

# Social Trust and the Ethics of Immigration Policy\*

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**A**LTHOUGH popular political discourse typically assumes that a state's right to guard borders and exclude foreigners is non-problematic, this privilege has been widely challenged.<sup>1</sup> Because there is always a presumption against restricting the freedom of individuals, the burden is on those who would restrict movement to demonstrate that such limitations are justified. Although we might still end up with a very restrictive regime, such restrictions require justification. As a result, although most public debate asks what policy will be best for current citizens,<sup>2</sup> a prior question regarding the shape and source of the state's right to exclude foreigners must be settled before this question can be rightfully addressed.

Concerns regarding social trust are often thought to provide this justification and thus legitimate limited restrictions on immigration. Indeed, it is commonly argued that immigration restrictions are justified because a nationally unified community is a necessary prerequisite of various redistributive programs (themselves required by justice).<sup>3</sup> On this view, to the extent that immigration threatens a community's enabling unity, it may be legitimately restricted.<sup>4</sup> Many influential analysts endorse such a view:

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<sup>1</sup>See: Ackerman 1980; Carens 1987 and 1992; Cole 2000; Moellendorf 2002; and Pritchett 2006. For an explanation of the shortcomings of such arguments, see Pevnick (forthcoming).

<sup>2</sup>Cf. Borjas 1999.

<sup>3</sup>For opposing views see: Abizadeh 2002; Habermas 1995; and Mason 2000, ch. 5.

<sup>4</sup>Exactly what is meant by shared nationality is a matter of dispute. David Miller describes it in terms of 'a common public culture'. On this view, 'There must be a sense that the people belong together by virtue of the characteristics that they share. It is not so easy, however, to pin down precisely what this entails. . . . If what matters to nationality is that people should share a common public culture, this is quite compatible with their belonging to a diversity of ethnic groups. . . . All that matters is that the melding together of different "races" should have produced a people with a distinct and common character of its own' (Miller 1995, pp. 25–6). While it is indeed necessary to distinguish between ethnic groups and national groups, there is a worry that Miller categorizes circularly such that any group upholding redistributive programs qualifies as a nation (thus rendering the hypothesis unfalsifiable). Moreover, because statistics regarding race and ethnicity are available while there is no data on membership in a 'common public culture', empirical evidence putatively upholding the argument relies on studies based on ethnicity and race rather than nationality.

Just states ‘require a common public culture that in part constitutes the political identity of their members, and that serves valuable functions in supporting democracy and other social goals’.<sup>5</sup>

Liberal egalitarian principles can only be realized in communities where relations among citizens are characterized by solidarity and trust, relations that are often sustained by a shared culture and can be jeopardized by large, short-term changes in membership.<sup>6</sup>

In addition to these academic proponents, public debate in many receiving countries revolves around concerns about integrating immigrants into the public political culture.<sup>7</sup>

Because the social trust view is a prominent line of argument (though not the only one used to justify restrictions on immigration), I focus exclusively on it in this essay. The position is constituted by the following set of claims:

- P1. A commitment to justice entails the support of a welfare state.<sup>8</sup>
- P2. The welfare state has costs (in terms of a higher tax rate).<sup>9</sup>
- P3. Citizens will only be willing to pay such taxes if they share a sense of common identity with fellow citizens.

Conclusion: Because admitting immigrants disrupts the shared identity of the citizenry,<sup>10</sup> erodes support for the welfare state and, so, obstructs the realization of justice, there is good reason to restrict immigration.

For the purposes of the paper, I simply assume that P1 is true.<sup>11</sup> Given P1, P2 is unobjectionable: if programs are required, they will have to be paid for. Having accepted P1 and P2, a rejection of the social trust view must hinge on challenging the validity of P3 and/or the relevance of P3 to the conclusion.

In recent years, empirical evidence has been presented which suggests that increasing diversity is linked to reduced provision of public goods<sup>12</sup> and that increasing migration stunts the growth of the welfare state.<sup>13</sup> It is commonly

<sup>5</sup>Miller 2005, p. 199; also see Miller 1995, p. 96.

<sup>6</sup>Gibney 1999, p. 174.

<sup>7</sup>Cf. Geddes 2003.

<sup>8</sup>I interpret ‘welfare state’ in a broad way so as to include not just TANF (Temporary Assistance to Needy Families), food stamps, or other means-tested redistributive programs, but also the much larger ‘universal’ programs such as social security, public education, and Medicare.

<sup>9</sup>According to some analysts (Barr 2001), the welfare state is—setting aside its redistributive effects—desirable because of its relative efficiency in supplying widely desired goods and services. On this view, market mechanisms will be less efficient in circumstances marked by certain kinds of risk and lack of information, conditions that characterize markets for goods such as healthcare and pensions. If widely seen as true, this would—at least to some extent—undermine the plausibility of the social trust view by persuading individuals (including the wealthy) that it is costly to *refrain* from supporting such institutions.

<sup>10</sup>Even if sound, the argument only works against potential immigrants who do not also possess the relevant characteristics or identity. Thus, whenever I refer to immigrants, the entry of non-national immigrants is at stake.

<sup>11</sup>Whether or not I accept P1 is neither here nor there: I grant it so that I can dispute the social trust view from premises accepted by its proponents and many others besides.

<sup>12</sup>Alesina et al. 1999; Easterly and Levine 1997.

<sup>13</sup>Soroka et al. 2006.

thought that such findings ‘vindicate Miller’s worries about threats to the national basis of the welfare state’.<sup>14</sup> So, this line of empirical research putatively vindicates the proposition that national unity is required for the maintenance of a robust welfare state and that, as a result, we must recognize that increased immigration is inconsistent with such redistributive programs.

On this view, egalitarian liberals cannot have their cake and eat it too; instead, they must choose which commitment—increased immigration or redistributive programs—takes precedence and accept that they will have to abandon the other. I dispute this claim in three ways. First, I review evidence which challenges the validity of the empirical claim (Section I). Second, I argue that the claim is not just an empirical one, but hinges also on an implicit but dubious normative component (Section II). Finally, I suggest that part of the social trust view’s persuasive power may flow from an appeal to a false choice (Section III).

## I. THE EMPIRICAL CLAIM

The first reason to resist the social trust view is that there are doubts about its validity: the empirical evidence on which it hinges is (at least) not unambiguously supported by the empirical literature. Here, I merely seek to point out the disputed nature of the empirical claim as a way of preparing the way for my main points.

Against the view that diversity necessarily undermines the provision of public goods, many analysts argue that the trust on which the welfare state relies depends more on the shape of the institutions than on the identity of the population that they serve. They point out that empirical evidence for the social trust view comes from studies on Sub-Saharan Africa (with its weak state institutions) and the United States (with its history of racial conflict). While social trust theorists assume that conclusions from these situations may be generalized to all eras and cultures,<sup>15</sup> there is reason to think that such results are not generalizable.

Kumlin and Rothstein, for instance, argue that the negative effects of diversity are ‘by no means cut in stone’ and have the ‘potential to wither away as a consequence of positive experiences of social interaction and institutional fairness’.<sup>16</sup> Likewise, Bo Rothstein contends that:

In designing our political institutions, we also in large part determine the normative attitudes citizens hold about welfare policy. If citizens regard the prevailing welfare programs as designed in accordance with principle of justice (sic), if they consider the implementation of such programs to be fair, and if they believe all citizens (or

<sup>14</sup>Ibid, p. 279.

<sup>15</sup>Kymlicka and Banting 2006, p. 287. For a conflicting interpretation of the evidence, see Putnam (2007, pp. 142–3).

<sup>16</sup>Kumlin and Rothstein 2007, pp. 5, 23; and Collier 1998.

almost all of them, at least) pay their due share of the costs incurred, then the political support for the universal welfare policy will in all likelihood endure. Otherwise not.<sup>17</sup>

This institutional view is important because it suggests that support for the welfare state depends primarily on features of *institutions* rather than on characteristics of the population.<sup>18</sup> On this view, the effects of diversity depend on the institutional context in which it is experienced.

If so, welfare programs will maintain support if they incorporate immigrants in a way that current citizens see as fair (especially by taking the precautions necessary to stop immigrants from free-riding on the benefits of such programs).<sup>19</sup> Just institutions, on this view, generate their own support: they (a) create incentive-based trust by providing people with incentives to comply and (b) change the citizenry in ways that *create* the very unity on which they putatively rely. Even if no empirical view on the source of social trust is undisputed,<sup>20</sup> the institutional view at least suggests that the link between diversity and lack of redistribution is more complex than social trust advocates typically allow. Along with generally challenging the empirical claim underlying the social trust view, this point will be of specific importance in Section III.

In addition to the claim's validity, its scope is also worth questioning. Underlying P3 is the assumption that the required common identity must be supplied by national groups. Because immigrants typically do not arrive sharing the nationality of their new society, they are seen as threatening to the required shared identity. However, scholars of nationality regularly argue that identification with such communities is socially constructed; it is (at least partly) the result of institutionally created shared experiences, stories and myths.<sup>21</sup> Rather than being a natural feature of the political and social world, the extent to which a set of people identifies with one another may be influenced by the way in which political institutions are designed.<sup>22</sup>

This is important because if a shared identity (a) is an empirical prerequisite for redistribution, (b) can be engineered through the design of political institutions and/or imposed through a public mythology, and (c) redistributive programs are a requirement of justice, why not create the communities of shared identity needed to maintain distributive justice? Why not engineer that shared identity which best satisfies the antecedent requirements of distributive justice?

To render the issue less abstract, consider the relationship between the European Union and the social trust view. To begin, I reject the claim that the EU straightforwardly falsifies the national orientation of the social trust view by

<sup>17</sup>Rothstein 1998, p. 222.

<sup>18</sup>Habyarimana et al. 2006; Svallfors 1993; Svallfors 1997.

<sup>19</sup>Nannestad and Svendsen 2005.

<sup>20</sup>Cook and Cooper 2003, p. 235.

<sup>21</sup>Cf. Anderson 1991; Gellner 1983; Hobsbawm 1990; Miller 1995.

<sup>22</sup>Hardin 1995.

facilitating redistribution transnationally in the absence of a common identity. Instead, the European Union has not yet acted as a sufficient source of redistribution to issue a substantial challenge to the social trust view. Without claiming that the EU is non-redistributive, there are significant limits to its capacity in this regard. Fully substantiating this claim would take me far afield, but two points merit brief mention.

First, the EU lacks a common set of social policies (such as a unified pension program) and a single financial/credit market, but these are the devices that would allow unification to beget redistribution.<sup>23</sup> Second, the European Union lacks the resources that would be needed to generate significant transnational redistribution. To give an idea, projected EU expenditure for 2007–2013 is 862 billion Euros (for a population of nearly 500 million) while US federal expenditure (for a population of roughly 300 million) is \$2.8 trillion for 2007 alone. Indeed, the EU controls only 1% of the GDP of its member states. Thus, the EU lacks the capacity to generate significant redistribution.

However, the European Union could *come to* issue a challenge to the national orientation of the social trust view in a slightly less direct way: EU leaders may gradually instill a common European identity in members that will eventually support redistribution across member states. There is no reason that shared identity is constrained to national communities; instead, groups of any size may come to experience the required identity. If so, the social trust view may provide reason to *create* the shared identity that best facilitates just redistributive institutions rather than—as typically claimed—justifying the maintenance of whatever identities *currently* facilitate redistribution.

These points regarding the validity and scope of P3 are but preliminary arguments meant to cast initial doubt on the social trust view. Both claims insist that the way in which institutions structure our lives affects how we conceive of our political relationships and, in this way, open the door (in ways I shall explain) to questions about the argument's ability to justify restrictions on immigration. In the sections that follow, my objective is to call into question the *relevance* of the social trust thesis by demonstrating that the position rests on a dubious normative claim (Section II) as well as a false choice (Section III).

## II. THE NORMATIVE CLAIM

While the previous section suggested that the empirical claim underlying P3 is vulnerable to challenge, it is crucial to recognize that the claim is not just an empirical one. Instead, there is also a normative component to the social trust view that requires clarification and is susceptible to challenge. In recent years increasing migration has 'provoked widespread public opposition in

<sup>23</sup>Galbraith et al. 1999.

industrialized countries'<sup>24</sup> and, as Stephen Macedo remarks, this opposition may 'tend to lower public support for social welfare and redistributive programs'.<sup>25</sup> At issue, however, is whether worries about immigration's effect on public support for the welfare state may *justify* restricting immigration. In this section, I (a) deny that the argument gives reason to restrict immigration and (b) show that it is incapable of providing the type of reason advocates suggest.

Imagine that there are two societies: in X, P3 obtains empirically and in Y it does not. Would we then want to say that X is justified in restricting immigration while Y is not?

*X says to those seeking entrance:* 'We cannot allow you to enter because doing so will erode the support of our current citizens for the welfare state. Our citizens will be unwilling to support the necessary institutions knowing that such institutions will partially benefit you. Thus, admitting you would undermine our welfare state and we are—as a matter of justice—committed to such institutions'.

*Alternatively, Y says to those seeking entrance:* 'We will grant you access to our institutions because we trust that you will see that they are fair and will, thus, be moved to support them. Likewise, we trust that our citizens will welcome you (even if you make demands on the state) because they trust that if the state accepts your requests, they must be legitimate ones'.<sup>26</sup>

Citizens of X thus claim that their *own* unwillingness to contribute to the welfare state may justify restrictions on immigration. There are two problems with such a position.

First, citizens of X are predicting that they will refuse to act in accordance with the demands of justice (by not supporting the welfare state) if forced to accommodate outsiders and that as a result of the poor consequences of this response (the crumbling of welfare state institutions), they or their representatives are justified in pursuing a policy of exclusion. However, this appeal to consequential reasoning masks an undefended normative assumption. Even if increased immigration and the crumbling of the welfare state would have bad consequences for current citizens, it is likely that the *overall* consequences of such a scenario (including and weighing equally the needs and interests of foreigners) would be better than the overall consequences of the *status quo* (because those from poor countries have a tremendous amount to gain by accessing productive economies).<sup>27</sup> In the absence of an explanation for why we should prioritize the needs and interests of compatriots, the appeal to consequences is therefore erroneous. Thus, even if social trust theorists are correct that a robust welfare state and increased immigration are incompatible, *they fail to provide reason to resolve the dilemma in favor of welfare institutions rather than increased immigration.*

<sup>24</sup>Cornelius and Rosenblum 2005, p. 99.

<sup>25</sup>Macedo 2007, p. 67.

<sup>26</sup>Notice that this response mirrors the institutional view explained above.

<sup>27</sup>Cf. Pritchett 2006.

Second, the line of argument wrongly depicts the will of citizens ‘as *just* a sociological fact’.<sup>28</sup> So, P3 is an empirical claim buttressed by the judgment that we must accept the empirical claim as a fact about the world and not, instead, as an alterable claim about the people making it. However, it is objectionable to allow citizens to use predictions about *their own* future behavior to rule out policies because they control their future behavior. That this is true is obvious in other situations. Imagine that all of a society’s surgeons insist that if their pay is not increased, they will jointly refuse to provide many needed operations. Though the doctors’ claim clearly provides a reason (albeit a threatening and coercive one) to give them a raise, what it does *not* provide is justification.

One might object, however, that there is an important dissimilarity between the surgeons of this example and the citizens in receiving countries. The surgeons intentionally manipulate future behavior in order to gain benefits whereas, advocates of the social trust view might suggest, those in receiving countries are only responding to diversifying immigration reflexively and with no preconceived ill-intent. The advocate of the social trust view may maintain that it is just an empirical fact about people in general that their support for a welfare state will decrease if some of the resources they contribute will benefit those of a different nationality. It is not a fact about particular people, but a putatively *general* finding of social science.<sup>29</sup>

This line of objection is not without force. It demands that we distinguish between pre-meditated threats and reflexive responses to changed circumstances. Let us, then, reformulate the surgeon example:

In an effort to render important services more widely accessible, a new government healthcare plan caps the amount surgeons are allowed to charge for a given procedure. Unfortunately, this intervention backfires. At the reduced rate, many of the country’s surgeons are unwilling to perform needed operations. Some reduce their working hours choosing to spend more time on non-work activities, others retire early, and still others move into the more lucrative business of cosmetic services. The result of these uncoordinated decisions is that many patients are forced to go without services that they desperately need.

It is clear that these surgeons are less culpable than those in the previous example.<sup>30</sup> Here their actions are regrettable, but not pre-meditated and coercive. However, even if the reactions (in providing surgery or failing to support redistributive programs) are not pre-meditated, there remain reasons to doubt whether they can provide a normative justification.

It is not clear that the surgeons in the second example are irreproachable. Regrettable social occurrences (such as causing a traffic accident), despite a lack

<sup>28</sup>Cohen 1991, p. 308.

<sup>29</sup>One way of accounting for this reflex would be that individuals of different nationalities prefer different sets of public goods and, thus, have trouble realizing a robust provision with nationally different others. For example, a Protestant dominated national group might prefer publicly provided education while a Catholic one preferred a private system.

<sup>30</sup>For good related discussions, see Cohen (2002) and Estlund (1998).

of conscious choice or ill-intent, demand regret and often recompense. Likewise, the surgeons (despite the lack of preconceived ill-intent) might, once made aware of the situation, have some duty to work out a scheme for providing the necessary operations. Similarly, it may be the case that evidence which shows that support for the welfare state decreases with an increase in the diversity of recipients provides reason to rectify the problem rather than justifying the response (and the institutional view suggests that such a change is possible). Indeed, it is hard to see how such evidence could provide justification unless it somehow proved such decreased support to be an *inescapable* human response to increased diversity.<sup>31</sup>

Thus, the objection remains important both because it further increases the empirical burden of justification shouldered by proponents of the social trust view and because it suggests that the reason it provides is pragmatic rather than justificatory. Advocates must now demonstrate not just that there is some correlation between national homogeneity and the strength of redistributive programs, but that it (a) does not depend on institutional context, (b) is robust across otherwise diverse eras and cultures and (c) is a necessary reflexive response rather than an instance of conscious threat mongering. However, all of these claims are susceptible to challenge.

First, as we have seen, it is likely that the effects of diversity are mediated by the institutions in which the diversity is experienced. Just as the effects of diversity are not ‘cut in stone’, so too what constitutes diversity is subject to change. For instance, the superintendent of the 1870 and 1880 US censuses insisted that immigrants from Southern and Eastern Europe were ‘degraded below our utmost conceptions . . . beaten men from beaten races, representing the worst failures in the struggle for existence’.<sup>32</sup> Likewise, when Congress passed a 1921 law with the effect of limiting immigration from Southern and Eastern Europe, a House Report explained that such individuals were ‘abnormally twisted’, ‘unassimilable’, and ‘filthy un-American’.<sup>33</sup> While such remarks reflected common opinion,<sup>34</sup> Southern and Eastern Europeans are no longer typically seen as distinct from other Europeans. As a result:

one cannot rule out in the long run that even perceptions of physical difference—that is, of a racial distinction—will change. . . . Some of the major European immigrant groups—the Irish, Italians, and Jews are the best-documented cases—were viewed as racially different from native-born whites . . . perceptions of, and social values attached to, different physical features changed over time.<sup>35</sup>

<sup>31</sup>However, once we adopt this strong view of the deterministic nature of human action, arguments regarding what constitutes legitimate restrictions on immigration miss the point, for they depend on the assumption that the potential set of feasible policies includes at least some policies other than currently existing ones.

<sup>32</sup>Quoted in Ngai 2004, p. 30.

<sup>33</sup>Quoted in Calavita 1996, p. 187.

<sup>34</sup>Lee 1998, pp. 40–4.

<sup>35</sup>Alba and Nee 2003, p. 63.

Likewise, Robert Putnam explains that social policy can dramatically affect ‘salient line[s] of social division’.<sup>36</sup> The social trust view hinges on the claim that the responses to and characterizations of diversity are inalterable facts about humanity, but there is evidence that such responses depend on the institutions in which diversity is confronted.

Moreover, in at least some of the empirical literature supporting the social trust view, the explanation includes individuals’ unwillingness to benefit others who are perceived as different. For instance, Alesina and his colleagues suggest that one reason ethnic fragmentation makes the provision of public goods more difficult is that ‘the identity of the beneficiaries of the public good directly influences the utility level of each individual’ such that, for example, if ‘a white person perceives that a public good is enjoyed mostly by black citizens, he would oppose it precisely for that reason’.<sup>37</sup> Likewise, in 2003 a Swiss anti-immigration party garnered a plurality of votes with a platform based on the slogan ‘The Swiss are becoming Negroes’. In cases in which a refusal to contribute to redistributive programs hinges on the fact that some of the benefits will go to nationally different others, the fact cannot be taken as *justification* for restricting immigration.

Two points emerge from this discussion. First, even if we grant that a robust welfare state is incompatible with increased immigration, social trust advocates have failed to justify their preference for the former. Second, it is worth being clear about the type of reason that the social trust view (even if correct on all counts) provides. The surgeon example shows that rather than a moral justification, the reason is an instrumental or pragmatic one. Of course, this does not make it unimportant, but it is worth bearing in mind that, just as those who benefit from a monopoly may bitterly (and from a powerful perch) protest policies meant to ensure competition, so too just immigration reform is likely to evoke significant reaction. The mere fact of powerful opposition to a policy ought not to be taken as justification for its repudiation. Especially given the evidence for the institutional view, rather than succumbing to the tendency for diversity to undercut redistributive programs, we have reason to work towards institutions that help overcome that tendency.

### III. REDUCTIVISM AND FALSE CHOICES

Even if we set aside the empirical and normative concerns raised above regarding the social trust view, there is a further reason to resist its conclusions. In this section, I shall argue that the social trust view is reductivist (in asking us to view migration as an all or nothing issue) and that, as a result, it presents a false choice.

<sup>36</sup>Putnam 2007, p. 160.

<sup>37</sup>Alesina et al. 1999, p. 11.

Explaining this requires making a few preliminary points regarding migration and citizenship.

The first such point is that while the privileges and burdens of citizenship are often seen as an all or nothing bundle, they can be (and, in practice, often are)<sup>38</sup> disaggregated. It is helpful to view the privileges of citizenship roughly in terms of two basic families. First, *claims of residence* are those that ought to be afforded to all present individuals (regardless of their political status). They are ‘rights whose justification has a moral character . . . possessed solely by virtue of their humanity’ and ‘meant to protect human dignity’.<sup>39</sup> Here, the ‘logic of personhood supersedes the logic of national citizenship’.<sup>40</sup> Second, *claims of membership* are those claims that are afforded to individuals because of their political status.

Claims of Residence	Claims of Membership
Civil Liberties <ul style="list-style-type: none"> <li>➤ Trial by jury</li> <li>➤ Due Process</li> <li>➤ Protection against torture</li> <li>➤ Freedom of Religion</li> </ul>	Extended Public Goods <ul style="list-style-type: none"> <li>➤ Public Pension programs</li> <li>➤ Non-emergency healthcare</li> <li>➤ Welfare programs</li> </ul>
Basic Entitlements <ul style="list-style-type: none"> <li>➤ Emergency Healthcare</li> <li>➤ Right to work</li> </ul>	Political rights and duties <ul style="list-style-type: none"> <li>➤ Right to vote</li> <li>➤ Duty to serve in the military</li> </ul>
Basic Public Goods <ul style="list-style-type: none"> <li>➤ Sewer systems</li> <li>➤ Roadways</li> <li>➤ National Defense</li> </ul>	

Against the view (famously expressed by Chief Justice Warren) that citizenship ‘is man’s basic right for it is nothing less than the right to have rights’, this view insists that the right to have rights, as a recognition of the worth of human life, is *more basic* than citizenship.<sup>41</sup> Here, citizenship is not the right to have rights, but the right to have an *extended* set of rights; it is the right to be a member of an association.

<sup>38</sup>The US Supreme Court has long held that certain rights (including the protection of private property, due process, trial by jury, protection from unreasonable search and seizure, etc.) are more basic than citizenship and must be accorded to foreigners present in the territory. For instance, the Court held that the protections granted by the Fourteenth Amendment ‘are universal in their application’ applying ‘to all persons within the territorial jurisdiction’ (*Yick Wo v. Hopkins* 1886; see also *Wong Wing vs. US* 1896 and *Plyler v. Do* 1982).

<sup>39</sup>Margalit 1996, p. 39.

<sup>40</sup>Soysal 1994, p. 164.

<sup>41</sup>*Perez v. Brownell* (1958).

Of course, divisions might be drawn in a number of ways and some goods do not clearly fit into one category rather than another. This suggests that it is better to see the distinction as ranging across a spectrum rather than varying dichotomously. Moreover, we should expect classification to be the contingent outcome of political deliberation and argument rather than determinant processes. Although noticing this distinction does not resolve disputes, it may improve their quality. For the moment, however, we can set aside such complexities so long as we recognize that the various features of citizenship rest on different kinds of justifications and may be disaggregated.

Connectedly, it is often not membership that migrants seek, but access to the economic opportunities provided by the labor market of a given territory. Long-term estimates suggest that approximately 30% of migrants to the United States eventually return to their home country<sup>42</sup> and that the ‘overwhelming majority of Mexican migrants plan to return, seeking to work in the United States for short periods’ in order to overcome failures in Mexican insurance or credit markets.<sup>43</sup> Allowing that citizenship is a complex category and that migrants often only seek access to certain elements of it, suggests, as I will explain, that the social trust argument does not prove as much as intended.

Advocates of the social trust view insist that citizens will refuse to support justice-required redistributive programs if such programs incorporate nationally diverse immigrants. As a result, they argue that states are justified in refusing admission to migrants. However, even if we accept their claim, it only provides reason to reject claims of membership, not residence. Migrants may be allowed to work, granted basic liberties (such as due process), given access to basic public goods (highways, emergency rooms, etc.), and taxed for such privileges,<sup>44</sup> even while they are denied access to the political community (and the associated rights, duties and extended public goods). In this way, their admittance to the territory may be disassociated from their incorporation into the welfare state. They may be admitted to the territory without (and without the possibility of) citizenship. Once this possibility emerges, it should be clear that (and this is the section’s key point): *even if successful, the social trust argument can only provide reason to*

<sup>42</sup>Kapur and McHale 2005, p. 170.

<sup>43</sup>Durand and Massey 2004, p. 6.

<sup>44</sup>Collecting such tax money should present no major problem as many, even illegal, immigrants already contribute to such schemes through money withheld from paychecks and, of course, taxes on purchases. Making their work legally recognizable should only render collection easier. The harder question is how to make sure that non-citizens do not end up shouldering an unfairly large tax burden (given their lack of political representation). Although I doubt whether a fully adequate answer exists, three points are worth making. First, employers (who are often politically powerful) will have an interest in maintaining the attractiveness of work and, thus, avoiding exuberant tax rates. Second, migrants would retain the right of exit which can be a powerful political tool. Finally, to show that the situation would be imperfect is to show little: the question is whether such problems would be worse than existing ones. So long as laborers continue to arrive there is at least *prima facie* reason to think that their situation is better even given these difficulties than it would be without freedom of movement.

*limit claims of membership*. The social trust argument provides no reason to forbid migrants from entering the territory.

Thus, even if we ignore the difficulties discussed in Sections II-III, the social trust view cannot justify restrictions on territorial access. So, it is only in combination with a reductive assumption about the nature of citizenship that the social trust view can even purport to justify full-fledged restrictions on immigration. The assumption is that either we allow migrants to enter the territory *and* grant them citizenship or we do neither.<sup>45</sup> The assumption that all admitted must be granted full citizenship is part of the reason that increased immigration and a robust welfare state are seen as incompatible. However, given that the objection of citizens to immigration often hinges on access to the welfare state (or membership) while migrants are often primarily interested in residence, the claim that citizenship must always accompany access to territory requires justification.

With rare exception,<sup>46</sup> policies granting unequal status (including those erecting barriers to naturalization and, thus, exclusion from membership rights) are summarily rejected in contemporary political theory. Instead, that all residents of a society must be accorded equal status, is typically taken as beyond question; indeed, 'the principle of equal citizenship has come to be universally accepted'.<sup>47</sup> On this view, it is illegitimate to permit individuals to have access to residence without citizenship. However, if justifications for restriction only extend to membership claims and many migrants only seek residence rights, we should at least consider the possibility that this commitment to the equal status of all is misguided. In the remainder of this section, I explore the possibility that this commitment presents a false choice that obfuscates the genuine, and more complex, issue: which kinds of admission to which people under which circumstances?

In what follows, I discuss two reasons to be skeptical of arguments for unqualified commitment to equal status. Bear in mind that the primary reason to allow migrants territorial access is that there is a presumption in favor of free movement and that the social trust view fails to provide reason to limit territorial access. The arguments that follow attempt only to weaken objections to this view; they are not themselves meant to establish the case for disaggregating membership and residence. Moreover, rather than providing a comprehensive discussion of the issue, I want only to demonstrate that the most common arguments for an uncompromising commitment to equal status for all are not powerful enough to justify the strong presumption afforded them in the literature. Instead, there appears to be at least some reason to prefer having a class of people in society for whom citizenship is unavailable (given a firm

<sup>45</sup>Walzer 1983, p. 62.

<sup>46</sup>Mayer 2005.

<sup>47</sup>Taylor 1994, p. 38.

commitment to the protection of the residence rights of all) than to block those people from access to the territory altogether. My claims will be that arguments for an unqualified egalitarianism (a) beg the question by failing to disaggregate the powers of the state and (b) are potentially self-defeating.

First, arguments for equal status hinge on a failure to disaggregate the powers of the state. For example, Michael Walzer and Ronald Dworkin both insist that those who fall under the government's authority are due equal say in making its laws:

Men and women are either subject to the state's authority, or they are not, and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does.<sup>48</sup>

No government is legitimate that does not show equal concern for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance.<sup>49</sup>

As they stand, these arguments are unsatisfactory.

Walzer begs the question by asserting that the extent to which one is under the authority of the state is an all or nothing issue. The reality is more complicated. Along with citizens, governments claim authority over—at least—illegal immigrants, travelers, resident aliens, and asylum-seekers. It would be unreasonable, however, to hold that travelers must be given a full say in state policies or register for military duty as long as they are present. Instead, we already recognize that the power a government may wield over an individual depends on the purpose of their presence. Travelers and asylum-seekers (prior to a decision on their claim) are generally entitled to claims of residence, but not claims of membership. Likewise, government has authority over such individuals, but only authority of a limited sort (roughly, authority in those matters connected to claims of residence). If it were true, as Walzer claims, that individuals either are or are not under the authority of the state, then it might also be true that they must be given an equal say or none at all in how the authority is used. However, because the premise does not obtain, the conclusion—that all individuals must be granted equal status—is left unsupported.

Moreover, it is not clear that the underlying reasons for Walzer's commitment demonstrate as much as he claims. In writing about guest workers (which are distinct in important ways than what is at stake here),<sup>50</sup> he claims that:

<sup>48</sup>Walzer 1983, pp. 60–1.

<sup>49</sup>Dworkin 2000, p. 1. Although Dworkin refers to 'citizens' in the passage this is because he uses the term interchangeably with 'individuals' and not because he is distinguishing between the two.

<sup>50</sup>I do not refer to the possibility under discussion as a guest worker program primarily because such programs have traditionally featured three important injustices that a proposal for widespread access to residence without citizenship avoids. First, unlike guest workers, such residents would not be tied to a single employer. This lessens the opportunity for abuse at the hands of the employer. Second, such residents would not be eligible for deportation. Third, permission to stay in the territory would not be temporary.

The civil liberties of speech, assembly, association—otherwise strongly defended—are commonly denied to them, sometimes explicitly by state officials, sometimes implicitly by the threat of dismissal and deportation.

And that:

Residence is tied to employment, and the authorities make it a rule that any guest worker who cannot support himself and his family without repeated recourse to state welfare programs, can be deported.<sup>51</sup>

However, a commitment to the residence rights of aliens should protect against their arbitrary treatment by state officials, rule out the threat of deportation, and block the possibility of tying residence to employment. Thus, Walzer's argument against different levels of status is insufficient and the reasons that he adduces for that commitment give reason to design non-citizen status in a particular way, but do not tell against it altogether.

Dworkin's argument is inadequate for similar reasons. He suggests that government must show equal concern for all those 'over whom it claims dominion and from whom it claims allegiance'. There are two ways in which this claim could be interpreted. First, equal concern could be owed only to those who satisfy *both* the allegiance and dominion demands. This interpretation, however, does not yield Dworkin's desired conclusion, for it leaves open the possibility of residents of differing status. For instance, it could permit a class of non-citizen workers (from whom the government demands dominion but not allegiance). Alternatively, it could be that anybody who meets *either* of the conditions is entitled to equal concern. While this interpretation forecloses the possibility of non-citizen workers, it does so only at the cost of becoming vulnerable to the same complaint lodged against Walzer. That is, government claims dominion over many groups whom it would be odd to insist are entitled to equal concern (travelers, asylum-seekers, resident aliens or prisoners of war). Thus, the common argument that government must give equal status to all those under its authority fails because it wrongly assumes that government authority must be doled out completely or not at all.

Second, insisting on a single level of status often undermines the very rationale by which it is putatively justified, thus rendering it potentially self-defeating.<sup>52</sup>

Walzer explains that the 'aim of political egalitarianism is a society free from domination'.<sup>53</sup> Dworkin's related explanation is that 'it is important, from an objective point of view, that human lives be successful rather than wasted, and this is equally important, from that objective point of view, for each human life'.<sup>54</sup> While a host of rationales may be given for a commitment to equality, all are

<sup>51</sup>Walzer 1983, p. 57.

<sup>52</sup>This discussion owes much to Thomas Pogge's explication of moral loopholes (Pogge 2002, ch. 3).

<sup>53</sup>Walzer 1983, p. xiii; see similarly Anderson 1999 and Margalit 1996.

<sup>54</sup>Dworkin 2000, p. 5.

likely to assert something similar: namely, we should care about equality because it is only through such a commitment that we can properly respect individuals and give due heed to their life chances.

The difficulty is that a commitment to equal status jeopardizes these goals by—at least potentially—increasing vulnerability and leading to lives being ignored by ruling institutions. The insistence on egalitarian status amounts to a promise to keep membership and residence claims bundled. However, this bundling predictably begets a situation in which millions—particularly illegal immigrants and asylum-seekers—live without *any* recognition from, and indeed under the threat of, ruling institutions.

To give an idea, estimates suggest that the millennium opened with between six and eight million people residing illegally in the United States. Moreover, this number was growing at a rate of approximately 500,000 annually.<sup>55</sup> Because legal access to the economy is blocked, such individuals negotiate their way into it through a series of dangerous and unpredictable avenues. Indeed, it is estimated that 350 people die annually attempting to surreptitiously cross the US-Mexico border (the rate of deaths has reportedly tripled since the US Border Control stepped up enforcement in 1993).<sup>56</sup>

Systematic evidence concerning the working and living conditions of illegal immigrants is hard to come by, but estimates suggest that wages of undocumented Mexican workers in the US hovered around \$4 per hour from 1980–1998.<sup>57</sup> A recent study on the day labor workforce in the United States (75% of whom are illegal immigrants) also provides some insight.<sup>58</sup> According to this survey of over 2,500 randomly selected day laborers in twenty states:

- Employer abuse is rampant: almost half had wages stolen in the two months prior to the study and similar numbers reported working without food, water, or breaks.<sup>59</sup> Also in the two months prior to the study, nearly one-fifth of workers reported being victims of employer violence.
- At least partially because day laborers ‘are hired to undertake some of the most dangerous jobs at a worksite and there is little, if any, meaningful enforcement of health and safety laws’,<sup>60</sup> 20% reported suffering a work-related injury<sup>61</sup> in the previous two months.

<sup>55</sup>Boeri 2002, p. 3; such estimates are notoriously difficult to make and the INS numbers should be taken cautiously.

<sup>56</sup>Massey et al. 2002, p. 114. Many analysts doubt that these efforts have achieved anything in terms of keeping illegal immigrants out of the country (Borjas 1999, pp. xv–xvi; Daniels 2004, p. 250; and Massey et al. 2002, pp. 45, 57), though it is likely that increased border enforcement discouraged migrants from leaving (Durand and Massey 2004, pp. 281–98; Riosmena 2004).

<sup>57</sup>Massey et al. 2002, p. 122.

<sup>58</sup>Valenzuela et al. 2006, p. iii.

<sup>59</sup>Ibid, p. iii.

<sup>60</sup>Ibid, p. 12.

<sup>61</sup>Ibid, p. iii.

- Most of the jobs secured at such sites last only one day, meaning that such workers have a very insecure income flow.<sup>62</sup>

This provides some idea of the vulnerability of illegal immigrants.<sup>63</sup>

Likewise, it is clear that many asylum-seekers await decisions on their status for long periods of time, on meager funds, without the right to work, and while suffering constant humiliation.<sup>64</sup> According to a Congressional report, in nearly 15% of the 6,000 studied cases in 2003, applicants waited over 180 days for a decision.<sup>65</sup> During this time, ‘they can be stripped, searched, shackled, manacled, chained, and denied access to lawyers and to their families . . . and, since September 11, increasingly so’.<sup>66</sup>

Faced with the prospect of either granting individuals *both* membership rights and citizenship rights (which may be seen as the property of the community) or *neither* set of rights, citizens insist on the protection of their citizenship entitlements and often do so at the cost of the more basic rights of outsiders. Pressure not to recognize such individuals would not be as substantial if recognition did not bring access to membership rights. Thus, it is at least possible that the insistence on equal status contributes to the very vulnerability and disrespect that it is called upon to block, by creating a class of invisibles.

The obvious retort, setting aside asylum seekers, is that worries about the vulnerability or disrespect of illegal immigrants are either (a) inapplicable because such migrants choose to come knowing the unavailability of equal status and do so without the consent of recipient countries or (b) best eliminated by more effectively closing borders so as to preclude the existence of such groups. Both responses are inadequate.

We should dismiss the first because since the social trust view purports to justify restrictions on immigration, it is circular to discount the needs and interests of foreigners because they are in violation of the law. That is, the argument cannot be used to justify the law at the same time that the law is used to justify the argument. At some point, independent reason for the position must be provided. Moreover, the normative weight of the ‘consent’ of both sides is questionable.

That the immigrants come despite the unavailability of equal status highlights the vulnerability of their situation. Additionally, while it is true that the United States (for example) officially opposes illegal immigration, this stance is at least partly duplicitous. At the same time that government officials decry illegal immigration, they refuse to enforce legislation that would hold employers liable for employing illegal migrants,<sup>67</sup> subsidize agricultural industries which depend

<sup>62</sup>Ibid, p. 6.

<sup>63</sup>Also helpful is Kandel (2004).

<sup>64</sup>Migrant Resource Center 2006; Moorehead 2006.

<sup>65</sup>USCIRF 2005, p. 343.

<sup>66</sup>Moorehead 2006, p. 93.

<sup>67</sup>Calavita 1992, p. 8; Daniels 2004, pp. 224–7; and Massey et al. 2002, p. 102.

heavily on the labor of illegal immigrants,<sup>68</sup> and pursued policies (during the Bracero Era) which played an important role in creating the social capital powering today's migration.<sup>69</sup>

Likewise, the second response (more effectively closing borders) is not available because restricting the movement of individuals requires justification and, as we have seen, the social trust argument only applies to claims of membership. Thus, exposing the reductive nature of the argument by decoupling claims of membership and residence helps demonstrate that the social trust view cannot provide reason to attempt to avoid problems related to illegal immigrants by more effectively sealing borders. Such a tack would amount to restricting movement without providing justification.

So, the second reason to question the egalitarianism of Dworkin and Walzer and consider the possibility of granting partial status is that stubbornly claspng onto the egalitarian commitment risks undermining egalitarianism's motivating rationale: rather than protecting individuals from vulnerability and rule by unaccountable institutions, there is some reason to think that it promotes such scenarios.

While I do not pretend that these comments establish the case for disaggregating citizenship claims or answer all worries about such a tack, normal pathways through which their consideration is summarily excluded are inadequate. Indeed, we have seen that (a) by hinging on an inaccurate view of government power, they fail to provide reason for such a commitment and (b) there is reason to think that such a commitment may be self-defeating.

Rejecting the welfare state's claim to a territorial monopoly is one way of suggesting that the dilemma presented to egalitarian liberals by advocates of the social trust view is erroneous, for it holds out hope of retaining the welfare state *and* allowing increased territorial access. My comments about what this arrangement would look like are admittedly sketchy and I do not have answers to all queries. The possibility has been so little considered that clear answers are nowhere to be had. However, given that (a) many immigrants primarily or exclusively seek residence and (b) claims based on social trust apply only to membership claims, there is at least reason to consider relatively freely admitting non-citizen residents. Indeed, strong reason would apparently be required to legitimate restrictions on movement given the willingness of the parties involved. However, as we have seen, the kinds of reasons typically given are unimpressive. Minimally, I hope that my discussion makes clear the need for a more serious consideration of the possible advantages of widespread access to residence without citizenship.

Before closing this discussion, it is worth considering a final line of objection. On this view, any attempt to separate membership and residence is bound to be

<sup>68</sup>Durand and Massey 2004, p. 11.

<sup>69</sup>Calavita 1994.

unstable because ‘unlike goods or capital, migrants (human beings) can and do acquire rights, particularly under the aegis of the laws and constitutions of liberal states, which afford migrants a measure of due process and equal protection’.<sup>70</sup> Following the experience of many European states with guest workers, some analysts contend that liberal states cannot grant residence without also eventually granting citizenship. This is particularly true in the United States where citizenship is automatically granted to all born in the territory. There are two ways in which this objection might be interpreted.

First, the claim could be that empirically it is very difficult to grant claims of residence without ultimately capitulating and granting membership claims. On this view, widespread acceptance of the language of human rights escorted in (typically through judicial rulings) a new model of citizenship which blocks the possibility of distinguishing between rights of membership and rights of residence.<sup>71</sup> Even if this claim is empirically correct, it does not undermine the position for which I argue. Instead, it targets the claim at the wrong level. My argument is a normative one about what kinds of laws we *should* have. Given this, it is no objection to insist that courts are likely to view such a position as inconsistent with current laws. After all, the point of the argument is to show that current laws appear to bundle claims of membership and residence without justification (and, indeed, there is strong reason to reject, for example, birthright citizenship<sup>72</sup>).

A second way to interpret the objection under consideration is to assume that its advocates hold not just that residence leads (as an empirical matter) to claims of membership, but that residence leads to *legitimate* claims of membership. In the absence of a specific explanation of why this is so, it is a difficult claim to assess. I can only assume that the underlying rationale would be similar to the one suggested by Dworkin and Walzer, but we have already seen that this line of thought cannot bear the weight of scrutiny. An explanation would need to be given for why simply being in a territory generates an entitlement to benefit from an associative scheme that operates within that territory.

This section’s objective was to demonstrate that the social trust argument (even if we grant the empirical and normative claims on which it relies) is incapable of providing grounds for the legitimate limitation of residence claims. Thus, disaggregating claims of membership and residence allows us to see that the social trust view, even if correct, proves less than claimed. Finally, attempts to resist this conclusion based on the necessity of maintaining a society of equal status depend on conflating the various powers of the state and, moreover, may be self-defeating.

<sup>70</sup>Hollifield 2004, p. 896.

<sup>71</sup>Soysal 1994; Jacobson 1997.

<sup>72</sup>Schuck and Smith 1985.

## IV. CONCLUSION

We have seen that many analysts hold that restrictions on immigration are justified because immigrants threaten the relatively unified public culture required for the maintenance of a just set of public institutions. Against this view, I have insisted that:

1. The underlying empirical claim is vulnerable to rival institutional explanations of the bases of social trust;
2. Only via a hidden normative assumption can the claim provide reason to restrict immigration and, even then, the reason is a non-justificatory one; and
3. Even if the social trust view otherwise succeeds, it can furnish reasons to deny membership claims, but not claims of residence.

As a result, the putative hard choice between increased immigration and the maintenance of the welfare state may not be a real dilemma (given the institutional view and because membership and residence may be able to be disconnected) and, even if the dilemma exists, the social trust view fails to provide reason to choose in favor of restricted immigration. Thus, the social trust view is vulnerable to challenge on multiple fronts and, even if correct, does not prove as much as advocates claim. My hope is that this discussion at least raises the suspicion that concerns about immigration and the welfare state are better addressed by thinking about issues related to legitimate entitlement rather than shared identity or social trust.

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