



# NSDA Nationals 2016

## LD Topic Analysis

---

This June, Lincoln-Douglas debaters qualifying for the 2016 NSDA National Debate Tournament will be discussing the topic **“Resolved: Immigration ought to be recognized as a human right.”** This guide will provide help deciphering the precise meaning of this resolution, as well as important background information, discussion of some of the key points of contention, and plenty of evidence for both sides, to help you build strong cases worthy of national competition.

We’ll get started by taking a look at what exactly the topic is asking you to discuss.

### Resolutinal Analysis

#### Immigration

According to [Black’s Law Dictionary](#), “immigration” is defined as “the coming into a country of foreigners for the purposes of foreign residence.”

The term “immigration” is related to “emigration,” which is essentially the same concept in reverse. When a person moves to a new country, they are an “immigrant” into that nation, and an “emigrant” from their original home nation. So, for example, if I moved from the U.S. to Canada, I would be a “Canadian immigrant” *and* an “American emigrant.”

The [U.S. Department of Homeland Security](#) (DHS) has this to say about immigration:

“An alien admitted to the United States as a **lawful permanent** resident. Permanent **residents are** also **commonly referred to as immigrants; however, the Immigration and Nationality Act** (INA) broadly **defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories** (INA section 101(a)(15)). **An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA but is not a permanent resident alien.** Lawful permanent residents are legally accorded the privilege of residing permanently in the United States. They may be issued immigrant visas by the Department of State overseas or adjusted to permanent resident status by the Department of Homeland Security in the United States.”



The [Internal Revenue Service](#) (IRS) defines “immigrant” as:

**‘An alien who has been granted the right by the USCIS to reside permanently in the United States and to work without restrictions in the United States.** Also known as a Lawful Permanent Resident (LPR). All immigrants are eventually issued a “green card” (USCIS Form I-551), which is the evidence of the alien’s LPR status. LPR’s who are awaiting the issuance of their green cards may bear an I-551 stamp in their foreign passports. Immigrant visas are available for aliens (and their spouses and children) who seek to immigrate based on their job skills. If an alien has the right combination of skills, education, and/or work experience and are otherwise eligible, the alien may be able to live permanently in the United States. Per USCIS, there are five employment-based immigrant visa preferences (categories): EB-1, EB-2, EB-3, EB-4 and EB-5. Refer to the USCIS Permanent Worker web site for more details.”

The [Congressional Research Service](#) (CRS) adds:

**‘Immigrants are persons admitted as legal permanent residents (LPRs) of the United States. The conditions for the admission of immigrants are much more stringent than nonimmigrants, and many fewer immigrants than nonimmigrants are admitted. Once admitted, however, immigrants are subject to few restrictions; for example, they may accept and change employment, and may apply for U.S. citizenship through the naturalization process, generally after 5 years.** Immigration admissions are subject to a complex set of numerical limits and preference categories that give priority for admission on the basis of family relationships, needed skills, and geographic diversity. These include a flexible worldwide cap of 675,000, not including refugees and asylees (discussed below), and a per-country ceiling, which changes yearly. Numbers allocated to the three preference tracks include a 226,000 minimum for family-based, 140,000 for employment-based, and 55,000 for diversity immigrants (i.e., a formula-based visa lottery aimed at countries that have low levels of immigration to the United States). The per country ceilings may be exceeded for employment-based immigrants, but the worldwide limit of 140,000 remains in effect. In addition, the immediate relatives of U.S. citizens (i.e., their spouses and unmarried minor children, and the parents of adult U.S. citizens) are admitted outside of the numerical limits of the per country ceilings and are the ‘flexible’ component of the worldwide cap.”

So, “immigration” refers broadly to the act of moving from one country to another on a long-term/permanent basis, regardless of whether or not the foreign person was legally admitted and/or authorized to live in the new nation.

## Ought

If you’ve made it to Nationals in LD, you probably know how to handle “ought.” On the off chance you need some help, though, check out our coverage from previous topics.

## To be recognized as a human right

To “recognize,” according to the [Merriam-Webster Dictionary](#), means:

“to accept or be aware that (something) is true or exists; to accept and approve of (something) as having legal or official authority”



According to the non-profit organization [United for Human Rights](#):

**Human rights are based on the principle of respect for the individual. Their fundamental assumption is that each person is a moral and rational being who deserves to be treated with dignity. They are** called human rights because they are **universal. Whereas nations or specialized groups enjoy specific rights that apply only to them, human rights are the rights to which everyone is entitled—no matter who they are or where they live—simply because they are alive.**

Yet many people, when asked to name their rights, will list only freedom of speech and belief and perhaps one or two others. There is no question these are important rights, but the full scope of human rights is very broad. They mean choice and opportunity. They mean the freedom to obtain a job, adopt a career, select a partner of one's choice and raise children. They include the right to travel widely and the right to work gainfully without harassment, abuse and threat of arbitrary dismissal. They even embrace the right to leisure."

[Encyclopedia Britannica](#) says human rights are:

“rights that belong to an individual or group of individuals simply for being human, or as a consequence of inherent human vulnerability, or because they are requisite to the possibility of a just society. Whatever their theoretical justification, human rights refer to a wide continuum of values or capabilities thought to enhance human agency or protect human interests and declared to be universal in character, in some sense equally claimed for all human beings, present and future.”

## **Background**

Now we'll move on to the general information you should be acquainted with. Immigration statistics around the world show that immigration is rising in terms of volume, but around the same rate of growth as global population. This means that the global number of migrants has remained a stable percentage of world population, about 3%. An estimated 232 million people in the world are currently migrants.

Most immigrants tend to come from middle-income nations; i.e. countries that where the average per capita income is between \$1,036 and \$12,615 per year. And most of these immigrants immigrate to countries of high income, those whose average per capita income is over \$12,615. Around 60% of migrants come from middle-income countries, and around 55% of migrants come to high-income countries.

Other types of migrants come for reasons other than economic, such as to avoid persecution, whether that is religious, cultural, or political. Typically, the source countries for these migrants are either authoritarian or experiencing turmoil, such as Egypt, Iran, or Venezuela.

Many migrants, upon reaching their destination, are afforded a life of second-class citizenry or no citizenship at all. Sometimes they are turned away and forced to come in illegally, or experience additional persecution in their new countries.



The United States has the highest population of immigrants of any country, at around 46 million immigrants, both legal and illegal. Most of this is due to economic opportunity and migration from Mexico – around 12 million people born in Mexico currently reside in the United States. Russia currently has the second highest number of immigrants, at around 11 million.

Further issues regarding migration includes the current migrant/refugee crisis in Europe. Many of those immigrating to Europe at this time are fleeing the Syrian Civil War, escaping other conflict in the Middle East and Africa, or seeking to expound on an economic opportunity. The European Union is struggling to disperse and properly accommodate all of the migrants and refugees seeking asylum, which is wreaking political havoc in countries such as Italy and Germany.

## Strategic Options

### Rights-based justification

The idea here is that immigration ends up being a *de facto* human right because it is required, in certain cases, to uphold other human rights. Therefore, by recognizing immigration as a human right, we uphold other human rights that were previously recognized.

### *Aff- freedom from coercion*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

This paper examines the debate as to whether migration is a basic human right or if the claims of outsiders are superseded by the principle of national sovereignty — the moral obligation of states to do the best for their own citizens. In evaluating migration and refugees it focuses on issues of open borders, migration selectivity, the capacity of sovereign states to control entry, the claims of refugees, the relationship between sovereignty and justifiable intervention, and the role of public opinion and morals throughout migration policies. In a world of global inequalities, persecution, and violence, are states ethically obligated to open their borders as wide as is economically feasible and politically acceptable to their citizens? **Is migration a basic human right** or are the claims of outsiders superseded by the principle of national sovereignty that the moral obligation of states is to do the best for their own citizens (see Weiner, 1993: 1—35)? How should we weigh these conflicting moral claims? 'Iliis article examines the debate between these two positions, focusing on the issues Of open borders, migration selectivity, the capacity of sovereign states to control entry', the moral claims of refugees, the relationship between sovereignty and justifiable intervention, and the role Of public opinion in migration policies. **Underlying much of the debate** over migration and refugee policies **is the fundamental moral contradiction between the notion that emigration is a matter of human rights** (for a liberal view on the right of emigration, see Whelan, **while immigration is regarded as a matter of national sovereignty** (see Sohn and Buergcnthal, 1992:3). **The United Nations Universal Declaration of Human Rights** and the Helsinki Accords **assert a universal right of emigration;** all governments and international organizations agree that governments have the right to determine those to admit and to whom citizenship should be granted. **But if people are free to leave, where**



**are they to go? Are states then obligated to take in migrants** from poor countries? Refugees in flight? Are they obliged to grant citizenship to guest workers and to regularize the status of illegal migrants? Underlying many of these policy questions are fundamental moral issues posed, on the one hand, by the conflicting claims and rights of those who seek admission and, on the Other, by the concerns of governments and their citizens to control their borders and protect themselves against what they regard as threats to their security, economic well-being, political stability, and cultural identity. Political theorists have traditionally been concerned with defining the rights and duties of citizens and of those who live within national boundaries, only recently with the claims of outsiders who seek admission. **Over the centuries, political theorists have defined and expanded our conception of the rights of individuals, but they have done so within the framework of the state.** As a result, in liberal democratic societies **the right to move within the country has become as much of a right as freedom of speech, assembly or religion,** but international law does not guarantee the right of people to move from one country to another. The question is whether **the moral justification for freedom of movement within countries can and should be extended to freedom of movement among countries. Migration and refugee policies raise moral issues because, directly or indirectly, they involve the exercise of coercion. Within countries, restrictions on the movement of people are decreed because they are coercive. However, it is also coercion that prevents people from freely moving across international boundaries. Coercion takes place when ships carrying would-be refugees are halted at sea and sent home, guards prevent undocumented migrants from crossing a border, refugees are confined to camps or forcibly repatriated, illegal migrants are rounded up by the police, employers are fined for hiring illegal migrants, and individuals are arrested for providing sanctuary to unsuccessful refugee claimants. Whenever coercion is employed by the state to prevent people from doing what they want to without apparent harm to others — both within and outside the state — a moral issue arises. Migration policy also raises the issue of fairness. Citizenship is determined by country of birth or by the citizenship of our parents, not by choice. Consequently, one's life chances depend upon being born in a prosperous country or to parents who are citizens of a prosperous country,** where there are opportunities for advancement and there is no persecution. Individuals born in a poor, autocratic country, where there are few opportunities, and where those who have particular beliefs or belong to particular ethnic or religious communities are treated badly, are truly unfortunate. **The fact that one's opportunities can so strongly and permanently be constrained by the simple chance of birth seems unfair.**

*Aff- SQ violates legal/due process rights*

*(Human Rights Watch, "Letter to US Immigration and Customs Enforcement expressing concern for detainees' legal visitation rights," <https://www.hrw.org/news/2015/12/10/letter-us-immigration-and-customs-enforcement-expressing-concern-detainees-legal>, Dec 10 2015)*

Dear Director Saldana, I write to share our concerns **regarding detainees' access to legal visits** at LaSalle Detention Center in Jena, Louisiana, as well as our concerns regarding other issues reported by detainees. Two Human Rights Watch attorneys, Clara Long and Grace Meng, who are **researchers** in our US Program, visited the detention center on November 2 and 3. What they **witnessed** and heard raises **serious**



**questions about the ability of detainees in LaSalle to assert their due process rights, particularly with regard to their right to legal visits. The allegations made by detainees regarding the conditions of their detention, including food, medical care, and the grievance system are contrary to a fair and humane civil immigration detention system.** Detainees' Access to Legal Visits Incidents Specific to Our Visit Events during our visit raised serious concerns that the **facility staff were trying to restrict individuals' access to attorneys.** On the first day, **we met** with Francisco **Rico**, a detainee **who has filed several grievances** against the facility. We also met with one of **14 men** who **had been on hunger strike** at the facility the previous week. We were not able to meet with everyone that day, as the attorney visiting room had been reserved by another attorney for the afternoon, so we planned to return to visit more individuals the following day. That night, **another man who had been on hunger strike called us to say that his commissary and phone account had been shut down, and he feared he was about to be deported.** **Given the timing** of the call, **we were** naturally **concerned that immigration officials were retaliating against this individual for his participation in the hunger strike** or that they and facility officials were trying to keep him from meeting with us. We contacted ICE deportation officer Matt Reaves, who referred us to Brian Cox, who referred us to Brian Acuna, AFOD in New Orleans. We strongly expressed our concern that this hunger striker might be facing retaliatory action. **The next day, we asked to meet with this individual** and again with Francisco Rico, along with six other individuals. We had also sent a request by email the night before and we arrived around 8:30 am. **We were told that the hunger striker had left the facility to be deported, and that Rico**, along with three other individuals, **was in court** in the ICE building next door, which allows for teleconferencing. When we asked the facility staff when they would be available, staff would not provide a definitive answer. Although we were allowed to meet with one individual immediately, only after repeated calls to Mr. Acuna did we receive a clear response that these individuals would be allowed to meet with us. **When we did meet with Mr. Rico** several hours later, **he told us that he had not had a court hearing that day**, nor had he seen a judge. **Since then, Mr. Rico has not been allowed to make secure calls to us. Before we arrived** at the facility, **Mr. Rico told us that he had posted Clara Long's contact information** in the detention center **for detainees who wanted to report concerns, and that in response** to his actions, **he had been placed in solitary confinement.** After our departure, Mr. Rico requested but was denied a secure attorney call to Ms. Long. There may be legitimate reasons for the decision to deport the hunger striker, the transfer of Mr. Rico to the court building when he did not have a hearing that day, or the apparent decision to place Mr. Rico in disciplinary segregation, but these actions are troubling given that both had been vocal about problems they had in detention and both were individuals we interviewed, and subsequently requested to meet. We also heard allegations of other potentially retaliatory actions against detainees at LaSalle for taking steps to assert their rights, including placement in solitary confinement. General Concerns We also wanted to raise more general concerns about attorney access at LaSalle. The facility has one attorney visitation room. If an attorney is occupying the room with his or her client, any other attorneys wishing to meet with individuals must wait. As you may know, LaSalle Detention Center is located in rural, central Louisiana. There are few immigration attorneys practicing near LaSalle. The few attorneys who represent individuals in LaSalle, including the provider of the Legal Orientation Program, drive for several hours in order to visit their clients. Many attorneys are not willing to represent anyone detained at LaSalle because of the challenges of meeting and preparing with their clients, and those who do are often asked to wait for hours while other attorneys meet with their client in the one attorney visitation room. During our visit on November 2, which commenced at 9 am, we were told an attorney had reserved the room for 1 pm, and we would have to finish our meetings by 1 pm. The next day, an attorney arrived, having driven six hours from Dallas, and was told she could not meet with her clients until one of our researchers was done with the attorney visiting room. The attorney room is not private. Conversations in the attorney room can easily be heard from outside. The attorney room does not allow for contact visits. There are two phones that attorneys must use to speak to detainees. While we were there, at first, only one phone worked. By the end of our visit, none of the phones worked. We had to speak loudly through the openings in the window, which further reduced the ability to have a private and confidential conversation. We greatly appreciated Mr. Acuna's prompt efforts to facilitate our attorney visits with several of the individuals we met. But we remain seriously concerned about the allegations of retaliatory action and the limited and non-private access to attorneys. We request immediate investigation into whether retaliatory action has been taken against detainees at LaSalle Detention Center. Please inform us as to whether you intend to investigate, and if so, the results of that investigation and the steps you plan to take to ensure such retaliatory action does not happen again. We also request a plan with specific steps ICE will take to expand capacity and confidentiality for legal visits. General Detention Conditions **During our**



visit, we interviewed ten individuals referred to us by attorneys and immigrant advocacy organizations. These individuals reported experiencing a range of problems, including unsanitary conditions, inadequate access to clean water, inadequate medical care, inadequate outdoor recreational time, and retaliatory use of solitary confinement. Several detainees reported an incident a few weeks before our visit, during which time the water smelled and tasted bad, and some detainees developed rashes after showering with the water. Initially, they were told the water was fine. When they were finally given bottled water, one detainee stated they were not given enough water per person. Several people also alleged that they had received inadequate medical care, that preexisting conditions were not being addressed, or that they had witnessed other detainees suffering from lack of care. Some noted that sick call was often very early in the morning, and if they are too sick to get up, they cannot request and access medical care during that particular day. Several reported abusive behavior by facility staff, including threats of bodily harm and racist and derogatory language. Some alleged they had been placed in solitary confinement in retaliation for asserting their rights.

#### *Aff- Children's rights to family*

*(Shani King, Assistant Professor at the University of Florida Levin College of Law, Co-Director of the Center on Children and Families, JD from Harvard Law, University of Florida Legal Studies Research Paper No. 2010-06, "U.S. IMMIGRATION LAW AND THE TRADITIONAL NUCLEAR CONCEPTION OF FAMILY: TOWARD A FUNCTIONAL DEFINITION OF FAMILY THAT PROTECTS CHILDREN'S FUNDAMENTAL HUMAN RIGHTS," [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1563730](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1563730), 3/2/2010)*

**Although the paramount purpose of United States immigration law is not to protect the integrity of family,<sup>1</sup> U.S. immigration law does explicitly aim to do so in certain circumstances. The Immigration and Nationality Act (INA) includes family reunification provisions, for example, which allow United States citizens and lawful permanent residents to petition for family members who live in other countries to join them in the United States. Even the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), often described as a draconian statute, technically allows "aliens" to remain in the United States if removal would result in "exceptional and extremely unusual hardship to the alien's [U.S. citizen or resident] spouse, parent, or child." **But** even where the United States aims to further family unity, it fails to do so because U.S. **immigration law reflects a legal construction of the "family" concept that is largely premised on biology,** is grounded in the traditional conception of a nuclear family, **and excludes what this Article calls "functional" families: formations which may not satisfy this narrow conception of family, but satisfy the care-taking needs of children.** By **excluding functional families,** the United States ignores the reality of millions of families who are affected by its immigration laws, separates children from their families, and **fails to honor a child's right to family as defined by the United Nations Convention on the Rights of the Child (CRC) and international law** as it has developed in Europe and the Americas. This Article suggests that **the United States must move beyond this largely biological narrative of family if it is to protect the****



**internationally recognized human rights of children.** What this means in practice is that we must reform U.S. immigration law to reflect a broader conception of family that respects and protects functional families as well as the traditional nuclear family.<sup>7</sup> What this Article suggests is that the notion of parenthood that is reflected in U.S. immigration law should be reconsidered and modified to reflect a definition grounded in relationships and care, or what has been described by Professor Nancy Dowd in a slightly different context as “nurture.” This would likely include, for example, “the psychological, physical, intellectual, and spiritual care” of children. In this Article, the primary focus, therefore, is on what has been described as in loco parentis relationships between children and relatives who are not their biological parents.<sup>10</sup> In other words, relationships in which an adult is operating as a parental figure for a child in a way that results in the child seeing the adult as a parental figure.

*Aff - brings attention to other rights*

*(Stefanie Grant [Migration Policy Institute], head of Amnesty International’s Research Department in London, “Migrants’ Human Rights: From the Margins to the Mainstream,” Migration Policy Institute, <http://www.migrationpolicy.org/article/migrants-human-rights-margins-mainstream>, March 1, 2005)*

Despite the incidence of abuse, **migrants’ rights have remained on the margins of the international human rights agenda for several reasons. These include a lack of data; gaps between different institutional mandates; parallel systems for protecting employment rights and human rights; relatively little reporting by human rights NGOs; the dominance of refugee protection in the migration field; and the fact that,** until the ICMW was drafted, **human rights law only made explicit reference to migrants — as non-nationals — in the context of free movement.**

*Aff - U.S. falls short of protecting migrants*

*(Udi Ofer, Executive Director of the American Civil Liberties Union of New Jersey, “Immigrants’ Rights are Human Rights: Universal Guarantees of Rights to All People,” New York Civil Liberties Union, [http://www.nyclu.org/files/publications/nyclu\\_pub\\_immigrants\\_rights\\_human.pdf](http://www.nyclu.org/files/publications/nyclu_pub_immigrants_rights_human.pdf), NDG)*

**In light of numerous issues** described in this report, the special rapporteur has come to the conclusion that **the United States has failed to adhere to its international obligations to make the human rights of the 37.5 million migrants living in the country** (according to government census data from 2006) **a national priority,** using a comprehensive and coordinated national policy based on clear international obligations. **The primary task of such a national policy should be to recognize that,** with the exception of certain rights relating to political participation, **migrants enjoy nearly all the same human rights protections as citizens, including an emphasis on meeting the needs of the most vulnerable groups.**



*Aff- SQ immigrants are unprotected against abuse*

*(Udi Ofer, Executive Director of the American Civil Liberties Union of New Jersey, "Immigrants' Rights are Human Rights: Universal Guarantees of Rights to All People," New York Civil Liberties Union, [http://www.nyclu.org/files/publications/nyclu\\_pub\\_immigrants\\_rights\\_human.pdf](http://www.nyclu.org/files/publications/nyclu_pub_immigrants_rights_human.pdf), NDG)*

**In the aftermath of the Sept. 11 attacks, the United States began engaging in racial profiling in the name of protecting national security.** This approach to national security is not new. **During World War II, Japanese Americans faced the brunt of this widely condemned and discredited practice.** Now, **in the post-9/11 era, Arab, Muslim and South Asian immigrants are the targets. Whether pre-9/11 or post-9/11, racial profiling violates human rights.** **In the hours, days, and weeks following the tragic events of Sept. 11, the government began to engage in the arbitrary detention and interrogation of hundreds, and possibly thousands of men from Arab, Muslim and South Asian countries. Despite the lack of any credible evidence against them,** they were investigated for possible involvement in terrorist activity. **The men were detained often for months, many in 23-hour lockdown.** In the words of the Justice Department's inspector general, **many were subjected to "a pattern of physical and verbal abuse."** **After being found innocent, many were deported.**

*Aff - protects other rights*

*(Kieran Oberman, Chancellor's Fellow in Politics at the University of Edinburgh, "Migration in Political Theory: The Ethics of Movement and Membership," Book, pg. 7-8)*

Let us turn to the political interest underlying the human right to free movement. **People have an essential interest in enjoying a free and effective political process. Free movement is essential for free political activity since one cannot organize in support of a cause by (say) attending a demonstration if one is prevented from getting there.** Moreover, **since free movement is a condition for free association**—one needs to move in order to meet people—**it is also vital for everything that free association makes possible, including political dialogue, conflict resolution, and the free exchange of ideas.** Finally, **free movement is necessary for the collection of reliable information regarding political affairs, for unless you can go to the affected areas or have someone you trust go for you, you cannot find out what is happening there.**

*Aff - "Right to Visit" is insufficient*

*(Kieran Oberman, Chancellor's Fellow in Politics at the University of Edinburgh, "Migration in Political Theory: The Ethics of Movement and Membership," Book, pg. 9)*



**Note that to protect these interests in personal and political freedom, people must have the right to reside in a foreign state for as long as they like; a right to visit is not sufficient. A time restriction on a person's stay restricts the range of options available to them in much the same way as an entry restriction does. This point is clear in the case of long-term life projects, such as romantic relationships and employment opportunities, which typically require more time than temporary visas allow.** But the point also stands in the case of short-term activities such as visiting friends or attending a political meeting. Temporary visas allow us to engage in such activities, but only as long as their validation periods last. As soon as the validation period ends, the activities are once again

### *Aff- rights should not just be "Adequate"*

*(Kieran Oberman, Chancellor's Fellow in Politics at the University of Edinburgh, "Migration in Political Theory: The Ethics of Movement and Membership," Book, pgs. 13-14)*

Next, consider the other human freedom rights I have mentioned. **If people only have a human right to the freedom to access an "adequate" range of options, then states could radically curtail the freedoms they protect without violating our human rights. Judaism could be banned, without any violation of the human right to freedom of religion, as long as Christianity, Islam, Hinduism, and Buddhism went unrepressed.** The government could burn books in the town square without any violation of the right to freedom of expression, as long as there was an "adequate" range of books left on the shelves. **Public meetings could be shut down** and social clubs closed **without any violation of the human right to freedom of association, as long as there were a sufficient number of other meetings** and clubs **to which one might go.**

### *Aff- deportation can be torture*

*(Susan Gzesh, Director of the Human Rights Program at the University of Chicago, "America's Human Rights Challenge International Human Rights Implications Of Us Immigration Enforcement Actions Post-September 11," Migration Policy Institute, [http://www.migrationpolicy.org/pubs/Americas\\_Human\\_Rights\\_Challenge\\_1006.pdf](http://www.migrationpolicy.org/pubs/Americas_Human_Rights_Challenge_1006.pdf), 2006)*

Since September 2001, **the US government has instituted new immigration controls that violate the due process protections of human rights law. Procedures include prolonged detention and a lack of opportunity to be heard that can result in deportation to be subjected to torture. Some procedures were trial measures while others have become permanent. Any seizure of the person or limitation on freedom of movement triggers due process protections.** What are the standards to be applied?



## State sovereignty

The primary argument here focuses on the idea of whether or not human rights, and individual rights, come before the rights of states' governments to control themselves.

*Aff- economic globalization means that sovereignty is no longer vital*

*(Saskia Sassen, sociologist noted for her analyses of globalization and international human migration, Robert S. Lynd Professor of Sociology at Columbia University and Centennial visiting Professor at the London School of Economics, "The de facto transnationalizing of immigration policy," Sec. 1 Chap. 2 in Challenge to the Nation-State: Immigration in Western Europe and the United States [ed. Christian Joppke], published by Oxford University Press, Google Books, 1998)*

While **the state** continues to play the most important role in immigration policy-making and implementation, it **has been transformed by the growth of a global economic system** and other transnational processes. These changes have brought on conditions that bear on the state's regulatory role and capacity. **Two** particular **aspects of this development are of significance to immigration** policy-making and implementation. **One is the relocation of various components of state authority to supra- national organizations such as the** institutions of the **European Union**, the newly formed **World Trade Organization**, **or international human rights codes. A second is the emergence of a new privatized trans-national legal regime for cross-border business transactions which now also includes certain components of cross-border labour mobility**, notably professional workers. **The major implication for immigration policy is that these developments have had an impact on the sovereignty and territoriality of the state and that in so far as the state has participated in the implementation of** many of **these new arrangements, the state itself has been transformed** and so has the inter-state system. **Thus, in so far as immigration policy is deeply embedded in the question of state sovereignty** and the inter-state system, **it is no longer sufficient simply to assert the sovereign role of the state in immigration policy design and implementation.** It is also necessary to examine the transformation of the state itself and what that can entail for migration policy and the regulation of migration flows and settlement. For the purposes of immigration policy analyses it is becoming important to factor in these transformations of the state and the inter-state system precisely because the state is a major actor in immigration policy and regulation. Nor is it sufficient simply to assert that globalization has brought with it a declining significance of the state in economic regulation. The state has been a participant in this process, and is the strategic institution for the legislative changes and innovations necessary for economic globalization as we know it today (e.g. Panitch 1996; Cox 1987 ). Some of these issues may seem far removed from the question of immigration policy. But we need to expand the analytic terrain within which we examine the options in immigration policy-making in the highly developed countries.



Aff- HR outweighs sovereignty

*(Saskia Sassen, sociologist noted for her analyses of globalization and international human migration, Robert S. Lynd Professor of Sociology at Columbia University and Centennial visiting Professor at the London School of Economics, "The de facto transnationalizing of immigration policy," Sec. 1 Chap. 2 in Challenge to the Nation-State: Immigration in Western Europe and the United States [ed. Christian Joppke], published by Oxford University Press, Google Books, 1998)*

Beyond the new conditions brought about by economic globalization, **immigration** policy and practice **is** also **increasingly affected by the new international human rights regime**.<sup>25</sup> The invocation of international covenants to make national policy signals yet another type of displacement of government functions: a displacement in the legitimization process. **This is a move away from statism—the absolute right of states to represent their people in international law and international relations**—towards a conceptual and operational opening for the emergence of other subjects and actors in international law. **The international human rights regime has been a key mechanism for making subjects out of those hitherto invisible in international law—first-nation people, immigrants and refugees, women** (Sassen 1996a, 1996c). This has brought about a growing number of instances where one sector of the state is in disagreement with another. It is perhaps most evident in the strategic role that the judiciary has assumed in the highly developed countries when it comes to defending the rights of immigrants, refugees, and asylum-seekers. **Human rights are not dependent on nationality**, unlike political, social, and civil rights, which are predicated on the distinction between national and alien. **Human rights override such distinctions**. Even where rooted in the founding documents of nation-states, as is the case with the United States and France, we need to understand the specific development of these rights over the last few years. **Human rights today are a force that can undermine the exclusive authority of the state over its nationals and thereby contribute to transform the interstate system and international legal order**.<sup>29</sup> **Membership in territorially exclusive nation-states ceases to be the only ground for the realization of rights**. All residents, whether citizens or not, can claim their human rights (Jacobson 1996; Henkin 1990). **Human rights begin to impinge on the principle of nation-based citizenship and the boundaries of the nation. They contribute to strengthen concepts of personhood. Human rights codes can erode some of the legitimacy of the state if it fails to respect such human rights—it is no longer just a question of national self-determination** (see Franck 1992). This is a very significant shift. The growing influence of human rights law is particularly evident in Europe. It was not until the 1980s that such influence started to be felt in the United States and it still lags behind.<sup>30</sup> This has been seen to be partly a result of American definitions of personhood, which have led courts in some cases to address the matter of undocumented immigrants **within American constitutionalism**, notably **the idea of inalienable and natural rights of people and persons, without territorial confines**. The emphasis on persons **makes possible interpretations about undocumented immigrants**, in a way it would not if the emphasis were on citizens. It was not until the mid-1970s and the early 1980s that **domestic courts began to consider human rights codes as normative instruments** in their own right. The rapid growth of undocumented immigration and the sense of the state's incapacity to control the flow and to regulate the various categories in its population were factors leading courts to consider the international human rights regime, **which allows courts to rule on basic protections of individuals not formally accounted in the national territory** and legal system, **notably undocumented aliens and unauthorized refugees**.<sup>31</sup> **The growing accountability of states under the**



**rule of law to international human rights codes** and institutions, together with the fact that individuals and non-state actors can make claims on those states in terms of those codes, **signal a development that**, according to some (e.g. Jacobson 1996), **goes beyond the expansion of human rights within** the framework of **nation-states; it contributes to redefining the bases of legitimacy of states under the rule of law and the notion of nationality. Under human rights regimes states must increasingly take account of persons qua persons, rather than qua citizens. The individual is now an object of law and a site for rights, regardless of whether a citizen or an alien.** Immigrants, in accumulating social and civic rights and even some political rights in countries of residence, have diluted the meaning of citizenship and the specialness of the claims citizens can make on the state. When it comes to social services (education, health insurance, welfare, unemployment benefits) citizenship status is of minor importance in western Europe and, until the 1996 law, in the United States. What matters is residence and legal alien status. And most of these countries will pay retirement benefits even if recipients no longer reside there. Some countries have also granted local voting rights, e.g. Sweden and the Netherlands. Aliens are guaranteed full civil rights either constitutionally or by statute. Given the little difference between the claims that citizens and immigrants can make, there is also a low propensity to naturalize. Even unauthorized immigrants can make some of these claims. Schuck has noted that **new 'social contracts' are being negotiated** in the United States every day **between undocumented aliens and US society, contracts that cannot be nullified through claims about nationality and sovereignty.** Courts have had to accept the fact of undocumented aliens and to extend to these aliens some form of legal recognition and guarantees of basic rights (see Bosniak 1992; Isbister 1996). Various decisions have conferred important benefits of citizenship to undocumented aliens. **This clearly undermines older notions of sovereignty.**

*Neg- not a moral question, but one of sovereignty*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

**The great variation in government policies toward migration reminds us of how closely tied questions of who should be admitted into the community are to conceptions of national identity, as well as to economic issues.**

A policy of excluding individuals on the basis of their group identity is morally unacceptable. But whether a country's migration policies should give preferences to ethnic kin, to the spouses, children, parents, or siblings of citizens or resident aliens, to individuals with specified skills or levels of education, or to unskilled low-wage workers or to individuals of financial means, or indeed whether a country should have an **immigration policy** at all **is not a matter of general moral principles but of politically defined national interests and values, that is,** in the broadest sense, **national sovereignty.**



## Utilitarian and empiricism

Weighing the balance between benefits and drawbacks of embracing immigration as a human right.

*Aff- economics justify*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

The **immigration policy from a utilitarian perspective would be the one that maximized overall economic gains. In this calculation, current citizens would enjoy no privileged position. The gains and losses of aliens would count just as much.** Now the dominant view among classical and neoclassical economics is that **the free mobility of capital and labor is essential to the maximization of overall gains.** But the **free mobility of labor requires open borders.** So, despite the fact that economic costs to Current are morally relevant to the frame- work, they would probably not be sufficient to justify restrictions, (Carens, 1987b:263)

*Aff- creates social equality*

*(Luke Buckmaster & Matthew Thomas, [Buckmaster is an expert in refugee policy in Australia, Thomas is a professor at the University of Sydney and a lecturer on Social Education], "Social inclusion and social citizenship towards a truly inclusive society," Parliament of Australia, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp0910/10rp08#Toc244315377](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0910/10rp08#Toc244315377), 23 October 2009)*

**The main way in which social citizenship contributes to equality of status is through** helping to develop a common culture in which the differences between social classes and other groupings are less sharp. This occurs as a result of **the redistribution of economic resources** (through benefits and services) **in such a way as to reduce the extent of social inequality.** For Marshall, **the point of this is not so much to eradicate income inequality as it is to bring about equality of status across the social structure**



## *Aff-veil of ignorance*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

Notwithstanding these objections, some political theorists argue that **liberal democratic societies ought to have open borders**, or that, short of open borders, a liberal democratic country should take in as many migrants and refugees as its citizenry will allow. **The primary criterion** for admission, these theorists insist, **should not be the needs of the host country but the plight of those who seek admission.** THE DELATE OVER OPEN ADMISSIONS philosopher John **Rawls** (1971) **provides the starting point for** theorists who take **this position.** Rawls argues that **people, not knowing anything about their own personal situation** (e.g., their class, race, or ability) **who could choose the kind of society in which they wanted to live from behind this "veil of ignorance," would follow self-interest and** choose to live in a society in which institutions were constructed to benefit those who were the well-off (what Rawls calls "the difference principle"). **Inequalities** of wealth and power and income, in other **would be acceptable only insofar as they ultimately benefited those in the society who were least well off.** In this aspect, Rawls' theory stems from the assumptions of classical liberalism, with its notions of liberty, justice as fairness, and the right to equality. For Rawls, **the "original position (starting from a "veil of ignorance") is necessary for thinking about the issues of justice within a given society,** but others have argued that this approach should be applied universally across different societies. Joseph Carens has systematically expounded this position in a number of articles (1992x25-47, 1988x207-230, 1987æ413-443, 1987b:251-273, 1987c, 1988b:41-60). **Others who also argue for a universal theory of justice** include Singer (1988: 111— 130), Charles Beitz (1979), Henry Shue (1980), Brian Barry (1973), and two British legal scholars, Ann Dummett and Andrew Nicol (1992). These philosophers and legal scholars **argue that, since it is purely a matter of chance whether we are born in a country that is peaceful, democratic, and prosperous or in a country that is poor, authoritarian, and torn by civil conflict, starting from the original position** we would all clearly prefer to be born in the peaceful, democratic, prosperous society. From a liberal egalitarian perspective **there are, therefore, no grounds for limiting membership in any society to those who happen to be born there. Birthplace and parentage are,** as Carens writes, **"arbitrary from a moral point of view"** (1987b:261). **Free migration** across open borders **would enable those who were born in disadvantaged countries to improve their position** by moving to a place where they would have greater opportunity. **If, by moving, the worse-off can thereby improve their position,** Carens argues, **the well-being of current citizens is irrelevant.** Carens also says that **it is irrelevant if open borders generate an influx of a people** from another culture or if the numbers of migrants are **large enough to undermine the dominance of the existing culture. The claims of citizens,** he asserts, **should not be given priority over the claims of others simply by virtue of their citizenship.**



*Neg- harms local population (laundry list)*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, *The International Migration Review*, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

To most citizens, however, **the argument in favor of national sovereignty with respect to control over migration appears to be commonsensical. Let us consider what the consequences might be if a country had completely open borders** to anyone who wished to enter. **While this approach seems to take the moral high ground by avoiding coercion, it clearly jeopardizes the well-being of the host population and threatens politicide. A safe and prosperous country that declares its borders open risks being overwhelmed by a massive influx of immigrants from poor and/or violent countries. If the country then provides these immigrants with the same benefits it offers its own citizens (education for children, healthcare, unemployment benefits, etc.), its social services and welfare services may be stretched to the limit. The country's own poor may find themselves pushed aside by migrants prepared to work at lower wages. If the number of migrants is large enough, the local population may** find itself outnumbered by people who speak another language, belong to another culture, and perhaps **seek to change the political system**. As the number of migrants grows, **the local population may become xenophobic, resulting in the growth of antimigrant political organizations, violence, and social disorder. Poor countries might also be at risk if their borders are open**. Peasants from densely populated neighboring countries might freely enter in search of land and employment, thereby putting pressure on the local population. Refugees from civil conflict might cross the border and damage the local ecology by cutting firewood, consuming water, generating waste, and destroying grass-lands. **The indigenous population might become acutely afraid of domination** by the intruding ethnic group, **especially if the community is one with which it has a history of enmity. Any country, rich or poor that opened its borders might soon find other states taking advantage of its** beneficent policy. **A neighboring country whose elite wanted a more homogeneous society could now readily expel its minorities. A government** that wanted a more egalitarian society **could dump its unemployed and its poor. An authoritarian regime could rid itself of its opponents; a country could empty its jails, mental institutions, and homes for the aged.** In an extreme cases, an overcrowded populous country could take over a hypothetically generous country simply by a large part of its population, and **an aggressive country would no longer need tanks and missiles for an invasion.**



*Neg- global egalitarianism backfires, causes more net human harm than good*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

Global egalitarians dismiss the idea of community as an impediment to a just world. **"The socialist tradition,"** explains David Miller, **"has been overwhelmingly hostile to nationality as a source of identity, usually regarding it merely as an artificially created impediment to the brotherhood of man"** (1992:87). **Like the socialists, the globalists** (and many with this view would regard themselves as socialists) **place the highest value on egalitarianism. Consequently, those who subscribe to the ideals of global justice put aside notions of community and the value which a community places upon itself—, a sense of common identity and mutual obligation to one another. The global egalitarian position is thus in opposition to those who want to improve the well-being of the population within their own country and who, therefore, weigh proposals for immigration against such considerations as its impact on the welfare system, employment, the delivery of educational benefits and healthcare, the environment, and intergroup relations.** From this perspective, migration should be permitted only when it best serves the interests of the country and its citizens rather than serving the interests of the migrants. **Many global egalitarians advocating immigration seek to avoid this conundrum by stressing the compatibility of migration with national well-being, for example by pointing to the contribution migrants make to economic growth, the taxes they pay in return for social benefits, and the benefits of cultural diversity. However, those who take this latter position in effect have conceded the argument that whether a country should or should not have migrants needs to be based upon an empirical consideration of costs and benefits, rather than a philosophical position in favor of global equality. For globalists, the highest moral is distributive justice. The preservation of a nation's existence, its political order, political institutions, and cultural identity, and of the wellbeing and interests of its citizens are subordinate to the goal of global distributive justice? Global redistribution — through open borders or foreign aid — is regarded not as a humanitarian act, but as a moral imperative. Globalists thus pay little attention to whether the adoption of their principles in a world comprised of sovereign states would lead to an improvement or a worsening of the human condition in any specific country. The adoption, for example, of a globalist position on migration by a single country puts that country at risk when other countries choose not to open their borders. As we suggested earlier, migration can then become an act against the country with open borders as one country disposes of its unwanted upon another. Under such circumstances, an open door to migrants might very well do more harm than good to large numbers of people. Moreover, if a state chooses not to give preference to the well-being of its own citizens over the well-being of citizens of other countries, then, as Walzer suggests, local communities and regions within the country might protect themselves by imposing restrictions upon entry or discriminating against foreign residents, generating the very opposite result from what the globalists intend** (for a forceful statement of this view, see King.) **There are, of course, many sensible reasons why governments might welcome**



**immigrants:** they may meet **labor**-force needs in industry, the service sector, or agriculture; they may bring **cultural diversity and** cosmopolitanism to countries whose citizens would like to be less parochial; they may provide **entrepreneurship** and other needed skills and talents; the country may regard itself as a "home" to people with whom its citizens have historic, cultural or religious ties; and families of immigrant origin may want to bring in their relatives and other members of their ethnic community. A government may also choose to open its borders to one or more neighboring countries with which it shares free trade and similar living standards. **But these policies fall within the normal framework of a state's domestic and foreign policies. None implies moral obligation.**

*Neg- Many good reasons to exclude, open borders not compatible with real world consequences*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

However, though there are numerous reasons a country might support and encourage immigration, many governments choose to severely limit or even close their borders to migration. **The reasons given for restricting migration**, as previously noted, **are numerous. In some countries** local **inhabitants are fearful that a large influx of immigrants will** overwhelm them, reducing them to a demographic minority and threatening their cultural and political dominance. Other countries fear that migration will **exacerbate problems of overcrowding, poverty, unemployment, and xenophobia.** And in some countries citizens have such a strong sense of an exclusive cultural identity that the incorporation into citizenship of even a small number of outsiders is unacceptable. **The moral stance that global justice can be served by a world** of open borders **in which individuals are free to move wherever they wish presumes a world** without borders, **without states, without repressive regimes, without vast differences in the health, education and welfare services offered** by governing authorities, and without vast differences in incomes and employment. **In the absence of these conditions the noble vision becomes a nightmare, for the consequences of opening the borders of a country in extreme situations can be the erosion of the institutions and values that liberal societies have created for themselves and which make them attractive to outsiders. In the real world** of states, **governments are morally responsible to** their own citizens and to **those legally reside within their territory.**

*Neg- public backlash*

*(Saskia Sassen, sociologist noted for her analyses of globalization and international human migration, Robert S. Lynd Professor of Sociology at Columbia University and Centennial visiting Professor at the London School of Economics, "The de facto transnationalizing of immigration policy," Sec. 1 Chap. 2 in Challenge to the Nation-*



*State: Immigration in Western Europe and the United States [ed. Christian Joppke], published by Oxford University Press, Google Books, 1998)*

**We can illuminate the issue of the substantive nature of the control by states over immigration with a twist on the zero sum argument. If a government closes one kind of entry category, recent history shows that another one will have a rise in numbers. A variant on this dynamic is that if a government has, for instance, a very liberal policy on asylum, public opinion may turn against all asylum seekers and close up the country totally; this in turn is likely to promote an increase in irregular entries.**

*Neg- must consider consequences for policymaking; it's distinct from personal ethics*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

As with most issues of public policy, **conflicts over immigration** and refugee policies typically **reflect** group and institutional interests. Behind debates over these policies, however, often lie **fundamental issues of public values and** of conflicting **moral considerations** that are rarely made explicit. With the end of the cold war, **there is emerging a greater moral** and political **consensus on universal human rights** than ever before and a willingness to at least consider what international regimes might be created to embody and institutionalize this consensus. **But there is also a widespread recognition that international population movements create major problems for states and that states have a legitimate right to limit these flows** when their interests are affected. **Thus, there is a need to balance state interests with moral considerations in the formulation of migration policies.**

There is not — and to restate the thesis of this paper — there cannot be an international consensus on the question of whether governments should admit migrants. Indeed, if an international consensus is emerging, it is that no government is obligated to admit migrants, that migration is a matter of individual national policy, that most governments need more effective control over their borders, that more forceful measures are needed to halt illegal migration and the growth of worldwide migrant smuggling, that improved procedures are needed to distinguish genuine asylum seekers and refugees suffering from persecution and violence from individuals who use these procedures to migrate, that "temporary" guestworker policies do not work. Also, in formulating migration policies government should give increasing importance to whether the skills and education levels of migrants strengthen the economy, rather than to the needs of the migrants themselves. There is a consensus that refugees and asylees are in need of protection, but disagreement on who should be granted protection, how best to adjudicate asylum claims, and where and what kind of protection is desirable. Here is a widespread view among the Western powers and many governments in the Third World that states cannot retreat behind the principle of national sovereignty if their mistreatment of their own citizens or their inability to maintain internal order results in massive flights. Disagreement exists, however, over what steps — if any — should be taken by the international community. In some policy areas — mostly notably in the field of wealth, biogenetics, and in policies relating to the use of nuclear weapons — explicit attention has been paid to moral questions. development of the field of applied ethics has been directed not at offering moral solutions to complex policy issues but rather at identifying the moral questions and specifying the trade-offs among alternative moral principles. Similarly, the task in the migration and refugee field is to extract the moral assumptions from the policy debates, to identify the dilemmas posed by conflicting moral principles, and to suggest how an explicit examination of moral issues can clarify policy choices. The moral issues with respect to migrants and refugees have been transformed in recent years by the emergence of a movement in support of universal human rights which transcend international boundaries so that many citizens feel they have moral obligations to those who live outside their boundaries. But citizens



in liberal societies also wish to weigh these claims against the needs and claims of their own citizens. **Moral reasoning differs from other kinds of reasoning about public policies. Typically, policy decisions are based on weighing costs and benefits, evaluating effectiveness, and considering political consequences — all of which have moral implications — but this is not the same as employing moral reasoning. Efforts to apply moral reasoning often flounder in a quagmire of conundrums and moral contradictions.** While these often cannot be resolved, one must at least understand what they are. **There is, first of all, the need to distinguish between personal morality and the application of moral principles to public policy. The moral choices we make as individuals need not, and often should not, be the same as the moral choices made by policymakers. A woman may have a moral objection to aborting her fetus, but that is not an argument for a public policy that bans abortions. One may be a pacifist, but that is not an argument for a public policy of disarmament. One may have a moral aversion to pornography, but that is not an argument for censorship. One may be willing to accommodate a poor immigrant in one's home, but that is not an argument for a policy to admit poor people from other countries. Personal ethics are a poor basis for public choices because they do not take into account the costs such policies impose upon others.** Similarly, personal benefits from previous policies that permitted the migration of one's parents, for example, are not justification for a liberal migration policy, either past or present. **It is also important to distinguish, as Max Weber did, between two kinds of ethics: the ethics of ultimate ends, which pursues an absolute ideal; and the ethics of responsibility, which requires that political leaders choose courses that are often less than ideal. Policymakers must not consider simply whether policies are in some abstract sense moral, but also whether there is a reasonable likelihood that morally desirable objectives can be achieved. The morality of an act should be judged by its probable consequences, not by its intent; good intentions are not a sufficient basis for choosing moral policies since many well-intended policies have had bad results, A policy, for example, that induces people to take hazardous risks for desirable ends (e.g., a policy that leads individuals to flee their country in unseaworthy boats) may have morally unsound consequences. An apparently morally justifiable policy, moreover, can sometimes lead to costly results and imprudent actions. Policymakers may have to make the difficult judgment of whether military action to provide protection for internally displaced persons will lead to a more costly war that will inflict even greater loss of human life. Support for a persecuted ethnic minority demanding self-determination, for example, might lead to a civil war and large-scale violence. Military intervention in another country to halt persecution or stop violent conflict also, if soldiers are killed, may lead to premature withdrawal that could result in greater harm to those originally intended to receive help.**

*Neg- A2 economics prove free migration of labor good*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*



The argument of the global egalitarians and the neoclassical economists thus converges on matters of migration, both arguing in favor of increasingly open borders as an instrument for achieving greater worldwide economic equality. **The question of what drives migration flows** and to what extent they beneficial to receiving countries **is**, of course, **central** to the argument of the neoclassical economists. **It is first necessary to note that the consequences of the free movement of labor across international borders are not the same as the consequences of the free movement of capital and goods across these same borders. The logic of free trade countries is that it finds its own equilibrium — a country that bought more than it sold would see the value of its currency decline, the cost of imports go up, and the price of its exports go down until a trade balance was established. No such simple mechanism operates with respect to the free movement of people across national boundaries.** A world without borders might indeed be one in which the free movement of people and the free movement of capital and goods would benefit all; but **in a world in which states and boundaries do exist, the free movement of people, unlike the free movement of capital and goods, would damage those countries that chose to have unregulated borders.** Indeed, much the same argument is used by those who advocate some form of managed trade in conditions in which there is no free movement of the factors of production since governments provide subsidies or impose costs upon their own producers and lace a variety of tariff and nontariff restrictions on imports. **A relatively free international labor market is not Without its costs. Migrants can displace some local labor, a large-scale influx can put a burden on housing, education, and social services and depress wages.** Refugees can impose heavy costs upon the government and upon local people, **push up food prices, crowd urban settlements, and damage the local economy;** some — though by no means all — societies are threatened if there are large numbers of immigrants from another culture. **And ethnic conflicts between migrants and locals,** especially between migrants and indigenous minorities and among different migrant communities, **can be politically destabilizing and violent and hence injurious to economic growth. There are also opportunity costs. In a tight labor market employers have an incentive to ways to make labor more productive. Technological and managerial innovations are more likely to occur when labor costs go up. Unemployment will decline. Previously excluded or restricted groups —the disabled, women, minorities — are let into the labor force.**

## Race/Ethnicity/Xenophobia

*Aff- term “alien” is racist, discriminatory*

*(Kevin R. Johnson, Professor of Law at the University of California at Davis, “The Social and Legal Construction of Nonpersons,” University of Miami Inter-American Law Review, vol 28, iss. 2, <http://repository.law.miami.edu/cgi/viewcontent.cgi?article=1335&context=umialr>, Jan 1997)*

International **human rights issues** in the United States obviously **are shaped by many factors.** **My focus** in this essay **is on** an issue that, at first glance, might appear insignificant. Nonetheless, it greatly influences thinking in the United States about acceptance of immigrants from



other countries as well as this nation's response to refugees fleeing human rights abuses in their homelands. My topic relates to terminology and specifically to **the use of the word "alien,"<sup>1</sup> a term of art used extensively in discussing** the legal rights of **immigrants** in the United States. **By definition, aliens are outsiders to the national community. Even if they have lived in this country for many years, have had children here, and work and have deep community ties** in the United States, **noncitizens remain aliens, an institutionalized "other," different and apart from "us."** **The classification of persons as aliens**, as opposed to citizens, **has significant legal, social, and political importance. Citizens have a large bundle of political and civil rights**, many of which are guaranteed by the U.S. Constitution; **aliens have a much smaller bundle** and enjoy far fewer constitutional and statutory protections. <sup>2</sup> Citizens can vote and enjoy other political rights, such as jury service. **Aliens, no matter what their ties to the community, enjoy limited political rights. They** cannot vote and **risk deportation if they engage in certain political activities** that, **noncitizens cannot sit on juries deciding the fate of fellow noncitizens charged with crimes, thereby ensuring that the jury** most definitely **will not reflect a cross section of the community.** <sup>4</sup> Perhaps most importantly, **aliens can be deported** from the country **while citizens cannot be.** For example, under the immigration laws, **an alien convicted of possession of** more than **thirty grams of marijuana may be deported,** <sup>5</sup> **while a citizen convicted of mass murder cannot be.** <sup>6</sup> **The concept of the alien has more subtle social consequences as well.** Most importantly, **it helps to** reinforce and **strengthen nativist sentiment** toward members of new immigrant groups, which in turn influences U.S. responses to immigration and human rights issues. Aliens have long been unpopular in the United States, though the particular disfavored group has varied over time. Over two centuries ago, the courts of the various states were perceived as being unfair in the treatment of the British, especially British creditors. Consequently, Article III of the U.S. Constitution authorized the federal courts to hear disputes between noncitizens and citizens, known from its time of creation as "alienage" jurisdiction.<sup>7</sup> Demonstrating the artificiality of the construct, the British, who colonized and at one time ruled the region that became the United States, were socially transformed into aliens by loss of the Revolutionary War. The British, however, were not the only relevant aliens in this nation's early history. The Federalists in the late 1790s pressed for passage of the now infamous Alien and Sedition Acts in order to halt the migration of radical ideas from France and to cut off the burgeoning support for the Republican Party offered by new immigrants. <sup>8</sup> Animosity toward other groups of aliens has occurred sporadically in U.S. history. Irish immigrants in the 1800s were the subject of hostility.<sup>9</sup> Near the end of the nineteenth century, Chinese immigrants suffered violence and bore the brunt of a wave of draconian federal immigration laws. <sup>10</sup> Animosity directed at Japanese immigrants, as well as citizens of Japanese ancestry, culminated in their internment during World War II.<sup>11</sup> As this sequence of historical events suggests, race has influenced the social and legal construction of the alien. Although the British may have been one of the nation's first groups of unpopular aliens, **the term** increasingly **became associated with people of color.** Some restrictionist laws, such as those passed by Congress in the late 1800s barring almost all Chinese immigration, were expressly race-based. Others were more subtle in their impact. **Before 1952, for example, the law barred most nonwhite immigrants from naturalizing** to become citizens, <sup>12</sup> **thereby forever relegating noncitizens of color to alien status and effectively defining them as permanent outsiders** in U.S. society. This essay will explain how **the word "aliens" today often is code for immigrants of color**, which has been facilitated by the changing racial demographics of immigration. <sup>18</sup> Many have expressed general concerns with the alien terminology in immigration law. Hiroshi Motomura noted that **the "term 'alien' is standard usage, but ... [has] a distancing effect and** somewhat **pejorative connotation.**"<sup>14</sup> Gerald Neuman has observed **that** "[l]it is no coincidence that we still refer to noncitizens as 'aliens,' a **term** that **calls attention to** their **'otherness,' and** even **associates them with nonhuman invaders from outer space.**"<sup>15</sup> Gerald Rosberg acknowledged that "**[the very word, 'alien,' calls to mind someone strange and out of place,** and it has often been used in a distinctly pejorative way."<sup>16</sup> Despite such concerns, the term is regularly used, often with some reluctance or at least the felt need for explanation, in immigration discourse. <sup>17</sup> This is the almost inevitable result of the fact that the alien is the nucleus around which the comprehensive immigration law, the Immigration and Nationality Act, <sup>18</sup> is built. Race as a social construction has been thoroughly analyzed.<sup>19</sup> However, surprisingly little has been written about how **the alien is socially constructed** as well. The alien is **made up out of whole cloth. The alien represents a**



**body of rules** passed by Congress and **reinforced by popular culture. It is society**, often through the law, **which defines who is an alien, an institutionalized "other," and who is not.** It is society through Congress and the courts that determines which rights to afford aliens. **There is no inherent requirement**, however, **that society have a category of aliens at all.** <sup>20</sup> We could dole out political rights and obligations depending on residence in the community, which is how the public education and tax systems generally operate in the United States. Indeed, a few have advocated extending the franchise to noncitizen residents of this country, a common practice in a number of states and localities at the beginning of the twentieth century.<sup>21</sup> Many alternatives to the term alien exist, including "person," "immigrant," or "undocumented worker." **My point** in this essay, **however, is not to offer an alternative terminology. Rather**, my hope is **to illustrate how the term alien masks the privilege of citizenship** and helps to justify the legal status quo. **Similar to the social construction of race, which legitimizes racial subordination, the construction of the alien has justified the fact that our legal system offers noncitizens limited rights. Alien terminology helps rationalize the harsh treatment of persons from other countries.** <sup>22</sup> **Consider the terms of the public debate. Today's faceless "illegal aliens" are invading the nation and must be stopped or we shall be destroyed.** <sup>23</sup> **Such images help animate, invigorate, and reinforce the move to** bolster immigration enforcement efforts and **seal the borders. The images that alien terminology creates have** more **farreaching**, often subtle, **racial consequences.** Federal and state laws regularly, and lawfully, discriminate against aliens. It is sanctioned by the Constitution, which provides, for example, that the President must be a "natural born citizen."<sup>24</sup> Under certain circumstances, discrimination against aliens is legally permissible.<sup>25</sup> In contrast, governmental reliance on **racial classifications generally are subject to strict scrutiny and ordinarily are unconstitutional.** <sup>26</sup> **Because a majority of immigrants are people of color,** <sup>27</sup> **alienage classifications all-too-frequently are employed as a proxy for race. Alienage discrimination**, though overinclusive because it includes persons who are not minorities, **allows one to disproportionately disadvantage people of color. California's** much-publicized **Proposition 18728 is an example** of this phenomenon at work. **Although debate during the** tumultuous **campaign centered on aliens**, specifically "illegal aliens," the Mexican-American leaders in California knew which specific group of aliens at which the measure was truly directed. With that in mind, it is not surprising that **"[w]hite voters supported the proposition** at about a **two-to-one** ratio **while Latinos over-whelmingly opposed it by over a three-to-one** margin."<sup>29</sup> My point is that **the terminological issue is not simply a word game. Alien terminology serves important legal and social functions.** Alexander Bickel perhaps said it best in the context of analyzing citizenship: **"It has always been easier**, it always will be easier, **to think of someone as a noncitizen than** to decide that he is **a nonperson** ..."<sup>3</sup> In Stephanie Wildman's words, **"language veils the existence of systems of privilege."**<sup>31</sup> Lucinda Finley put it differently though with the same flavor: "Language matters. Law matters. Legal language matters."<sup>32</sup> Let us investigate how this works. Keep in mind that it should not be surprising that law serves this legitimating function. Lawyers attempt to reconcile conflicting legal precedents to make persuasive arguments. In so doing, they attempt to rationalize that which may seem, and may well be, inconsistent.



*Aff- racism against migrants due to perceived illegality*

(Kevin R. Johnson, Professor of Law at the University of California at Davis, "The Social and Legal Construction of Nonpersons," University of Miami Inter-American Law Review, vol 28, iss. 2, <http://repository.law.miami.edu/cgi/viewcontent.cgi?article=1335&context=umialr>, Jan 1997)

Alienage status has not always been linked to race. As mentioned previously, the primary group of aliens that the framers of the Constitution had in mind in creating alienage jurisdiction in Article III were the British.<sup>83</sup> **Over time, however, aliens have increasingly become equated with racial minorities.** As Gerald Neuman has succinctly observed, **"the discourse of legal [immigration] status permits coded discussion in which listeners will understand that reference is being made, not to aliens in the abstract, but to the particular foreign group that is the principal focus of current hostility."**<sup>84</sup> An important first association between aliens and racial minorities can be seen in the foundational immigration cases allowing for the exclusion and deportation of Chinese persons in the late 1800s.<sup>85</sup> Not long after, in the early part of the twentieth century, some states passed laws known as the "alien land laws" that barred "aliens ineligible to citizenship" from owning certain real property. This facially-neutral phrase was taken from the immigration and naturalization laws, which barred most nonwhite persons from becoming citizens.<sup>86</sup> While incorporating a facially neutral phrase from the immigration laws into the land laws, the state effectively barred certain nonwhites from owning real property. These laws undisputedly were directed at persons of Japanese ancestry.<sup>87</sup> More recently, since 1965 when Congress repealed the national origin quotas system, there has been a sharp increase in racial minorities as a proportion of the immigrant stream to the United States.<sup>88</sup> The "alien" has increasingly become associated with racial minorities in the modern debate about immigration. **The words "alien" and "illegal alien" today carry subtle racial connotations. The dominant image of the alien often is an undocumented Mexican or some other person of color,** perhaps a Haitian, Chinese, or Cuban person traveling by sea from a developing nation. **Treating racial minorities poorly on the ground that they are aliens or illegal aliens allows us to reconcile the view that "we are not racist" and the desire to insulate ourselves from certain groups of persons viewed as different, racially or otherwise.**<sup>89</sup> A. Some Examples: Mexicans, Haitians, Cubans As the century comes to a close, concern with illegal aliens in the United States dominates debate over immigration reform. "The illegal alien is said to sneak into the United States, insinuate himself into our midst, hide, remain without asking permission. The introjection language, language of overstepping, is both literal and unmistakable."<sup>90</sup> Though the term illegal alien is seemingly race neutral, it is relatively easy to discern which noncitizens are the ones that provoke concern. Study of the use of the terminology in context reveals that, particularly in the Southwest, the term refers to undocumented Mexicans and plays into stereotypes of Mexicans as criminals.<sup>91</sup> **The terminology better masks nativist sympathies than the popular vernacular that it replaced--"wetbacks,"** which is even more closely linked to Mexican immigrants.<sup>92</sup> The link between "illegal aliens" and Mexican citizens often goes unstated.<sup>93</sup> The courts, with little explanation, often have approached the "illegal immigration problem" as an exclusively Mexican problem. For example, Justice Brennan, writing for the Supreme Court, suggests the equation in his mind between illegal aliens and Mexican immigrants. Employment of illegal aliens in times of high unemployment deprives citizens and legally admitted aliens of jobs; acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens; and employment of illegal aliens under such conditions can diminish the effectiveness of labor unions. These local problems are particularly acute in California in light of the significant influx of illegal aliens from neighboring Mexico.<sup>94</sup> **The best estimate of the INS, however, is that, as of October 1992, less than forty percent of the undocumented population in the United States is of Mexican origin.**<sup>95</sup> **The public debate, however, fails to focus on undocumented white aliens. The INS estimated that three of the top ten sending nations for undocumented immigrants are Canada (97,000), Poland (91,000), and Italy (67,000).**<sup>96</sup> A study by the state of New York estimated that, despite the images of Chinese and Central Americans as the predominant illegal aliens in the state, the three largest undocumented groups in New York came from Ecuador, Italy, and Poland.<sup>97</sup> In focusing on the "illegal alien" as a Mexican immigrant, the



U.S. Supreme Court decisions are replete with negative imagery about undocumented immigration from Mexico. 98 Such immigration, in the Court's view, is a "colossal problem"99 posing "enormous difficulties"100 and "formidable law enforcement problems."10 1 One Justice observed that immigration from Mexico is "virtually uncontrollable."1 0 2 Chief Justice Burger stated that the nation "is powerless to stop the tide of illegal aliens and dangerous drugs that daily and freely crosses our 2000-mile southern boundary."10 3 Even renowned liberal Justice Brennan, in analyzing the lawfulness of a workplace raid in southern California, stated that "[n]o one doubts that the presence of large numbers of undocumented aliens in the country creates law enforcement problems of titanic proportions."0 4 Ignoring the heated debate among social scientists about the contribution of undocumented immigrants to the economy,105 the Supreme Court has stated unequivocally that undocumented Mexicans "create significant economic and social problems, competing with citizens and legal resident aliens for jobs, and generating extra demand for social services." 06 Such perceptions inspired Chief Justice Burger to include an extraordinary appendix to an opinion describing in remarkable detail "the illegal alien problem,"1 7 which focused exclusively on unauthorized migration from Mexico. Similar concerns with illegal aliens from Mexico and other developing nations influence policymakers. For example, in arguing for an overhaul of immigration enforcement in 1981, then Attorney General William French Smith proclaimed that "[w]e have lost control of our borders."08 Around that same time period, the Reagan administration began interdicting Haitians fleeing political turmoil0 9 and detaining all Central Americans seeking asylum in this country because of feared political persecution." 0 More recently, the public perception that "illegal immigration" is out of control motivated in President Clinton to increase enforcement efforts along the U.S.-Mexico border through military-style operations like Operation Blockade-later renamed Hold the Line-in El Paso, Texas." This public perception also prompted congressional action designed to bolster border enforcement. 112 While the government fortifies the southern border with Mexico, reports of smuggling of undocumented immigrants across the northern border with Canada fail to provoke significant public concern. 113 The use of "illegal alien" as code for Mexicans can be seen in the debate over Proposition 187. Consider the argument in favor of the measure in the pamphlet distributed to registered voters: Replace illegal aliens with "Mexicans" probably would be more precise. The unfortunate treatment of Haitians fleeing political violence in their homeland demonstrates the powerful legal impact of alien terminology on racial minorities. President Bush issued an executive order in May 1992 entitled "Interdiction of Illegal Aliens," which authorized the extraordinary step of repatriating Haitians without inquiring, as required by international law, 115 into whether they had a well-founded fear of persecution if returned to Haiti.116 Although the order did not mention Haitians or Haiti, only "illegal aliens," President Bush, and later President Clinton, implemented the repatriation policies exclusively against persons fleeing Haiti. n 7 The Supreme Court decision upholding this extreme policy is no less sterile than the executive order. In introducing the case, the Court emphasized that only the rights of aliens were at stake: Aliens residing illegally in the United States are subject to deportation ... . Aliens arriving at the border ... are subject to an exclusion hearing, the less formal process by which they, too, may eventually be removed from the United States .... [T]he alien may seek asylum as a political refugee.... . When an alien proves that he is a "refugee," the Attorney General has discretion to grant him asylum ... . If the proof shows it is more likely than not that the alien's life or freedom would be threatened in a particular country because of his political or religious beliefs, ... the Attorney General must not send him back to that country. The [immigration laws] offer these statutory protections only to aliens who reside in or have arrived at the border of the United States. 118 The word alien is used six times in the paragraph. Notably absent from the Court's opinion is any discussion of the human suffering experienced by the Haitians. 119 As the Supreme Court has said on numerous occasions when upholding discrimination against aliens, "Congress regularly makes rules that would be unacceptable if applied to citizens."120 The government's decision to detain some Cubans indefinitely is an extreme example. In 1980, Fidel Castro allowed many Cuban citizens to come to the United States in the so-called Mariel Boatlift. The INS tried to return some of the Cubans and later attempted to deport others who had initially been released. Cuba, however, refused to accept these persons. In response, the United States held these noncitizens in indefinite detention, often in maximum security federal penitentiaries. In one case challenging that detention, the court emphasized in the very first line of the opinion that "Alexis Barrera-Echavarria is an alien."121 Not surprisingly, the court upheld the indefinite detention. 122 B. The Absence of Race From the Public Debate **Because the immigration laws do not facially discriminate on the basis of race, they can be defended as "color blind."** Consistent with this, most modern **restrictionists** routinely deny that race is the reason for their objections to immigration. They **point to other alleged impacts of illegal immigration**, and immigration generally: **that aliens take jobs** from U.S. citizens, that aliens **contribute to overpopulation** that damages the environment, and that aliens **overconsume public benefits and commit crime.** 23 Such facially-neutral contentions deeply complicate the debate. 124 The fact that the race of immigrants ordinarily is not expressly offered as a reason for restricting immigration should not be surprising. **Unlike past anti-immigrant eras, it is generally considered impermissible to expressly rely on race as a reason for restricting immigration.** 25 **Consequently, race** ordinarily **is submerged in the public discourse about immigration.** However, the persistent reappearance of racist statements in the immigration debate, even if they do not dominate, suggests that race at some level influences restrictionist sentiments. 126 **Though facially-neutral, restrictionist measures have disproportionate impacts on people of color.** In many places in the country, **Latinos/as, as**



**well as persons of Asian ancestry, bear the brunt of heightened immigration enforcement efforts because they are perceived as "foreign" to the Anglo-Saxon mainstream.** 127 Persons of Latin American ancestry are well-aware that the lashing out at aliens often is difficult to limit to noncitizens. A relationship exists between anti-immigrant and anti-Mexican sentiment. For example, Proposition 187 supporters claimed initially that, despite the anti-Mexican overtones to the campaign, they were not anti-immigrant but only anti-illegal alien and only wanted to limit benefits to "illegal aliens."<sup>128</sup> This anti-illegal alien contagion spread, however, and Congress later passed a law limiting public benefits to lawful immigrants. 129 Because Mexican nationals constitute the largest group of lawful permanent residents in the country, 30 they will be disparately affected. Nothing in this essay should be read as suggesting that Mexican-Americans are the only racial minorities adversely affected by alien terminology. **Indeed, "illegal alien" is an infinitely malleable term that may encompass the most feared outsider-often in modern times a person of color-in any region** of the United States. In the Southwest, the term generally refers to persons of Mexican ancestry. In New York, it may refer to Chinese and Central Americans. 131 Consequently, the beauty (if one can call it that) of anti-illegal alien rhetoric is its ability to tap into the specific racial fears in a particular region and allow for consensus on national solutions to the "alien problem." **To complicate matters, alien terminology often works in combination with other racial code. Culture, for example, in certain circumstances is loosely linked to race. Restrictionists, while denying any racist sympathies, may claim that the cultural differences of non-Anglo Saxon immigrants, not their race per se, is objectionable.** 8 2 The overlap between culture and race may explain Latinos/as' more favorable attitude about immigration than other groups; 133 they generally are less concerned about non-Anglo Saxon peoples immigrating to the United States. In addition to cultural differences, **language skills may also be employed as a proxy** for national origin and used to support the exclusion of non-English speaking immigrants.

*(Kevin R. Johnson, Professor of Law at the University of California at Davis, "The Social and Legal Construction of Nonpersons," University of Miami Inter-American Law Review, vol 28, iss. 2, <http://repository.law.miami.edu/cgi/viewcontent.cgi?article=1335&context=umialr>, Jan 1997)*

**Critical analysis of immigration and human rights law, which today disparately affects people of color in particularly harsh ways, is much needed.** In this realm, legal terminology is important. Legal **construction of the "alien" has facilitated the rationalization of severe treatment of noncitizens.** At times, **"alien" has been used as a code word for racial minority. For too long, the racial impacts** of legal rules and fictions **have been obscured and ignored. We should remain vigilant of the use of language that masks the very human impacts of** the **immigration laws.** Although difficult **choices must be made,** we should make them honestly **with a full realization that persons, not faceless, nonhuman, demon "aliens," are affected in fundamental ways.**

*Aff- dehumanization of migrant and migration*

*(Kevin R. Johnson, Professor of Law at the University of California at Davis, "The Social and Legal Construction of Nonpersons," University of Miami Inter-American Law Review, vol 28, iss. 2, <http://repository.law.miami.edu/cgi/viewcontent.cgi?article=1335&context=umialr>, Jan 1997)*



A popular, **and important, topic in** modern **immigration** law **scholarship focuses on** how immigration and alienage law defines **"community membership."**<sup>33</sup> **The definition of aliens as a group distinct and apart from citizens assists in ensuring that noncitizens are only limited, conditional, or "partial members" of the community. Importantly, these partial members** of U.S. society **are deportable** if they violate the conditions of admission. **We should not underestimate the severity of deportation, which the Supreme Court has emphasized "may result in the loss 'of all that makes life worth living.'**<sup>1</sup> **5 Aliens are partial members of the community** with limited membership rights, **which includes the fact that they may be subject to treatment, such as deportation, that never could be afforded citizens.**<sup>8</sup> <sup>6</sup> An extreme example drives this point home. **Aliens not convicted of any crime under certain circumstances may be detained indefinitely.**<sup>8</sup> **7 Citizens, of course, could never be subject to such treatment.**<sup>8</sup> The value of citizenship is nothing new to American law. For example, long ago, the Supreme Court held that Dred Scott, a black man suing for his freedom, was not a "citizen" and therefore could not invoke the diversity of citizenship jurisdiction of the federal courts. <sup>39</sup> By denying citizenship to Dred Scott, the Court denied him a right-access to the federal courts-to which citizens are entitled,<sup>40</sup> thereby highlighting the fact that freed blacks, like slaves, generally were not full members of the community. Consider the linkage between alien status and citizenship under the modern immigration laws. The comprehensive immigration statute, **the Immigration and Nationality Act,** rather blandly **defines an "alien" as "any person not a citizen or national of the United States."** <sup>41</sup> **Despite the blandness of the definition, the word alien immediately brings forth rich imagery. One thinks of space invaders** seen on television and in movies, such as the blockbuster movie Independence Day.<sup>43</sup> **Popular culture reinforces the idea that aliens may be killed with impunity and, if not, "they" will destroy the world as we know it. Synonyms for alien** have **included "stranger, intruder, interloper, ... outsider, [and] barbarian,"** <sup>44</sup> **all terms that suggest the need for harsh treatment and self-preservation. In effect, the term alien serves to dehumanize persons. We have few, if any, legal obligations to alien outsiders to the community, though we have obligations to persons.** <sup>45</sup> **Persons have rights while aliens do not.**<sup>46</sup> **The term alien serves as a device that intellectually legitimizes the mistreatment of noncitizens and helps to mask human suffering.** Cognitive dissonance theory from psychology, which posits that the human mind strives to reconcile inconsistent phenomena, helps to explain the utility of this intellectual device. <sup>47</sup> **Persons have dignity and their rights should be respected. Aliens have neither dignity nor rights. By distinguishing between aliens and persons, society is able to reconcile the disparate** legal and social **treatment afforded the two groups. To further rationalize the differential mistreatment, aliens may be "racialized,"** even if they are, at least by appearance, "white."<sup>4</sup> Look at this phenomenon concretely. If we think that persons who come to the United States from another nation are hard-working and "good," it is difficult to treat them harshly.<sup>49</sup> If we consider these foreigners to be criminals who sap finite public resources and damage the environment, it is far easier to rationalize their harsh treatment. These different visions help us better understand the ongoing political debate about undocumented immigration. While serving as Western Regional Commissioner of the INS in charge of border enforcement in the West, Harold Ezell, later a sponsor of Proposition 187, said the following about illegal aliens in 1989: "[i]f you catch 'em, you ought to clean 'em and fry 'em."<sup>50</sup> Absent from this characterization is the human toll on undocumented immigrants who migrate to the United States: the often painful decision to leave family, friends, and community, the arduous journey replete with dangers, and their uncertain status upon arriving in this country.<sup>5</sup> <sup>1</sup> By obscuring the human tolls of utilitarian policy, alien terminology facilitates such policy choices. Consider the nation's schizophrenia about undocumented Mexican labor. Following World War II, a perceived labor shortage in agriculture provoked Congress to establish the Bracero Program, which allowed Mexican workers to enter the country temporarily.<sup>5</sup> <sup>2</sup> Even after the program's dismantling, the U.S. Border Patrol informally collaborated with growers in the Southwest to ensure ready availability of cheap undocumented labor <sup>83</sup> Coming full circle, the U.S. Border Patrol implemented a mass deportation program in 1954 officially known as "Operation Wetback."<sup>54</sup> As in the 1950s, it is politically popular today to crack down on "illegal aliens" from Mexico.<sup>5</sup> <sup>5</sup> The need for a disposable labor force of aliens, with little concern for the human consequences on persons, explains these shifting policies. A. Deportable and Excludable 'Aliens' Students of the immigration laws might challenge any blanket assertions about aliens and claim that there are important legal distinctions between different groups of aliens. True, U.S. law makes distinctions between aliens with different



categories of aliens enjoying different rights. For example, "deportable aliens," that is, noncitizens who are physically present in the country, have more legal protections than "excludable aliens," that is, aliens who may be excluded from admission at the borders.<sup>56</sup> Deportable aliens are protected by the Due Process Clause while excludable aliens generally are not.<sup>57</sup> The differential treatment of these groups might be justified by the differing "stakes" they have in the community. Deportable aliens, who have lived in the United States, are more likely to have friends, families, jobs, and community ties in this country, than those seeking to enter.<sup>58</sup> Some Justices of the Supreme Court recognize the subtle impact that the terminology denoting different categories of aliens has on the legal treatment afforded noncitizens. Justice Douglas, for example, emphasized that "[w]e cannot allow the Government's insistent reference to these Mexican citizens as 'deportable aliens' to obscure the fact that they come before us as innocent persons who have not been charged with a crime ...."<sup>59</sup> Despite the legal niceties, the rights accorded to either deportable or excludable aliens are nowhere close to the rights of citizens. Importantly, both groups of aliens, unlike citizens, can be returned to their countries of origin. They can be deported against their will to a country where they may not have lived for years. Some may be torn from a country where they have lived, known, and loved. B. "Good" (Legal) and "Bad" (Illegal) 'Aliens' For legal purposes, the distinction between legal and "illegal aliens" often proves to be important. Legal immigrants, the largest category being "lawful permanent residents,"<sup>60</sup> are viewed more positively in the eyes of the law than undocumented immigrants. Lawful permanent residents and others who entered through lawful channels are "good aliens" who receive more favorable treatment by the courts than undocumented noncitizens, "bad aliens," who are "uninvited guests, intruders, trespassers, law breakers."<sup>61</sup> Whether "good" or "bad," aliens unquestionably possess fewer legal rights and protections than citizens. The most damning terminology for noncitizens is "illegal alien." Illegal aliens unquestionably are the most unpopular group of aliens.<sup>62</sup> Although alien is found repeatedly in the Immigration and Nationality Act, illegal alien is not defined in this law.<sup>63</sup> Illegal aliens is a pejorative term that implies criminality,<sup>64</sup> thereby suggesting that the persons who fall in this category deserve punishment, not legal protection. <sup>65</sup> Nevertheless, it is common, if not standard, terminology in the modern debate in the Southwest if not the entire nation, about undocumented immigration. The illegal alien label, however, suffers from inaccuracies and inadequacies at several levels. Many nuances of immigration law make it extremely difficult to distinguish between an "illegal" and a "legal" alien. For example, a person living without documents in this country for a number of years may be eligible for relief from deportation and to become a lawful permanent resident. <sup>66</sup> He or she may have children born in this country, who are citizens,<sup>67</sup> as well as a job and community ties here. It is difficult to contend that this person is an illegal alien indistinguishable from a person who entered without inspection yesterday. The vaguely defined, but emotionally powerful, illegal alien terminology also fails to distinguish between the different types of undocumented persons in the United States. There are persons who cross the border without inspection; there are also noncitizens who enter lawfully but overstay their business, tourist, student, or other visas.<sup>68</sup> The illegal alien in public discussion often refers to a person who enters without inspection, often a national of Mexico. <sup>69</sup> This is not surprising because the furor over illegal aliens, at least in the Southwest, can be seen as an attack on undocumented Mexicans, if not on lawful Mexican immigrants and Mexican-American citizens. History teaches that it is difficult to limit anti-alien sentiment to any one segment of the immigrant community, such as the undocumented. <sup>70</sup> This is evidenced by the slow reduction of public benefits to all categories of noncitizens in the 1990s. On the heels of the passage of Proposition 187, which focused on limiting benefits to undocumented persons, Congress enacted welfare "reform" legislation that greatly limited legal immigrants' eligibility for public benefit programs. <sup>71</sup> Later, more general attacks were made on racial minorities, such as California's so-called Civil Rights Initiative that, if implemented, would eliminate affirmative action. <sup>72</sup> Put simply, nativist outbursts fail to make the fine legal distinctions among members of outsider groups like those that legal academics proudly articulate. My point is not that all distinctions between different types of aliens and between aliens and citizens should be discarded. Rather, we must recognize that difficult choices must be made in distinguishing between the groups that we create under the law and the rights afforded to persons in those groups. In so doing, we should not employ legal terminology as a tool to obfuscate the real impacts of our judgments. <sup>73</sup> **As a society, we should** instead be honest in making truly difficult decisions with an **understand- ing that persons, not dehumanized, demonized aliens, are being affected, often in harsh and deeply personal ways.**

*Neg- erosion of closed spaces for culture leads to "1000 petty fortresses"*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*



Yet, while the arguments put forth by Rawls, Carens and others make open borders and free movement seem morally clear-cut, **there are** contending **moral considerations which suggest that open borders may generate great injustices.** Michael Walter, in his 1983 book, asserts that **it is** also **moral to develop policies which preserve a particular way of life** (see also Sidgwick, 1891; Schuck and Smith, 1985). Walter distinguishes between "members" and "strangers," i.e., those who belong to our political community and those who do not, and he writes that **theory of justice must allow for the territorial state, specifying the rights of its inhabitants and recognizing the collective right of admission and refusal"** (Schuck and Smith, 1985:44). **Countries,** writes Walter, **are somewhat like clubs which can (and should) regulate admissions** (Walter, 1983). **We, who are members of a community, define who we are, what kind of community we want to have, and whom we should admit into it. We can give membership to strangers, but we are not obliged to** except under special circumstances. **If someone is in urgent need and the risks and costs of giving aid are low, ought to help the injured stranger — not on the basis of justice but on the basis of charity. But giving help** — which may lead us to offer the hospitality of our home (or our country) — **does not necessarily require that we admit the stranger to membership in our community.** Walter further argues that **people who belong to a community will defend their local politics and culture against strangers, and that if the state did not take on this responsibility, we would not have a world without walls but rather we would "create a thousand petty fortresses.... the distinctiveness of cultures and groups depends upon closure and, without it, cannot be conceived as a stable feature Of human life.** If this distinctiveness is valued, as most people seem to believe, then closure must be permitted somewhat" (p. 39). **Walter therefore finds value in the sovereign state not because it is exclusive, but because it provides for greater inclusiveness than would be possible if it did not exist.** Building upon Walter, then, the debate over open borders and the broader issue of whether governments have greater obligations to their own citizens than to others has grown to involve the philosophers who call themselves "communitarians." The issue is whether "community" is valued and, therefore, whether members of a community have rights and obligations toward one another that transcend those toward individuals who do not belong to the community. For our purposes, "community" can be defined as coterminous with nationality, and "nationals" can be defined as citizens of a political institution known as the state.

*Neg- public opinion matters—ignoring it leads to backlash, xenophobia, violence*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

In dealing with these issues, **democratic governments must take into account the views of their own citizens;** but to what extent should a government base its immigration and refugee laws on public opinion? What if a substantial part of the electorate is xenophobic? Should the U.S. Congress, for example, have posed national quotas on immigration after World War I because an anti-immigrant lobby sought to halt the influx of migrants from Eastern and Southern Europe? Should the British government have passed restrictive immigration laws in the 1970s after Enoch Powell, a Member of Parliament, won support for his anti-migrant views? Should French politicians have adopted a restrictive stance toward refugee admission and migration as a result of the rise of popular support for Jean-Marie Le Pen's right-wing anti-migrant party? Should the German government have revised its generous asylum laws because of violent attacks against foreigners? Was it wrong for the governments of Southeast Asia to refuse to accept Vietnamese



refugees because of widespread opposition? And was it wrong for the government of Pakistan to refuse to admit "stranded Pakistanis" (as they call themselves) left in Bangladesh after independence because local people in the Karachi region opposed the further influx of immigrants? Government leaders often take the position that they must be responsive to public sentiments even if the public is irrationally xenophobic. Political leaders moreover, that opposition politicians will use anti-migrant sentiments to win electoral support. A somewhat more sophisticated version of this argument is that **unless responsible policymakers take heed of deeply felt public sentiments, extreme right-wing parties will grow and threaten the democratic system.** This fear has particular credibility in countries with authoritarian traditions and fragile democratic structures. **Moreover, the migrants and refugees themselves may be at physical risk.** Yet, if the proposed policies are morally unjust then they should not be adopted, no matter how strong public sentiment may be, even in a democracy. Consequently, a complex balance must be struck between catering to the wishes of a citizenry and protecting the rights of migrants and refugees. Anti-migrant, anti-refugee sentiment may come from a relatively small though vociferous group of citizens. It is generally within the power of a government to seek public support for existing policies if it is clear that these policies are sensible. The Swiss government was able to resist a widespread popular demand that its guest workers be expelled by demonstrating that workers were engaged occupations for which Swiss workers were not available and that the country's economy would suffer if the guestworkers were expelled. The Australian government was ahead of Australian public opinion in its support for a nondiscriminatory immigrant admissions policy. The French government has successfully resisted demands that locally born children of migrants could not readily acquire citizenship. There are times, too, when a public has been willing to accept extraordinarily large numbers of refugees, as was the case of the Pakistani willingness to accommodate millions of Afghans, and the American and French willingness to take in many Indochinese. **When there is public opposition, moreover, it may be for good reasons. The concerns expressed by many Americans and Europeans that their governments should take steps to halt illegal migration, establish more rigorous procedures to prevent foreigners from entering under false asylum claims, repatriate rejected asylum seekers, and reduce immigration during a period of recession, should not be dismissed — no matter how unsavory some of the anti-migrant rhetoric.** For a country to have an acceptable immigration policy, it must be able to effectively control illegal immigration. For a country to have an acceptable refugee policy, it must be able to prevent large numbers of immigrants from entering and remaining on the basis of unjustifiable asylum claims. **The unwillingness of governments to take steps to halt an unwanted influx of foreigners can erode immigration and refugee policies, strengthen right-wing parties, and generate xenophobic fears and violent behavior that may put democratic societies at risk.**

### *Neg - immigration does not ensure inclusion – statelessness*

(Emma Batha [Global Policy Forum], is a journalist at Reuters specializing in news about humanitarian crises, "The Forgotten Faces of Statelessness," Global Policy Forum, <https://www.globalpolicy.org/nations-a-states/citizenship-and-nationality/50609-the-forgotten-faces-of-statelessness.html?itemid=713>, August 23, 2011)

Rejected by the countries they call home and **denied the most basic of rights, stateless people live in a shadowy limbo** -- in the words of one such person, like being "between the earth and the sky." **Up to 15 million people are stateless, not recognized as nationals by any country. They are some of the most invisible people on the planet** -- an anonymity the United Nations hopes to lift when it launches an international campaign on Thursday to highlight their plight. **"One of the big problems we have is that this simply is not recognized as being a major issue globally,"** said Mark Manly, head of the stateless unit at the U.N. refugee agency UNHCR. **Statelessness exacerbates poverty, creates social tensions, breaks up families and destroys children's futures. In some cases it can even fuel wars when disenfranchised people pick up weapons, as has happened in Ivory Coast and Democratic Republic of Congo**



(Lydia Polgreen [New York Times], is the Johannesburg bureau chief for the New York Times and from 2009 to 2011 she was a South Asia correspondent for The New York Times, based in New Delhi covering India, Nepal, Sri Lanka, Bangladesh, Bhutan and the Maldives, "At India-Bangladesh Border, Living in Both, and Neither," New York Times, [http://www.nytimes.com/2011/10/10/world/asia/at-india-bangladesh-border-living-in-both-and-neither.html?\\_r=0](http://www.nytimes.com/2011/10/10/world/asia/at-india-bangladesh-border-living-in-both-and-neither.html?_r=0), Oct. 9, 2011)

**Mohammed Idris Ali's watery rice paddies shimmer in the monsoon breeze just like his neighbors'.** His tepee-shaped stacks of jute, ready to be soaked, stripped and then turned into rope, stand as tall as the ones across the rutted footpath. **But the house across the footpath sits in India, and its owner, Chitra Das, has all the trappings of citizenship: a voter ID and a ration card that entitles him to discounted rice and wheat at a government shop. His children go to local schools and have access to Indian government hospitals. Mr. Ali, however, exists in a no man's land.** The patch of earth here on which he lives and farms is part of an archipelago of villages, known as enclaves, that are **technically Bangladeshi territory but sit entirely surrounded by India, stuck on the wrong side of the border. "The Indians say we are not Indian; the Bangladeshis say we are not Bangladeshi,"** Mr. Ali said. **"We are nowhere."** There are 50 other Bangladeshi enclaves like Mr. Ali's inside India; there are 111 Indian enclaves inside Bangladesh. **The people of the enclaves are orphans, citizens of no country.** For decades, neither the Indian nor the Bangladeshi government has taken responsibility for them. Their villages do without basic public services like electricity and roads. **Parents must forge documents to send their children to local schools. They cannot vote.** Without identity documents they face arrest and imprisonment as illegal immigrants.

(The Atlantic, "The Stateless 'Border Brides' of Central Asia," The Atlantic, <http://www.theatlantic.com/international/archive/2012/02/the-stateless-border-brides-of-central-asia/253360/>, Feb 21, 2012)

**When Odina Solieva left** her hometown in **Uzbekistan's Ferghana Valley** 10 years ago **to marry a man** from Osh, **across the border in Kyrgyzstan, she didn't realize she was giving up her legal identity. The 30-year-old** trained nurse **is now one of thousands who have fallen through the cracks.** Because she has no valid passport in either country, Solieva can't work and can't go home. **She is stateless.** Solieva didn't know that when she first came to Kyrgyzstan **she** should have registered with the Uzbek Embassy in Bishkek. After five years her passport was automatically invalidated, the Uzbek Embassy later told her; the diplomats there refused her pleas for help. For over a decade people like Solieva could cross the border back to Uzbekistan without a passport, but border controls have become much tighter in recent years. "I cannot travel back home to visit my parents and siblings. I am stuck," Solieva told EurasiaNet.org. "In addition, I **cannot find a job in Kyrgyzstan,** where I live with my husband, because I lack the proper documents." **According to estimates by the United Nations High Commissioner for Refugees (UNHCR), there are about 17,000 stateless people in Kyrgyzstan.** Most are Kyrgyzstanis who did not renew their Soviet identity documents after Kyrgyzstan and Uzbekistan became independent states in 1991 (they had until 2003 to do so). But a growing number are so-called "border brides" from Uzbekistan, who married ethnic Uzbek men in southern Kyrgyzstan and do not possess current papers.



*Neg - national identity is key to developing nations*

*(Dawa Norbu, was an expert on Central Asian Politics and the leading voice on Tibetan affairs as he worked as a professor of Central Asian studies at the Jawaharlal Nehru University, "Culture and the Politics of Third World Nationalism," book, pg 213)*

**In the leading Third World nations a consensus emerged among the nationalist leaders** during the anti-imperialist nationalist movements **to the kind of ethnic variable** that should be emphasized in order **to achieve maximum mass mobilization. It was invariably religion-induced culture that constituted the cultural hegemony of a given society** which should be skillfully exploited and manipulated **for a most effective form of mass mobilization and social communication** as shown in Chapter 8. **Thus, at least during its formative stages, the core of any national identity is cultural,** though it might have a modern ideological dimension too.

*(Dawa Norbu, was an expert on Central Asian Politics and the leading voice on Tibetan affairs as he worked as a professor of Central Asian studies at the Jawaharlal Nehru University, "Culture and the Politics of Third World Nationalism," book, pg 213)*

**But what about new cases in which a world religion has been introduced during the last hundred years?** The Christianization of tribal areas in various parts of the Third World indicates that such delayed cases might exhibit a certain amount of national consciousness, but **their sense of national identity is weaker than historical** secondary **cases in which national culture formation has taken at least 500 years.** For **the core of national identity must be rooted and anchored in the crucible of history and civilization which can mature only with the passage of time. Only such a crucible can ensure the cultural sameness and historical continuity that characterizes any enduring national identity.**

*(P.R. Kumaraswamy, is a Professor at the School of International Studies, Jawaharlal Nehru University, "Who Am I?: The Identity Crisis In The Middle East," Middle East Review of International Affairs, Vol. 10, No. 1, pg, 63, March 2006)*

Speaking at the meeting of the Foreign Ministers of the Gulf Cooperation Council (GCC) in September 2005, **Sheikh Mohammed bin Mubarak al-Khalifa of Bahrain urged the need for safeguarding Iraq's "Arabic-Islamic identity so that Iraq can remain an active member of the Arab and Islamic environment."** Coming from an organization that in the past led the anti-Iraqi and anti-Saddam sentiments in the region, **it exhibited a basic concern over possible fragmentation of Iraq and its ramifications for its Arab neighbors. Yet the statement also brought to focus the fundamental problem facing the Middle East, namely identity**

*(P.R. Kumaraswamy, is a Professor at the School of International Studies, Jawaharlal Nehru University, "Who Am I?: The Identity Crisis In The Middle East," Middle East Review of International Affairs, Vol. 10, No. 1, pg, 63, March 2006)*

**Countries of the Middle East are internally diverse and hence a narrow exclusive national identity could not be imposed from above.** If experiences in Lebanon or post-Saddam Iraq were an indication, confessional arrangement or other forms of



proportional representation would only intensify the internal tensions and conflicts. Proportional representation, for example, did not prevent the marginalization of the Israeli Arabs. **Each state would have to evolve an identity that is neither parochial nor confessional, but rather a territorial identity that recognizes and encompasses their individual distinctness and variations. Each state would have to recognize the need for and eventually evolve an inclusive identity.** In many or most cases, such an identity, given the mix of populations, would not be exclusively "Arab" or "Islamic" but would require lots of local variations and flexibility. The Middle East faces a stark choice: accommodate or fragment

*(P.R. Kumaraswamy, is a Professor at the School of International Studies, Jawaharlal Nehru University, "Who Am I?: The Identity Crisis In The Middle East," Middle East Review of International Affairs, Vol. 10, No. 1, pg, 63, March 2006)*

At the same time, **the problem of national identity is universal in the Middle East and only individual countries can resolve this problem. Outside interference, even a well-intended one, would merely be a repeat of the colonial legacy. So long as this fundamental issue has not been resolved, any reforms in the system of governance,** including a democratic model, **would be insufficient to mitigate the problems facing the Middle East.**

### *Neg – leads to ethnic violence*

*(Roger D. Petersen, is a professor at MIT since 2001 and an expert on the Balkans as well as ethnic identities in conflicts, "Understanding Ethnic Violence: Fear Hatred and Resentment in Twentieth-Century Eastern Europe," book, pg25)*

**Structural changes such as the collapse or weakening of the center and/or occupation rearrange ethnic status hierarchies by changing sovereignty relations, composition of political positions and police, and other features such as language policy. The predicted ethnic target will be the group perceived as the farthest up the ethnic status hierarchy that can be most surely subordinated through violence.** If the target group is lower on the ethnic status hierarchy, then Resentment is not supported. If the target group is higher on an ethnic hierarchy but cannot have its position reduced through ethnic violence, then Resentment does not apply. If two possible target groups are higher on an ethnic hierarchy and either one or the other can be brought to a subordinate position, and if the lower group is the target then Resentment alone is not a sufficient explanation. The choice of a sub-optimal target would need to be explained in conjunction with another theory (possibly hatred or rage) or simply by another theory.

*(David A. Lake, is Professor of Political Science at the University of California San Diego and Research Director for International Relations at the Institute on Global Conflict and Cooperation, "Containing Fear: The Origins and Management of Ethnic Conflict," International Security, Vol. 21, No. 2, Pg 41, Fall 1996)*

We argue instead that **intense ethnic conflict is most often caused by collective fears of the future. As groups begin to fear for their safety,** dangerous and difficult to resolve strategic **dilemmas arise that contain** within them **the potential for tremendous violence.** As information failures, problems of credible commitment, and the security dilemma take hold, **groups become apprehensive, the state weakens, and conflict becomes more likely. Ethnic activists and political**



**entrepreneurs, operating within groups, build upon these fears of insecurity and polarize society. Political memories and emotions also magnify these anxieties, driving groups further apart.**

## Inevitability

*Neg- inevitability doesn't prove obligation/desirability*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

**Some opponents of the notion that national sovereignty should shape migration policies argue that national sovereignty is itself an anachronistic conception. According to this argument, the world economy and global communications are such powerful forces for international migration that states are essentially powerless to effectively control who enters.** There is now a global labor market "which largely determines the flow of people so that attempts to restrict entry simply result in the growth of an illegal migrant population living without the benefit of rights. Under these circumstances it is best to allow the market to work, to reap its benefits and mitigate its costs. **The argument for this view is as follows: developed countries find it difficult to prevent illegal migration because many employers want the low-skilled, low-wage workers that they are unable to find in the local labor market,** A number of factors have contributed to this demand. Employers can no longer recruit from the now absent rural hinterland or among the urban poor who reject low-wage employment when they can often do better on welfare entitlements. Declining fertility and population aging in industrial societies also leads to an increase in the demand for imported labor. Faced with a tight labor market for low-wage labor, employers of labor, like users of capital, turn to the global market to meet their needs. Employers in the United States have found low-wage workers in Mexico and the Caribbean; German employers have turned to Italy, Yugoslavia, Greece and, more recently, to Eastern Europe; French, Italian, and Spanish employers find their workers in North Africa. Even when employers can find workers on the local market they often prefer foreign workers, who are pliable, unlikely to join unions, willing to work long hours, tolerate conditions that local labor finds unacceptable, and can readily be dismissed when they are no longer needed. The emergence of a global labor market is made possible by advances in information technology and transportation. Mexicans, Turks, Chinese, Algerians, Filipinos, Jamaicans, Tunisians, Croatians, Serbs are now familiar with the labor markets of Europe, the United States, and Canada. They have friends and relatives abroad who inform them of changing market conditions and of the opportunities for employment and housing. Transportation costs, moreover, have declined, and brokers have now organized the international market in labor. Potential migrants also have learned entry regulations and how best to get around them, e.g., by entering a country as tourists and staying to find jobs. They also know they can claim political asylum and, while their cases are reviewed, find work or live at government expense. Employment opportunities abound in the less-regulated secondary labor market — in restaurants, small businesses, and domestic service. Forged documents are readily available for purchase. Meanwhile, circumstances in their home countries are often dire. In developing countries an estimated 38 million people join the labor force every year, and as many as 700 million people are already unemployed or underemployed (UNDP, 1992:54). Consequently, the risks of illegal migration are relatively low and the rewards, in terms of finding employment and obtaining higher wages than at home, are high. Indeed, it is surprising that only a small fraction of employment-age individuals in developing countries has thus far attempted to migrate, it is further argued, illegal migration and nonjustifiable claims for asylum are strongly employment- and employer-driven, policy instruments to significantly reduce the flow are not likely to work. Government penalties against employers who hire illegal migrants in the United States appear to have had only limited effects. Studies of the 1986 U.S. Immigration Reform and Control Act, for example, report that the legislation has not halted illegal migration and may have only marginally reduced the



flow (Cornelius, also see Bean et al., 1990, especially pp. 33—76). Western European guest worker programs to rotate workers and prevent permanent settlement also have not had their intended effects. Japan, in spite of imposing large fines on employers for the employment of illegal aliens, has been unable to prevent the growth of an illegal labor force (Cornelius, 1992; Cornelius, Martin and Hollifield, 1995; Sasscn, 1988, 1991). Moreover, notwithstanding efforts by countries in the European Union to tighten their immigration and asylum policies, the annual flow of irregulars has been increasing since the mid- 1980s. The number of annual asylum seekers (excluding displaced persons from the former Yugoslavia) increased from 165,000 in 1985 to 314,000 in 1989 to 690,000 in 1992; in the same years the estimated number of illegal immigrants increased from 50,000 to 150,000 to 370,000. The number of annual registered migrants to Western Europe also reportedly increased — from 650,000 in 1985 to in 1993 (ICMPD, 1994: 10). This can be partly attributed to the result of family reunion but also reflects the growth in the number of asylum seekers in previous years who were subsequently granted residence permits. Liberal democratic political systems are particularly constrained from adopting policies to tightly control immigration — partly by their liberal ideology which leads governments to provide entitlements to legal and illegal immigrants and claimants for asylum and which prevents them from engaging in large-scale expulsions, and partly by the influence of lobbyists (e.g., business, ethnic groups, migration lawyers and civil libertarians) on behalf of illegal migrants and asylum seekers (see Hollifield, 1991). In the United States the introduction of a counterfeit-proof identity card that would be required as a condition of employment, for example, is opposed by civil libertarians. Many members of the middle class employ illegal domestic servants, a lifestyle on which government is reluctant to intrude. Furthermore, many people in Western Europe and North America do not regard the overstay of a visa or an illegal entry as a crime but rather as an understandable effort of someone attempting to improve his or her position at no cost to others — a "victimless crime." Less-developed countries also find it difficult to control unwanted entries. Market forces play a role here as well. Migrants move from one Third World country to another when opportunities are available for employment or for gaining access to land. Border control is made more difficult by the arbitrary character of many postcolonial borders, which cut across ethnic communities and divide lands customarily used by cattle farmers and shifting cultivators. In addition to market forces, moreover, civil conflicts and natural disasters have led millions of people, especially in Africa, to move across international borders within the Third World. Finally, new states often lack the military and administrative capacity to halt movement across their borders and are therefore even less capable than industrial societies of imposing restrictions and penalties on employers for using illegal aliens. Given these realities, it is argued, both market and political forces are now so powerful that traditional conceptions of state sovereignty, which rest upon notions of borders and state capacity to define membership, have become or are becoming an anachronism, **If this argument is correct then states must develop new approaches to address migration issues. If states, especially advanced industrial democracies, cannot control who enters, they should turn instead to the question of how best to deal with the consequences of such entries. Proponents of policy changes to address the consequences do not suggest that governments should announce that their borders are open, but** rather that they should expand the amount of legal migration and **quietly accept** illegal, i.e., "**unauthorized**" or "undocumented," **migration**. An analogy can be drawn with free international markets in goods and the globalization of capital markets. If the free market in trade and capital is beneficial to all countries, proponents of this approach assert, so is a free market in labor. Furthermore, just as it has become difficult, as well as undesirable, for countries to prevent the free movement of goods and capital (legally or through smuggling), so too is it difficult and undesirable to prevent the globalization of labor. Such a policy conclusion draws on the views of neoclassical economists, who point to the economic benefits of the free movement of the factors of production. Everyone gains, they argue, if communities produce what they can make most efficiently and then trade their goods with others. Capital would move to where it could be most efficiently (and profitably) utilized, and every country would be better off if money and goods could move freely. Neoclassical economists have applied this same logic to the free movement of labor within a country: individuals would move to where their labor was most needed and the price paid would be the highest, making the country, as well as individuals, better off. Given this economic rationale, would it not be desirable to permit as much free movement of labor across international boundaries as is politically acceptable? Labor-exporting countries would gain by earning remittances from their overseas workers, while receiving countries would gain by employing unskilled foreign workers for jobs that locals do not want and by compensation for domestic labor shortages. The absorptive capacity of Western European countries, though not great as that of America or Australia, is still bigger than timid people think. European politicians who run scared of racist or anti-immigrant feeling will be doing their countries no favors. Their guiding principle as they map out Europe's immigration plans should not be 'How few can we get away with letting in?', but rather, "How many can we possibly take without creating unbearable social strain?" (The Economist, Would- be EuroFans," Aug, 4, 1990, p, 15)



*Neg- A2 embrace the inevitable*

*(Myron Weiner, professor & head of the department of political science at MIT & director of MIT's Center for International Studies, The International Migration Review, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, "Ethics, National Sovereignty and the Control of Immigration," Jstor, Spring 1996)*

**Particularly telling is the growth in international migration to developed countries even in the midst of a recession and high unemployment,** that either supply is creating its own demand or that ease of access rather than the structure of the labor **market is shaping the flow. Large increases in the number of migrants to Germany** — the stock of foreigners increased from **4.5 million in 1988 to an estimated 6.5 million by 1994** — **had little to do with a growth in demand for labor. During this same period, the United Kingdom experienced no significant increase in the size of its foreign population. The difference clearly has to do with ease of access.** United Kingdom's insular position enabled it to keep down the flow of illegal migrants, while Germany's location on the borders of Eastern Europe made it more vulnerable than Britain to claimants for asylum. Moreover, **Britain adopted a more restrictive asylum policy than Germany. Similarly, the presumed globalization of the labor market did not prevent Japan** from choosing not to have a guestworker program when Western Europe did, nor has it prevented Japan **from keeping down the number of asylum seekers and illegal migrants by imposing tighter controls than have most Western governments.** The **comparative evidence suggests that states have been able to control entry,** though never completely. **Germany does not have an illegal alien problem of the magnitude of the United States. But, then, Germany requires all citizens and aliens to register when they take up a new residence;** a Central Aliens Register compiles information on foreigners living in Germany, **and all residents carry national identification documents which they must produce when they seek employment. Similar identification systems exist in most of the Scandinavian countries with the result that these countries have relatively few illegal residents compared with the United States.** A national ID card may be politically unacceptable in the United States, where it is regarded as an infringement on civil liberties, but its use elsewhere that control over migration is possible. **A variety of other types of controls have been used to prevent unwanted migration** and to reduce the number of claimants. Australia requires that all visitors (except those from New Zealand) apply for visas. The government keeps records of which country's nationals fail to leave and then tightens visa controls on the countries that produce visa overstayers. Germany, the Czech Republic, and Poland have established cooperative policing of borders, and in many other countries, including the United States, more resources are being allocated to improve border controls. European governments have devised policies aimed at reducing the number of asylum claimants: sanctions against carriers of individuals without papers, accelerated asylum reviews, restrictions on entry of asylum claimants from third countries, the preparation of lists of "safe" countries whose citizens cannot claim asylum, the establishment of safe havens in third countries, and deportations of individuals whose asylum claims have been rejected. Critics correctly note that some of these policies as presently implemented are violations of the U.N. Refugee Convention. **The point, however, is that governments have successfully controlled migration notwithstanding the demand for low-wage labor by many of their own employers and the growth of global communication, global transportation, and global markets** — all of which facilitate international migration. Indeed, in



the absence of such controls it seems likely that international migration would be far higher than it is. According to U.N. estimates, the annual flow of migrants across international boundaries is approximately 4 million persons, plus episodic refugee movements — a small number in a world of 5.7 billion people, with an annual worldwide population increase of 90 to 100 million. **The inability Of states to have total control over who enters and who overstays their visas is no more an argument against control than the persistence of crime is an argument for ending the enforcement of criminal law.**



## Conclusion

That brings us to the end of our introduction to the Nationals 2016 LD topic. We hope you now feel prepared to tackle the National Debate Tournament with rock-solid cases!

You can also always submit those completed cases to [braxton.clark@ncpa.org](mailto:braxton.clark@ncpa.org) for a confidential, personalized critique.

Questions about this guide, the resolution, or debate in general? Don't hesitate to email!

Good luck, and don't forget to thank Debate Central when you're onstage accepting your national championship trophy!  
;)