligation to obey the immigration laws of states that would exclude them, whether citizens of a state have obligations to obey less than fully just but otherwise legitimately enacted laws, how we can conform immigration policies to principles of domestic and international justice, and how far our policies may deviate from these principles before they lose their legitimacy, and how principles of international relations effect the justice of immigration policies. The correct response to any one of these considerations is not, I claim, obvious, but all – and no doubt more – must be considered before we can have a fully satisfying account of a just policy in relation to unauthorized migration.

We must also ask whether, both while trying to craft positive policies and while critiquing existing practices, we are most interested in a general account of how to respond to unauthorized migration, one that would apply to the large majority of cases and provide us a default approach, or if we are better served by taking a piecemeal approach, looking at why certain people or certain groups should be exempt from removal, even if they would otherwise be liable to it. In this paper, I will focus primarily on this distinction. Although her considered position is not completely clear to me, Brock, in her chapter on “irregular” migration (Brock 2020, 88-106), mostly seems to favour the later approach, focusing primarily on five groups of people who, she claims, should be free from a threat of removal and who should have their status regularized.

A piecemeal approach like this could be developed in two ways. One approach would be to think that only members of certain groups or people with particular traits fully deserve protection from removal, even after a significant passage of time, and then

focus on these groups, leaving others liable to removal. On such an approach it is especially important to determine which features make an otherwise unauthorized migrant deserving of regularization, so as to protect all and only those persons. A second approach would accept that, while it is really the “special” features of some of the unauthorized that justifies granting them immunity from removal and regularization of status, a large enough percentage of the total unauthorized population is likely to fit into one or more of these categories that it makes good sense, at least administratively, to simply apply the exception to everyone in a more general category, without bothering to see if the specific exemptions apply to individuals. We might, with such an approach, use a proxy like the passage of a certain amount of time as a stand-in for the traits that we think are actually morally significant.

Interestingly, we might see Joseph Carens’ well known “social membership” approach to regularization as a version of the second approach above. We can take the social membership approach to be one that focuses on only one special feature – “social membership”. On Carens’ account, being a social member of a society is the most common feature that makes an unauthorized migrant such as to justify regularizing their status. But, Carens thinks, after five years it will be so common for an unauthorized migrant to be a “social member” that we are better served to simply use that passage of time as a proxy rather than to enquire into the specific details of particular unauthorized migrants (Carens et al. 2010, 24-26).²

Brock’s discussion of the unauthorized is centred around five groups: the “Windrush Generation” in the UK; people with

² Carens also points out that using a proxy like time, rather than looking “under the hood”, avoids predictable bad uses of discretion and is more compatible with principles of liberal neutrality. See Carens et al. 2010, 25-26. I agree with both points.

Temporary Protected Status (“TPS”) in the US; children who arrived without authorization in a country at a young age who were brought there by their parents; people who migrated at a time when there was widespread tacit approval of such flows; and people who migrated in response to state system failures (Brock 2020, 88). One thing we notice about these categories right away is that the first two are very narrowly drawn, with reference made to specific historical cases or laws in particular countries. This makes it hard to know what sort of moral to draw from the discussion. Are we here focusing on particular policy failures in particular countries, or are these cases meant to be paradigm examples? Although Brock is not as clear on the matter as she might be, I will assume that we should take the “Windrush Generation” and “people with TPS” to be paradigms of undesirable situations that can and do arise in many countries, and not just about these specific situations.

Another issue also makes it difficult to interpret Brock’s account. For members of some of the groups above, it is not clear that they are properly “unauthorized” (or “irregular”, or “illegal”, so changing the terminology here will not help) migrants at all. This is clearest in the case of the “Windrush Generation”. The group most commonly included under this heading arrived in the UK with full legal authorization as children, and although the laws that authorized their entry and stay in the UK were eventually changed, this did not change the legal status of these people at all. They remained fully “legal” or “authorized” migrants. The problem in their case was that, because of some administrative mistakes (the destruction of their “landing cards”) they became predictable, but unintentional, victims of changes in UK’s policy towards actually unauthorized migrants, the so-called “hostile environment”. Because members of the Windrush Generation were not able to easily prove that they were authorized migrants, they were often unjustly treated as if they were unauthorized. This is a serious injustice, and one that arises in many states. Furthermore, it gives

us good reason to be very careful in designing approaches for enforcing immigration law.³ But, this is a different issue than the one Brock is directly interested in. Because members of the Windrush Generation are not unauthorized or irregular or illegal migrants, it is not clear to me that they tell us anything about when the regularization of the unauthorized is called for. A similar worry applies to at least some people with TPS in the US. TPS is available only for people who were already inside the US when the events necessitating the protection takes place.⁴ While some of those granted TPS will be unauthorized migrants at the time of the grant, many will not be at that time, and so long as they have TPS, they will never be unauthorized, irregular, or illegal. This will apply to people who entered the US on valid visitor visas, student visas, or other sorts of temporary visas, or who were eligible to come under a visa waiver program, but then could not return. Because this group of people with TPS are not, and never were, unauthorized migrants, it is not clear that they tell us anything about how we should respond to unauthorized migration, although their situation may be relevant for considering other important issues in relation to immigration policy.

Another factor about TPS (and, arguably, although perhaps somewhat less clearly, about programs such as “Temporary Protection” and “Safe Haven Enterprise” visas in Australia and complementary protection under the Qualifications Directive in

³ Jose Mendoza provides an instructive discussion of this matter in relation to US. See (Mendoza 2017, 116-123). I give a somewhat similar but more general discussion in my article, “Enforcing Immigration Law”. See Lister 2020a. A more wide-ranging discussion, that I agree with in part but disagree with in part, is developed by Amy Reed-Sandoval in her book *Socially Undocumented*. (Reed-Sandoval 2020).

⁴ See 8 USC §1254a(c)I(A)(i)-(ii).

the EU⁵) that complicates the analysis here is that, while it is often extended many times, it is only officially granted for a set, relatively short period of time, and never officially becomes presumptively permanent. (In the US, any particular grant of TPS is limited to 18 months, although some are shorter.) Many people with TPS cannot adjust their status to that of a permanent resident while inside the US.⁶ TPS can be, and has been, removed from migrants from several countries.⁷ These factors about TPS, and other forms of temporary protection, are arguably relevant in that they put constraints on the types of expectations those provided such protection can or should reasonably form. It would arguably be as unreasonable for someone who has received an initial, or even a second or third, grant of TPS to assume that their stay would be permanent as it would be for someone who has entered a country on a temporary work or student visa that allowed for an extended stay but not for permanent residence. Of course, in many cases where TPS has been renewed many times, no clear end to the

⁵ See Council Directive 2004/83/EC of 29 April 2004 for the Qualification Directive. For Temporary Protection Visas and Safe Haven Enterprise Visas, see Migration Act of 1958 s35A

⁶ The exception to this claim is relevant to the fact that not all of those with TPS were “unauthorized” at the time of entry, or ever. If someone with TPS entered the US with authorization (that is, if they did not “enter without inspection”), then, if they marry a US citizen, they may adjust their status to that of a permanent resident without leaving the country. This is so even if the person in question lost legal status before the grant of TPS, so long as he or she did not enter without inspection. Brock suggests that this is generally not so, but that conclusion applies only to those who “entered without inspection”. It is questionable whether such important differences in rights and opportunities should depend on the method of entry, but such distinctions are made in many countries. Additional discussion of this difference is beyond the scope of my analysis in this paper, but is worthy of future discussion.

⁷ A helpful list of countries that currently have, and those that have had but no longer have TPS may be found here: https://en.wikipedia.org/wiki/Temporary_protected_status

danger that called for the grant of protection is in sight or appears likely. I have elsewhere argued that, in such cases, even though we might have hoped to need only temporary protection, once it becomes plausible that the danger will be of indefinite duration, we have reason to make the protection permanent (Lister 2020b 225-228). Once again, there are features here relevant to thinking about migration policy in general, but it is not immediately obvious that they are relevant to questions about unauthorized immigration.

The group that Brock considers that is most widely recognized as needing regularization are the so-called “Dreamers” in the US, and others like them in other countries. These are people who were brought into a country at a young age – before they were old enough to have had agency in the matter attributable to them – and who have since spent their formative years, often a majority of their lives, in the host country. In such cases the unauthorized migrant cannot plausibly be considered a “wrongdoer”, and has a very strong claim to be a member of the larger society in much the same way as a “native born” citizen would.⁸ It is unclear to me that we need to consider the more controversial and less obvious claims that removing “Dreamers” would constitute “torture” or would violate the right to family life (Brock 2020, 98). Despite what it often suggested by Brock, it is unclear to me that these claims have a strong legal grounding.⁹ But, if the case for allowing “Dreamers” to remain can be made without these claims, we need not worry

⁸ Brock also includes the qualification that the people in question were brought to the host country by their parents, but how, exactly, the person in question got to the host country seems less obviously relevant to me, so I leave it aside.

⁹ That is, I am unaware of any courts or tribunals having found that removal in cases like this constitutes “torture”, or that lawfully authorized removal violates the right to family life any more than, say, imprisonment would. If, following Brock, we take a “practice based” account of human rights (Brock 2020, 43), it seems important to me to look to actual legal practice to find what falls under the rights in question, at least at the start of our inquiry.

about that. The larger issue for the analysis in this paper is that this group, while large in total numbers, is a relatively small portion of the total unauthorized population in any given country. And, it seems implausible to me to think that we should “boot strap” from a claim by “Dreamers” to remain in the country where they have grown up to the claim that their parents should also be allowed to remain, perhaps on the grounds of a supposed right to family life. In the case of the parents, the features noted above that make “Dreamers” especially sympathetic do not apply, and there would be a significant worry that such a policy would greatly incentivise unauthorized migration, including encouraging migrants to expose young children to danger. I will return to the problem of bad incentives below. Here the important conclusion is that the most important factors that tell in favour of regularization for “Dreamers” do not obviously seem to apply to the general unauthorized population.

Brock next considered a potentially much wider group, people who arrived in a country with “tacit permission” to migrate. I will suggest, however, that it is much harder to know who this concept applies to than is suggested, and that in most cases it is currently relatively small, on any plausible understanding of “tacit permission”. We start with the fact that essentially all states – certainly all of the states considered carefully in Brock’s text – have visa requirements for entry, even if only “deemed” ones in some cases.¹⁰ So, all of the relevant states at least make a *prima facie* claim to regulate entry. Despite this, of course, many people enter states without authorization. When can we say this is or was done with “tacit permission”? The rule cannot be, I think, that there must be

¹⁰ That is, in some cases a migrant to a country is treated as automatically having a visa, even though no application for or grant of an explicit visa is made. Travel under the US’s “visa waiver program”, and travel between Australia and New Zealand by the citizens of each country, are examples of this phenomena.

full or even nearly full success at keeping out unauthorized migrants. We know that full enforcement would not be achievable without unacceptable costs, both moral and fiscal, but this no more tells us that we “tacitly accept” the arrival of those unauthorized members of society who do manage to enter than the fact that we cannot reasonably hope to be fully successful in enforcing laws against murder tells us that we “tacitly accept” a certain number of murders. Any sense in which that is true is morally uninteresting, and does not suggest different treatment for those against whom the law is not effectively enforced.

The US receives the bulk of the attention in Brock’s account, so it is perhaps useful to consider it here. The US devotes a very significant amount of money and resources to border enforcement and other forms of migration enforcement. This amount has been increasing since, at least, 1986, with the passage of the Immigration Reform and Control Act. See (Massy, Durand, and Malone 2002, 73-141). It seems very odd to suggest that the US “tacitly accepts” the unauthorized population, given that it devotes so many resources to keeping them out and removing them if found, resources that could be spent more productively elsewhere. And, as Adam Hosein has shown, even if we accept that some employers instilled expectations of being able to find work in unauthorized migrants, it is not reasonable to generalize this into society-wide “tacit acceptance” (Hosein 2016, 164). Given this, it seems implausible to me to claim that “tacit acceptance” applies to unauthorized migrants in the US, at least if they arrived after 1986. (Most of those who arrived before 1986 were able to regularize under an amnesty provision in that law). And, even before the start of increased border enforcement, much of the unauthorized migration to the US was circular and temporary, with migrants, typically young men, coming for less than two years and then returning home. Increased border enforcement has had the perverse result of turning this once-temporary population into a

permanent one (Massey 2006, 136-138), but it seems implausible to me that this has happened with the “tacit acceptance” of the US government. It is likely that there are cases where it is plausible to say that a government is “tacitly accepting” an unauthorized population in a morally relevant way. But, it seems implausible to me that this ground applies to very large numbers of unauthorized migrants in the US now or most other countries.

The last group that Brock considers is people who migrated in response to “state system failures” (Brock 2020, 97-98). The most obvious group to fit this category is people who ought to have been able to apply for asylum or related forms of protection, but who could not, because of restrictive interpretations of protection obligations, lack of access to support, and so on. The number of people who fall into this category is, unfortunately, not small. However, unless we take a controversially strong interpretation of “state system failures”, including in it vastly more people than fall under the refugee convention and associated forms of complementary protection, it is likely that this group will not make up the majority of the unauthorized population in many countries. Applying such a wide understanding of “state system failure” would, however, make it much harder to come to practical agreement on how to respond to those who have migrated without authorization for these reasons. And, the factors that tell most strongly for regularization here – that the people at issue *should have been* covered by *existing* obligations recognized by “host” states – do not generalize across the unauthorized population as a whole, or even very large percentages of it.

Brock has presented us with five groups of unauthorized migrants, each of whom has some claim to regularization, although I have tried to show that these claims are often more complicated than suggested in the text. The conclusion I want to draw at this point, however, is that at best we have a number of disparate

reasons that do not add up to a general account. And, more importantly, even when we take these reasons into account, we will be left with a large group of unauthorized migrants who do not fit into any of these groups. We might call this group the “generic unauthorized”. These are people who live in a country without authorization, after having over-stayed a visa, or after violating its conditions, leading to its cancelation, or who have entered without inspection, but who do not fit into any of the categories above. My impression is that, in many countries with significant unauthorized populations, this will be the single largest group, perhaps an overall majority of the unauthorized. But, at the least, it is clear that the “generic unauthorized” make up a significant percentage of the unauthorized population. If we want to give a full account of how to respond to unauthorized migration, it is important to explicitly consider them.

I further claim that there is a methodological advantage to starting with thinking about the generic unauthorized. In doing so, we need not deny that at least some members of the above groups are “special” in some ways, and may well be deserving of special treatment. But, if we are able to come up with a general approach, one that does not depend on the special features of an unauthorized migrant, then it can be applied to anyone who meets the basic rule or requirements, without having to show further particular features. Such a rule could have significant efficiency values, especially if it required, as seems likely to me, less detailed adjudication or investigation. This would be a benefit for the host state, but also plausible for the unauthorized population, too, as it will often be easier to establish that one falls under a general rule than that one has particular “special” features.

We can get an idea of the advantages of looking for a general approach, one that would apply to the generic unauthorized, by drawing a comparison with the relative ease of qualifying for TPS

in the US, where it is only necessary to be in the US at the time that TPS is granted and to be from the relevant country, as opposed to qualifying for asylum, where it is necessary to make a personalized showing of a well-founded fear of persecution on the basis of a protected ground. And, we can now see how a general or generic approach can help us deal with some of the special cases that Bock focuses on. Consider again TPS and other forms of temporary protection in other countries. As Brock notes, right now there is often no way out of “temporary” status for many people who hold this type of protection.¹¹ However, if we have a general account of why, how, and when people who have lived in a society for some period time, even if they are unauthorized, should have access to full membership, then it would be very odd to not extend this account to people who are being provided temporary protection in that society. Temporary protection is most appropriate when the danger feared is expected to be temporary. I have elsewhere argued that, when a presumption of temporariness can no longer be maintained, there is good reason to move to permanent protection (Lister 2020b, 227-228). But, beyond that, if the passage of time suffices as a proxy for the grounds for granting membership to a generic unauthorized person, then it would certainly suffice when we extend this to those given temporary protection.

This suggests that we ought to focus on something like Carens’ social membership account. On this approach, over time, as people live and work in a society, they become members of the society in much the same way as others with legal status, regardless of the way they entered (Carens et al. 2010, 18-21). Brock herself offers a similar story, with her discussion of the need to “respect located life plans,” a supposed “right not to be kept in limbo” and a

¹¹ For a helpful general discussion of problems with “temporary” protection, see Buxton (on-line first 2020).

supposed “need to feel settled” (Brock 2020, 102-103).¹² It is not clear to me how Brock, herself, sees these arguments as connected to the five special cases (and situations where unauthorized immigrants have family ties – another “special” case¹³). I do not think that they can easily be abstracted from the special cases. But, if we do take a “social membership” approach of this sort, we are on the path of setting out a general argument that would apply to the generic unauthorized population, even if they do not have any of the “special” features discussed above.

The social membership / passage of time approach brings with it worries of its own, however. First, we may worry that any selected period of time is arbitrary. Carens himself notes this, but rightly points out that this is both unavoidable and not a deep problem (Carens et al. 2010, 24-26). We see this when we note that there are similar issues in relation to essentially all policies that involve time – voting age, drinking age, when people become eligible for retirement, and so on. In each case, we have to pick a point and use it, even if it does not perfectly conform to the underlying features we are interested in, but the gains in efficiency and certainty outweigh the possible loss in accuracy.¹⁴

¹² The latter two arguments have significant similarity to Adam Hosein’s “Autonomy argument” for legalization. See (Hosein 2016, 174-177). Brock suggests that her “life plans” argument differs from Carens’ “social membership” approach in that it avoids potentially exclusionary nationalistic elements that she finds in the idea of “social membership”, but as those features stem not from Carens – and I believe he would reject them – but from work by Margalit and Raz, which Carens does not obviously accept, the difference between the approaches seems smaller to me than Brock suggests.

¹³ I discuss this topic briefly in (Lister 2018, 166-168).

¹⁴ This possible loss in accuracy should not be over-estimated, given that in many cases we should not expect adjudicators to be especially adept at measuring the feature in question, and given that bias is always possible.

An arguably more important problem is that a clearly placed and established rule granting regularization after a set period time – especially if it is relatively short – may itself help promote more behaviour of the sort we are trying to remedy. If unauthorized migrants know that, if they manage to spend five years in a society and meet certain other basic requirements, they will be allowed to regularize their statues, it is very likely that this will increase unauthorized migration.¹⁵ If this is so, then we will have created a new “pull” factor for unauthorized migrants, encouraging them to come despite the wishes of the host society, and then obliging the host society to either try to remove them sooner or regularize them after the set period of time.¹⁶

People who think that open borders are required by considerations of justice may not see this as a problem. But, for others, it presents a significant worry. From a practical perspective, this approach may have other undesirable side effects. If in fact this approach encourages increased unauthorized migration, as seems likely, in states where this is opposed by significant percentages of the population, it is likely that the states will shift to increasingly strong measures to restrict this movement. These measures may include making border crossing even more dangerous and difficult (as has happened already on the southern US border and in the Mediterranean Sea with the EU), “hostile environment” type policies designed to get unauthorized migrants to “self-deport”, and other methods. Even though some of these

¹⁵ This is noted by Alex Aleinikoff in his commentary on Carens’ social membership argument. See (Aleinikoff 2010, 111).

¹⁶ When I lived in Philadelphia and worked regularly with the Russian immigrant population, there was a perpetual belief in the community that people who lived without authorization could regularize their status after five years. This was false, and yet despite being false, it shaped the behaviour of many migrants. It seems very likely that if the belief were true, and well know, it would have a much larger effect.

policies are likely to be self-defeating, as the case of US policy on its southern border shows (Massey 2007, 129-138), they are nonetheless predictable and, I think, likely responses to the increased unauthorized migration that would plausibly follow set policies of regularization after relatively short periods of time.

With a policy of regularization of the unauthorized after a set, relatively short, period of time, we would also likely expect many types of authorized movement to become more difficult, especially for people from “suspect” countries. Already the stringency of visa requirements for travel and short stays for people from “suspect” countries are typically greater than for people coming from presumptively “low risk” countries. This is not obviously irrational on the part of receiving states, as visa over-stayers make up a significant percentage of the unauthorized in many countries. But, any increase in stringency would put extra burdens on many people who may already be less well off. In addition to simply granting fewer visas, we might also expect, if regularization policies become wide spread, growth in such measures as requiring large bonds from visa applicants, required family separation, with some “core” family members remaining behind in the home country, shorter visa periods, and intrusive asset and “local ties” testing, as well as increased monitoring in country. Perhaps most importantly, rules such as these would make it even more difficult for people in need of asylum to travel legally to countries where they might be able to make a claim. Such travel is already very difficult in most cases, but would likely get worse in the face of set regulation policies. None of these developments seem desirable to me. Perhaps they are worth risking, if the justice gains from a set regularization policy is great enough. But, it seems to me, these issues must be faced more squarely than has been done in most of the philosophical discussion of unauthorized migration, including in Brock’s discussion of the topic.

I assume that Brock, like most people working on migration, would find the developments that I suggest are likely to result from set regularization programs to be undesirable. At this point, a common response within political philosophy is to note that these results are undesirable, and that they are not strictly speaking necessary or logical implications of regularization plans. It would be possible to put in place a regularization plan, have it lead to an increase in unauthorized migration, and yet not respond in any of the ways noted above. While this is true, I do not think it can suffice as a response. While I would claim something similar about political philosophy in general, I think this point is especially clear for those such as Brock who, rightly, want their work to have practical impact and importance. In such cases it is especially important to consider not only the desired or most favourable outcomes of the policy changes we propose, or of the rules and principles that we would have guide our policy changes. We must also consider the expected outcomes – those that are reasonably predictable given the favoured policies or principles. It will not do to simply say that people could do better, unless we have some plausible reason to think that they will do so. In philosophical discussions of unauthorized migration, it seems to me that so far too little attention has been given to the completely plausible and predictable undesirable results that would follow many approaches to regularization.

Where do we go from here? I am genuinely unsure, which is why I think this is one of, perhaps the, hardest problem to deal with in relation to migration. I see three main options, each with significant draw-backs. The first would be to avoid “general” regularization schemes and to focus on “special” cases, as Brock largely does. This could be joined with particularized actions to suspend removal for individual unauthorized migrants when it was held that the harm of removal would be worse than the “wrong” of unauthorized entry or presence, given the length of stay, ties to

the community, family, and so on. Such an approach would have significantly less negative impact of the sorts considered above. (It would not, however, have no impact of that sort, I think. It would encourage more unauthorized migrants to bring family members, including children, with them, and to stay longer, rather than to engage in shorter term circular migration.) This approach would, however, have the major disadvantage of leaving a large population of “generic” unauthorized migrants with only ad hoc and discretionary protection.

The second approach would be to have set period of time after which regularization would be largely automatic, assuming certain fairly formal requirements were met, as argued for, on different grounds, by Carens and Hoesin. It may be that this is the best approach, and we simply have to bite the bullet if and when this leads to increased unauthorized migration and likely undesirable forms of increased migration regulation. Of course, it is open to the proponents of this approach to argue against increased regulation, but they should not suppose that it will be unlikely. This approach does have the clear advantage of offering aid to the generic unauthorized.

A third approach would have special treatment for select unauthorized migrants, including, most likely, at least some of those discussed by Brock, but would also have occasional, ultimately randomly spaced amnesties for migrants who had been in the country for periods of time chosen before the amnesty. Such an approach would, perhaps, have less of a “pull” factor for unauthorized migrants, but would also at least reduce the problems that come with a large population of long-term unauthorized migrants who have no chance to regularize their status. This approach might also appeal to those who hold a view like Michael Blake’s, where the “generic” unauthorized are not owed regularization as a matter of justice, but who hold that the political

value of mercy may call for the periodic regularization of generic unauthorized, even if justice does not (Blake 2020, 215-218). For those who hold that even the generic unauthorized have a claim in justice to regularization, however, the random and unsystematic element of this last approach is likely to be seen as adding a new injustice on top of another when it adds uncertainty to the lives of already marginalized people.

Which among these approaches is the most desirable? I am genuinely unsure, although I lean towards the second or third, despite their problems. It seems possible to me that the right approach will vary from country to country, depending on the size of the unauthorized population, how much of it is in the “generic” category, and the predictable impact of different policies, given the history, culture, and geography of the state in question. What does seem clear to me, however, is that, in considering unauthorized migration, it is important to consider the generic case, and not only special ones, or else we will be left with an unfinished account.

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