

# Immigration, Political Community, and Cosmopolitanism

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## TABLE OF CONTENTS

I.	CONTRACTUALIST DEFENSES OF A NONCOSMOPOLITAN CONCEPTION OF POLITICAL COMMUNITY .....	938
II.	COSMOPOLITANISM AND THE MODERN DEMOCRATIC STATE .....	948
III.	IMMIGRATION AND COSMOPOLITANISM .....	954
IV.	TRADE-OFFS BETWEEN INJUSTICES.....	959
V.	CONCLUSION .....	961

Is there any good reason from within moral cosmopolitanism to limit immigration into political societies? A morally cosmopolitan view asserts that the fundamental norms of justice that ground the legitimacy and justice of the political communities of modern states are ones that hold for the whole world community. And whether one holds to liberal egalitarian or classical liberal cosmopolitan principles, the initial impulse of cosmopolitans is to assert that political societies do not have a right to limit immigration into political communities. Each person is entitled on these views to equality of opportunity or freedom of movement respectively and thereby is entitled to move into, or avail themselves of the opportunities in, any political society. Hence cosmopolitanism would appear, on its face, to imply that open borders are required by justice.

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And yet, though we do not know what the consequences of such policies would be, many find the prospect of such policies to be unsettling or even frightening. Many citizens of liberal democracies are unsettled by even the modest immigration flows they see into their societies. The reasons for this anxiety are presumably many. One is fear of loss of control over the community, of living in a society of mutually uncomprehending strangers. Some are concerned that open immigration would leave unfinished the project of bringing social justice to their own society. Another may be simple xenophobia. The first two of these considerations are legitimate ones, though they may not be decisive; others are illegitimate. What place do these kinds of considerations have within a moral cosmopolitan view?

In this paper, I want to suggest one important way to take the above issues seriously that is consistent with a thoroughgoing cosmopolitanism. The idea develops a consideration that has been discussed, but not sufficiently explored, by some cosmopolitans.<sup>1</sup> It starts from the observation that one can be a moral cosmopolitan without being a political cosmopolitan in the sense of advocating for a global political community in the near-term future. To be sure, given the role of the political community in establishing justice among persons, it seems clear that in the long term, moral cosmopolitans must hope for a global political community. In the near-to-medium term, however, efforts to establish a global political community would be quite premature and would probably lead to the kinds of oppression and anomie that Kant worried about.<sup>2</sup> Still, the aspiration to a global political community in the long run and the steps necessary to achieve this aim may give us some guidance as to how to think about the migration of peoples from the point of view of moral cosmopolitanism.

The basic idea of this paper starts from the observation that the modern liberal democratic state represents an essential achievement in the attempts of human beings to realize justice and the common good among themselves. Its achievements are not all we want them to be, and they are limited to the scope of people brought into its jurisdiction. But considering the long and wretched history of human oppression, they are achievements that must attract our respect. Furthermore, the modern democratic state embodies the best hope we have of ultimately bringing justice to the whole of humanity. It is an essential example for global

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1. See Joseph H. Carens, *Migration and Morality: A Liberal Egalitarian Perspective*, in *FREE MOVEMENT: ETHICAL ISSUES IN THE TRANSNATIONAL MIGRATION OF PEOPLE AND OF MONEY* 25 (Brian Barry & Robert E. Goodin eds., 1992).

2. See IMMANUEL KANT, *Perpetual Peace*, in *ON HISTORY* 85, 113–14 (Lewis White Beck ed., 1963).

institutions and the basic building block on which such global institutions can be created. Liberal democratic states are responsible for the modern development of international institutions that protect and regulate international trade, provide for collective security, and aspire to realize some collective goods such as the protection of the environment and the relief of poverty and disease. And international institutions are maintained by such democratic states through their example and practices. My surmise is that these institutions would not last long without the sponsorship of liberal democratic states. This leads me to argue that, insofar as the development of global political institutions and ultimately the development of a global political community are essential to the realization of the aims of the moral cosmopolitan, the modern liberal democratic state must play a central role. And to the extent that it is necessary to this development, we must protect such states from forces that would undermine their democratic character and the normal functioning of their political systems. Immigration policy should therefore be in part evaluated in terms of whether it undermines the existence and normal practices of liberal democratic states. To the extent that open borders would undermine the existence or normal functioning of liberal democratic states, such a policy should be rejected from a cosmopolitan standpoint because it derails the very institutions that give us some hope for realizing cosmopolitan justice in the future.

As a start, it is important to discuss the basis of some noncosmopolitan conceptions of justice and political community. I will discuss two different conceptions of the relationship between political community and distributive justice that have played a role in the debate. In the first account of this relationship, distributive justice consists of a set of principles independent of political community, and political community has the function of trying to realize and establish distributive justice among the persons within it. This “functional” account of the relationship between justice and political community is historically associated with John Locke.<sup>3</sup> The job of the political community, according to this view, is to realize principles that apply to persons independent of the political community. In the second account, distributive justice consists of a set of principles

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3. JOHN LOCKE, TWO TREATISES OF GOVERNMENT 395–99 (Peter Laslett ed., The New Am. Library, Inc. 1965) (1690). The functional conception is independent of any particular principles of justice. Locke’s principles were a kind of qualified classical liberalism, while many contemporary cosmopolitans espouse egalitarian principles of distributive justice. *See, e.g.*, Carens, *supra* note 1, at 25.

that only arise within the context of the political community and because of the particular features of the relationships among persons within the political community.<sup>4</sup> Examples of this account are some recent liberal nationalist and contractual views about the nature and basis of political community. The participation in political community is partly constitutive of distributive justice in this view. The relationships in which people stand towards each other in the political community are what give rise to considerations of distributive justice. I will call this the “constitutive” conception of the relationship between political community and distributive justice.

First, I want to examine some recent arguments for the constitutive conception of the relationship between political community and distributive justice. This kind of view has been defended by liberal nationalists such as David Miller,<sup>5</sup> and in part by Michael Walzer<sup>6</sup> and political contractualists such as Michael Blake,<sup>7</sup> Stephen Macedo,<sup>8</sup> and Thomas Nagel.<sup>9</sup> In this paper, I will critically assess the contractualist arguments but not the liberal nationalist ones; the latter merit a full length treatment of their own. The contractualist arguments attempt to show that, although we owe respect for the basic human rights of all persons, there is no reason to think that principles of equality of opportunity or equality in material distribution ought to regulate our relations with all the peoples of the globe. The existence of a shared political community is a necessary condition for the obligations of distributive justice to hold among persons. It is in this respect that these views are not cosmopolitan. They do recognize obligations that people hold towards each other just by virtue of being fellow humans, and some of these views hold that there are human rights correlative with duties on the part of all persons.<sup>10</sup> But these thinkers hold back from the thesis that distributive justice is owed to all human beings. Distributive justice has a kind of restricted scope, limiting the

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4. A fourth recent view asserts that political communities as we know them are voluntary associations or clubs. Defenders of this view argue that political communities should be able to control immigration just as clubs can control entry. I will not be able to address this view in this paper. See Christopher H. Wellman, *Freedom of Association and Immigration*, ETHICS (forthcoming Oct. 2008).

5. See DAVID MILLER, NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE (2007).

6. See MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 31–35, 61–63 (1983).

7. See Michael Blake, *Distributive Justice, State Coercion, and Autonomy*, 30 PHIL. & PUB. AFF. 257 (2001).

8. See Stephen Macedo, *The Moral Dilemma of U.S. Immigration Policy: Open Borders Versus Social Justice?*, in DEBATING IMMIGRATION 63, 69–76 (Carol M. Swain ed., 2007).

9. See Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFF. 113 (2005).

10. See MILLER, *supra* note 5, at 163–200.

targets of the obligations to fellow citizens or members of the political community. This relationship of norms of distributive justice to the political community is what characterizes the constitutive conception of the political community.

This conception of political community has enormous implications for immigration because it is the concern for cosmopolitan distributive justice that leads to the cosmopolitan demand for open borders.<sup>11</sup> The thought is that cosmopolitan justice requires equality of opportunity for all persons and that this can be achieved only if all persons have access to participation in the wealthy economies and stable political societies of the world. For example, the coercive exclusion of large numbers of poor persons from Africa and Latin America from participation in the wealthy economies of Europe and North America seems clearly to violate the fundamental norm of equality of opportunity as understood in a cosmopolitan sense.

To be clear, none of the thinkers above argue that immigration should be completely restricted. They all hold that there are duties of humanitarian assistance that may require allowing either economic or political refugees into a country, even possibly as citizens. And a number have argued that refugees and legitimate asylum seekers have rights to be admitted into some—though not every—political society that will protect their basic human rights.

In this paper, I discuss two recent contractualist arguments that defend the constitutive conception of the relation between political community and distributive justice and the consequent right of political communities to engage in limited exclusion of poor immigrants into their society. I argue that the case has not been made for differentiated moral obligations towards fellow citizens and human beings generally. I then elaborate an alternative functional conception of political community that accepts the idea that standards of distributive justice hold for the whole world. Ultimately, this implies that the long-term aim of humanity must be to have a global political community. That said, we must not produce a global political community prematurely. The way forward is through the creation of international institutions by liberal democratic states which have achieved limited political communities. Although it will

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11. See, e.g., Carens, *supra* note 1, at 25. For a very interesting effort to show that cosmopolitans need not accept open borders to satisfy equal opportunity, see Eric Cavallero, *An Immigration-Pressure Model of Global Distributive Justice*, 5 POL., PHIL. & ECON. 97 (2006).

take a very long time, this is the process by which a legitimate global political community can be created. This gives some reason for cosmopolitans to consider limitations on immigration into democratic societies. Because democratic societies are the key to the creation of a global political community, it is essential that they be protected from threats to their maintenance and proper functioning. After discussing some empirical arguments to this effect, I conclude with a discussion of a further difficulty with the particular argument I offer and relate it to some general problems of non-ideal theory in global political theory.

Let me say a little bit about the method I follow here. The argument of this paper is only hypothetical. It asserts that if large-scale immigration into democratic societies were to undermine the proper functioning of those societies, then there would be good cosmopolitan reasons for limiting immigration. But the empirical evidence is not definitive, in my mind, so we must await more conclusive evidence. In part I am engaging in straightforward moral and political philosophy. But I am also engaging in a kind of speculative social science. In my view, political philosophy must engage in speculative social science to some significant degree. Political philosophy inevitably makes assertions about political institutions and their functioning. We must try to marshal the available empirical evidence in support of these assertions, and where the evidence is inconclusive, we must suggest what empirical hypotheses are relevant to the normative political project we are engaged in. In a sense, political philosophers are partly engaged in the building of models of just and legitimate political institutions or of the ways in which to bring about such institutions. The validity of these models depends in part on a priori reasoning and in part on empirical theories. Political philosophers can contribute to the development of social science by suggesting what kinds of empirical hypotheses need support given a basic normative theory.

#### I. CONTRACTUALIST DEFENSES OF A NONCOSMOPOLITAN CONCEPTION OF POLITICAL COMMUNITY

The basic idea behind contractualist arguments is that the members of a political community are owed justification for the terms of the political community. Persons who are not members of the community are not owed such justification. The second main premise states that the duty to justify coercive institutions to fellow members implies that one must advance principles for the governance of society that they can accept as free and equal persons. The third main premise of the argument states that a scheme of egalitarian distribution of material goods—in a broad sense of “egalitarian distribution,” which might allow inequalities in

distribution but only for the common good—is a necessary component of an adequate justification of coercion to fellow free and equal members of the community.<sup>12</sup> Moreover, because nonmembers are not owed such justification, there is no duty to invoke principles of egalitarian distributive justice in justifying one's relations to nonmembers.

Thomas Nagel and Michael Blake give somewhat different arguments for the first and second main premises of this argument. Blake argues that because the state coerces individuals, it interferes with the autonomy of persons and therefore owes them a justification that would be sufficient for them to hypothetically consent to the coercion.<sup>13</sup> This is a kind of variant of Locke's requirement of consent to the coercive authority of the state, but it comes with some twists not contemplated by Locke. First of all, it requires only hypothetical consent and not actual consent. Second, it turns out that the hypothetical consent will not be forthcoming unless a number of ambitious principles of distributive justice also constrain and guide state action. We are told that individuals will only hypothetically accept the coercive authority of the state if the state assures an egalitarian distribution of political power, equality of opportunity, and an egalitarian distribution of material resources. Now, this latter claim is itself never defended, save for a brief and noncommittal allusion to Rawls's argument from the original position. Blake assures us that we need not accept Rawls's argument from the original position for the difference principle.<sup>14</sup> This is all to the good because I do not think many have been convinced that the original position argument gives much support for the difference principle over utilitarianism or a guaranteed minimum. But Blake never supplies us with any further argument for the idea that hypothetical consent will not be forthcoming unless a set of highly ambitious distributive principles are put into place. As far as I can tell, it seems that no good argument can be made here. The reason why I am discussing this apparent failure is because I do not see how Blake can show that there is any reason to think that the moral principles that govern the state are different from those that should govern all human beings. Hypothetical consent does not seem to have the power to generate determinate principles at all.

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12. It should be noted that the third premise is not necessary to the constitutive approach. One could be a classical liberal and still hold that there are some special duties relating to justice owed to one's fellow citizens that are not owed to others.

13. See Blake, *supra* note 7, at 272–84.

14. *Id.* at 283–84.

More importantly, it is not clear why principles of justice ought to arise out of this kind of hypothetical consent. We are, after all, talking about the consent of an individual to a particular state's authority. Why would this consent not simply be regulated by the usual rational and moral norms that have authority over a person? To see this, think of the generative power of actual consent. Though actual consent does produce special duties, it does not generate new principles of justice. It merely produces obligations to support or not to interfere with what one has consented to. If I have consented to Amnesty International taking money out of my bank account, I may have an obligation not to interfere, but I have not produced a new principle of justice that says Amnesty may withdraw funds from my account. It is hard to see how hypothetical consent could have any more generative power than actual consent. And so, it is not clear how hypothetical consent can generate special principles of justice.<sup>15</sup>

Another argument for this point is more internal to Blake's position. The problem I have in mind becomes evident when we see that coercive relationships take place everywhere among persons in the world. Not only does the state coerce its citizens, it coerces all persons in the world with respect to the things that come under its jurisdiction. No one may violate my property rights as they are established by the political society of which I am a part, and all the rights I have as a citizen are protected against all persons, not merely fellow citizens. And, of course, the borders of a territory are coercively enforced as well. Furthermore, the world as a whole is organized in terms of territorial states, each of which has similar rights of coercion against all persons. To the extent that this whole system is sanctioned by international law and recognized as legitimate by virtually all states, it is an unmistakably unified and distributed scheme of coercion. All these acts of coercion against the world, and the whole system of such actions, would seem to call for hypothetical consent on the account Blake has given us. And if we do require hypothetical consent, why would it not be possible to have the same considerations carry the day in the case of the world as in the case of a domestic society? It is simply not clear why this larger perspective is not one that ought to have priority over more local perspectives.

I am not advocating for the application of a Rawlsian original position argument for the world; I do not think that such arguments yield clear

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15. A final point on the relation between consent, coercion, and justice should be noted here. It is clear that the consent of the coerced is not required for the vast majority of acts of coercion. Each and every human being is protected by a standing threat of unpleasant consequences if someone contemplates harming, interfering with, or mistreating a protected person in some way. Yet, it is unreasonable to think that the consent of the coerced is needed to validate this coercion.



conclusions. I am simply arguing that it is not at all clear that this idea, that hypothetical consent is called for when people are coerced in a systematic manner, is going to yield the kind of differentiated morality that Blake is recommending.

Blake gives a kind of intuitive application of his argument in the case of immigration.<sup>16</sup> He argues by means of a contrast between the distribution of political power and the rights of entry and exit from a political community. He asks us to consider an argument, adopted from Joseph Carens, asserting that it is a violation of moral equality if someone from Buffalo is able to move to Boston without any impediment, while someone from Toronto is not permitted to move to Boston without significant efforts to acquire a residency permit. This seems like a violation of equality. The person from Buffalo is being treated in some way better than the person from Toronto and for a reason that seems arbitrary from a moral point of view: where they are currently citizens. Blake contrasts this example with the case of the person from Buffalo having some say over the decisions of the federal government of the United States, while the person from Toronto has no such say. This, Blake asserts, is no problem because the person from Buffalo must share burdens with other U.S. citizens and is subject with them to the authority of the federal government, while the person from Toronto is not. There is no reason to distribute political power to the person from Toronto. The justification owed to the person from Buffalo for the burdens imposed on him, and the coercion he is subject to, must include an offer of equal political rights as part of the bargain. And because the person from Toronto is not subject to these burdens and duties, she is not owed such a justification, and therefore, is not owed equal political rights.

Blake's inference is that "Carens now has no argument as to why the right to mobility should be treated as something which is always an implication of moral equality, rather than a specific implication of moral equality which applies only within the context of shared liability to the state."<sup>17</sup> The thought is that, just as the state owes different justifications to citizens and noncitizens in the case of the distribution of political power, so it owes different justifications in the case of freedom of movement.

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16. See Michael Blake, *Immigration*, in A COMPANION TO APPLIED ETHICS 224, 228 (R. G. Frey & Christopher Heath Wellman eds., 2003).

17. *Id.* at 229.

I agree with Blake's observation about the justice of distributing political power. But I am not convinced that his inference from this observation is correct. A very different interpretation of the case can be given. In the normal case, giving the person from Toronto equal political power over the actions of the U.S. federal government may be incompatible with a proper appreciation of the requirements of equality in distribution. It would amount to distributing equal political power to someone who does not have overall equal stakes in the decisionmaking. People from outside a country are not normally affected by a state's policies and laws to the same degree as people from within a political society. People within a political society, because of the internal development of the state over several hundred years, tend to share in each other's fate a great deal more than those without this shared history. To be sure, this does not hold in absolutely every case. However, I believe it is fair to say that for the most part, people who are members of modern states tend to have roughly equal stakes in their states, while those who are not members have lesser stakes.

Under the principle that those who have very significantly unequal stakes in some community ought not to have an equal say over that community, it would seem unfair for the person from Toronto to have the same political power over the U.S. government as the person from Buffalo. But this argument is grounded in equality. It is because these persons are equal, and have equal claims to their interests being advanced, that they ought not to have an equal say over what happens in communities where they have very unequal stakes. The very same set of considerations applies within political societies. One reason for blocking the application of democratic decisionmaking to the exercise of basic individual liberties is that outsiders have much less of a stake in whom I associate with, or what I do with my free time, than I do. The principle that underpins the lesser political rights of the person from Toronto over the decisions of the U.S. federal government is a principle of equality in distribution, either of welfare or of opportunity. And that is the very same principle that suggests to many that the inhabitants of poor countries ought to have open access to the economies of rich countries.

Let us consider another case Blake mentions. He argues that by virtue of the authority exercised over citizens, the state owes citizens basic civil liberties.<sup>18</sup> These too are part of the basic package of things to be included in a justification to free and equal persons with shared liabilities to the state. The thought seems to be that the state only owes this justification to its citizens. However, I see no good argument for the

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18. *Id.*

thesis that the state owes greater respect for the civil rights of citizens than it does for noncitizens. Certainly once noncitizens enter the state's territory, the state must protect their civil rights as well. For example, I do not think it would be legitimate for the state to restrict the movement of noncitizens who are in the country legally, except perhaps for very special cases involving foreign policy. In sum, I do not think that Blake has made his case against a completely cosmopolitan account of the duties of distributive justice.

Although Blake invokes the idea of shared liability to political authority, Nagel stresses the importance of authority acting in the name of the citizens.<sup>19</sup> Citizens are the ultimate authority in the society and are owed a justification for the existence of the state and the state's activities by virtue of the fact that the state acts in their names and enlists their cooperation to pursue its aims. Here it is the required engagement of the will or agency of the citizens in the activities of the state that entails the need to justify the state's action to them. And this engagement of the will or agency of citizens holds even if the state is imposed or is dictatorial. Any state "purports not to rule by force alone. It is providing and enforcing a system of law that those subject to it are expected to uphold as participants, . . . . Since their normative engagement is required, there is a sense in which it is being imposed in their name."<sup>20</sup> The relationship to distributive justice—indeed to justice generally—is then laid out:

Insofar as those institutions admit arbitrary inequalities, we are, even though the responsibility has been simply handed to us, responsible for them, and we therefore have standing to ask why we should accept them. This request for justification has moral weight even if we have in practice no choice but to live under the existing regime. The reason is that its requirements claim our active cooperation, and this cannot be legitimately done without justification—otherwise it is pure coercion.<sup>21</sup>

Nagel argues that individuals do not owe such justification to those outside the political community. Rather, they owe no more than respect for basic human rights. And Nagel applies this idea directly to the question of immigration:

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19. See Nagel, *supra* note 9, at 128–29.

20. *Id.* at 129 n.14.

21. *Id.* at 129.

The immigration policies of one country may impose large effects on the lives of those living in other countries, but under the political conception that by itself does not imply that such policies should be determined in a way that gives the interests and opportunities of those others equal consideration. Immigration policies are simply enforced against the nationals of other states; the laws are not imposed in their name, nor are they asked to accept and uphold those laws. Since no acceptance is demanded of them, no justification is required that explains why they should accept such discriminatory policies, or why their interests have been given equal consideration. It is sufficient justification to claim that the policies do not violate their prepolitical human rights.<sup>22</sup>

These are highly suggestive and tantalizing phrases, but it is not clear what they mean. Nagel seems to think that outside the context of the state, some kind of modified libertarianism is correct. We owe duties of noninterference and nonharming, as well as some duties of beneficence, to foreigners. But when we join together in a political community, new duties arise that were not present before. Because we are responsible for the activities of the state, we are owed a justification of its activities. And in particular, we are owed a justification for various inequalities that arise through the state's activities because we are responsible for the inequalities. And because we are responsible for the inequalities, we must now be concerned with the inequality even though had we not been responsible for them we would not have been required to be concerned about inequality. The key issue here seems to be the relationship of responsibility for inequality and a requirement to be concerned with inequality. Nagel's approach suggests that it is only because we are responsible for the inequality that we become duty bound to attempt to alleviate it.

It is important to be clear on the notion of responsibility here. It is not responsibility in the sense of duty; the relationship above would not be very interesting were that the notion of responsibility in play. Instead, one who is responsible for an act is capable of being blameworthy or praiseworthy for that action. A moral agent is responsible for an act when she knowingly and intentionally performs it. She is then, at least in principle, capable of being praised or blamed for it, though it may turn out that neither praise nor blame is called for. Praise and blame are enabled by responsibility. Let us call this the attributive sense of responsibility. My question is: can responsibility for *X* in the attributive sense be at least a necessary condition for the application of a moral norm to do *X*? Or must the norm be prior to and independent of the responsibility?

Suppose that I am in a position of responsibility for someone being misled or not by an action of mine. The misleading can be attributed to

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22. *Id.* at 129–30.

me if it occurs. Is the fact that I am in a position to be responsible for misleading someone a necessary condition for the application of the duty to me of not misleading that person? In this case, this appears to be so. The reason is that the duty is precisely a duty not to responsibly mislead someone. Without responsibility, I cannot violate this duty.

But injustice can occur even if no one is responsible for it. For example, suppose we set up a system of criminal trials that is the best system humans can establish. It tends very strongly to punish the guilty and acquit the innocent, and it does better on this score than any alternative available to us. Still, some innocent persons are punished, and some guilty persons are not punished. We know that this will happen, but we cannot do better given the cognitive limitations of human beings. And of course we do not know when we are punishing the innocent, though there is a clear fact of the matter. Though we cannot do better than have a system that in effect punishes some innocent persons, and the punishment of the innocent cannot be attributed to any flaw that we can do better on, we still think that those innocent persons were treated unjustly. We cannot be held responsible for the punishments of the innocent because the punishments are performed non-negligently and in ignorance. But there has been injustice.

Another example of this is the case of fair division. Suppose two persons create a pair of valuable objects, and that they are equally deserving of the value produced. But let us further suppose that the goods are unequal and indivisible. One must come away with more than the other, and there is nothing that can be done about it unless both objects are destroyed. I think that most of us can see that the resultant unequal distribution of the objects is unjust to some degree. And both persons would experience some regret at the way the goods were distributed even though they could not be distributed in a fairer way.

Lifeboat cases have a similar structure. One person among five must die if anyone is to survive. The group draws lots to select that person, and that person is then thrown overboard. Every person who survives will regret that a fairer way of distributing the burden was not available, and that one person had to assume the whole burden of saving the group. That sense of regret, I affirm, cannot be explained but by the sense that they fell short of the ideal of justice through no fault of their own.

In these cases, we experience the sense of falling short of the ideal of justice even though we know we could not have done better. We cannot attribute responsibility to any person or group, yet there is injustice.

Moreover, the same sense of justice guides us to do the best we can and gives us the residual sense of injustice. Here the norm of justice is prior to and independent of any attribution of responsibility, but at the same time it is the norm that guides our actions to the extent that we are responsible. Justice gives us a measure to which we strive to approximate as much as possible but from which we know we will sometimes fail to achieve.<sup>23</sup>

Let us focus on another aspect of Nagel's argument: Because I am expected to cooperate willingly with the state's action, I must be given a good reason for doing so.<sup>24</sup> And because many others must cooperate, they must all be given good reason for cooperation. Now the thought seems to be that a state that permitted some to be worse off than others for no good reason would in some way be violating this constraint, even if there was no problem with some people being worse off than others in the absence of state action. So although inequalities among the peoples of the world are of no moral significance, similar inequalities among fellow citizens would be of great importance. Let us see if we can understand this idea intuitively. Suppose we see two people in a park who are not related to one another; one person has a big piece of cake and the other has a little piece of cake. We may think that there is no problem here. But now suppose the very same two people come to me and ask me to distribute a third piece of cake between them. I have no good reason for giving more to one than the other, so I divide the cake equally. And if I were to distribute the cake unequally between them, perhaps I could be charged with a bit of arbitrary behavior.

This looks like it is pushing in the same direction as Nagel's argument. But it is not clear how far this goes. For suppose that one of the persons is nicer to me than the other is, and I give that person more than I give the other. If there is no problem with the inequality per se, then why does this not constitute a good enough reason for the unequal division? Or suppose I was in a hurry and cut the cake somewhat unequally as a consequence. If there is no problem with inequality, would there be any other problem here?

Perhaps the thought is that if I make the cut based on an invidious distinction between the two, I am acting wrongly. If I give more to one than the other on the basis of race or gender alone then perhaps I have acted wrongly, despite the fact that we might not be concerned about an inequality between these two if we did not think it was based on the invidious distinction. Still, this does not give us a concern for inequality, only for invidious discrimination.

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23. I develop this case in a paper with Will Braynen, *Inequality, Injustice and Leveling Down*, *RATIO* (forthcoming 2008).

24. See Nagel, *supra* note 9, at 129.

Does it make a difference that we are talking about the state? Surely it must make some difference. The state is supposed to be a kind of impartial arbiter among the persons who come under its jurisdiction. So reasons like a state official liking one person more than another usually do not have any weight. But suppose the state intends to act on the basis of minimal morality—say of noninterference and nonharming as well as minimal beneficence—that Nagel thinks holds in the absence of the state.<sup>25</sup> And suppose that it does actually protect people in accordance with minimal morality by not taxing and regulating behaviors very much. And suppose furthermore that the consequence is a lot of economic inequality. In addition, suppose that there is no reason to be concerned with inequality per se. When the state justifies its system of law to each citizen, it cites the minimal morality and its minimal demands on persons. It says that it protects everyone's basic rights, and it fiddles as little as possible with the social order that arises from this arrangement. In the absence of the state, people's basic rights would be less well protected. And so each person has good reason to go along with the state's action. And if the state is correct in its assessment that as little fiddling as possible is desirable, then it would seem that the inequalities are not arbitrary. They are generated in accordance with an impartial standard and on the basis of no invidious distinctions.

I do not see what is wrong with this picture. No new principles need emerge beyond the fact that the state is acting in accordance with minimal morality. The appearance of arbitrariness can be fully dispelled if we accept the conception of morality the state is acting on. And if there is nothing wrong with inequality of distribution, there can be no basis for criticism here. Everyone is treated as an equal citizen to the extent that everyone's rights are protected, and no one is interfered with on any basis that is not common to all.

To be sure, I ought not to allow things to go on in my name that are immoral. But I do not see why libertarianism does not fit the bill here. I ought not to be coerced and subjected to authority for immoral aims and purposes. Once again, the libertarian can give an account of this. So can a liberal egalitarian.

The basic thesis I want to uphold here is that there are no new or distinctive fundamental moral principles that arise in political justification within a political community. The state's actions ought to be justifiable,

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25. *Id.* at 126–27.

to be sure, but the principles by which this justification proceeds are not unique to the context of state to citizen. No new principles arise just to enable the state to justify its actions to its citizens.

The position Blake and Nagel defend sees at least certain basic moral principles as only coming into play in the context of a certain kind of political community. They insist that in the context of the modern state, the state owes a certain kind of justification for its actions to its citizens by virtue of their being subjected to its authority and it acting in their name. Again, I see that the state's actions and authority should be justifiable, but I do not see why the justification need proceed on the basis of anything other than the correct moral principles for the case. So if, for example, some version of libertarianism is correct, then the state must justify its actions on the basis of libertarian principles. Or, if some variant of egalitarian liberalism is correct, then the state must justify its actions on the basis of these latter principles.

But the basic idea is that only if equality matters independently of the state can it become a standard with which to evaluate the state. Thus, the idea is that a cosmopolitan principle comes first, and the state is charged with the job of trying to realize, to the best extent it can, justice among persons. And the Nagel and Blake method of arguing that equality of distribution matters in the domestic case amounts to the proverbial pulling a rabbit out of a hat.

As far as I can see, the only things that have really changed with the introduction of the modern state are the facts that people are faced with. People ought to have an equal say in decisions regarding the modern state because the modern state is, for most, a community in which people have roughly equal stakes; decisions must be made for the community concerning how it ought to be arranged, and people have interests in their judgments being respected. Furthermore, because the governmental institutions of the state are very powerful, a healthy skepticism about human motivation should make us insist on all the rights associated with the rule of law and due process. But these facts do not bring with them new moral principles.

## II. COSMOPOLITANISM AND THE MODERN DEMOCRATIC STATE

Moral cosmopolitans must determine the role of states as we currently know them within a cosmopolitan order. In my view, states as we know them have a large role to play in the development of a more just cosmopolitan order. The first thing that states attempt to do is establish justice among a limited set of persons. This is the Lockean aspect of the



state that is relevant to cosmopolitan concerns.<sup>26</sup> States, through their systems of criminal and civil justice, property, taxation, and limited redistribution, attempt to realize a kind of justice among their citizens. The law of a political society is not merely a means to the realization of justice; it establishes justice among persons for practical purposes. Because of the legal framework, certain things count as my property while other things do not. I am entitled to some things, but not to others. When persons take away things that belong to me by law, we rarely discriminate between a legal wrong and a moral wrong. The law performs this function for a variety of reasons. First, we need to coordinate on the same set of rules; natural justice does not give us enough information to achieve this coordination. Second, there is a substantial amount of disagreement about what natural justice requires, and we must have some way of resolving the matter so as to live together reasonably well. Again, a set of rules is often a kind of coordination point for the society. But it is a complex coordination point that cannot merely be arrived at by persons acting without the benefit of an authoritative rule giver. These problems are resolved by means of a system of known and “settled” law, as Locke put it.<sup>27</sup>

To be sure, states make law in very different ways, but more and more states are becoming democratic. This is important because law is made in a way that accommodates a wide variety of interests in society, at least in moderately democratic societies. Ideally, law is made in a way that enables persons in the society to have a roughly equal say in at least the whole package of laws. This gives a kind of legitimacy to the law and the state because it ensures that when there is substantial disagreement on political matters, the great majority of people have some input in those areas that matter to them most, and individuals are treated as equals in the process of resolving those disagreements.<sup>28</sup>

So states establish justice among their citizens, and democratic states do this in a way that brings a large number of citizens into the process and gives each an equal say in that process. This makes outcomes legitimate even when there is a substantial amount of disagreement

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26. See LOCKE, *supra* note 3, at 395–99.

27. *Id.* at 396.

28. For further elaboration and arguments for these claims, see THOMAS CHRISTIANO, *THE CONSTITUTION OF EQUALITY: DEMOCRATIC AUTHORITY AND ITS LIMITS* (2008) [hereinafter *THE CONSTITUTION OF EQUALITY*], and Thomas Christiano, *The Authority of Democracy*, 12 J. POL. PHIL. 266 (2004).

concerning their justice. Many states have developed extremely sophisticated and relatively egalitarian methods for accommodating the interests of their members and for discussing alternative proposals for law and policy in the process of establishing justice. They have developed complex systems of deliberation and accommodation in the functioning of their civil societies. And these systems act with a fair amount of success. The evidence for this is quite strong. Democracy tends to be a very strong predictor of the production of public goods in society and the protection of civil rights. And it tends to be a strong predictor of higher overall levels of well-being in society, measured in standard ways.<sup>29</sup> Democracy also seems, though this is more controversial, to improve the plight of the poor in those societies and lessen overall inequalities.<sup>30</sup>

So the conception of political community elaborated here is distinct from that of the contractualist or nationalist conceptions and the more instrumentalist conception common to many cosmopolitans. On one hand, political communities do not generate new standards of morality that are not present independent of the state. I attempt to make a case for this in my discussion of the contractualist approaches to political community.<sup>31</sup> On the other hand, political communities are not mere instruments of justice. They do not have the function of realizing justice everywhere and anywhere. Political communities, in my conception, attempt to bring about a just order among a group of persons. The standards of justice are independent of political community, and the job of the political community is to realize those standards to the extent possible within a community of persons. They attempt to do this by accommodating the many disagreements people have over justice in a way that itself is reasonably just—that is, democratically.

For these reasons, in my view, the ultimate political aim for humanity as a whole must be a global political community. Only a global political

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29. There is a great deal of empirical research on these topics. See ADAM PRZEWORSKI ET AL., *DEMOCRACY AND DEVELOPMENT: POLITICAL INSTITUTIONS AND WELL-BEING IN THE WORLD, 1950–1990*, at 216 (2000); CHARLES TILLY, *DEMOCRACY* 185 (2007).

30. See Walter Korpi & Joakim Palme, *The Paradox of Redistribution and Strategies of Equality: Welfare State Institutions, Inequality, and Poverty in the Western Countries*, 63 *AM. SOC. REV.* 661, 676 (1998), for evidence that tax and transfer systems in welfare states significantly reduce the GINI coefficient of inequality for these societies. See also Marc Gradstein et al., *Democracy and Income Inequality: An Empirical Analysis* 2–5, 9, 21–23, 31–35 (The World Bank, Policy Research Working Paper No. 2561, 2001), for a more nuanced argument. For some skepticism, see Adam Przeworski, *Democracy, Equality, and Redistribution*, in *POLITICAL JUDGMENT: ESSAYS IN HONOUR OF JOHN DUNN* (Richard Bourke & Raymond Geuss eds., forthcoming 2007). See also PRZEWORSKI ET AL., *supra* note 29, at 237, 270, for the thesis that democracies help the poor. For a contrary opinion, see Michael Ross, *Is Democracy Good for the Poor?*, 50 *AM. J. POL. SCI.* 860, 860–72 (2006).

31. See *supra* text accompanying notes 12–25.

community can realize justice as much as possible among all the persons in the world. Only it can create a just global order. But this ultimate aim is very far off, to say the least. Those who worry that such an order would be tyrannical are right to worry about it in the short run. Such an order must be constructed very slowly and carefully. A premature construction of a global political community would probably be a disaster. But we do not have reason to think that a global political community, when constitutionally limited and federally structured, could not be a success in the long run. We have seen the development of very large and reasonably successful democratic states. We are witnessing the gestation period of what may become a very large political community in Europe, and we are seeing the development of large-scale regional economic associations in every part of the globe. There are some reasons for hope here, but we must not hurry these developments lest we undermine this progress.

To be sure, a global political community is not necessary to start on the most pressing problems of global poverty and inequality. The development of more partial global institutions can help with these. The World Trade Organization helps with the alleviation of poverty through the expansion of trade. And for those many cases in which trade is not sufficient for the relief of poverty and disease, some modest redistribution of wealth may be possible through international institutions in the short run. But this is only a start, and these more modest institutions in general require democratic states for their sustenance.<sup>32</sup>

From a cosmopolitan standpoint, there are two main limitations to even the best democratic states. First, democratic states are mostly pretty imperfectly democratic, and they are certainly imperfectly just. Second, the scope within which each contemporary state establishes justice is limited to a small proportion of the population of the world.

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32. Egalitarians are not committed to any particular institutional mechanism for the achievement of equality, although I think a political society ought to be ruled democratically. See CHRISTIANO, *THE CONSTITUTION OF EQUALITY*, *supra* note 28, at 3. Some think that free markets are the best means for bringing about greater equality; but recent empirical evidence shows that free markets are not sufficient to increase equality or even to alleviate the condition of the worst off in the world. See, for example, DANI RODRIK, *ONE ECONOMICS, MANY RECIPES: GLOBALIZATION, INSTITUTIONS, AND ECONOMIC GROWTH* 154–62 (2007), and JEFFREY D. SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* 195–96, 281–82 (2005), for some of the many empirical arguments for supplementing free trade with other programs.

Still, this is no mean achievement when we consider what most of human history has been like for people.

Again, an understandable cosmopolitan impulse is to try to extend as far as possible the justice establishing powers of states, or at least to make reasonably just and prosperous states open to everyone. But the question we must focus on here is whether these are feasible aims in the near term. It has taken a great deal of time just to develop the reasonably prosperous and moderately just states that exist, and it has taken a great deal of time to turn these into democratic states. Any sudden and very substantial expansion of powers, population, and citizenship would not constitute trivial changes and could do great damage to the states as we know them and their modest capacities to bring justice.

I want to bring out some additional features of democratic states that are important from a cosmopolitan standpoint. First, democratic states have been relatively successful at negotiating treaties with each other on a wide variety of different issues of great importance and following them to a significant degree. Democratic states have negotiated significant treaties on international trade that increasingly restrict their freedom of action. They have also created a variety of international organizations that constrain them in a number of ways. Second, democratic states are often thought to be more law abiding members of the international system for a variety of reasons including their internal respect for the rule of law and the prevalence of a variety of active interest groups.<sup>33</sup> Third, an important feature of democratic states from a cosmopolitan standpoint is that they represent a wide variety of interests during the process of negotiation. Not only are treaties negotiated with the idea that they will be complied with, but the negotiating partners represent the different interests in their societies in the process.

To be sure, the representation of interests in the process of negotiating international treaties is currently very limited in many democratic states. Negotiations are still carried out by the executive branch of the government and its foreign policy establishment, which tends to be undemocratic because it has traditionally been associated with war making and forming alliances. As international treaties become more and more invasive in the societies that make them, this relatively nondemocratic character of negotiation will have to give way to a more democratic practice.

The representative character of democratic states in the process of international negotiation is, I think, one of the keys for a moral cosmopolitan to the making of progress towards a more genuinely politically cosmopolitan world. It is through the negotiations of democratic

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33. See Beth A. Simmons, *Compliance with International Agreements*, 1 ANN. REV. POL. SCI. 75, 77, 83–85 (1998).

states that international institutions are created and maintained and global public goods can be produced. Ultimately, it is through these negotiations that political institutions of a regional and then global scale can be produced. But it is only through these democratic states that the interests of a large majority of people can be accommodated in the process of creating international institutions. Again we can see this kind of development in the rise of regional economic alliances among states in which states are giving up some elements of their sovereign powers to the larger entities.

The other key towards a cosmopolitan political order that genuinely represents and accommodates a large proportion of the world's population is that the negotiations among states must be carried out reasonably fairly. That is, states must avoid exploiting one another and taking advantage of each other's most serious vulnerabilities in the process of negotiation. The element of fairness is not something I will dwell on in this paper, partly because there is little yet in the way of theorizing about fairness in international negotiation, and partly because it does not have as much bearing on the topic of immigration. But this is absolutely critical in thinking about the normative features of international negotiation and essential to understanding the complaints that poorer and smaller states have made about the international system over the last twenty years.<sup>34</sup>

The conception of political community that I wish to defend here accepts that the ultimate moral principles for the evaluation of the international order are cosmopolitan. But it also accepts that modern democratic states are the institutional lynchpin in the development of a just cosmopolitan political order. Modern democratic states attempt, with some success, to extend the reach of social justice and legitimate institutions to large numbers of people, though still only to substantial subsets of the world's population. They are extremely sophisticated systems for discussing alternative views of justice and fairness and for accommodating the many interests of their publics. In that respect, they are models—even though very imperfect—for the realization of social justice on a much larger scale than the nation states. They are also the main engines of the development of international institutions and the

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34. I discuss some of these issues in further detail in Thomas Christiano, *Democratic Legitimacy and International Institutions*, in *THE PHILOSOPHY OF INTERNATIONAL LAW* (Samantha Besson & John Tasioulas eds., forthcoming 2008).

principal supporters of these institutions. In some cases, they have turned over significant powers to transnational institutions. So while the reach of the modern democratic state is limited, it promises to expand so as to increase the reach of social justice.

The essential point here is that the modern democratic state is necessary to expanding the reach of social justice through international institutions. Without the democratic state, it is simply not clear that these institutions will develop, or at least that they will develop in a direction that can create a constitutionally limited, federally structured democratic cosmopolitan political order. So the modern democratic state is both an important achievement in the development of political systems and an essential basis of progress towards a just cosmopolitan order.

### III. IMMIGRATION AND COSMOPOLITANISM

If we are to look at the question of immigration from a cosmopolitan standpoint, we must think about it not from the standpoint of any particular society but from the standpoint of the world as a whole. I agree with Joseph Carens that there is nothing in the existence of political borders that can justify the fact that some are born into circumstances in which they have ample opportunities to live good lives, and others are born into circumstances in which they have very few such opportunities.<sup>35</sup> This inequality of opportunity remains morally problematic even though the inequality holds across different political societies. I have argued above that we cannot give less weight to this inequality merely because it occurs across borders. And I think moral cosmopolitans must be concerned with ways of trying to alleviate these inequalities.<sup>36</sup>

One very natural response to the inequality of opportunity that we see in the international realm is to open up borders so that those with inferior opportunities in their own political societies may avail themselves of opportunities in other societies. This would by no means equalize opportunities because the cost and difficulty of migration would still be very high. Indeed, it seems clear to many observers that it is not the world's worst off who migrate; they lack the resources to do so. It is those who have significant resources who try to migrate. But still, open

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35. See Carens, *supra* note 1, at 26–27.

36. This is another premise that I do not have space in this paper to defend. See Thomas Christiano, *A Foundation for Egalitarianism*, in *EGALITARIANISM: NEW ESSAYS ON THE NATURE AND VALUE OF EQUALITY* 41, 41–81 (Nils Holtug & Kasper Lippert-Rasmussen eds., 2007), for a full-dress defense of equality and a response to fundamental objections. See also Christiano, *THE CONSTITUTION OF EQUALITY*, *supra* note 28, at 12–45.

borders would go some distance towards improving the opportunities of many of the world's poorest. This seems to be the strongest argument for the position of open borders.<sup>37</sup>

In my view, in addition to the fundamental cosmopolitan adherence to equality of opportunity, there are two types of considerations that ought to shape our conception of immigration. First, we must find a way to accommodate the needs for immigration of those of the world's poorest who are trying to emigrate. I think nearly everyone agrees on that. Both Michael Blake and David Miller have argued that all people ought to be able to live in circumstances in which they can make an adequate living.<sup>38</sup> And they both agree that immigration is part of the means by which this can be achieved.<sup>39</sup> Of course, this does not require that every state need open its borders to everyone. It requires a kind of sensible coordination among relatively wealthy states on immigration policies that will alleviate some of the world's most serious poverty. And for this we will need international institutions.

The other type of consideration I have in mind follows from my discussion above about the necessity of the role of modern democratic states in developing a just cosmopolitan order. And here all I can do is express some anxieties about open immigration, which seems to be the natural starting point for a cosmopolitan view. The main idea is that it is acceptable to limit immigration if such limitations are quite important to the maintenance or proper functioning of the democratic states, and having open immigration would constitute a serious threat to the democratic state. A threat to the proper functioning of a democratic state involves a threat either to its constitutional structure or its ability to carry out some of the main functions democratic states have been able to successfully carry out over the last century, most particularly over the last half century. A threat to the constitutional structure of democracy is an obvious threat to democracy, but I would contend that a threat to at least the most stable activities that democracies have been able to carry out is also a threat to democracy. The most stable activities of democracy are ones that have withstood the test of time and thus are ones that seem to have the strongest support from democratic societies. A threat to these activities

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37. See Carens, *supra* note 1, at 25–26, 32 (arguing that open borders would help to equalize opportunities for the world's poorest inhabitants).

38. See MILLER, *supra* note 5, at 200; Michael Blake, *Immigration and Political Equality*, 45 SAN DIEGO L. REV. 963, 973 (2008).

39. See MILLER, *supra* note 5, at 225; Blake, *supra* note 16, at 236.

would seem to show that something has gone wrong with the democratic society, at least *prima facie*.

There are three types of reasons why this kind of limit is to be respected. First, democracy has an intrinsic value in that it realizes a fundamental kind of equality of concern for the interests of the persons who are citizens of the democracy. In pluralistic societies, in which there is a substantial amount of disagreement on how best to organize the society, democracy gives each an equal say and legitimizes the outcomes of decisionmaking. Second, democracy is a fairly reliable instrument for the advancement of the well-being of persons who are members of the society. It is a fairly reliable protection of human rights among persons within the society, and the absence of democracy is a fairly reliable predictor of large-scale human rights violations. In addition, democracy is fairly well-correlated with the advancement of the material well-being of the members of society, and the absence is correlated with the opposite.

These last two considerations are merely values to be counterbalanced with the important values that may be realized by greater openness of borders to immigration. And they are problematic because they seem to give license to many of the wealthier societies in the world to avoid important action to help alleviate poverty. Supposing that open immigration really would pose a threat to democracies, limitations on immigration preserve the benefits of those who are members of these societies by excluding those who are not beneficiaries. It simply looks like a license for the haves to exclude the have-nots. Nevertheless, these are not unimportant values and they ought at least to be taken into account.

The main argument I want to propose for the protection of democracy is based on the importance of democracies to the long run establishment of a just cosmopolitan order. To put the argument in the crudest possible form, the idea is that if democracies are essential to the long-term realization of a just cosmopolitan order, and if open immigration would threaten democracies either in constitutional structure or proper functioning, then open immigration amounts at most to a short-term gain at the expense of much greater long-term gains. It amounts to killing the goose that will lay the golden egg in the long run.

What are the threats that I have in mind when it comes to democracy? One major category of considerations that people have discussed in recent empirical work is, broadly, threats to trust in democratic societies. The basic idea is that democracies function well to the extent that the members of the society are able to trust one another. Trust is an important good in a democracy because the majoritarian character of democracy implies that there are winners and losers on almost all issues. If the losers in a democracy do not trust the winners, they may be disinclined to shoulder the burdens that a democratic society inevitably imposes on



everyone. And if there is widespread distrust, it may be that most would not be willing to shoulder the burdens and sacrifices essential to the proper functioning of a democratic society. A further consequence of distrust could be the failure of democracies to carry out the aims that they have pursued for a long time. In some cases, this might involve the inability to pursue public goods. In other cases, this may involve undermining the modest redistribution that takes place in a democratic state. And it could involve undermining the basis of the welfare state in democratic societies, which has been able to protect many of the worst off from calamity and has been able to smooth out the boom-bust cycles typical of pre-welfare state capitalism. All of these activities require a considerable amount of cooperation and willingness to shoulder burdens, which may be undermined by lack of trust. At worst, the consequence could be the collapse of the democratic order itself.

How is immigration related to this concern for trust? The idea has been that a sudden, very large influx of persons into a society from a different society with different traditions may increase the level of distrust. This is the result, not necessarily of xenophobia, but of misunderstanding and uncertainty as to whether the new group is really willing to participate in the society. A great deal of diversity, brought about by a rapid influx of persons from another society, could therefore conceivably lead to distrust.<sup>40</sup>

A second possible mechanism is that persons may simply not be willing initially to undertake great sacrifices on a continuous basis for people who are very different from them and who do not share a common history or culture. Here the mechanism is simply from cultural or ethnic diversity, to lack of identification, to lack of solidarity or unwillingness to undertake sacrifices for the benefit of others.<sup>41</sup>

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40. See David Miller, *Immigrants, Nations, and Citizenship*, J. POL. PHIL. (forthcoming 2008). For some economic research, see Alberto Alesina & Eliana La Ferrara, *Who Trusts Others?*, 85 J. PUB. ECON. 207 (2002). For the effects of diversity on the production of public goods, see Alberto Alesina et al., *Public Goods and Ethnic Divisions*, 114 Q.J. ECON. 1243, 1251–53 (1999), and Eliana La Ferrara, *Solidarity in Heterogeneous Communities*, in CULTURAL DIVERSITY VERSUS ECONOMIC SOLIDARITY 69, 69–78 (Philippe Van Parijs ed., 2004). For a good critique of some of the more philosophical arguments, see Arash Abizadeh, *Does Liberal Democracy Presuppose a Cultural Nation? Four Arguments*, 96 AM. POL. SCI. REV. 495, 500–02 (2002).

41. See Philippe Van Parijs, *Cultural Diversity Against Economic Solidarity*, in CULTURAL DIVERSITY VERSUS ECONOMIC SOLIDARITY 371, 377 (Philippe Van Parijs ed., 2004). For the opinion of a highly informed observer that large-scale migration into

A third possible mechanism that may lead to undermining democratic institutions or the normal functioning of democratic institutions is simply lack of understanding. Lack of understanding due to basic differences in conceptions of society and justice or lack of understanding due to linguistic misunderstanding<sup>42</sup> could also lead to a significant undermining of the activities of the democratic state.

All of these mechanisms can damage the more formal aspects of the democratic process as well as the willingness of people to abide by its results, but they can also damage the informal part of democracy which consists of its political parties, interest group associations, and other elements of civil society so essential to the maintenance of a democratic society.

I want to distinguish this concern from a concern for xenophobic reactions within the receiving society. To be sure, xenophobia does seem to play a role in reactions to immigration. But it is hard to allow that this should be a legitimate motive for excluding people. Of course, if xenophobia were a major factor in producing reactions among the receiving society, we might still wish to limit immigration on these grounds. But this would surely be a concession to the devil. I think that the trust argument does not rely on such a crude and morally problematic motivation. The trust, identification, and misunderstanding arguments rely more on the understandable and morally not so problematic phenomena of uncertainty and misunderstanding.

The thought is that if large-scale immigration into certain states were to undermine the trust, identification, or mutual understanding necessary to sustain the proper functioning of democratic institutions, this would be a good reason for limiting large-scale immigration. It would be a painful one, and it might have the appearance of being a merely self-serving policy. But the idea here is that modern democratic states are essential elements in progress towards a cosmopolitan political order that brings justice to everyone. Nondemocratic states are not as likely to bring about powerful international institutions, nor are they as likely to maintain those institutions when the institutions constrain them. As a consequence, a threat to the proper functioning of democratic states is a threat in the long run to the realization of a cosmopolitan political order and therefore also a threat to the realization of justice among all persons. Once again, if the worry about immigration undermining trust is justified,

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California has weakened its support for the public school system, see Christopher Jencks, *Who Should Get In? Part II*, N.Y. REV. BOOKS, Dec. 20, 2001, at 94, 102.

42. Dominique Schnapper, *Linguistic Pluralism as a Serious Challenge to Democratic Life*, in CULTURAL DIVERSITY VERSUS ECONOMIC SOLIDARITY 213, 213 (Philippe Van Parijs ed., 2004).

then large-scale immigration for the purpose of achieving greater justice would be self defeating.

Another possible threat to democratic government could come, I suppose, from a large influx of people who are completely unfamiliar with participating in democratic government. This too would need to be explored because the societies from which large-scale immigration would seem to derive are ones with relatively weak democratic traditions.

The empirical evidence for these claims is slim and uncertain.<sup>43</sup> And there seems to be some evidence to the contrary, such as the evidence from studies of transitions to democracy from authoritarian societies. These do not give great importance to shared culture or ethnicity in the generation of successful democracies.<sup>44</sup> So the evidence is unclear. But it does seem to me that these are the kinds of things that we should be thinking hardest about when we think of the legitimacy of policies limiting immigration.

#### IV. TRADE-OFFS BETWEEN INJUSTICES

One large question that I have yet to deal with is the issue of how to trade off the short-term gains of open borders with the long-term costs, assuming that we can develop an empirically defensible conception of the long-term costs. Even if the hypotheses that open borders would significantly undermine the functioning of liberal democratic states is correct, and that this would in turn significantly retard or set back the development of the international institutions which are necessary to bring about greater justice on a global scale, we might still ask, what principles should guide the trade-offs that are necessary to making an

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43. For some further counterevidence, see Keith Banting & Will Kymlicka, *Introduction*, in *MULTICULTURALISM AND THE WELFARE STATE: RECOGNITION AND REDISTRIBUTION IN CONTEMPORARY DEMOCRACIES* 1, 22–30 (Keith Banting & Will Kymlicka eds., 2006). See also Keith G. Banting, *Looking in Three Directions: Migration and the European Welfare State in Comparative Perspective*, in *IMMIGRATION AND WELFARE: CHALLENGING THE BORDERS OF THE WELFARE STATE* 13, 19–23 (Michael Bommes & Andrew Geddes eds., 2000), for an argument that the modest immigration into Europe has not weakened the welfare state there, although it has led to calls for limiting immigration.

44. For an excellent review of findings and an argument that cultural homogeneity is at least not a necessary condition for democracy, see Mathias Koenig-Archibugi, *Is Global Democracy Possible?* 12–14 (Mar. 26–29, 2008) (unpublished manuscript, on file with author), available at [http://www.allacademic.com/meta/p\\_mla\\_apa\\_research\\_citation/2/5/2/7/9/pages252793/p252793-1.php](http://www.allacademic.com/meta/p_mla_apa_research_citation/2/5/2/7/9/pages252793/p252793-1.php). See also M. Steven Fish & Robin S. Brooks, *Does Diversity Hurt Democracy?*, 15 *J. DEMOCRACY* 154, 154–64 (2004).

ethically defensible choice here? When is it permissible to sacrifice some gains to the present generation for the sake of increasing the chances of much greater gains to justice in later generations? When is it required to do so? When is it impermissible?

It is important to note that the problem I am outlining is not merely one of intergenerational justice as it has come to be understood. So understood, the issue concerns the proper distribution of goods over generations. In the problem I am describing, the issue is complicated by the fact that we are dealing with trade-offs between injustices in the present and injustices in the future. To what extent is injustice in the present justified by the desire to avert much greater injustice in the future? This involves not only questions of intergenerational justice but also questions of permissible or even required injustice. And we should know that this kind of problem will be quite pervasive in thinking about the nonideal circumstances we are in with regard to global justice. We will need a general answer to this question if we are to face the problems of global justice squarely.

This question is more difficult than I suggest here, where I propose that, if the hypotheses I have outlined are true, no one would gain ultimately from the opening of borders. But that assumes that the opening of borders would immediately lead to the difficulties I have hypothesized. But this is not likely to be true even in the most dire circumstances. The likelihood is that the negative effects of open borders, if there are any, would take a generation or so before they are fully realized. Though we may hope that the worst off will benefit a bit in the reasonably near future from sufficiently powerful international aid institutions, those institutions are not likely to come under serious threat in the near term. The main beneficiaries of the long-term development of political institutions powerful enough to effect serious changes in the global distribution of wealth are generations away.

I do not know how to solve this problem as a general matter, but the following considerations seem to me to be relevant in the present circumstances. The first thing to note is that a policy of open borders is not likely to help the worst off in the societies we are dealing with. It is likely to help those who have the resources that enable them to travel long distances and enlist the help of smugglers and occasionally bribe officials. This does not mean that they ought not to be helped. And it does not mean that there is no injustice in refusing them entry into wealthy societies. But the people who can be helped once the wealthy societies can organize sufficiently well to help the global poor and diseased are likely to be much worse off. Now I would want to say that the injustices to the worst off are significantly greater than injustices to those who are able to migrate. So the trade-off could well be between

moderate injustice now versus very significant injustice in the future, starting perhaps with the fairly near-term future. My tentative answer for this particular case, therefore, would be that there are circumstances which would require us to hold off the current large demand for immigration in order to ensure that the institutions necessary to solving some of the main problems of global justice can be put in place. We need a much more general principle here but I am not currently able to supply one.

## V. CONCLUSION

The results of this paper are hypothetical. They argue against one prominent strain of anticosmopolitan political thought, and consequently in favor of the idea of open borders that is often defended by cosmopolitans. But I find that there is one set of arguments that cosmopolitans ought to accept if they agree with my thesis about the way in which progress to cosmopolitan institutions must proceed. If the route to cosmopolitan political community is through the successful operation of democracies, then the immigration policies of democratic states must not undermine the proper functioning of those states. If open immigration were to undermine the proper functioning of democratic states—and that remains a big *if*—then that would undermine the main route to the cosmopolitan political community which alone can fully implement distributive justice on a global scale.

