The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory

Howard F. Chang
University of Pennsylvania Law School

Follow this and additional works at: https://scholarship.law.upenn.edu/faculty_scholarship

Part of the Ethics and Political Philosophy Commons, Immigration Law Commons, Jurisprudence Commons, Labor Economics Commons, Law and Economics Commons, Law and Politics Commons, Law and Society Commons, and the Public Law and Legal Theory Commons

Repository Citation
https://scholarship.law.upenn.edu/faculty_scholarship/153

This Article is brought to you for free and open access by Penn Law: Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship at Penn Law by an authorized administrator of Penn Law: Legal Scholarship Repository. For more information, please contact PennlawIR@law.upenn.edu.
The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory

Howard F. Chang†

Introduction ................................................................. 1
I. The Economic Effects of International Labor Migration .... 3
   A. Distribution of the Gains from International Migration . 4
   B. Distribution Among Natives in the United States ....... 7
   C. Protectionism and Distributive Justice ................. 10
II. Liberal Ideals and Global Distributive Justice ............. 11
   A. State Coercion ................................................... 15
   B. Collective Self-Governance ................................. 17
   C. Involuntary Residence ....................................... 19
   D. The Absence of a Cosmopolitan State ................... 21
Conclusion ................................................................. 24

Introduction

In recent decades, progress toward a world economy that is integrated across national boundaries has been especially dramatic in the liberalization of international trade in goods. Economists generally welcome this development, prescribing free trade as the regime that maximizes global economic welfare. Economists also recommend liberalized trade as a policy that is likely to produce gains for each national economy. Economists recognize that the same theory that applies to goods also applies to international trade in other markets. Nations can gain from not only the free movement of goods across national boundaries but also the free movement of labor across national boundaries.1

The basic intuition for this result derives from the gains from international trade in the labor market. We would expect labor to migrate from low-wage countries to high-wage countries in pursuit of higher wages. As a

† Earle Hepburn Professor of Law, University of Pennsylvania Law School; Visiting Professor of Law, University of Chicago Law School. Copyright © 2008 by Howard F. Chang. I would like to thank Joseph Carens, Stephen Perry, Joshua Rabinowitz, and conference participants at Cornell University, at the University of Pennsylvania, at Sacramento State University, and at the University of Gloucestershire for helpful comments.

result of migration, world output rises. Higher wages in the host country imply that the marginal product of labor is higher there than in the source country. That is, higher wages for the same worker mean that the worker produces more value in the host country than in the source country. Labor migration generally leads to net gains in wealth for the world as a whole because labor flows to the country where it has the higher value use. For this reason, economic theory raises a presumption in favor of the free movement of labor. Migration restrictions distort the global labor market, producing a misallocation of labor among countries, thereby wasting human resources and creating unnecessary poverty in labor-abundant countries. The larger the inequality in wages between countries, the larger the distortion of global labor markets caused by migration restrictions, and the larger the economic gains from liberalizing labor migration. Given the degree of wage inequality in the world today, it should be apparent that the gains from liberalized migration are huge.

Despite the presumption that economic theory raises in favor of international labor mobility, the nations of the world maintain restrictions on immigration and show little inclination to liberalize these barriers significantly. To some degree, however, globalization proceeds in the labor market despite the immigration barriers that states raise. In the United States, for example, there are probably more than ten million unauthorized immigrants residing among us today, accounting for more than 3% of the total U.S. population, with 700,000 more unauthorized immigrants arriving each year on average. Thus, the global labor market resists attempts by states to restrict the flow of labor across borders.

Most unauthorized immigrants in the United States come from Mexico, where workers earn one-ninth of the amount that they can earn in the United States. Given the disparity in wages between these labor markets and the tight restrictions on the legal entry of workers, the incentives for illegal immigration are enormous. Indeed, in recent years, hundreds of unauthorized immigrants have died attempting to enter the United States from Mexico under dangerous conditions, and these deaths have given a sense of urgency to the campaign for liberalized immigration laws.

Efforts to liberalize restrictions on the flow of workers into the United States have picked up momentum recently as President George W. Bush has proposed an expanded guest-worker program that would allow unau-

---

4. Passel, supra note 3, at +.
5. See Mexican Deportees Report Good Treatment, UPI, Apr. 21, 1996, available at LEXIS, Nexis Library, UPI File (reporting that Mexican immigrants received an average of $278 per week in the United States, compared with the equivalent of $30.81 per week in Mexico).
The Economics of International Labor Migration

In this article, I argue that considerations of not only economic efficiency but also distributive justice militate in favor of liberalized immigration laws in countries like the United States. First, in Part I, I review the economic theory and empirical evidence regarding the impact of international labor migration. This literature indicates that even partial liberalization of international migration would produce substantial increases in the world’s real income and improve its distribution by reducing international inequality. This literature also suggests that immigration has had only a small adverse effect on the distribution of income among natives in the United States. Furthermore, economic theory suggests that the most efficient response to concerns about the distribution of income among natives is to increase the progressivity of our tax system, rather than to restrict immigration. Restrictive immigration policies are not only likely to be relatively costly as an instrument for redistribution among natives but also perverse from the standpoint of global distributive justice. In Part II, I turn to the ethical question of whether countries of immigration have a moral duty to reduce global economic inequality. I argue that the liberal ideals espoused by countries like the United States require a global view of distributive justice, and I respond to some of the alternative conceptions advanced by critics of this cosmopolitan perspective. Finally, in Part III, I conclude with normative implications for immigration reforms in liberal states.

1. The Economic Effects of International Labor Migration

A survey of recent estimates of the economic impacts of international labor migration indicates that liberalization of this migration would produce substantial increases in the world’s real income and improve its distribution. Moreover, estimates of the impact of immigration on native workers in the United States indicate that only the least skilled native work-

ers suffer adverse effects and that these effects are small. Although immigration restrictions may prevent these adverse effects, these restrictions are not only likely to be costly as a response to concerns about income distribution among natives but also perverse from the standpoint of global distributive justice.

A. Distribution of the Gains from International Migration

Some economists have attempted to estimate the gains that the world could enjoy by liberalizing migration. For example, in an early study using data from 1977, Bob Hamilton and John Whalley produced a range of estimates based on various assumptions about critical parameters, but all of their estimates suggest that the potential gains are enormous.\(^\text{11}\) Many of their estimates indicate that the elimination of immigration restrictions could more than double the world's real income, and even their most conservative estimate indicates that the world's real income would rise by 13\%.\(^\text{12}\) They also find that liberalized migration would reduce global inequality by raising wages dramatically for the world's poorest workers.\(^\text{13}\)

In a recent study applying the same assumptions to 1998 data, Jonathon Moses and Bjorn Letnes produced similar results, finding that "the estimated efficiency gains from liberalizing immigration controls have only increased over time" as a result of the increase in "wage . . . inequalities over the past 20 years."\(^\text{14}\) Even when they adopt more conservative assumptions, "the estimated gains remain substantial," ranging from 5.6% to 12.3% of the world's real income, or from $1.97 trillion to $4.33 trillion per year.\(^\text{15}\) Given that even their most conservative estimates "exceed the combined current levels of development assistance and foreign direct investment to the developing world," they suggest that "international migration may be one of the most effective means of shrinking the income gap that separates rich and poor countries."\(^\text{16}\) Furthermore, their estimates of the benefits of partial liberalization of migration controls indicate that "a substantial portion of these gains can be reaped without allowing for full migration," because even small increases in migration "could produce significant economic gains," large enough to "dwarf those generated by traditional development policies."\(^\text{17}\)

The World Bank has recently studied the potential gains from such a

\(^{11}\) See Bob Hamilton & John Whalley, Efficiency and Distributional Implications of Global Restrictions on Labour Mobility, 14 J. Dev. Econ. 61 (1984).

\(^{12}\) See id. at 70–72.

\(^{13}\) See id. at 73–74.


\(^{15}\) Id. at 1616. The estimated gains in what they consider "the most reasonable . . . scenario" are $3.39 trillion per year, or 9.6% of the world's real income. Id. at 1615-16.

\(^{16}\) Id. at 1620.

\(^{17}\) Id. at 1610; see id. at 1616-18.
limited increase in international migration. The World Bank economists consider the effects of an increase in migration from "developing" countries to "high-income countries" sufficient to increase the labor force in the host countries by 3% by the year 2025. They conclude that this scenario "would generate large increases in global welfare," increasing the world's real income by 0.6%, that is, by $356 billion in 2025.

Would the effects of immigrant workers in the labor market, however, be in the economic interest of natives in the countries of immigration? If we examine the impact of immigrants in the labor market, we find that the natives of a host country, taken together, will gain from the immigration of labor. Wages may fall for those native workers who compete with immigrant labor, but this loss for those workers is a pure transfer among natives: it is offset by an equal gain for those who employ labor and ultimately for consumers, who obtain goods and services at lower cost. Furthermore, natives gain from employing immigrant workers: they gain surplus in excess of what they pay immigrants for their labor. Thus, natives as a group enjoy a net gain from employing immigrants. In fact, the World Bank economists estimate that the high-income countries receiving immigrants in their liberalization scenario would enjoy an increase of 0.4% in their real income, that is, a gain of $139 billion.

In addition, immigrants also gain from their own migration. They obtain higher wages than in their source countries and thereby enjoy far larger gains per capita than natives in host countries do from their immigration. In the scenario analyzed by the World Bank, the additional migrants allowed to move under liberalized immigration policies nearly triple their own real income on average, enjoying a gain of $162 billion, even after subtracting remittances sent back to those left behind in their countries of origin. In this sense, labor migration represents a form of international trade in which the source country exports labor to the host country. Like international trade in goods, labor migration allows foreign suppliers to sell their services to domestic buyers, allowing both parties in each transaction to gain from trade.

19. Id. at 25.
20. Id. at 26.
21. See id. at 31.
23. See id. at 138-39.
24. See id. at 139 (stating that immigrants are paid less than the value of the new goods and services that they help produce).
25. See id.
26. See World Bank, supra note 18, at 34.
27. See id. (predicting that the migrants would increase their real income by 199%).
28. See National Research Council, supra note 22, at 146 (comparing immigration to international trade in products).
29. See id. (concluding that the reasons explaining the net national gain from trading with other countries also explain the net national gain from immigration).
In theory, migration may make those left behind in the source countries worse off insofar as they no longer enjoy the gains from trade that they enjoyed from employing the workers who have emigrated. Workers left behind may enjoy an increase in wages as a result of the departure of competing workers, but employers and their consumers would lose more from the departure of those emigrants than the workers left behind would gain from their departure. As long as the migrants allowed to move under the liberalization analyzed by the World Bank send the same proportion of their income to those left behind in source countries as that sent by existing migrants, however, the World Bank estimates that with these remittances, those left behind would enjoy a net increase of 0.9% in their real income, that is, a gain of $143 billion. Developing countries, including the migrants allowed to move in this scenario, enjoy an increase of 1.8% in their real income. Thus, “the relative gains are much higher for developing-country households than high-income country households,” not only increasing the world’s real income, but also reducing international income inequality.

An understanding of the economic effects of international labor migration gives us some reasons to question the claims of Thomas Pogge, who argues that “those who accept a weighty moral responsibility toward needy foreigners should devote their time, energy, and resources not to the struggle to get more of them admitted into the rich countries, but rather to the struggle to institute an effective programme of global poverty eradication,” which would transfer resources from rich countries to programs to help the global poor. Although he agrees that “richer states ought to admit more needy persons,” he explains that “we should expend our scarce political energy and resources” on “other moral projects with regard to which our mobilizing efforts can be much more effective.” Our review of the economics of labor migration, however, casts some doubt on the empirical claims on which Pogge relies.

First, Pogge notes that the “number of desperate foreigners” that richer states “might conceivably come to admit ... are ridiculously small in comparison to the number of those who are in desperate need.” This observation would suggest that liberalized immigration would be relatively ineffective in reducing global poverty, but only if we assume that only those who migrate would benefit from liberalization. Labor migration confers important benefits on the poor who remain in source countries, however, not only through remittances but also by increasing the wages of workers left behind. Given this wealth transfer to poor workers and away from their employers in developing countries, migration would not only

30. See World Bank, supra note 18, at 57-58.
31. See id. at 34.
32. See id. at 31.
33. Id. at 35.
35. Id. at 12.
36. Id. at 13.
increase incomes for migrants but also tend to reduce income inequality in poor countries.

Second, Pogge argues that transfers of wealth from rich countries to programs for the global poor would be more feasible politically than liberalized immigration policies. The economics of labor migration, however, indicate that liberalized immigration policies would confer net gains not only on the migrants and their source countries but also on natives in host countries. These gains from trade suggest a reason to favor migration over transfer policies on the merits: whereas labor migration is a positive-sum game for the world as a whole, transfers are at best a zero-sum game. Furthermore, these gains for natives of host countries suggest some reason to believe that liberalized admissions are more likely to prove politically feasible than the transfer policies that would produce the same benefit for the global poor, despite Pogge’s claims to the contrary. After all, whereas transfer policies would impose costs on rich countries, liberalized admissions for workers from poor countries would confer net economic benefits on natives of host countries.

B. Distribution Among Natives in the United States

Despite the significant gains from international trade in the labor market, countries often restrict immigration to protect native workers from the unemployment or the wage reductions that the entry of foreign workers would supposedly entail. In this sense, immigration barriers, like trade barriers, are protectionist: they are designed to protect natives from foreign competition. Protectionists often defend these barriers as policies that promote a more equal distribution of income among natives, pointing to the adverse effects of immigration on the welfare of the least skilled workers in particular. Contrary to popular belief, however, these concerns for distributive justice do not provide a sound justification for our restrictive immigration laws.

First, as I have noted elsewhere:

[C]oncerns regarding income inequality do not justify any restrictions on skilled immigration, because skilled immigrants not only increase total wealth for natives but also promote a more equitable distribution of income among natives. They are likely to have an adverse effect only on competing skilled natives and increase the real wages of everyone else, including less

37. See id. at 16-22. Pogge proposes raising funds for the global poor from "general tax revenues" in "rich countries" or from other sources that would place a fiscal burden on the global rich. Id. at 19; see id. at 19-21.

38. To the extent that Pogge relies on "the hostility and anger" that poor immigrants "generate among our compatriots" to support his claims, id. at 22, he may be unduly pessimistic about our ability to overcome such intolerance. As I have argued elsewhere, these xenophobic or racist attitudes may be "more amenable to reform than the tendency of natives to pursue their own self-interest." Howard F. Chang, Immigration and the Workplace: Immigration Restrictions as Employment Discrimination, 78 Chi.-Kent L. Rev. 291, 320 (2003). "The evolution of attitudes in the United States toward ethnic groups once greeted with hostility offers hope that more tolerant attitudes will eventually prevail with respect to those who currently dominate the immigrant flow." Id.

39. See Chang, supra note 38, at 308.
skilled natives, who enjoy the benefits of a greater supply of skilled labor. Therefore, the pursuit of a more equal distribution of income would at most justify concerns regarding unskilled immigration, which could have an adverse effect on the real wages of unskilled native workers.\footnote{Id.}

Second, studies of the effects of immigration in U.S. labor markets have shown little evidence of any significant effects on native wages or employment, even for the least skilled native workers.\footnote{See George J. Borjas, The Economics of Immigration, 32 J. ECON. LIT. 1667, 1697-98 (1994) (concluding that empirical estimates suggest that the effect of immigration on the labor market outcomes of natives is small); Rachel M. Friedberg & Jennifer Hunt, The Impact of Immigrants on Host Country Wages, Employment and Growth, J. ECON. PERSP., Spring 1995, at 23, 42 (same).} Given the small effects of immigration on native wages and employment, protectionist policies seem particularly misguided. David Card’s influential study of the effect of the Mariel Cubans on the Miami labor market, for example, produces fairly typical results for this literature: he found that the arrival of 125,000 Cubans in 1980, which increased the supply of labor in Miami by 7% almost overnight, had virtually no effect on the wages and employment opportunities for workers in Miami, including unskilled whites and unskilled blacks.\footnote{See David Card, The Impact of the Mariel Boatlift on the Miami Labor Market, 43 INDUS. & LAB. REL. REV. 245, 256 (1990).}

Immigrants have had little adverse impact on the wages and employment of natives in part because “the demand for labor does not remain fixed when immigrants enter the economy.”\footnote{Chang, supra note 38, at 306.} as I have explained elsewhere: “Immigrant workers not only supply labor, for example, they also demand goods and services, and this demand will translate into greater demand for locally supplied labor.”\footnote{Id.} An influx of labor will also create a profit opportunity for investors, which in turn will attract capital to the economic activities employing the immigrant labor. This expansion in the sector of the economy employing this labor will also increase the demand for that labor, which in turn would tend to offset the effect of increased supply.\footnote{Thus, by shifting resources to the sectors of the economy employing immigrants, an economy can mitigate or even eliminate the adverse effects that immigrant workers may have on the wages of competing native workers. See Noel Gaston & Douglas Nelson, Immigration and Labour-Market Outcomes in the United States: A Political-Economy Puzzle, 16 OXFORD REV. ECON. POL’Y 104, 108 (2000) (noting that “some of the adjustment... will occur via a change in the output mix, reducing the... costs to the competing factor (i.e. domestic unskilled labour”).}

Furthermore, the empirical evidence indicates that immigrants and natives are not perfect substitutes in the labor market, so they often do not compete for the same jobs.\footnote{See generally Jean Baldwin Grossman, The Substitutability of Natives and Immigrants in Production, 64 REV. ECON. & STAT. 596 (1982).} In fact, labor markets are highly segregated, with immigrant labor concentrated in some occupations while natives are...
Immigrants compete with one another far more than they compete with natives. Indeed, some immigrant labor can be a complement rather than a substitute for some native labor, so that an increase in the supply of immigrant labor will increase the demand for native labor and thus have positive effects on native wages rather than negative effects.

Nevertheless, some economists claim that immigration has had a significant adverse impact on the least skilled native workers. It is important, however, to interpret these claims carefully in light of the positive effects of immigration on the demand for native labor. Recent work by Borjas, in particular, is often cited by restrictionists for his large estimates of the effect of immigrants on native wages. In a study published in 2003, he attempts to estimate the effect of all immigration between 1980 and 2000 on native workers in the United States, concluding that the large influx of workers over these two decades reduced the wage of the average native worker by 3.2% and the wage of high-school dropouts by 8.9% during this period. These results, however, are based on a simulation that makes two extreme assumptions. First, he assumes that immigrants are perfect substitutes for natives within each class of labor. Second, he assumes that the capital stock is fixed and does not respond to this immigration by increasing the supply of capital to the economic activities employing this expanded supply of labor, thereby increasing the demand for the labor in question. Given these unrealistic assumptions, his simulation is inherently biased in favor of finding large adverse effects on native workers.

A more recent study by Gianmarco Ottaviano and Giovanni Peri uses a simulation that instead allows the supply of capital to adjust and allows immigrants and natives within each class of labor to be imperfect substitutes. By relaxing the unrealistic assumptions used by Borjas in his study, Ottaviano and Peri produce dramatically different results. Once they allow the capital stock to adjust fully, they estimate that all immigration into the United States from 1990 to 2004 increased the average wage of native workers by 1.8% and decreased the wage of native high-school drop-

47. See NATIONAL RESEARCH COUNCIL, supra note 22, at 218 (concluding that the data suggest that "the jobs of immigrant and native workers are different").

48. Thus, immigration does have a more substantial adverse effect on the wages of other immigrants, who are much closer substitutes for new immigrants. See id. at 223 ("The one group that appears to suffer significant negative effects from new immigrants are earlier waves of immigrants, according to many studies.").

49. See, e.g., GEORGE J. BORJAS, HEAVEN'S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY 99 (1999) (claiming that immigration "transfers a substantial amount of wealth away from the workers who compete with immigrants to the natives who have skills or physical resources that benefit from the presence of immigrants" and that "it is the less-skilled natives who pay the price of immigration").


51. Id. ("[a]ssuming that the capital stock is constant").

outs by only 1.1%. Indeed, they find that all native workers with at least
a high school education enjoy increased wages as a result of this immigration
rather than reduced wages. Thus, this influx of immigrants had an
adverse effect only on the shrinking minority of native workers with less
than a high school education, and this effect was quite small.

C. Protectionism and Distributive Justice

We may want to prevent even relatively small reductions in the wages
of our least skilled workers, and protectionists may defend immigration
restrictions on this basis. Like trade barriers, however, immigration barri­
ers sacrifice gains from trade and thus reduce the total wealth of natives as
a group. In this sense, protectionism is a costly way to redistribute wealth
from some natives to others. We could redistribute the same wealth
through tax policies and transfer programs rather than through protection­
ism and probably would thereby make all classes of natives better off than
they are under restrictive immigration policies, because immigration pro­
duces net gains for natives as a group.

If we wish to protect unskilled native workers from adverse changes in
the distribution of income, then progressive reforms of tax and transfer
policies are likely to prove less costly than protectionist immigration
restrictions. As long as immigration increases total wealth, those who gain
from immigration can compensate those who lose and still be better off.
Redistribution can shift the costs of liberalized immigration policies to the
beneficiaries of liberalization. Protectionist policies currently impose an
implicit tax on natives that probably costs them more than the explicit tax
that would be necessary to compensate unskilled native workers for the
effects of liberalized immigration policies. Once we recognize that pro­
tectionism is merely a disguised tax-and-transfer program, it should be
apparent that there is no good reason to favor protectionism over less costly
and more efficient transfer policies.

We could probably achieve redistribution more efficiently and equita­
bly by expanding programs already in place in our tax system. Given the
small adverse effects of immigration and the small number of native work­
ers who find their wages reduced by the influx of immigrant labor, a fairly
small increase in the progressivity of our tax rates would suffice to com­
pensate the few who lose income as a result of competition from immigrant

53. See id. at 4.
54. See id.
55. See Borjas, supra note 49, at 27 (noting that "by 1998, only 9 percent of natives lacked a high school diploma" and showing how this percentage declined steadily over the preceding four decades); National Research Council, supra note 22, at 228 (noting that "by 1995, high school dropouts represented less than 10 percent of the American workforce" and were "a declining group of American workers").
56. See Chang, supra note 38, at 308.
57. See id. at 309-11.
58. See id. at 309.
59. See id.
workers. We could make Social Security taxes more progressive, for example, or we could increase the earned income tax credit and liberalize its requirements.

Furthermore, this discussion of distributive justice among natives has ignored the benefits that the immigrants themselves enjoy from their access to our labor markets and the benefits that flow to people overseas in the form of remittances. This discussion has assumed that the welfare of immigrants and people overseas is of no concern to us. Once we give some weight to the interests of those born outside our borders, however, we have yet another reason to liberalize immigration. Once we recognize any moral obligation to reduce poverty abroad and to reduce global inequality, we must confront the significant economic harm we inflict on those we exclude under our restrictive immigration laws. Given the adverse effects of restrictive immigration policies on the poor abroad, considerations of global justice militate in favor of progressive fiscal policies and against protectionism as a method of addressing any concerns regarding the distribution of income among natives.

II. Liberal Ideals and Global Distributive Justice

Immigration restrictions keep disadvantaged groups of people in conditions of poverty and deprive them of equal access to important economic opportunities. In this sense, as I have argued elsewhere, immigration restrictions are much like laws mandating employment discrimination or residential segregation in the domestic context. When it comes to racial segregation in the domestic context, we condemn segregation for keeping disadvantaged groups in an underclass, cut off from valuable social and economic opportunities. For example, our courts refuse to enforce zoning ordinances or racially restrictive covenants that exclude blacks from white neighborhoods. We would not consider such laws or covenants any more acceptable if they excluded aliens rather than racial minorities from local communities. If we would reject such exclusionary practices as vio-

60. See id. at 310-11.
62. See Shelley v. Kraemer, 334 U.S. 1 (1948) (holding that the Fourteenth Amendment prohibits states from enforcing racially restrictive covenants); Buchanan v. Warley, 245 U.S. 60 (1917) (holding that the Fourteenth Amendment prohibits laws that forbid blacks to reside in white neighborhoods).
63. See Graham v. Richardson, 403 U.S. 365, 372 (1971) (declaring that "classifications based on alienage, like those based on . . . race, are inherently suspect"). The author of the Graham opinion would later explain that "aliens often have been the victims of irrational discrimination" and "historically have been disabled by the prejudice of the majority," which "led the Court to conclude that alienage classifications in themselves supply a reason to infer antipathy . . . and therefore demand close judicial scrutiny." Toll v. Moreno, 458 U.S. 1, 20-21 (Blackmun, J., concurring) (quoting Personnel Adm'r v. Feeney, 442 U.S. 256, 272 (1979)). The Graham court struck down state laws conditioning access to welfare benefits on either U.S. citizenship or residence in the United States for a specified number of years. See Graham, 403 U.S. 365. Recognizing
lations of liberal principles of equality, then why should exclusion be any more legitimate when the exclusion occurs on a national scale rather than at the local level? Why should it be less troubling to exclude an alien from an entire country rather than from a single neighborhood? Expanding the geographic scope of the community from which we exclude the alien only broadens the range of opportunities that we thereby deny that alien.  

One might object to the analogy that I draw between immigration restrictions and segregation in the domestic context by challenging my premise that aliens are as entitled to distributive justice under our laws as natives. In particular, one might claim that we do not owe the same concern to prospective immigrants as we do to incumbent residents. In comparing immigration restrictions to de jure segregation in the domestic context, I have relied on the premise that prospective immigrants as well as natives are entitled to equal concern. I suggest here that the liberal ideals expressed in our declaration that “all men are created equal” require such a cosmopolitan perspective.

Consider the notion of equal concern expressed in the liberal theory of justice developed by John Rawls, who asks what principles individuals would choose behind a “veil of ignorance.” In this “original position,” individuals know nothing about their own personal circumstances or traits; thus, “they do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.” This position ensures that the parties are “fairly situated and treated equally as moral persons.” Rawls, however, includes only persons within a single “society,” which he describes as “a cooperative venture for mutual advantage,” as participants in the original position. That is, he assumes that the “boundaries” of his principles of justice “are given by the notion of a self-contained national community.”

the tension between the Graham reasoning and federal immigration restrictions, however, the Supreme Court would later refuse to apply the same scrutiny to federal laws discriminating against aliens. See Matthews v. Diaz, 426 U.S. 67, 81-87 (1976).

64. See Roger Nett, The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth, 81 ETHICS 212, 224 (1971) (“May we expect the lesson which the Negro has taught his fellow Americans about denial of fair opportunities to be repeated on a broader scale, with the underprivileged of the earth demanding ‘desegregation’ of nation states?”); see also Darrel Mollendorf, Equality of Opportunity Globalized?, 19 CAN. J.L. & JURISPRUDENCE 301 (2006) (defending the principle of global equality of opportunity). The analogy between racial segregation and immigration restrictions suggests that we should view the campaign for liberalized immigration policies as a natural extension of the civil rights movement. See Kevin R. Johnson & Bill Ong Hing, The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement, 42 HARV. C.R.-C.L. L. REV. 99 (2007).

65. See, e.g., Chang, supra note 38, at 295–302.

66. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).


68. Id. at 136–37; see id. at 141 (“If a knowledge of particulars is allowed, then the outcome is biased by arbitrary contingencies.”).

69. Id. at 141.

70. Id. at 4.

71. Id. at 457.
This assumption, however, raises the question of whether a world in which nations engage in international trade in goods, services, capital, and labor is a “cooperative venture for mutual advantage.”72 In light of this international cooperation, Charles Beitz and others have argued that the entire world is a “society” in which all individuals would be parties to the original position.73 Beitz suggests that “we should not view national boundaries as having fundamental moral significance” and that “principles of justice” should “therefore apply globally.”74

Furthermore, place of birth would appear to be a circumstance that Rawls should deem “arbitrary from a moral point of view.”75 Pogge notes that nationality based on such a circumstance “is just one further deep contingency (like genetic endowment, race, gender, and social class), one more potential basis of institutional inequalities that are . . . present from birth.”76 “Within Rawls’s conception,” Pogge suggests, “there is no reason to treat this case differently from the others.”77 Thus, Pogge also argues in favor of globalizing Rawls’s principles of justice.78

72. Id. at 4.

73. See CHARLES R. BEITZ, POLITICAL THEORY AND INTERNATIONAL RELATIONS 143–53 (1979) (arguing that sufficient cooperation and interdependence exists among nations to justify a global view of the original position); see also THOMAS POGGE, REALIZING RAWLS’ 257 (1989) (noting that “it would seem difficult in a context of tight global interdependence to maintain the sharp distinction between national and international institutions” adopted by Rawls); Thomas M. Scanlon, Jr., RAWLS’ THEORY OF JUSTICE, 121 U. PA. L. REV. 1020, 1066–67 (1973) (arguing that “considerations of justice apply at least wherever there is systematic economic interaction” and that therefore Rawls’s principles of justice “apply to the world economic system taken as a whole”).

74. BEITZ, supra note 73, at 151. Others have argued that “the salience of global justice is increasing in the density of interactions across borders.” A.J. Julius, Nagel’s Atlas, 34 PHI. & PUB. AFF. 176, 187 (2006); see, e.g., Joshua Cohen & Charles Sabel, Extra Rerumpublicam Nullo Justitia?, 34 PHI. & PUB. AFF. 147, 164–75 (2006) (arguing that obligations of global justice have increased with greater international cooperation and interdependence); Julius, supra, at 178 (arguing that “members of different states are in the justice relation if their interaction links them densely enough”). For a critique of any theory of justice that makes obligations of distributive justice contingent on voluntary acts of cooperation, see Howard F. Chang, The Immigration Paradox: Poverty, Distributive Justice, and Liberal Egalitarianism, 52 DE PAUL L. REV. 759, 769–71 (2003).

75. RAWLS, supra note 67, at 72.

76. POGGE, supra note 73, at 247.

77. Id. Similarly, Peter Singer argues that Rawls’s stated goal of a theory of justice in which “no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances” and a theory that is “indifferent to the consequences of something as contingent as which side of a national border one happens to live” simply “cannot be reconciled.” PETER SINGER, ONE WORLD 177 (2002).

78. See POGGE, supra note 73, at 240–80; see also MARTHA C. NUSSELMAN, FRONTERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP 264 (2006) (agreeing that it is “far more appealing” for us “to think of the Original Position as applied directly to the world as a whole” because “national origin is rather like class background, parental wealth, race, and sex: namely, a contingent fact about a person that should not be permitted to deform a person’s life”). Following in this tradition, I have argued elsewhere in favor of a cosmopolitan interpretation of the “original position.” See, e.g., Chang, supra note 74, at 768–73.
Citing Beitz and others, Joseph Carens addresses the issue of immigration restrictions as a question of social justice using a global interpretation of Rawls’s original position. In seeking a justification for the exclusion of aliens, he suggests, “we don’t want to be biased by self-interested or partisan considerations” and instead “can take it as a basic presupposition that we should treat all human beings, not just members of our own society, as free and equal moral persons.” Carens identifies this premise as a basic feature of all liberal political theories, concluding that we should “take a global, not a national view of the original position.”

If we begin with equal concern for all persons, then immigration barriers are morally suspect and demand justification. All immigration restrictions discriminate against individuals based on their alienage. Most aliens are born aliens because our nationality laws deem them to be aliens based on immutable characteristics, including the geographic location of their birth (that is, national origin) and the citizenship of their parents at the time of their birth. This discrimination based explicitly on circumstances of birth is at odds with liberal ideals. Carens concludes that we cannot justify restrictions “on the grounds that those born in a given territory or born of parents who were citizens were more entitled to the benefits of citizenship than those born elsewhere or of alien parents.” Similarly, in a utilitarian calculation of global welfare, “current citizens would enjoy no privileged position.” Carens concludes from these liberal premises that “we have an obligation to open our borders much more fully than we do now.” Carens condemns our immigration restrictions: “Like feudal barriers to mobility, they protect unjust privilege.”


80. Id. at 256.

81. See id. at 265 (claiming that “our social institutions and public policies must respect all human beings as moral persons,” which “entails recognition . . . of the freedom and equality of every human being”); see also id. at 269 (“No moral argument will seem acceptable . . . if it directly challenges the assumption of the equal moral worth of all individuals.”). This liberal commitment to moral equality in the public sphere does not imply that individuals are wrong to favor their friends or families using their own private resources. Kwame Anthony Appiah argues that equality “denotes a regulative ideal for political, not personal, conduct.” Kwame Anthony Appiah, The Ethics of Identity 230 (2005). “Social justice may require impartiality - or evenhandedness, or fairness, or . . . ‘neutrality,’” he explains, “[b]ut social justice is not an attribute of individuals.” Id. at 228. Although the state may be “bound by moral equality,” it would be “wrong . . . to suppose that individuals should be subject to the same constraint.” Id.

82. Id. at 256.


84. Carens, supra note 79, at 261.

85. Id. at 263 (“[T]he utilitarian commitment to moral equality is reflected in the assumption that everyone is to count for one and no one for more than one when utility is calculated.”).

86. Id. at 270.

87. Id. Others have reached similar conclusions regarding immigration restrictions in liberal political theory. See, e.g., Bruce A. Ackerman, Social Justice in the Liberal
nevertheless reject the extension of our principles of distributive justice to prospective immigrants?

A. State Coercion

Although Michael Blake concedes that liberalism is "committed to moral equality, so that the simple fact of humanity is sufficient to motivate a demand for equal concern and respect," he defends "distinct principles of distributive justice applicable only within the national context." In particular, he argues that "a concern for specifically economic egalitarianism is only morally required within the context of a domestic legal system," where "distinct burdens of justification" apply "between individuals who share liability to the coercive power of the state." He claims that it is only in the "search for the justification of state coercion" that "egalitarian distributive justice becomes relevant." Although Blake seeks to use state coercion to distinguish the domestic context from the international context, his suggestion that we focus on state coercion does not distinguish prospective immigrants from incumbent residents. After all, we exclude prospective immigrants through the use or threat of force applied by the state. In this sense, all aliens are subject to exclusion under the immigration laws enforced by our state, and they may demand that we justify this coercive exclusion within a framework of equal concern and respect for all.

Blake recognizes this problem but asserts that "each distinct form of coercion requires a distinct form of justification." Without elaborating,

---

89. Id. at 258.
90. Id. at 265.
91. Id. at 264.
92. Id. at 265.
93. See Cole, supra note 87, at 186 ("What is ... crucial here is to realise that there are two groups subjected to the laws of the state: its own members, and those non-members who are applying for inclusion.").
94. See Carens, supra note 79, at 256 (arguing that “anyone who wants to be moral will feel obliged to justify the use of force against other human beings, whether they are members of the same society or not” and that “we can take it as a basic presupposition that we should treat all human beings, not just members of our own society as free and equal moral persons”); Julius, supra note 74, at 188 (suggesting that “you shouldn’t use other people by directing their action to your benefit unless you can show that the resulting sequence of actions and results is something they themselves have reason to want to come about,” which demands “an equal consideration of other people’s interests”); id. at 181 (“I’ll impose terms on you, I am required to make them acceptable to you. I trigger this requirement just by intending to coerce you ... ”).
95. Blake, supra note 88, at 280 n.30.
he claims that the justification that we owe to a prospective immigrant "would be significantly different from that offered to a present member for the web of legal coercion within which she currently lives" and that only inequality among "current" members of our society "gives rise to a legitimate concern for relative deprivation."\textsuperscript{96} This limit on the justification owed to the prospective immigrant seems at odds with Blake's broad claim that "Rawls's... theory of justice might profitably be viewed as a theory by which the coercive force of the state might be justified to free and equal persons who have a prima facie moral entitlement to be free from all coercion."\textsuperscript{97} Blake does not qualify this claim based on the nature or the scope of the coercion to be justified. As Seyla Benhabib observes:

\begin{quote}
[As a moral being you have a fundamental right to justification...]. Your freedom can be restricted only through reciprocally and generally justifiable norms which equally apply to all. In the sphere of morality, generality means universality; universality refers to what would be valid for all human beings considered as being equally entitled to respect and concern...
\end{quote}

Blake's treatment of immigration begs the question: Why should the prospective immigrant accept a justification for our immigration laws that does not offer the alien the equal concern embodied in the Rawlsian original position, including a concern for relative deprivation?

It is unclear why we should limit our concern for relative deprivation to those currently living within our "web of legal coercion." If the claim is that prospective immigrants are burdened in only a minor way by our immigration laws, which therefore require little justification, then this empirical claim is questionable, given the significant harm suffered by those excluded from our labor market. Although prospective immigrants do not currently live under all of our laws, this fact does not diminish the coercion that they suffer and the costs that they bear under our immigration laws. This fact may change the law in question that requires justification, but it should not change what counts as a justification. That is, a defense of our immigration laws must give the aliens coerced by our state the same equal concern extended to citizens coerced by our state, including a concern for relative deprivation.

Even if we grant Blake's claim that one must live within our web of coercive laws to be entitled to a concern for relative deprivation, we must extend such concern to the unauthorized immigrant who also lives within this web. For example, if we seek to deport the unauthorized immigrant as a means of enforcing our immigration laws, then the immigrant may demand that we justify those laws in terms that reflect concern for the relative deprivation that we impose through those laws. This right to distributive justice may well block deportation in the case of an immigrant who would be excludable at the border in the absence of such a right. Yet it

\textsuperscript{96} Id.

\textsuperscript{97} Id. at 271 (emphasis added).

seems perverse and unfair to give the unauthorized immigrant a right to distributive justice that we do not extend to the prospective immigrant who obediently complies with our immigration laws. Such a stance invites prospective immigrants to enter illegally so that they may obtain this right. Yet if we cite the unauthorized immigrant’s violation of our immigration laws as the reason to deny that immigrant a right to distributive justice, then how are we to respond to that immigrant’s demand that we justify those immigration laws first? After all, we owe even criminals a justification for the laws we invoke to punish them, and Blake agrees that “a concern for relative deprivation” is relevant in such a demand for justification.

B. Collective Self-Governance

If we deny the unauthorized immigrant a right to distributive justice, then we must be requiring something more than simply living under our web of coercive laws to generate such a right. One response to this problem might be to distinguish both prospective and unauthorized immigrants from citizens by pointing to some other feature of citizens. Thomas Nagel, for example, suggests that “the objection to arbitrary inequalities” arises only among “fellow participants in a collective enterprise of coercively imposed legal and political institutions that generates such arbitrary inequalities.”

He claims that “[i]t is only from such a system, and from our fellow members through its institutions, that we can claim a right to democracy, equal citizenship, nondiscrimination, equality of opportunity, and the amelioration through public policy of unfairness in the distribution of social and economic goods.” Similarly, Stephen Macedo asserts that we should confine “the extensive obligation of distributive justice to self-governing and self-responsible political communities: peoples who share a common political life and who exercise extensive authority over one another.”

Like Blake, Nagel notes that a regime’s “requirements claim our active cooperation, and this cannot be legitimately done without justification.” By participation in such a collective enterprise, however, Nagel means more than mere cooperation through obedience. The law-abiding prospective immigrant, after all, cooperates with us by complying with our immigration laws. Nagel stresses that “we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority.” Prospectively, and unauthorized immigrants are not putative joint authors of our immigration laws. Furthermore, Nagel claims, “the laws are not imposed in their name, nor are they asked to

101. Id. at 127.
103. Nagel, supra note 100, at 129.
104. Id. at 128.
accept and uphold those laws.” 105

It is obscure, however, in what sense prospective immigrants are not “asked to accept and uphold those laws,” given that we threaten criminal penalties for aliens who enter illegally. 106 Nagel’s claim would come as a surprise to the unauthorized immigrant sentenced to imprisonment for violating our immigration laws. If we do not ask immigrants to “accept and uphold” these laws, then why do we punish violators? It is difficult to perceive any respect in which we do not ask aliens to “accept and uphold” our immigration policies, given the way that we treat violators under our laws and in our public discourse, which seems to regard unauthorized immigrants simply as lawbreakers deserving of punishment.

Furthermore, Nagel’s observation that our immigration laws “are not imposed in their name” 107 merely begs the question of whether we should impose immigration laws that we can justify in the name of all those affected. His observation provides no persuasive defense for immigration laws that are too restrictive to be justified in such terms. If Nagel intends to cite our failure to give equal consideration to the interests of prospective immigrants as a justification for immigration laws that fail to give their interests equal consideration, 108 then his reasoning would seem to prove too much.

Consider a society that permits slavery. Suppose it seeks to defend its laws by noting that the slaves do not participate in that society’s collective enterprise of self-governance and are thus not “putative joint authors of the coercively imposed system,” adding that “the laws are not imposed in their name.” 109 This proposed justification would not be persuasive, precisely because the very fact that the laws exclude the slaves from participation and are not imposed in their name is a reason to deem the laws unjust. 110 Therefore, a person’s participation in the collective enterprise of self-governance as a “putative joint author[ ] of the coercively imposed system” 111

105. Id. at 130.

106. Any alien guilty of improper entry may be imprisoned for up to six months “for the first commission of any such offense” and for up to two years “for a subsequent commission of any such offense.” 8 U.S.C. § 1325 (2000). Furthermore, any alien previously ordered removed who thereafter “enters, attempts to enter, or is at any time found in . . . the United States” may be imprisoned for up to two years and under certain specified conditions may be imprisoned for up to 20 years. Id. § 1326. Criminal prosecutions of such aliens under these provisions have increased dramatically in recent years. See Kevin R. Johnson, Open Borders?, 51 UCLA L. REV. 193, 248 (2003); James C. McKinley, Jr., Tougher Tactics Deter Migrants at U.S. Border, N.Y. TIMES, Feb. 21, 2007, at A10.

107. Nagel, supra note 100, at 130.

108. See id. at 129–30.

109. See id. at 128, 130.

110. As A.J. Julius observes, “[T]here is no obvious respect in which the laws of the antebellum United States can be said to have been enacted in the name of the slaves.” Julius, supra note 74, at 183. In a regime of “naked tyranny,” as Julius notes, “[P]eople do what the tyrant tells them to do so that he will not kill them,” and the problem with Nagel’s theory is that Nagel “cannot find injustice in their situation,” yet “it is hard to agree that the society is not unjust.” Id.

111. Nagel, supra note 100, at 128.
cannot be a necessary condition for that person’s right to distributive justice in that system. If we reject the proposed defense of slavery on the ground that the exclusion of slaves from political participation and from the sphere of equal concern is unjust and a violation of human rights, then we beg the question: Are restrictive immigration laws also unjust because they exclude both prospective and unauthorized immigrants from full participation in our society? Before we cite participation in self-governance as a basis for the right to distributive justice, we must first demonstrate that the restrictions we impose on this participation, including immigration restrictions, are themselves justified. The implicit assumption is that we are justified in discounting the welfare of prospective immigrants when we formulate our immigration laws. This proposed justification for our immigration laws would suffer from circular reasoning if it ultimately relies on an assumption that these laws are just.

C. Involuntary Residence

We might distinguish immigrants from natives on the ground that immigrants seek to associate with us voluntarily whereas natives are born into our society and have no choice. Nagel, for example, stresses “the contingency of involuntary rather than voluntary association,” claiming that “[a]n institution that one has no choice about joining must offer terms of membership that meet a higher standard” than voluntary associations. Similarly, Joseph Heath notes that “being born into society is a circumstance, while moving into one is a choice,” arguing that “involuntarily incurred obligations must meet a much higher standard in order to be considered binding.” In particular, Heath claims that “[t]he conditions under which immigrants secure admittance...are not involuntary,” and, therefore, “the strict criterion of equality...need not apply.” This distinction would allow us to justify not only laws discriminating against unauthorized or prospective immigrants but also nativist laws that fail to extend equal concern to legal immigrants after admission.

This suggestion seems to turn liberalism on its head insofar as it entitles natives in rich countries to advantages based on immutable circumstances of birth. Nagel concedes that “[w]e do not deserve to have been born into a particular society any more than we deserve to have been born into a particular family,” yet he maintains that only natives enjoy a presumption against arbitrary inequality, “so an arbitrary distinction is

---

112. As Pogge recalls: “[E]ven the injustices we now recognize as the most conspicuous (slavery and the inferior status of women) were once entirely taken for granted. Those advantaged by them found it easy not to think about them or, at best, to invoke some shallow rationalizations...” Pogge, supra note 73, at 278. He asks: “Are we today any more immune to comfortable errors of moral judgment?” Id.
113. Nagel, supra note 100, at 133.
115. Id. at 351.
116. Id. at 355.
responsible for the scope of the presumption against arbitrariness.\textsuperscript{117} This suggestion seems to fly in the face of reality when those born in rich countries cite the circumstances of their birth as if it were some sort of disadvantage justifying privileges not extended to those born in poor countries who seek to move "voluntarily" into those rich countries. After all, those born into poor countries involuntarily incur poverty and the legal obligation to comply with the immigration laws of rich countries. Given those realities, why not impose the same standard of distributive justice to bind prospective immigrants under our immigration laws as we apply to natives under other laws? A view more sensitive to social, legal, and economic realities would recognize the claims of prospective immigrants based on all the burdens that they have involuntarily incurred.

Nagel and Heath assume that natives are not free to emigrate and therefore reside involuntarily in their country of origin. They may base their assumption on a realistic evaluation of the feasibility of emigration under current conditions. Insofar as they base this assumption on the immigration barriers raised by other countries, however, they make our right to distributive justice curiously contingent on the immigration policies of other countries.\textsuperscript{118} If another country opens its borders to some, most, or all prospective migrants from our country, do those who are free to emigrate become voluntary residents who are therefore not entitled to distributive justice?\textsuperscript{119}

Nagel and Heath may invoke not only legal barriers to migration but also those barriers raised in practice by the social or economic costs of migration for the individual migrant. Heath, for example, suggests that "the costs associated with emigration are so high that nationality is de facto involuntary," conceding that "the distinction between voluntary and involuntary is determined by some notion of which options an individual could reasonably be expected to exercise."\textsuperscript{120} Often, however, these costs are quite low, as when a native of the United States contemplates migration to Canada, or when a native of Australia contemplates migration to New Zealand. If such emigration is quite easy for the native, then does this option undermine that native's claim to distributive justice? Furthermore, once we recognize that the difference between "involuntary" residence and "voluntary" migration is not only a matter of degree, but also a question of what options we should deem "reasonable," then the claims advanced by

\textsuperscript{117} Nagel, supra note 100, at 128.

\textsuperscript{118} If Nagel and Heath base this assumption on barriers to immigration raised by other countries, then their claims beg the question of whether both natives and the foreign-born should ideally enjoy greater freedom of movement across borders. See, e.g., Seyla Benhabib, The Law of Peoples, Distributive Justice, and Migrations, 72 Fordham L. Rev. 1761, 1774 (2004) (suggesting that "liberal peoples ought to have fairly open borders," permitting both "a fundamental right to emigrate" and "the privilege to immigrate, that is, to enter another peoples' territory and become a member of its society peacefully").


\textsuperscript{120} Heath, supra note 114, at 351 n.25.
Nagel and Heath beg the question: Should we regard residence in a poor country to be so costly as to make it unreasonable for us to expect the prospective migrant to refrain from migration to a rich country?

D. The Absence of a Cosmopolitan State

Macedo rejects claims of cosmopolitan distributive justice, finding it "hard to understand the reasonableness of making people responsible for the welfare of others without also making them responsible for their governance."121 "Cosmopolitan distributive justice," he concludes, "makes no sense absent a cosmopolitan state."122 Even if we assume that the absence of a cosmopolitan state implies some limits on global distributive justice, however, this absence would not justify immigration restrictions that neglect principles of global distributive justice. After all, the admission of any given set of immigrants would make us "responsible for their governance" as well as responsible for their welfare. Upon joining our society, the immigrant could agree to the same terms of the social contract as the native born into our society.123 Why should our inability to govern immigrants prior to admission justify our failure to consider their welfare in the admission decision, as long as we can govern them after admission?

Perhaps the concern is that immigrants may not have paid their fair share of tax revenues and could thereby unfairly exploit the public treasury in the country of immigration. Heath, for example, worries that "if states lifted immigration controls in the current global context, they would open themselves up to a variety of forms of harmful predation."124 "No welfare state could survive," he notes, "if people chose to spend their childhood and retirement in a welfare state, yet their working lives in a low-taxation state with minimal public services."125 These concerns, however, only justify policy responses tailored to those specific concerns, not general restrictions on immigration. We might address such concerns, for example, with fiscal policies that impose appropriate conditions on immigration. To ensure that immigrants do not unfairly drain the public treasury, we might restrict immigrants' access to the particular public entitlements raising

121. Macedo, supra note 102, at 1731.
122. Id. Rawls adopts a similar view of distributive justice. For Rawls, as Samuel Freeman explains, "Distributive justice in the first instance poses the general problem of fairly designing the system of basic legal institutions and social norms," and "in the absence of a world state, there can be no global basic structure on a par with the basic structure of society." SAMUEL FREEMAN, JUSTICE AND THE SOCIAL CONTRACT 305-06 (2007). These observations, however, beg the question: Why should the principles of distributive justice that we bring to bear on "basic legal institutions" such as immigration policy fail to extend equal concern to those born outside the country of immigration? Why not adopt a broader view of distributive justice and apply principles of global justice in the normative evaluation of immigration policies?
123. Regarding prospective immigrants outside "the borders of the rich nations" who are "desperate for the opportunity to become part of those national communities," Peter Singer observes: "There is no reason to think that, if we admitted them, they would be any less ready than native-born citizens to reciprocate whatever benefits they receive from the community." SINGER, supra note 77, at 169-70.
124. Heath, supra note 114, at 347.
125. Id. at 348.
those concerns, for example, or impose special taxes on immigrants as a form of admission fee in appropriate cases. These policies would be less restrictive than immigration restrictions that exclude prospective immigrants from our country entirely and thereby needlessly destroy gains from trade in the labor market. More important, any such concern would seem to raise questions only regarding the particular policies that could be justified within a framework of equal concern. Fiscal concerns do not provide much of a reason to question the basic premise that any law is morally justified only if its rationale extends equal concern to all those affected.

We might say the same regarding suggestions that liberal immigration policies would pose various other problems. For example, Heath worries that liberal immigration could undermine the incentives for "the provision of public goods for future generations, by such measures as encouraging a high rate of savings, controlling public debt, preventing long-term environmental degradation, [and] implementing population control measures." Rawls expresses similar concerns, worrying that people may be tempted to "make up for their irresponsibility in caring for their land and its natural resources . . . by migrating into other people's territory." If Heath and Rawls are worried about the incentives to invest in local public goods in countries of emigration, then two considerations suggest that their concerns provide little support for immigration restrictions.

First, we should recognize that it is entirely appropriate for a country of emigration to take future emigration into account in deciding how much to invest in local public goods. Insofar as emigration implies a smaller
population in the future than would otherwise exist, the benefits derived from a local public good will be smaller, and a reduced investment in such a good would be socially optimal. A legitimate concern arises only if the prospect of future emigration leads some residents in the country of emigration to withdraw support for even this optimal level of investment because they anticipate their own future emigration.

Second, even if the prospect of emigration distorts investment below the optimal level, there are probably better policy responses available to the country of immigration than immigration restrictions. If the country of immigration is actually concerned about local public goods in countries of emigration, then the country of immigration can always use its jurisdiction over immigrants to collect tax revenue from them to finance subsidies for investments in public goods in countries of emigration. Such subsidies would be better than the exclusion of prospective immigrants insofar as a policy of exclusion needlessly destroys gains from trade in the labor market.

Heath may also be worried about incentives to invest in public goods in the country of immigration. Immigrants may congest local public goods and thereby reduce the return that natives enjoy on their investment in these public goods. Again, we would have these concerns even within a framework of distributive justice for all and could address these concerns through measures more narrowly tailored than general immigration restrictions. We could, for example, charge immigrants an appropriate fee for access to any public good subject to congestion without imposing other immigration restrictions. Such fees can internalize negative externalities from immigration, deter inefficient immigration, and compensate natives for any congestion of local public goods arising from immigration.

We can weigh all of these concerns against the claims of the immigrant in deciding what policy responses are appropriate.

After all, similar concerns also arise within a society in the absence of any immigration. We may worry that redistribution from the rich to the poor, for example, undermines the incentives of poor families to save or to have fewer children. I do not deny that similar concerns may arise with liberal immigration policies. My only claim is that our policy response to these concerns in the immigration context should extend equal concern and respect to all those affected, just as our policy response to similar concerns in the domestic context should be based on equal concern and

129. See Heath, supra note 114, at 347.
130. See Miller, supra note 127, at 202 (worrying about immigration’s “impacts on the physical environment,” such as “congestion” and reduced “access to open space”).
131. Id.
132. Peter Singer criticizes “Rawls’s readiness to invoke, against the idea of economic redistribution between nations, arguments that could easily be brought . . . against economic redistribution between individuals or families within the same nation.” Singer, supra note 77, at 178. “Both cases raise a problem for anyone who supports the redistribution of wealth, and if the problem can be answered in the case of redistribution within a society,” as Singer notes, there would appear to be “no reason why it cannot be answered in the case of redistribution between societies.” Id.
respect. If we understand in the domestic context that it is unfair for a native born into a large and poor family to suffer as a result of circumstances beyond his or her control, for example, then we should also understand in the immigration context that it is unfair for an alien born into a poor and populous country to suffer as a result of similar circumstances.133 I have suggested that the attempts by some liberal theorists and philosophers to distinguish immigration policies from laws in the domestic context in this regard are all ultimately question-begging.

Conclusion

As Philippe Legrain observes, advances in transportation and telecommunication technology, together with the “individualism” fostered by the spread of liberal ideals, have allowed us to “roam our newly open world more freely than before” and have “undermined the tyranny of geography which tied people to a place and loosened the shackles of nationalism which dictated that people in one place should all be alike.”134 In this globalizing world, he suggests, “[o]ur efforts to keep poor people out” of rich countries “are a form of global apartheid,” and “if our conscience is not sufficient to persuade us to change course, then our self-interest surely ought to.”135 I have argued that a survey of the evidence on the economic effects of migration supports these normative claims.

Estimates of the magnitude of the gains that the nations of the world could enjoy by liberalizing international migration indicate that even partial liberalization would not only produce substantial increases in the world’s real income but also improve its distribution. Although the economic effects of immigration on native workers and distributive justice among natives are often advanced as reasons to reduce immigration, these concerns do not provide a sound justification for our restrictive immigration laws. Instead, the appropriate response to concerns about the distribution of income among natives is to increase the progressivity of our tax system. Protectionist immigration policies are not only likely to be relatively costly as an instrument for redistribution but also perverse from the standpoint of global justice.

133. See Kok-Chor Tan, Critical Notice, 31 CAN. J. PHILOS. 133, 122 (2001) (reviewing RAWLIS, supra note 128) (noting that “[o]n Rawls’s own reasoning, a person born into a society with poor population control and economic policies cannot be said to deserve her fate any more than another born into more favorable circumstances,” because “[these are mere accidents of birth, and are as morally arbitrary as is being born into wealth or poverty in the domestic context”). Natives of rich countries may claim that it is unfair to saddle them with the claims of poor immigrants because conditions in poor countries are largely outside of the control of the natives of rich countries. This claim, however, reflects an incongruous notion of fairness. This notion is sensitive to the burdens imposed on natives of rich countries for reasons outside their control, yet simultaneously insensitive to the burdens imposed on those born in poor countries, despite the fact that their circumstances of birth are entirely outside their control.


135. Id. at 324.
I have suggested that liberal ideals require a global view of distributive justice, and I have outlined critiques of some of the alternative conceptions of justice advanced by critics of this cosmopolitan perspective. I conclude that considerations of not only economic efficiency but also distributive justice militate in favor of liberalized migration. Considerations of distributive justice suggest that liberal states should seek to liberalize their immigration policies, thereby reducing global inequalities in economic opportunity. It is incumbent upon liberal states to pursue such liberalizing reforms if they are to remain faithful to the egalitarian ideals that they espouse.

136. The immigration bill debated by the Senate in 2006 would have liberalized the ceiling on the number of guest-worker visas annually in response to excess demand for those visas. See Senate Resumes Comprehensive Immigration Reform Debate, 83 INTERPRETER RELEASES 981 (2006). Before passing that bill, however, the Senate amended the bill to fix that ceiling at 200,000 visas per year. Id.