
The Ethics of Doing Business with Illegal Immigrants

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Immigration policy has been a highly contentious topic in American political discourse for more than two decades. Perhaps the most contentious aspect of immigration in the United States involves addressing what should be done about people who immigrate to the United States illegally. This is an important question because roughly 10.5 million of the 44 million foreign-born people in the United States reside here illegally.¹

For decades politicians have been unable to reach agreement on immigration reform laws that would address illegal immigration. The 1986 Immigration Reform and Control Act (IRCA) was the last comprehensive law to address immigrants already residing in the United States illegally. That act provided temporary and eventual permanent legal resident status to 2.7 million illegal immigrants and provided an eventual path to citizenship.² Since that time, most of the current 10.5 million illegal immigrants came to the United States.

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1. <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/>.

2. For a more complete description of the impacts of this reform see Yao et al. 2021.

The most serious attempt at passing laws to deal with the illegal immigrant population occurred between 2005 and 2007. The Secure America and Orderly Immigration Act (the McCain-Kennedy Bill) was introduced in 2005, and it contained provisions for legal status for undocumented immigrants, guest worker programs, and increased border enforcement. The bill was never voted on, but its major provisions were incorporated into the subsequent Comprehensive Immigration Reform Act (2006), which passed in the Senate but never became law because it could not be reconciled with the immigration bill passed by the House of Representatives, and into the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007, which never made it out of the Senate.

The Dream Act of 2017 was the most recent attempt to provide a path to legal status for a portion of the undocumented immigrant population in the United States. It applied only to illegal immigrants who came to the United States as children. It would have mostly applied to the approximately 700,000 immigrants partially protected by the Deferred Action for Childhood Arrivals (DACA) executive order. Various versions of the Dream Act have been introduced since it was first proposed in 2001, but none have become law despite the fact that these illegal immigrants are among the least controversial. A 2018 Gallop poll found that 83 percent of the U.S. population approved of allowing DACA immigrants to become citizens.³

Although there was increased news coverage of deportations after President Trump took office, actual deportations decreased. Annual deportations averaged 383,000 per year during President Barak Obama's administration and fell to 275,725 per year during President Trump's first two years in office.⁴

Thus, businesses find themselves in a situation in which 10.5 million immigrants reside in the United States illegally. As a matter of law, it is generally illegal to hire undocumented or illegal immigrants. This creates an ethical problem for businesses. Is it ethical to do business with these immigrants? Is it ethical to hire illegal immigrants? Currently approximately 7.6 million of these illegal immigrants are employed by U.S. businesses.⁵ Is it ethical to rent housing to illegal immigrants? To contract with them? To serve them as customers? These are important questions to consider, given the current status quo in the United States.⁶ Answering these questions requires both economic and philosophical analysis. We believe that the argument we make in this article helps answer these questions with regard to all of the 10.5 million immigrants currently residing in the United States regardless of

3. <https://news.gallup.com/poll/235775/americans-oppose-border-walls-favor-dealing-daca.aspx>.

4. <https://www.cato.org/blog/deportation-rates-historical-perspective>.

5. <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/>.

6. Business ethicists have explored a few related questions, such as who bears ethical responsibility for the deaths of illegal immigrants crossing the desert (Whitaker 2009), ethical concerns when labor migration is temporary (Ciupjus 2010), and what an ethical immigration policy toward Latino immigration would look like (Davies 2009). But no paper, to our knowledge, has explicitly addressed the business ethics questions we are exploring here.

whether they migrated here illegally in search of a job, were brought here as a child, or overstayed a legal visa.

Law and ethics are not the same; the mere fact that something is illegal is not sufficient to demonstrate it is wrong, just as the fact that something is legal is not sufficient to show it is right. In some cases, it may be pragmatic to comply with unjust laws. Whether it is pragmatic to break an unjust law will depend on the probability of being caught, the severity of the punishment, and the degree of the unjustness of the law. Our purpose in this article is not to pass judgment on whether any given person or business should break immigration laws. Our purpose is to argue that they are justified in breaking these laws if they choose to do so. To anticipate the argument that is to follow, we will show that, in light of the economic consequences of immigration, every major ethical theory finds that existing immigration restrictions are unjust. Then we will argue that immigration restrictions do not fall into the special circumstances where philosophers have argued that there is an independent duty to obey the law. Thus, we conclude that it is ethical for people and businesses to interact with illegal immigrants in violation of the law.

Economic Impact of Immigration

Immigration creates economic gains through two principal channels. The first is through international trade in labor driven by the forces of comparative advantage. The second is through the productivity differences between countries due to their different formal and informal institutions, geographies, and other sources of place-specific (rather than person-specific) productivity. We review each of these channels in turn and then review estimates of the global economic gains that could be achieved by eliminating global barriers to immigration.⁷

Trade creates economic gains because different people in different places have different comparative advantages because they differ in their opportunity costs of production of various goods and services. Shipping goods across international borders is one way to attain some of these gains from trade. But not all gains from international trade can be realized by shipping goods. In some cases, gains from trade through comparative advantage can be realized only through the movement of laborers. If laborers in Mexico have a comparative advantage in construction or landscaping in the United States, then they need to be able to move to where the service is demanded. Geography and climate often dictate where food is best grown. If the laborers with a comparative advantage in agricultural work are not free to move to these locations, then food will be inefficiently produced by the wrong laborers, with the wrong quantity and type of capital, and in the wrong places. The economic case for free trade in labor (migration of workers), based on comparative advantage, is fundamentally the same as the standard and widely agreed-upon case for international free trade in goods (Freeman 2006). However, in the case of the movement of people, this standard case is incomplete.

7. This section draws on chapter 2 of Nowrasteh and Powell 2020.

In an (unrealistic) world where all people had identical opportunity costs, there would not be economic gains realized by moving goods across borders, but there would still be gains from moving workers across borders because places differ in their productivity. When humans living in low-productivity countries are allowed to move to countries with relatively better governance, more physical capital, and people who have accumulated more skills and education, they are instantly better able to make use of their own skills and creativity. These gains are often substantial.

A recent study by economists Michael Clemens, Claudio Montenegro, and Lant Pritchett (2019) provides the best available evidence for the differences in wages (implicitly productivity) of identical workers in different countries. They examine individual wage data from forty-two poorer countries and the United States, focusing on prime-age, low-skilled males educated outside the United States to compare real wages (adjusted for purchasing power parity) between workers in the origin country and identical workers from that origin country in the United States. They control for observable differences in these workers (age, education) and use “theory and evidence on migrant self-selection to bound the real wage gap for fully equivalent workers, adjusted for both observable and unobservable characteristics” (201). The “place premium” they measure is the increased real wage a worker could expect to earn by emigrating from his origin country to the United States. This increase is, essentially, the gains from place-specific productivity in the United States. The place premiums are massive. Their lower bound estimate is an average gain in wages of \$13,700 for the 1.5 billion working-age people from these forty-two countries if they moved to the United States. The massive wage differentials we observe today would surely decrease if more people immigrated. However, we have good reason to believe that the global gains from (mostly) unrestricted immigration would remain massive.

A small literature has attempted to estimate the overall global gains in output that could be achieved by eliminating immigration restrictions, and it finds even more massive numbers. Clemens surveyed this small literature in an aptly titled article, “Economics of Emigration: Trillion-Dollar Bills on the Sidewalk?” (2011). The methodologies and assumptions in the studies varied.⁸ As Clemens summarizes, “Differences among the models’ conclusions hinge critically on how the effects of skilled emigration are accounted for; the specification and parameters of the production function (and thus the elasticities of supply and demand for labor); assumptions on international differences in the inherent productivity of labor and in total factor productivity; and the feasible magnitude of labor mobility. Assumptions on the mobility of other factors matter a great deal as well” (87). Regardless of the different assumptions in these models, they all have one thing in common: they estimate massive global increases in economic output that could be achieved by abolishing immigration restrictions. They range from a low of 67 percent to a high of nearly 150 percent of global output. Other more recent

8. These studies include Hamilton and Whalley 1984; Moses and Letnes 2004; Iregui 2005; and Klein and Ventura 2007.

papers estimate comparable massive gains.⁹ Since the gains estimated in all these papers accrue annually, the present value of free immigration is worth quadrillions of dollars in additional global output (Borjas 2014, 162). In short, free immigration would essentially eliminate extreme poverty by massively expanding global output.

Most of the massive increase in global output would accrue to the immigrants themselves. So, before discussing how immigration policy would be evaluated under various philosophical frameworks, we must briefly consider the consequences of immigration on those who remain behind in origin countries and the impact on the native born in destination countries.

There is not much evidence that the emigration of some people from origin countries does much to harm those who remain behind. There is better evidence that emigrants end up helping those who remain behind through the money that they send back in remittances, which currently amount to roughly a half a trillion dollars per year worldwide. A recent paper by economists di Giovanni, Levchenko, and Ortega (2015) estimates that countries with large emigration flows have a net *increase* in their welfare of approximately 10 percent because of remittances.

There is a massive literature on how immigration impacts the welfare of the native-born population in destination countries. For more than thirty years economists have vigorously debated the impact immigrants have on the wages of the native born, how immigrants impact government finances, and a whole host of other indicators of wealth or well-being. The recent National Academy of Sciences study (NAS 2017) reviewed much of this literature and we need not repeat it all here. To summarize it, the overall evidence indicates that immigration increases the per capita income of the native born in destination countries on average but that this gain is relatively small in proportion to the size of destination countries' economies and these gains are unevenly distributed. Owners of capital and workers with skills different from those of the immigrants gain, whereas those with skill sets most similar to the immigrants may see wage decreases in the short run. This latter point is hotly debated when it comes to how low-skilled immigration impacts the wages of the native born without a high school diploma. The National Academy of Sciences' exhaustive literature summary on the economic effects of immigration concluded: "When measured over a period of 10 years or more, the impact of immigration on the wages of native-born workers overall is very small ... some studies have found sizable negative short-run wage impacts for high school dropouts, the native-born workers who in many cases are the group most likely to be in direct competition for jobs with immigrants. Even for this group, however, there are studies finding small to zero effects" (2017, 267).

Unlike international trade in goods, immigrants or their family members consuming government-financed services such as schooling, medical care, and welfare

9. See Desmet, Nagy, and Rossi-Hansberg 2018 and Kennan 2013.

could use more tax-funded services than they pay in taxes and thus might generate a fiscal drain. There are numerous studies estimating the fiscal impact of immigration.¹⁰ Looking at the results of all these studies, the fiscal impacts of immigration are all relatively small and rarely more than 1 percent of GDP in either a positive or negative direction. The recent National Academy of Sciences literature survey on the economics of immigration published its own model and found that the seventy-five-year net-present value of fiscal contributions from immigrants was a positive \$76,000 in the United States (NAS 2017, 450). The most important factors in determining whether an individual immigrant is a net fiscal gain or drain are the age at which the immigrant arrives and his or her level of education, which have the most direct bearing on the person's consumption of government benefits and tax payments. Despite that, government fiscal policy determines fiscal outcomes more than do changes in the composition of the population from immigration. It is at least conceivable that larger fiscal drains could occur under free immigration. However, drains need not persist. As reviewed earlier, the overall economic pie would get much bigger without quantitative restrictions on immigration. Some of that larger pie could be allocated via changes in fiscal policy to offset any significant fiscal drains that might emerge. In fact, if the economic estimates of the global gains are anywhere near correct, policy could conceivably direct some of those gains to address virtually any negative economic impact on the native born caused by increased immigration.¹¹

A final qualification is necessary before closing our review of the economic consequences of immigration. The massive global gains estimated from free immigration depend on the factors responsible for the high productivity in destination countries (such as the formal and informal institutions) remaining unchanged with the arrival of large numbers of immigrants. One prominent immigration economist has estimated that many of the global gains from free immigration could be wiped out or even turned negative if immigrants from low-productivity origins infect their destination countries with the factors responsible for the low productivity in their origin countries (Borjas 2014, 2015). A small literature has developed investigating this conjecture.¹² Some studies examine how variations in initial stocks and subsequent flows of immigrants impact formal and informal institutions across a large cross-section of countries. J. R. Clark et al. (2015) examine how these stocks and flows impact economic freedom in destination countries, whereas Jamie Bologna Pavlik et al. (2019) employ

10. See Nowrasteh 2015 for a good survey of these studies. The estimates in studies of the fiscal impact of immigrants over time are all sensitive to assumptions about future fiscal policies and the rate at which they are discounted back to present values.

11. See Caplan and Naik 2015 for what they call "key hole" solutions to deal with most negative consequences, real or imagined, stemming from open borders.

12. Clark et al. 2015; Powell, Clark, and Nowrasteh 2017; Padilla and Cachanosky 2018; Bologna Pavlik, Lujan Padilla, and Powell 2019; Clemens and Pritchett 2019; Forrester et al. 2019; Nowrasteh, Forrester, and Blondin 2019; Padilla, Cachanosky, and Beck 2020; Yao, Bolen, and Williamson 2021; The most comprehensive book-length investigation is Nowrasteh and Powell 2020.

a similar methodology to examine how corruption is impacted, and Andrew Forrester et al. (2019) examine the impact of terrorism. None of these researchers find any evidence that greater immigration undermines institutions. Similar studies have been done on U.S. states (Padilla and Cachanosky 2018, Padilla et al., forthcoming), which also do not find immigration significantly impacts institutions. Other studies take advantage of large exogenous immigration shocks in individual countries to see how immigration impacts institutions. Benjamin Powell, J. R. Clark, and Alex Nowrasteh (2017) study how immigrants from the former Soviet Union impacted Israel in the 1990s, and Nowrasteh, Forrester, and Colin Blondin (2019) study how Palestinian immigration to Jordan after the first Gulf War impacted institutions. Both studies find significant institutional improvement caused by mass immigration. Though a relatively new literature, thus far it indicates that immigrants do not harm and may even improve the factors responsible for high productivity in destination countries. Thus, we retain our confidence in the most important finding in the immigration economics literature: that free immigration massively increases global output. This fact will inform our subsequent ethical analysis.

For the remainder of the article, when we speak of unrestricted immigration, free immigration, or open borders, the reader can charitably assume we accept that there might be limited restrictions in special cases. For instance, a state might justifiably restrict people from an Ebola hot zone, at least requiring them to quarantine before moving. Or a state might justifiably capture an absconding criminal and return him to another country's justice system. When we talk of unrestricted immigration, we mean a system in which there are no general quantitative restrictions on foreigners' ability to immigrate to the United States, but we can accept special exceptions like these. Existing immigration restrictions are, however, much more restrictive than the special exceptions recognized here.

According to a 2017 Gallup Survey, more than 750 million adults (15 percent of the global adult population) wished to move in order to permanently reside in a foreign country.¹³ The United States would be the first-choice destination for approximately 150 million of them.¹⁴ Other evidence indicates that another billion people would like to temporarily work in another country.¹⁵ In comparison, only about 232 million people currently reside outside the country they were born in.¹⁶

Currently, only about 33.5 million foreign-born people reside in the United States legally and another 10.5 million reside here illegally. The number of people

13. <https://news.gallup.com/poll/245255/750-million-worldwide-migrate.aspx>.

14. <https://news.gallup.com/poll/153992/150-million-adults-worldwide-migrate.aspx>.

15. Neil Esipova and Julie Ray (March 9, 2012), "More Adults Would Move for Temporary Work Than Permanently," Gallup World. At <http://www.gallup.com/poll/153182/Adults-Move-Temporary-Work-Permanently.aspx>.

16. Phillip Connor, D'Vera Cohn, and Ana Gonzalez-Barrera (December 17, 2013), "Changing Patterns of Global Migration and Remittances," Pew Research Center. At http://www.pewsocialtrends.org/files/2013/12/global-migration-final_12-2013.pdf.

granted lawful permanent resident status has averaged just more than a million annually between 2010 and 2018.¹⁷ Most of the world's poor qualify to apply for a very small number of lottery visas. But even for people who can qualify for relatively more plentiful categories, the expected wait time once they have applied can be long. About 83 percent of the 4.7 million people who are on the quota waitlist applied via a category of family reunification (the remaining 17 percent are employment visas). The longest wait time for some types of family reunification visas exceeds twenty years for Mexicans and Filipinos, and employment-based visa wait time for some Indians and Chinese exceeds a decade.¹⁸ One study estimates that roughly 14 percent of people currently on the waitlist are likely to die before they make it to the front of the queue.¹⁹ And most of the world's poor don't even qualify for the majority of these visas. Thus, legal immigration to the United States, which was once a near-universal possibility for the world's "wretched refuse," is effectively no longer possible for most of the world's population.

Simply looking at wage disparities between the United States and other countries also gives an indication of how restrictive U.S. immigration policy is. Clemens, Montenegro, and Pritchett report that once observable factors are controlled for, it is "difficult to find labor markets anywhere on earth that sustain real wage differentials much above 1.5 across geographical areas in absence of policy restrictions on migration" (2019, 211). Yet, the wage differentials we discussed when reviewing the place premium are massive. The differentials between those forty-two countries and the United States range from a high of 16.4 for Yemen to a low of 1.7 for Morocco. The lower bound for the place premium for the median country in the sample is 3.95 and for the average country (weighted by working age population) it is 5.65.

Hundreds of millions of people say they would like to emigrate if they were allowed. Waitlists for restricted legal categories are decades long. Wage differentials between countries are many times bigger than differentials where people are free to move between regions. All of these factors indicate that U.S. immigration policy is massively restrictive. Is a massively restrictive immigration policy ethical in light of the economic impacts reviewed in this section?

Ethical Immigration Policy

Differences of opinion about the desirability of any public policy can stem from differences in judgments about the policy's consequences, differing judgments about

17. <https://www.migrationpolicy.org/programs/data-hub/charts/Annual-Number-of-US-Legal-Permanent-Residents>.

18. <https://www.cato.org/publications/policy-analysis/immigration-wait-times-quotas-have-doubled-green-card-backlogs-are-long>.

19. <https://www.cato.org/publications/policy-analysis/immigration-wait-times-quotas-have-doubled-green-card-backlogs-are-long>.

the moral weight of conflicting consequences, or evaluating the policy with differing philosophical frameworks. The previous section reviewed the “state of the art” of what social scientists know about the consequences of immigration, which represents the dominant view among social scientists who study this issue, though of course not all social scientists agree. For the purposes of this article we will take those consequences as given and ask what is an ethical (desirable, just, etc.) immigration policy in light of the consequences forecast by economists and other social scientists. In contrast to economics, philosophy (including normative business ethics) remains heavily fragmented, with no major theory winning majority assent among philosophers.²⁰ We will approach this question from each major philosophical framework and thus will vary the moral weight we attach to the various consequences and, in fact, whether consequences are valued at all in the case of deontological frameworks. (In contrast, Hidalgo 2016 defends somewhat similar conclusions on the basis of one particular framework.) In doing this, we are explicitly following Caplan and Naik (2015) and Caplan and Weinermith (2019), and like them, we reach a somewhat surprising conclusion, at least given the controversial nature of immigration policy. If the economics estimates of immigration’s consequences are anywhere near correct, all major philosophical frameworks recommend a policy of (mostly) unrestricted immigration as the ethical immigration policy.

Utilitarianism

Utilitarianism seeks to maximize the sum of total human happiness (Mill 1863). Strictly speaking, utility is not interpersonally comparable or measurable and thus cannot be scientifically summed (Stringham 2010). However, there is good reason to believe that utility is positively correlated with increases in wealth (Stevenson and Wolfers 2008). This relationship should be particularly pronounced among poorer people, because the marginal utility of an extra dollar to them is likely to be higher than the marginal utility of an extra dollar to a rich person.

The utilitarian case for nearly unrestricted immigration is pretty straightforward in light of the economics we have reviewed. Unrestricted immigration would massively increase global output and thus should increase total utility. The gains in incomes mostly accrue to the immigrants themselves, and because they are relatively poor, the marginal utility in income gained to them is likely high. Meanwhile, estimates of income losses to the subset of the population in destination countries that compete with immigrants tend to be small and temporary, and the people suffering them are considerably wealthier than most immigrants. Economic estimates of the gains from immigration would have to be very far off the mark for utilitarianism to point to any immigration policy other than open borders. From the utilitarian standpoint, the case for immigration is overwhelming.

20. For empirical proof of this claim, see <https://philpapers.org/surveys/results.pl>.

Cost-Benefit

A cost-benefit framework, such as that employed by Posner (1979), is closely related to utilitarianism but instead seeks only to maximize total dollar value in society. The cost-benefit framework is related to utilitarianism because we presumably believe in the link between dollar income and well-being, but, unlike utility, dollars are objectively measurable and they are counted equally whether a rich person receives them or a poor person. Thus, unlike utilitarianism, cost-benefit analysis does not count the fact that the poor disproportionately benefit from unrestricted immigration and that it is the relatively rich who suffer some small losses. However, given that the global gains from unrestricted immigration are in the range of a doubling of global output, cost-benefit analysis clearly recommends a policy of unrestricted immigration.

Egalitarianism

Egalitarians judge policies on the basis of how they impact poorer people. Specifically, within a Rawlsian framework policies are justified on the basis of maximizing the well-being of the least well off (Rawls 1971). Starting from the status quo, people living in poorer countries are the group that is least well-off. Thus, on its face, a policy that allows people in those countries to migrate to countries where they can improve their well-being should be endorsed by egalitarians. The egalitarian case for unrestricted borders becomes even stronger when we take into account the economic evidence that those left behind in origin countries, who become the new group of least well-off after some of their countrymen emigrate, are not harmed by the departure of the emigrants and in fact, are likely made better off themselves, primarily through the flow of remittances.

Rawlsians tend to focus their analysis within single societies, and immigration may negatively impact the well-being of some of the least well off already residing in rich destination countries by temporarily decreasing their wages if they have skill sets similar to immigrants. Similarly, egalitarians may worry that immigration might undermine welfare-state benefits in destination countries. However, as we review the fiscal impacts of immigration, it seems unlikely that immigration would overwhelm the welfare state. But we note two important factors that address these concerns. First, if there are massive gains from free immigration and these gains naturally accrue to immigrants, does not mean that they need therefore to stay with the immigrants. Caplan and Weinermith (2019) suggest that “key-hole solutions” exist to address most problems associated with immigration that do not involve preventing massive global immigration. In the cases considered here, an immigration “surtax” placed on the earnings of immigrants could be redistributed to fund the welfare state or directly to enhance the incomes of the native born who experience wage decreases due to immigration, which would satisfy the concerns of a strictly

nativist egalitarian.²¹ Secondly, however, we find nothing within the Rawlsian or more broad egalitarian framework that stops at national borders. Native-born citizens who compete with immigrants or who access the welfare state are still part of the global rich. The 2020 *poverty line* for an individual in the United States was \$12,760. That is above the *average* income per capita in 45 percent of countries that the International Monetary Fund estimated incomes in for 2020.²²

A Rawlsian egalitarian might insist that principles of distributive justice apply primarily *within* countries but not *between* them (Macedo 2007). However, this aspect of Rawlsianism is stipulated rather than argued for. When Rawls (1971) constructs the original position thought experiment, he asks us to imagine that deliberators are choosing principles of justice to govern their society, which is stipulated to be isolated and autarkical, and in which he stipulates people enter only through birth and leave only through death.

Of course, in the real world, things are not so simple. For Rawls, the rules of the game are justifiable only if everyone subject to those rules sufficiently benefits. But then, by Rawls's own reasoning, the very act of dividing the world into nation-states, with different laws and formal institutions in different places and with membership almost always determined by accident of birth rather than by choice, has to be justified. Rawls argues that the fundamental rules must grant everyone equal liberties. Rawls argues that inequalities in income and other goods must be to the maximal advantage of the least advantaged. Rawls thinks luck should play little role in determining who gets what. What, then, about the inequalities that result from the bad luck of being born on the wrong side of a border? Thus, it is widely thought that a proper Rawlsianism applied to a real-world context requires understanding the theory to transcend national boundaries, and for principles of justice to apply among all people, not merely inside single countries (Pogge 1989; van der Vossen and Brennan 2018).

At any rate, even if some Rawlsian egalitarians are not on board for technical reasons we will not explore here, the point remains that egalitarianism strongly recommends a policy of open borders. In one recent paper, economist Glen Weyl (2018) examines how differing immigration policies affect total welfare and, in particular, affect global income inequality. He notes that the Gulf Cooperation Countries admit a far higher number of immigrants on a per capita (and often absolute) basis than what he calls the “fortress welfare states” of the Organization for Economic Cooperation and Development (OECD) countries. Using this natural experiment, he then compares the effects of various policies:

21. Alternatively, this surtax could be charged up front as a fee for the immigration visa. The disadvantage of an upfront fee is that many poor immigrants would not have the money up front but would be able to afford it based on their higher wages once they are in a destination country. Capital markets could provide loans to help alleviate this disadvantage but would likely be imperfect. However, an up-front fee would have an advantage of avoiding any concerns about a permanent surtax being politically unstable after many immigrants become citizens and might want to repeal the tax or any other concerns about a permanent surtax creating “second class citizens.”

22. [https://en.wikipedia.org/wiki/List_of_countries_by_GDP_\(PPP\)_per_capita](https://en.wikipedia.org/wiki/List_of_countries_by_GDP_(PPP)_per_capita).

(a) heavy in-country redistribution and provision of various public goods, (b) monetary transfers from rich to poor countries, and (c) open immigration.

Weyl finds that even at current levels of immigration, and despite the massive restrictions the fortress welfare states impose, immigration already produces a larger reduction in global income inequality and already produces higher welfare gains for the world's poor than redistribution *inside* or *between* countries. That is, right now, even with mostly closed borders, immigration is already doing more to reduce poverty and promote economic equality than internal welfare states or foreign aid. Further, when Weyl estimates what would happen if there were either much more redistribution or much more immigration, he again shows that immigration would do far more (in some countries, ten times more) to increase the welfare of the poor and reduce income inequality than either form of redistribution.

Human Capabilities

A human capabilities approach (Sen 1992; Nussbaum 2000) advocates for individuals to have realistic opportunities to fulfill their potential. Immigration restrictions forcibly prevent hundreds of millions of people leaving countries that have myriad obstacles, such as bad governance, violent crime and insecurity, corruption, and poor education, that keep people from reaching their potential. NGOs, policy experts, humanitarians, missionaries, and development economists, have been trying to decrease these obstacles to human flourishing for decades with relatively poor results (Coyne 2013). A policy of unrestricted immigration would immediately provide a path around these obstacles to flourishing for immigrants willing to take it. Since their presence in their own origin country is largely unrelated to the factors preventing others from flourishing, their emigration should not harm the potential of others. Thus, this approach would also recommend a policy of unrestricted immigration.

Rights

Rights-based theories assert that people own themselves and any justly acquired property and should be free from anyone interfering with their ability to use themselves and their property in any way they wish, so long as they don't infringe on the same rights of others (Locke [1689] 1988; Nozick 1974). Thus, individuals should be free to engage in any mutually voluntary transactions with each other that do not infringe on the person or property rights of third parties.

Immigration policy is fairly straightforward from the perspective of individual rights. People in origin countries have a right to the product of their own labor and may trade their labor with those willing to pay for it. They also may use their earnings to acquire justly owned goods and services from others. Employers own financial and physical capital in the first world and can hire willing people to work for them. Similarly, owners of land and homes can rent or sell their justly acquired property to other people.

If any destination country business owner or property owner would like to employ, rent, or sell to someone who happens to reside in a foreign country, any government immigration restrictions that prevent them from engaging in these exchanges amount to prohibiting what Robert Nozick calls “capitalist acts between consenting adults” (163).

A rights-based approach need not be *libertarian*. However, the rights-based approach specifies a moral default from which departures must be justified (Gaus 2003). By default, people are presumed to have a right of free association, rights to movement, and rights to work, which allow them to take jobs others offer or live in any property offered to them. If a state intends to restrict or regulate such behaviors, it must be able to demonstrate a compelling social interest in doing so.

A state might have a compelling interest in, for instance, forbidding large companies from engaging in widespread racial discrimination, even though this restricts the free exercise of private property and places restrictions on free association. However, *immigration restrictions* have the opposite effect—they instead require employers, apartment complex owners, and others to positively discriminate against foreigners who lack the appropriate legal credentials, all in virtue of their foreign citizenship.

Now, if there were a compelling state interest in doing so, the rights theorist might admit that such forced discrimination is permissible. But we need a positive argument to that effect. This will be difficult to produce, given the rather overwhelming case economists have made in favor of open immigration, and given that every moral theory examined thus far seems in favor as well.

As an instance of rights view, consider Kantianism. Kantianism requires that all people be treated as ends in and of themselves and never be used merely as means for other objectives (Kant [1785] 2018; Kant [1797] 1998). Kant’s theory explicitly requires us to regard all other human beings as having infinite worth and, as a result, to be imbued with stringent rights that all others must respect at all times.

Going from this abstract theory to any particular policy takes a great deal of work. However, we can note that it seems to rule out certain kinds of moves rather straightforwardly. One argument for restricting immigration holds that unrestricted immigration would depress the wages of some unskilled native-born workers even as it greatly raises the wages of immigrants and of other native-born workers. For Kant, then, interfering with free association might be permissible if there are strong public benefits, but not to simply redistribute income from one group to another. As a rights theorist, Kant takes noninterference as a default.

Stakeholder Theory

So far, we have been considering general theories of ethics. We will now turn to considering three major theories that are specifically theories of business ethics.

First, consider stakeholder theory (Freeman et al. 2010). Stakeholder theory holds, in the abstract, that when considering what to do, businesses must give due

consideration to all the legitimate interests of all affected individuals, groups, or enterprises that have a stake in the corporation. Now, what precisely this means is hotly contested, and R. Edward Freeman's recent work seems to suggest that *any* way of filling in the details counts as a form of the theory (Freeman et al. 2010, 9); stakeholder theorists even count what seem to be rival theories as instances of their own theory (Freeman et al. 2010, 24). Thus, the theory is very abstract rather than having any specific content.

However, we can note that this approach on its face seems to demand that we respect the interests of everybody, and it cautions against promoting the interests of the few at the expense of the many. As we argued earlier when summarizing the economics literature, doing business with illegal immigrants appears to strongly promote the interests of all in the long run. Thus, it appears a stakeholder theorist must presumptively regard doing business with illegal immigrants as ethical.

Market Failures Approach

The market failures approach to business ethics (Heath 2014) holds that markets are a kind of staged competition. Certain normal interpersonal moral norms are relaxed because allowing businesses to compete with each other in capitalist markets greatly enhances everyone's welfare. We are all (even the poorest of us) vastly better off with markets than without them, but for markets to make us much better off, we cannot require competing businesses to treat each other the way we expect family members to treat each other. Instead, the ethics of the market is a kind of adversarial ethics, like the ethics of sports. It is a set of rules designed to constrain or shape how competitors compete, with the goal being that competition lead to Pareto-efficient gains for everyone involved. Market competition tends to discipline firms to act in publicly beneficial ways (this is Adam Smith's *invisible hand*). Government regulations are needed to correct some market failures (this is the visible fist of government). But market and government regulation are not enough to make the system work well; various moral norms are needed as well, in particular, norms that forbid businesses from engaging in rent seeking or certain anticompetitive practices.

On Joseph Heath's theory, the point of business practice is, on the whole, to promote general human welfare and Pareto-efficiency. Accordingly, demonstrating that doing business with illegal immigrants greatly enhances general welfare, whereas refusing to do business with them greatly undermines it, should be sufficient on this approach to regard it presumptively as ethical, unless we can show that there is an overriding duty to obey the law despite its harmfulness.

Integrated Contracts Theory

One major theory of business ethics holds that businesses are a kind of conventional institution authorized by societies for the purposes of promoting welfare and justice (Donaldson 1982). On this view, businesses have an implicit social contract with all

other members of their society, though precisely who counts as part of the society is controversial (just as Rawlsians cannot simply assume that principles of justice apply only within national borders, so social contract theories of business cannot simply assume that a society is extensionally equivalent to the modern nation-state). On this view, members of society implicitly authorize the creation of special productive enterprises, with their own internal rules of competition, for the purposes of promoting overall social welfare and for helping to realize justice through a division of labor. Here, the division of labor refers to the idea that governments alone cannot realize justice but require assistance from civil society and markets.

This theory is very abstract but explicitly states that the purpose of business is to promote welfare and justice, where *justice* is defined by independent moral principles. Thomas Donaldson's contract theory of business is not a fundamental theory of ethics but rather an extension of various liberal welfarist and Rawlsian ideas into the business realm. Thus, since these *other* theories provide a strong presumption in favor of the view that immigration and doing business with immigrants is good and just, and that restrictions are bad and unjust, the theory presumptively favors doing business with immigrants, legal or illegal. This presumption can be defeated only if it can be shown that businesses have, as part of their implicit contract, some strong presumption to follow the law, even if the law is unjust. We examine this issue in the next section, noting here that social contract theories of business generally follow Hart's (1955) and Rawls's (1971) theory of the authority of law.

Is It Ethical for Companies to Break Anti-Immigrant Laws?

Every major philosophical framework recommends a policy of unrestricted immigration in light of the economic consequences of immigration. Yet, immigration policy in every major wealthy country restricts immigration. The deviation between ethical immigration policy and actual immigration policy is massive.

For the purposes of this article, we do not want to simply assume that whenever ethics and law conflict, ethics always wins. Many people believe there is an independent duty to obey the law, and that such a duty might sometimes require people to act wrongly or to comply with unjust directives or rules. Most people believe that states have *authority*, which refers to a moral power to create various rules and, in virtue of creating those rules, to induce in others an obligation to obey. Importantly, for a state to have authority over some issue, when it issues a command or makes a law, it must be the fact that the state issued the law or command, which induces in others an obligation to follow it, or it must at least provide a very strong reason for people to perform that act. For instance, if we the authors order readers not to kill others, no one thinks that our issuing an order creates any duty or adds new grounds to avoid killing others. It is morally inert. However, when the democratic state orders us not to kill each other, people believe this adds new grounds not to do so, on top of independent moral reasons. If the state orders us not to use cocaine, many believe

this renders cocaine use impermissible even if, in the absence of any law to the contrary, it would be permissible.

If there is a duty to obey the law, then perhaps sometimes people might be obligated to follow laws that unjustly interfere with their own or others' rights, or that violate other principles of justice, or that are badly designed or suboptimal. However, every major political theory, other than totalitarian theories, holds that states have limits on their rightful authority. They hold that in some cases states issue laws that citizens lack any obligation to obey (Brennan 2019).

Thus, we return to the question we asked earlier: Are laws that forbid employers from hiring illegal immigrants possibly morally binding and authoritative?

It is difficult to find a theory-neutral way of answering this question, in part because every particular theory of government authority is highly controversial. Following A. John Simmons's (1981) seminal work on authority, skepticism about political authority now seems to be widespread. Michael Huemer concludes, after reviewing the literature, "Skepticism about political obligation [i.e., authority] is probably the dominant view" in philosophy now, at least among authors writing about authority (2012, 19). Leslie Green (2003) says, in his *Stanford Encyclopedia* article surveying the field, "there are plausible objections to each of the dominant justifications for the duty to obey the law. . . . Each leaves significant gaps in the authority of law." Ned Dobos (2018) similarly concludes, "There is today a growing consensus to the effect that no theory of political obligation succeeds."

Of course, if general skepticism about government authority is correct, this makes our task easy. If governments lack authority, then government commands and laws by hypothesis are not in themselves binding—we have no duty to obey the law per se. Instead, we would have duties to act in accordance with those laws only if the laws simply restated a preexisting independent obligation. As we argued earlier, it looks like there is not only no independent obligation to avoid hiring illegal immigrants but that such avoidance is deeply wrong and harmful according to every major ethical theory. Thus, it is permissible to hire illegal immigrants.

However, if general skepticism about government authority is not correct, our task is more complicated. Here, then, we will suppose on behalf of the other side that democratic governments have a general kind of political authority, but we will then argue that nevertheless they lack authority on the issue of doing business with illegal immigrants.

Consider a few of the major existing theories of political obligation. Each of these theories tries to show that we have a general duty to obey the law.

Public Goods Theories and Consequentialist Theories

Public goods and consequentialist theories (Rawls 1971; Schmidtz 1991) are perhaps the simplest major theories. They make straightforwardly consequentialist arguments. They argue that there are certain goods, such as the protection of rights,

peaceful dispute resolution, or roads, that cannot be provided adequately by any mechanism other than through a state. Or they otherwise argue that the absence of the state would lead to disastrous or very bad consequences. They argue states are necessary to provide those goods and prevent those bad consequences.

Public goods theories are meant to explain why states may force citizens to pay for certain public goods. However, as a technical point, these theories are silent on the question of whether we are *obligated* to pay for such public goods. Accordingly, they must be supplemented with other theories, such as what follows. Further, exclusion of immigrants is not, as we showed, a public good, except in very special cases (as when the immigrant happens to be a criminal or has a very high probability of spreading a known, highly virulent disease). If immigrants brought beliefs, values, and customs with them that eroded the formal and informal institutions responsible for the productivity in destination countries, as Borjas (2015) and Collier (2013) assert, then immigration restrictions could be justified on public goods grounds. However, the empirical literature we reviewed in the earlier section of this article does not find that greater immigration degrades the institutions responsible for high productivity in destination countries, and, thus, a public goods justification for general restrictions does not apply.

Fair Play Theories

Fair play theories (e.g., Hart 1955; Klosko 1987; Rawls 2001) are often used to supplement public goods theories by providing an additional moral argument in favor of political authority. They argue that if someone benefits from various kinds of public goods or collectively provided goods, then one acquires an obligation to do one's fair share, which includes, supposedly, contributing to the public goods in turn and obeying the law.

Again, though, fair play theories can only explain why someone must comply with a law when the law is in fact good and just, or when the law helps maintain a public good. They do not explain why a person must comply with a law that is bad and unjust and that does not promote a public good.

For instance, suppose a world-ending asteroid will collide with Earth in three years. An asteroid-destroying missile can be built at great expense. This missile is a public good if anything is. Intuitively, it seems obvious that you should pay your fair share. But suppose the government specifies not merely that you must pay your fair share of taxes toward constructing the missile, but further, you must give up Catholicism, stop listening to heavy metal, must dance in the park daily, and must engage in frequent self-flagellation all while wearing polka dots.

None of these latter behaviors is part of a system of fair play and none contributes to creating or maintaining any public goods. Hart's fair play theory tells us only to pay taxes; it does not show that we are obligated to follow these other laws.

The evidence is very strong that laws forbidding immigration and restricting doing business with illegal immigrants produce very bad outcomes for nearly

everyone in both the short and the long term. These laws are not like laws requiring us to pay taxes for asteroid protection and are more like laws requiring self-flagellation.

Good Samaritan Theories

Good Samaritan theories (Wellman in Wellman and Simmons 2005) are closely related to fair play theories; they hold that we are obligated to obey the law as a means of providing easy aid to others. Christopher Wellman appeals to the idea that there is a natural (that is, nonconventional) moral obligation to provide easy aid to others when we can do so at little or at no unreasonable cost to ourselves. Whereas fair play theories say we must obey the law as a matter of reciprocity—of paying for the benefits we receive—Good Samaritan theories say we must obey as a matter of beneficence.

However, the same problem remains. If a law is harmful, injurious, or deeply unjust, we are not doing people favors by obeying it. For instance, suppose that there was a law stating that when someone has been beaten and robbed and is left to die on the side of the road, no one may help that person. Here, a Good Samaritan acting out of beneficence would want to break the law and save the person. Similarly, as we argue above, criminalizing immigration and avoiding doing business with immigrants is deeply harmful. Thus, the beneficent action—the thing the Good Samaritan would do—is break the law, not obey it.

Public Reason Theories

Public reason theories (Rawls 1996; Gaus 1996, 2003; Estlund 2008; Gaus 2010; Vallier 2018) are perhaps the most dominant theories in political philosophy today. These theories say that laws must not simply be forced upon people. Instead, for a law to be binding, it must be something that all reasonable members of the public could accept by their own lights, given their own values. There must be a sound deliberate route, on the basis of widespread public values and public evidence, that demonstrates that the law is good. If a reasonable member of the public has a strong objection to the law, those imposing the law must be able to answer and defeat the objection. By default, any coercive law is presumed unjustified until such burdens are met.

Again, though, this theory seems straightforwardly to work in favor of our thesis. Immigration restrictions, including laws against doing business with illegal immigrants, are coercive—by the lights of public reason liberalism—whereas the absence of such laws is not coercive. Thus, the laws must be justified. They do not count as authoritative and binding unless the major objections of every reasonable member of the public can be overcome and defeated (Gaus 2003; Vallier 2018). On this point, we can say that we have offered public evidence in favor of free immigration and against restrictions, on the basis of a very wide set of values. Accordingly, by the public reason account, our objections should serve to render the law nonauthoritative until our objections are overcome.

These are four of the most important theories of the duty to obey the law. None of them seems to show that there is any obligation to obey anti-immigrant laws or forbear from doing business with illegal immigrants. On the contrary, each theory implies these laws are not authoritative.

Conclusion

Illegal immigration to the United States creates an important ethical problem for business. Is it ethical for U.S. businesses to employ or otherwise engage in economic transactions with illegal immigrants?

In light of the consequences of immigration found in the economics literature, every major philosophical framework indicates that the United States' extremely restrictive immigration policies are unethical. Many immigrants have taken the law into their own hands and immigrated illegally, and existing law prohibits businesses from employing them and penalizes them if they do. This article argues that in the face of these restrictions, it is ethical for businesses to ignore government laws and employ and otherwise interact with illegal immigrants who wish to voluntarily interact with businesses. This conclusion does not depend on adherence to any one particular philosophical framework or any one particular theory of political obligation to state authority.

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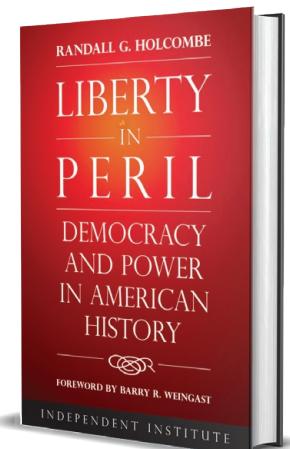
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