

RIGHTS OF PASSAGE: THE ETHICS OF IMMIGRATION AND REFUGEE POLICY

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[Editor's Note: In light of the legal, economic, and political aspects of migration, the authors of this Note on Moral Theology offer a comparative analysis of three rival ethical perspectives that tacitly shape our rhetoric regarding immigration and refugee policy: political liberalism, communitarianism, and Roman Catholic social thought. They conclude with an assessment of the distinctive theological and pastoral implications of migration.]

AT THE ADVENT of the millennium, the solemn words of Leviticus 19:33–34 bid us remember the stranger or resident alien in our midst. No command is repeated more frequently in the Old Testament, with the exception of the imperative to worship the one God.¹ Yet if the mass migrations of the late-20th century bear witness to an unprecedented global interdependence, the millennial promise of a global household (*oikoumene*) remains elusive. “Good fences make good neighbors,”² we say, sharply distinguishing member and stranger, citizen and alien. In this note, we will consider the legal and moral status of migrants and refugees, and the morally relevant criteria of an equitable admissions policy in modern, pluralist societies. A brief consideration of the legal, economic, and political background of migration

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¹ See W. Gunther Plaut, “Jewish Ethics and International Migrations,” *International Migration Review* 30 (Special Issue: “Ethics, Migration and Global Stewardship”; Spring 1996) 18–36, at 20–21; Plaut distinguishes the differing legal status accorded temporary or permanent migrants in the Hebrew Bible and Talmud.

² Robert Frost, “Mending Wall,” in *Complete Poems of Robert Frost* (New York: Henry Holt, 1949) 47–48.

serves as a prelude to our assessment of three rival ethical perspectives on migration at play in the present debate: political liberalism, communitarianism, and Roman Catholic social thought. Finally we will consider the theological and pastoral implications of our response to the Levitical admonition, "the alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself" (Lev 19:34).³

THE CONTEXT OF MIGRATION

The unraveling of political regimes in the wake of the Cold War, the emergence of a truly global market, and the recurrence of ethnic and political strife have contributed to massive movements of peoples in the last decade. In 1996, some 14,500,000 people sought asylum or refugee status, while more than 19 million people were numbered among the internally displaced.⁴ Countless more have migrated from their homelands. International law distinguishes different claims arising from the differing status of refugees, immigrants, asylum seekers, and internally displaced people. The Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967) define refugees as those who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" have had to flee their country of origin.⁵ The restrictive definition of a refugee in international law excludes victims of general insecurity or economic deprivation, e.g. the denial of subsistence rights.⁶

³ All biblical citations are from the *New Revised Standard Version*, unless otherwise indicated.

⁴ United States Committee for Refugees, "World Refugee Survey 1997" (Washington, D.C.) 3–6. The United Nations Development Programme [UNDP] estimates that 80% of refugees or internally displaced were women and children. The number of refugees has increased manifold from 2.5 million in 1960 (UNDP, *Human Development Report 1997* [New York: Oxford University, 1997] 31, 66). Some web sites for information on immigration include <<http://www.fairus.org/>> (FAIR); <<http://www.us.net/cis/>> (Center for Immigration Studies); <<http://www.nnirr.org/nnirr/index.html>> (National Network and Refugee Rights); <<http://www.ins.usdoj.gov/stats/index.html>> (INS Statistics).

⁵ The full description of a refugee in the Convention Relating to the Status of Refugees is one who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it." In Fiscal Year 1966, the U.S. admitted 75,682 refugees through overseas admissions programs, and it planned to admit up to 78,000 in Fiscal Year 1997, a 13 percent decrease from the previous year's ceiling; see "World Refugee Survey 1997" 238–43; also Susan Raufer, "In-Country Processing of Refugees," *Georgetown Immigration Law Journal* 9 (1995) 233–62.

⁶ Definitions that are more inclusive are accepted by the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), the Cartagena Declaration on Refugees (1984) endorsed by the Organization of Ameri-

Foremost among the rights affirmed by the international refugee regime is refugees' right of "nonrefoulement," which forbids forcible repatriation to a country where there is a reasonable expectation of persecution. The regime acknowledges that refugees have the right "to seek and to enjoy asylum," but it imposes no correlative obligation upon states to grant it. Other rights enumerated by international conventions include entitlements to freedom of religion, education, social security, public assistance, work, and limited travel documents.⁷

Immigrants are those who choose to leave their homelands in order to find a better way of life. They may suffer considerable economic hardship or political repression at home, but unlike refugees, they are not regarded as subjects of persecution.⁸ Refugees customarily apply for admission to another country from abroad, while asylum seekers enter the country with or without legal documentation, usually under the claim of "well-founded fear of persecution."⁹ While the office of the United Nations High Commissioner for Refugees (UNHCR) offers assistance and protection, decisions to grant asylum after a person has entered a host country remain the prerogative of individual states.

The justified fear of persecution or violence that impels refugees to cross international borders likewise contributes to a vast displacement of people within their homelands. (The Sudan offers the most dramatic instance: the Muslim regime in Khartoum has waged a genocidal war that has uprooted 4 million Christians and adherents of traditional religion in the south.¹⁰) These internally displaced people are not accorded legal protection as refugees, although the UN Security Council's authorization of humanitarian intervention on behalf of Iraqi Kurds (Resolution 688) establishes a limited precedent for extending such protection. Even as the developed countries make their refugee policies more restrictive, it remains true that the vast majority of refugees and

can States (OAS), and in the operational practice of the United Nations High Commissioner for Refugees (UNHCR); see United Nations High Commissioner for Refugees (UNHCR), "Protecting Human Rights," in *The State of the World's Refugees: In Search of Solutions* (New York: Oxford University, 1995) 57-94.

⁷ See Guy S. Godwin-Gill, *The Refugee in International Law*, 2nd ed. (Oxford: Clarendon, 1996).

⁸ The term "economic refugees" blurs the distinction between refugee and immigrant. Economic deprivation has not been seen to generate the same rights as explicit persecution. Currently, the U.S. admits about 800,000 documented immigrants a year, a number that exceeds the total of all other industrial nations combined. Although it is difficult to determine the number of undocumented immigrants who enter the U.S., a recent joint study by the U.S. and Mexican governments debunks fears that millions of undocumented Mexicans are coming annually to the U.S., asserting that over the past decade the annual total has been about 105,000; see Sam Dillon, "US-Mexico Study Sees Exaggeration of Migration Data" *New York Times*, 31 August 1997, A 1.

⁹ 129,579 persons filed applications with Immigration and Naturalization Service asylum officers in fiscal year 1996. 21.6 percent were approved on the first review; asylum judges approved 15.1 percent of the 69,828 deportation or exclusion cases ("World Refugee Survey 1997" 239).

¹⁰ UNDP, *Human Development Report 1997* 66.

internally displaced persons remain in the poorest countries. Globally, the largest number of refugees and asylum seekers are in Africa (3,684,000) and the Middle East (5,841,000).¹¹

Since the early 1980s, a great increase in asylum seekers has eroded the distinction between economic migrant and political refugee. Refugees and asylum seekers make up about one quarter of recent international migration.¹² "In Europe, North America, and Australia, applications for asylum rose more than ninefold, from 90,444 in 1983 to 825,000 in 1992."¹³ The U.S., which had previously seen only a small number of asylum seekers, almost all from Communist countries, witnessed an influx of such persons, particularly from the Caribbean and Central America. "In 1993, the number of new asylum claims was up to 150,000, which is a 300% increase since 1990, while the backlog of pending cases grew to . . . 425,000 in 1994."¹⁴ In 1996, the U.S. Immigration and Naturalization Service (INS) "was beginning to make a dent in the asylum backlog, which stood at 455,725" at the year's end. Over 300,000 of these applicants for asylum are Salvadorans and Guatemalans granted temporary admission in the 1980s.¹⁵

Recently, the U.S. Congress has drastically altered admissions procedures to reverse this trend.¹⁶ The policy of "expedited removal" allows immigration officials to detain, interview, and send asylum seekers with invalid documents back to their country of origin or to other countries in 48 hours without benefit of administrative or judicial review. The policy denies such asylum seekers the constitutional protections of due process and equal protection that had been extended them by court decisions in the previous decade. Germany responded in similar fashion to a large increase in asylum seekers from Eastern Europe and Turkey. Christian Joppke writes that such "conflicts over asylum policy are in the first [place] domestic conflicts over the dual mandate of liberal nation-states to respect human rights while protecting the integrity of the people from which their sovereignty derives."¹⁷

Immigrants of all categories face a similar problem, inasmuch as their rights are proclaimed by convention and treaty but few correla-

¹¹ See "World Refugee Survey 1997" 4-5. A recent study of the World Bank notes that states "differ in their ability to avoid or limit refugee flows. Stronger states are more effective at denying entry to refugees and asylum seekers. It is often the weaker states, with the most limited resources, that shoulder the greatest burden in protecting refugees and repatriating them when conflicts end" (*The World Development Report 1997: The State in a Changing World* [Oxford: Oxford University, 1997] 139).

¹² See Mark Miller and Stephen Castles, *The Age of Immigration* (London: Macmillan, 1993) 168.

¹³ Christian Joppke, "Asylum and State Sovereignty: A Comparison of the United States, Germany and Britain," *Comparative Political Studies* 30/3 (1997) 259-98, at 263.

¹⁴ *Ibid.* 271.

¹⁵ U.S. Committee for Refugees, "World Refugee Survey 1997" 239.

¹⁶ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was signed into law by the U.S. President on September 30.

¹⁷ Joppke, "Asylum and State Sovereignty" 261.

tive obligations are acknowledged by sovereign states. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (opened for signature, Dec. 18, 1990) recognizes the particular vulnerabilities of migrant workers and their dependents. It codifies and extends rights accorded under the general provisions of international human-rights law to migrants.¹⁸ In the absence of effective enforcement, however, the entitlements of immigrants and refugees remain weak law; their claims are superseded by domestic legislation or arbitrarily interpreted in the name of national self-interest. On August 22, 1996, for instance, President Clinton signed the welfare reform bill that severely curtailed public benefits to documented, non-citizen immigrants.¹⁹

The economic impact of immigration remains a vexed issue. Two recent studies by the Rand Corporation of legal and illegal immigration in the state most heavily affected found that "California's employers, and its economy in general, have been the main beneficiaries of immigration. Immigrants are paid less than native workers at all skill levels but are equally productive employees."²⁰ Immigrants may add as much as ten billion dollars to the national economy annually (a relatively small percentage of an economy whose annual gross domestic product is approaching eight trillion dollars). On the other hand, some analysts contend that low-income migrants and refugees' use of public services (particularly public education), higher birthrate, and lower levels of taxes paid have had a negative fiscal impact on state and local governments.²¹ Whether low-skilled citizens are hurt by the arrival of immigrant competitors for low-wage jobs is a matter of de-

¹⁸ The Convention applies the Universal Declaration of Human Rights; the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; the International Conventions on the Elimination of All Forms of Racial Discrimination, on the Elimination of All Forms of Discrimination against Women, and on the Rights of the Child. All migrants, whether documented or not, are entitled to emigrate, to security against torture or degrading treatment, to liberties of conscience and religion, opinion, and expression, to privacy, to equality with nationals before courts and due process, to just and favorable conditions of work, to freedoms of assembly and association, to education, social security, and urgent medical care; see James A. R. Nafziger and Barry C. Bartel, "The Migrant Workers Convention: Its Place in Human Rights Law," *International Migration Review* 25/4 (Winter, 1991) 771-99.

¹⁹ Although some benefits were subsequently restored in the recent federal budget, many immigrants will still be excluded from assistance programs, including food stamps, Supplemental Security Income (SSI) for the elderly and disabled, or health care provided by Medicaid.

²⁰ Rand Institute on Education and Training, "Policy Brief: New Immigrants New Needs: The California Experience," from <<http://www.rand.org>>, documented in Kevin McCarthy and Georges Vernez, *Immigration in a Changing Economy: California's Experience* (Santa Monica, Calif.: Rand, 1997). These findings were supported by the National Research Council's report "The New Americans: Economic, Demographic and Fiscal Effects of Immigration," ed. James P. Smith, James and Barry Edmonston (Washington: NRC, 1997).

²¹ The overall economic benefit of immigration nationally is due in large measure to the high value brought by professional and high-tech workers; there are many more

bate. Although no such direct impact can be found in cities like Miami or Los Angeles, competition from immigrants may push citizens who did not complete high school to migrate away from urban centers.²²

Three disturbing trends emerged from the Rand studies: "First, the earnings and employment prospects of low-skilled workers (both native and foreign-born) have steadily dropped in recent years. Second, immigrants with minimal job skills are making little or no progress after they arrive. Third, the costs of providing services to immigrants have added appreciably to the state's fiscal burden."²³ Young people from Mexico and Central America have the bleakest prospects, in large part due to their low level of education. Despite the fact that federal immigration policies have significantly contributed to this problem, the federal government provides little assistance to the states most affected, namely California, New York, Texas, New Jersey, Florida, and Illinois. Since the national economy as a whole benefits from immigration, it seems unfair to relegate to a few states the full cost of social services for immigrants and refugees.

Demographically, the implications of immigration are clearer than on the economic front. The Immigration and Nationality Act of 1965 did away with the old quota system that was heavily weighted toward European countries. In its place, it prescribed a more even global distribution and, more importantly, favored family members of those who had already come to the U.S. More than half of the 800,000 documented immigrants admitted annually to the U.S. now come from Mexico, the Philippines, Vietnam, the Dominican Republic, China, Taiwan, Korea, and India. In the 1950s, Germany, Canada, and Great Britain were the top countries of origin. Much of the population growth in the U.S. over the past two decades can be attributed to immigration. The net result is likely to be a future population with different racial composition: "In 1995, the American population was seventy-four per cent white, twelve per cent black, ten per cent Hispanic, and three per cent Asian. In 2050, according to the [National Academy of Sciences] study, it will be fifty-one per cent white, fourteen per cent black, twenty-six per cent Hispanic, and eight per cent Asian."²⁴ Fear of this change in America's racial and ethnic composition may provide much of the fuel for the heated national debate over immigration.

migrants at the low end of the wage scale who, over a lifetime, will not contribute as much to the economy and who will draw more heavily on local social services; see the analysis of John Cassidy, "The Melting-Pot Myth," *The New Yorker*, 14 July 1997, 40–43.

²² *Ibid.*

²³ Kevin McCarthy, "Immigration by the Numbers," *New York Times*, 15 October 1997, A 19. See also, Georges Vernez and Kevin McCarthy, *The Cost of Immigration to Taxpayers: Analytical and Policy Issues* (Santa Monica, Calif.: Rand, MR-705-FF/IF, 1996); Harriet Orcutt Duleep and Mark C. Regets, "Measuring Immigrant Wage Growth Using Matched CPS Files," *Demography* 34/2 (1997) 239–49; Sergio Díaz-Briquets and Jorge Pérez-López, "Refugee Remittances: Conceptual Issues and the Cuban and Nicaraguan Experiences," *International Migration Review* 31/2 (Summer 1997) 411–37.

²⁴ Cassidy, "The Melting-Pot Myth" 41.

Discussion of the economic, demographic, and political data of migration is seldom a simple exercise of figuring costs and benefits. Our very descriptions of migrants as "political refugees," "illegal aliens," or "guest workers" typically betray our implicit evaluative assessments. They are clues to the moral status we ascribe to those seeking membership in our communities. Our understanding, that is, reflects our preunderstandings, the cognitive and affective prejudices, or prior judgments, that tutor our moral imagination.²⁵

Consider, for instance, the recently recounted case of the González family.²⁶ Five years ago in Mexico, María, a Mexican national, married José, a "green card" resident of San Mateo, California. Since the marriage, she has been waiting for a green card that would confer permanent residency. Rather than remaining in Mexico during the lengthy proceedings, she entered the U.S. illegally to be with her husband. The couple have two children, a four-month old daughter, Guadalupe, and a three-year old son, Jesús, both U.S. citizens. Under provisions of the 1994 Immigration and Nationality Act, undocumented immigrants in the process of applying for permanent legal residency or related to a citizen or legal resident were permitted to pay a waiver fee of \$1,000 to remain in the U.S. This provision was to expire on Sept. 30, 1997.²⁷ If María is not admitted to the program, she would be required to return to Mexico to wait for her green card. Her status, however, is complicated by a provision of the 1996 immigration law that further penalizes undocumented immigrants. After April 1, 1997, immigrants like María who have lived in the U.S. for more than 180 days are barred from reentering the country for three years.

"I don't want to be separated from my husband," said María. Yet José needs to stay in the U.S. to support his family. A week's work in Mexico, he says, would be required to match his daily income as a gardener in the U.S. "So before dawn yesterday," the report concludes, "María González took her place in a line that wrapped around the federal building. She waited more than three hours just to get in the door, all the time cradling her four-month old daughter, Guadalupe, against the wind tunneling through the highrises. Her husband tried to calm their crying three-year old, son, Jesús."²⁸

How we "see" María and her family is determined in part by our

²⁵ We understand "prejudice" here in the original, non pejorative sense of *praejudicium*; see Hans-Georg Gadamer, *Truth and Method*, 2d ed., trans. Joel Weinsheimer and Donald G. Marshall (New York: Crossroad, 1991) 265–307.

²⁶ Suzanne Espinosa Solis, "Immigrants' Last Chance: Expiring INS Program Draws Thousands in S.F.," *San Francisco Chronicle*, 27 September 1997, 1, 15 (A).

²⁷ The U.S. Congress is presently considering a long-term extension of the waiver provision (Section 245i of the Immigration Act).

²⁸ Solis, "Immigrants' Last Chance" 15 (A).

“moral squint.”²⁹ “She’s technically illegal,” said David Still, deputy director of the INS in San Francisco.³⁰ Such widely used terms as “illegal immigrant,” or “illegal alien” are themselves illuminating, since the predicates “legal” or “illegal” properly characterize behavior rather than persons. Nationals who trespass federal or state law may act illegally, but they do not, through some feat of conceptual legerdemain, become “illegal citizens.” This category mistake entered our official rhetoric when California’s Proposition 187 (the so-called “Save Our State” initiative) characterized undocumented immigrants as “illegal aliens.” Branding the person “illegal” divests her not only of legal but also of moral standing. María and her family cease to be seen as members of our moral community or subjects of international law. Her fate as an “illegal alien” is then determined by weighing the benefits or burdens of her admission to “us” in a strategic, utilitarian calculus.³¹

In this section, we will consider the rhetorical role played by categories like “illegal alien,” “members and strangers,” and “neighbors.” These terms reflect distinct philosophical perspectives tacitly at play in our political deliberations. The differing interpretative horizons of liberalism, communitarian philosophy, and Roman Catholic social teaching lead to differing accounts of a “just” or “equitable” admissions policy, and hence differing ways of seeing María, José, and their children. Although the California bishops appealed to Catholic social teaching in opposing Proposition 187, its moral message remained our “best kept secret.”³² What are the assumptions behind these commonplaces on immigration? Why do they make it so difficult for the distinctive perspective of the Catholic heritage to get a hearing?

The Liberal Abstract Citizen

Heralded by the great declaration of independence we call the Western Enlightenment, philosophic liberalism championed the new, individualistic school of natural rights. With the eclipse of the medieval ethical ideal of the common good, the liberal world, in Max Weber’s words, was “disenchanted.” No longer ordered to “the ultimate and most sublime values [that] have retreated from public life,” sovereign individuals must choose their own ends.³³ In Mill’s memorable words, “the only freedom which deserves the name is that of pursuing our own

²⁹ The term is taken from Robert Bolt’s *A Man for All Seasons* (New York: Random House, 1990) 19.

³⁰ Solis, “Immigrants’ Last Chance” 15 (A).

³¹ Even many opponents of Proposition 187 differed merely over the economic and social costs of immigration legislation, ignoring the moral status of the immigrants themselves.

³² See Peter Henriot, Edward DeBerri, Michael Schultheis, *Catholic Social Teaching: Our Best Kept Secret* (Maryknoll, N.Y.: Orbis, 1991).

³³ Max Weber, “Science as a Vocation,” in *From Max Weber: Essays in Sociology*, trans. and ed. H. H. Gerth and C. Wright Mills (New York: Oxford University, 1946) 148–55.

good in our own way," unbridled by "the despotism of custom" or aristocratic and ecclesiastical constraint.³⁴

The root metaphor of liberal political philosophy is the abstract citizen, that is, one who is conceived in abstraction from the social norms and values imposed by external authorities or institutions. For the heirs of the liberal Enlightenment, social obligations are moral only when they are autonomously assumed. States derive their moral authority not from divine establishment or the weight of custom, but from the consent of the governed as individuals limit themselves by self-chosen laws. Sovereign states and sovereign individuals mirror each other. State boundaries are like the skin of an individual inasmuch as it sets the outer limits of the person and serves as a protective membrane from alien intrusion. Just as the state's legitimacy rests on the social contract of sovereign selves, so state sovereignty is necessary for individual freedom to flourish. The weakness of the United Nations testifies to our skepticism about expanding the social contract globally. We will not cede more than a little national sovereignty to any supra-national authority because we have no confidence that it would protect our individual rights.

Liberal theories have a definite family resemblance in their conceptions of justice. They all accord primacy to the sovereign individual in abstraction from the web of social relationships; they respect individual autonomy as essentially "negative" freedom, immunity from interference by others; and they believe that social obligations are chosen and agreed upon, imposed neither by God nor by nature. The modern metaphor of the social contract succinctly captures the political process: we cede some of our liberty to the state so that it may protect our individual rights to pursue our own diverse goals and values.

Perhaps the clearest portrait of the abstract citizen is found in John Rawls's magisterial treatise on justice, widely regarded as the most influential text in Anglo-American political philosophy in the last half century.³⁵ Rawls has articulated in philosophical terms the genius of the American experiment: a pluralist society that bases its consensus on fair procedures of a social contract rather than on a comprehensive conception of the common good. In order to achieve a fair and impartial ordering of social goods, we have to imagine that the contracting parties do not know what their particular interests or conception of the good will be. Fairness is achieved by imposing a "veil of ignorance" upon their mutually disinterested, prudential choice. For if they are ignorant of their social or cultural roles, economic status, natural and

³⁴ John Stuart Mill, *On Liberty*, ed. Gertrude Himmelfarb (New York: Penguin Books, 1974) 72, 200.

³⁵ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap, 1971); see also his *Political Liberalism* (New York: Columbia University, 1993), and "The Law of Peoples," *Critical Inquiry* 20 (1993) 36–68.

acquired abilities, or their particular goals, desires, etc., the parties' self-interested choice will be tantamount to impartiality once the veil is lifted. Rawls's procedural framework thus enshrines fairness in the design of society's basic institutions. Such a society, as a compact of mutual advantage, would not discourage achievement or wealth, nor would it neglect to have a minimal social safety net, because any of the framers might end up as highly talented or socially disadvantaged in actuality. In order to preserve the paramount value of liberty (immunity from interference) in whatever social location they occupy, or whatever their particular ends might be, abstract citizens will construct a social order that gives no unfair advantage to any group.

The primacy accorded individual liberty as our foremost right lays a foundation for justice as fairness in a modern, pluralist society where we can no longer rely on extensive social ties of civic friendship. A just society is established by those who are party to its arrangements, which usually happens by birth and eventual acceptance of the prevailing order, just as subsequent generations who were born in America implicitly ratify the original constitutional contract that created the nation. The question of a national admissions policy emerges only tangentially, since Rawls, like his contractual forebears, Locke and Kant, takes for granted that such a society is closed.³⁶ Even though Rawls acknowledges certain "natural duties" to noncitizens, our disinterested, abstract citizens would have little reason to recognize strong *prima facie* rights of immigrants such as Maria or José.³⁷

Why, after all, should citizens accept limitations on their liberty arising from the social, economic, or cultural claims of those not party to their social contract? Do not most Americans cherish their freedom from interference, a liberty more important than any moral ties of benevolence or natural sentiment? Beneath public fears about immigration lies the conviction that the newcomers will not accept the American way of life, will never take responsibility for its foundations. And even if they did accept it, why should citizens be burdened for their benefit?

The more cosmopolitan liberalism of Bruce Ackerman and Joseph Carens strikes a dissenting note. They contend that Rawls's impartial sense of justice requires that the original contractors must also be ignorant about birthplace and parentage since they are "arbitrary from a moral point of view."³⁸ His rational choosers must represent not only

³⁶ William James Booth contends that the "founders of early modern liberalism . . . while systematically undermining the foundations of particularism that had sustained the classical acceptance of the hierarchy of 'townsmen, metic and foreigner' nevertheless made the community of members, and its boundaries, the locus of justice" ("Foreigners: Insiders, Outsiders and the Ethics of Membership," *The Review of Politics* 59/2 [Spring 1997] 259–92, at 266.)

³⁷ Rawls, *A Theory of Justice* 114.

³⁸ Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics* 49 (Spring 1987) 251–73, at 261; see also Carens, "The Rights of Immigrants," in

citizens, but also potential members of a social system which, if it is to be fair and complete, cannot remain closed.

Precisely because community is “no longer given an independent moral weight,” citizenship “appears as an ascriptive and morally irrelevant matter.”³⁹ Rawls’s gambit of restricting the original position to citizens of a closed, modern constitutional regime may thus secure the primacy of our rights and liberty, but apparently at the price of fairness for those like José or María who are not privy to the social contract.⁴⁰

Carens questions the wisdom of basing morality on a “realistic” pursuit of interests, short-term or long-term. “If any discussion of the ethics of migration should recognize reality, it should also consider whether we should embrace that reality as an ideal or regard it as a limitation to be transcended as soon as possible.”⁴¹ Refugees, after all, are “orphans of the state system.”⁴² On this score, the “global absolutists” concur with neo-classical liberal economists who champion the international mobility of labor as well as capital. Carens argues that the status quo of national sovereignty shapes our perceived interests in ways that may be morally indefensible. “Even if we do not have a realistic chance of bringing about a fundamental transformation of our social arrangements (or of ourselves), we should still assess current reality in the light of our highest ideals.”⁴³

Communitarian Members and Strangers

Communitarians object strenuously to the “view from nowhere” that characterizes the abstract citizens of political liberalism.⁴⁴ We have

Group Rights, ed. Judith Baker (Toronto: University of Toronto, 1994) 142–63; and “Membership and Morality: Admission to Citizenship in Liberal Democratic States,” in *Immigration and the Politics of Citizenship in Europe and North America*, ed. William R. Brubaker (Lanham, Md.: University Press of America, 1989) 31–49. See further Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University, 1980); and Charles R. Beitz, “Cosmopolitan Ideals and National Sentiment,” *Journal of Philosophy* 80/10 (October 1983) 591–600.

³⁹ Booth, “Foreigners: Insiders, Outsiders and the Ethics of Membership” 284.

⁴⁰ In later writings Rawls states that satisfying basic needs might become a priority for members of a just, liberal state, if only so that they can realize the fair value of their liberty; see his *Political Liberalism* 7. See also Yael Tamir’s contention that closure is justified only if “all nations have an equal chance of establishing a national entity The right to preserve cultural homogeneity is therefore contingent on the welfare of other nations” (*Liberal Nationalism* [Princeton: Princeton University, 1993] 161.)

⁴¹ Joseph H. Carens, “Realistic and Idealistic Approaches to the Ethics of Migration,” *International Migration Review* 30/1 (Spring, 1996) 156–70, at 166.

⁴² Joseph H. Carens, “States and Refugees: A Normative Analysis,” in *Refugee Policy: Canada and the United States*, ed. Howard Adelman (Toronto: York Lanes, 1991) 18–27, at 23.

⁴³ Carens, “Realistic and Idealistic Approaches to the Ethics of Migration” 167.

⁴⁴ See Booth, “Foreigners: Insiders, Outsiders and the Ethics of Membership” 287–92. Curiously, in referring to the “political institutions of a constitutional regime and the public traditions of their interpretation” Rawls evokes the leitmotif of communitarian

roots that can and often do nourish moral life. Echoing Edmund Burke's appeal to the "latent wisdom" of our particular national traditions, communitarianism favors the "politics of the common good" over the "politics of rights." "Rights-based liberalism" begins with assumption of separate, abstract citizens, each with their own individual aims and interests. The starting point of communitarian ethics, conversely, is the "situated self," embedded within a particular political community and endowed by birthright with a distinctive cultural heritage.⁴⁵ Knit together by shared history and sentiments, "we have," in Burke's words, "given to our frame of polity the image of a relation in blood, binding up the constitution of our country with our dearest domestic ties."⁴⁶ The underlying image is not the autonomous citizen but the extended family.

Our liberty, far from deriving from the peculiar self-interest of abstract citizens, "has a pedigree and illustrating ancestors. It has its bearings and its ensigns armorial" which the stranger may admire but never fully possess.⁴⁷ Custom is not despotic; rather, the Aristotelian virtue of civic friendship (*philia*) is the very font of liberty and civic obligation. In a body politic without boundaries would it be possible to preserve the relations of affinity and friendship that support moral loyalties? The sense of belonging to community makes us responsible to the obligations of membership. "How shall men love their country," asked Rousseau, "if it is nothing more for them than for strangers, and bestows on them only that which it can refuse to none?"⁴⁸ The question of membership (and hence of admissions) thus looms large. As Michael Walzer observes, "The primary good that we distribute to one another is membership in some human community. And what we do with regard to membership structures all our other distributive choices: it determines with whom we make those choices, from whom we require obedience and collect taxes, to whom we allocate goods and services."⁴⁹ Communitarianism reflects less the autonomy of discrete individuals

ethicists such as Alasdair MacIntyre, Michael Sandel, and Michael Walzer (Rawls, *Political Liberalism* 13–14).

⁴⁵ Michael Sandel, "Introduction," in *Liberalism and Its Critics*, ed. Michael Sandel (New York: New York University, 1984) 4, 6, 10; see also Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University, 1982); and Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame: University of Notre Dame, 1984) 204–43.

⁴⁶ Edmund Burke, *Reflections on the Revolution in France* (New York: Liberal Arts, 1955) 38–39.

⁴⁷ *Ibid.*

⁴⁸ Jean-Jacques Rousseau, "A Discourse on Political Economy," *The Social Contract and Discourses*, trans. G. D. H. Cole (New York, 1950) 302–3; Rousseau's defense of natural rights renders him a Janus-faced figure in this respect.

⁴⁹ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983) 31; see also his "The Moral Standing of States," *Philosophy and Public Affairs* 9 (1980) 209–29; and his "Nation and Universe," in *The Tanner Lectures on Human Values XI* (Salt Lake City: University of Utah, 1990). For a comparative analysis of Rawls and Walzer on admissions policy, see Mark Gibney, *Strangers or Friends: Principles for a New Alien Admission Policy* (New York: Greenwood, 1986) 3–34.

and their rights than the autonomous narratives of moral communities which are themselves “not pervasively subject to the constraints of justice.”⁵⁰

The root metaphor of members or strangers colors our perception of José, María, and their children. The communitarian appeal to a sense of belonging finds extreme expression in Peter Brimelow’s contention that Americans “have a right to insist that their government stop shifting” the country’s racial balance from its “specific ethic core” that “has been white.”⁵¹ The debate over immigration is driven in considerable part by concerns about national identity: Can it survive under the constant inflow of immigrants, particularly of those who seem unwilling to assimilate into the linguistic and economic mainstream? There are limits to the elasticity of any community.⁵²

Communitarians do not necessarily argue for impregnable barriers against newcomers, particularly in the American polity that has seen itself as a nation of immigrants. While defending a “limited” right of closure, subject to “the external principle of mutual aid,” Walzer insists that the very nature of membership, as our primary social good, imposes moral constraints upon naturalization. “Every new immigrant, every refugee taken in, every resident and worker must be offered the opportunities of citizenship.” No community composed of half citizens and half “guest workers” could reasonably “claim that its admissions policies are acts of self-determination or that its politics is democratic.” In fact, history’s most common form of tyranny occurs when citizens rule over noncitizens and members rule over strangers.⁵³

“Guest workers” become entitled to the privileges of membership the longer they contribute to the common life. We cannot simply identify “members and strangers” with “citizens and aliens.” Even on communitarian grounds, therefore, José and María have a moral claim based on long-term residency and work as de facto, if not de jure, members of our political community.⁵⁴ Ironically, Brimelow’s appeal to racial and ethnic membership attests to our multiple memberships that overlap other types of national community boundaries. Brimelow is not discomfited by his British origins; his claim to membership in the U.S. rests on the fact that he is white.

Matters become even more complicated if we consider that pluralism

⁵⁰ Walzer, *Spheres of Justice* 61

⁵¹ Peter Brimelow, *Alien Nation* (New York: Random House, 1995) 264

⁵² See Ruben G. Rumbaut, “Paradoxes (and Orthodoxies) of Assimilation,” *Sociological Perspectives* 40/3 (1997) 483–511

⁵³ Walzer, *Spheres of Justice* 33, 45–46, 62, 65

⁵⁴ Walzer thus argues that family admission “is a way of acknowledging that labor mobility has a social price. Since laborers are men and women with families, one cannot admit them for the sake of their labor without accepting some commitment to their aged parents, say, or their sickly brothers and sisters” (“The Distribution of Membership,” in Peter G. Brown and Henry Shue, ed., *Boundaries: National Autonomy and Its Limits* [Totowa, N.J.: Rowman and Littlefield, 1981] 1–35, at 12)

is an integral part of the American community heritage, and that the liberal rhetoric of rights may be the best defense of this pluralistic community. Perhaps we must finally concede that *our* political tradition depends upon the discourse of human rights in which José, María, and their children must be counted as equal participants.⁵⁵

Roman Catholic Social Teaching

The rival liberal and communitarian perspectives, as we have seen, find virtue in each other's vices. If Rawlsian liberalism finally rests upon an appeal to our public culture and tradition, so the tradition of communitarian ethics is nurtured by what Walzer describes as "America's heterogeneity"⁵⁶ and our Jeffersonian regard for universal, "unalienable rights." Criteria of an equitable admissions policy must finally respect both the good of our varied membership and the common rule of rights. Such, indeed, is the promise of the heritage of Catholic social teaching that in its modern development seeks a critical rapprochement between the "politics of the common good" and the "politics of rights."

Reflecting its Thomistic pedigree, the Catholic Church's social teaching preserves the moral centrality of the common good, interpreted analogically as "the sum total of those conditions of social living whereby [persons] are enabled to achieve their own integral perfection more fully and more easily."⁵⁷ Our mundane perfection in moral community (the *communitas perfecta*)⁵⁸ is translated into the rhetoric of human dignity and the rights and correlative duties that give it force. For "in our time the common good is chiefly guaranteed when personal rights and duties are maintained," which remains the principal "con-

⁵⁵ See Charles Taylor's communitarian account of a liberal polity in *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University, 1989).

⁵⁶ Michael Walzer, "Response to Veit Bader," *Political Theory* 23/2 (May 1995) 247-49, at 248. T. Alexander Aleinikoff writes of contemporary U.S. society, "No one ideology, religion or culture unites us. Ethnic and racial lines continue to separate Americans into distinct, self-identifying groups" ("Aliens, Due Process and Community Ties," *University of Pittsburgh Law Review* 44/2 [Winter 1983] 237-60, at 240-41).

⁵⁷ John XXIII, *Mater et magistra* no. 6, *Pacem in terris* no. 58, in *Catholic Social Thought*, ed. David J. O'Brien and Thomas A. Shannon (Maryknoll, N.Y.: Orbis, 1992) 94, 140; compare *Gaudium et spes* no. 26, in *Catholic Social Thought* 181. See David Hollenbach's analogical interpretation of the common good in "The Common Good Revisited," *TS* 50 (1989) 71-94.

⁵⁸ The Aristotelian-Thomistic notion of the "perfect community" signifies the finality and sufficiency of a political association to ensure human flourishing and its constituents; see Aristotle, *Nicomachean Ethics* 1094b7-10, 1129b15, 1143a1-3, 1160a9; *Politics* 1252a1-1253a38; Thomas Aquinas, *ST* 1-2, q. 90, a. 2. By analogy, the common good, conceived in terms of human rights and correlative duties, refers us to interrelation of social institutions (national, supra, and subnational) presumed for the realization of human dignity; see Ignacio Ellacuría, "Human Rights in a Divided Society," ed. and trans. Alfred Hennelly, in *Human Rights in the Americas: The Struggle for Consensus* (Washington: Georgetown University, 1982) 52-65.

cern of civil authorities.”⁵⁹ Yet while charting a *via media* between liberalism and communitarianism, the Church invokes a different root metaphor: neither “members or strangers” (set by the limits of *philia*), nor “abstract citizens” (generated by the “bracketing” of *philia*), but “near and distant neighbors” (established by the *ordo caritatis*, the right ordering of loves). We must “make ourselves the neighbor to absolutely every other person.”⁶⁰

How do we determine which neighbors are near and which are distant? As Thomas Aquinas specified Christ’s command of neighbor-love in the gradations of “the affection of charity” owed to one’s neighbor, so we can distinguish between general and special obligations of neighbor-love.⁶¹ Modern Roman Catholic social teaching interprets the general obligations of charity in terms of respect for persons’ equal dignity or inherent worth as created in the *imago Dei* and redeemed by Christ.⁶² In virtue of their inalienable dignity, persons are entitled to be treated with equal respect, regardless of their race, nationality, gender, or religion, that is, as *ab ovo* neighbors or members of a comprehensive moral community. Respecting persons as moral agents, moreover, implies respect for the conditions of their exercising agency—their “negative” civil-political liberties of participation as well as basic “positive” rights to security and subsistence (which, as Rawls recognized, must be presumed if equal liberty is to flourish).

Our equal basic rights, as prerequisites of moral agency, must be met first, since we must presume their satisfaction if we are to enjoy any other human right, e.g. property rights. Indeed, we can establish not only a moral ordering or hierarchy of human rights, but also of the duties correlative to such rights. Although “negative” duties of forbearance fall generally upon all individual or collective agents (none may deprive a neighbor of basic rights), “positive” duties of protection and aid are typically mediated by our social institutions and particular social roles. Our specific duties to protect our neighbor from malnutrition or to aid the victims of torture, for instance, are determined by the complex “conditions of social living” that for John XXIII constitute the

⁵⁹ John XXIII, *Pacem in terris* no 58, in *Catholic Social Thought* 141

⁶⁰ *Gaudium et spes* no 27, see *Catechism of the Catholic Church* (Liguori, Mo Liguori, 1994) nos 1825, 2196, 2443–49

⁶¹ See ST 2–2, q 26, a 6 Our translation is from Thomas Aquinas, *Summa theologiae*, trans R J Batten (New York Blackfriars/McGraw Hill, 1975) Our appeal to Aquinas’s conception of the *ordo caritatis* rests on his formal distinction of the love owed all equally and the differing kinds and degrees of neighbor-love, rather than on the specific material interpretation of our differential obligations, e.g. to parents or children As Stephen Pope argues, any contemporary interpretation of the ordering of love must respect the “dynamic patterns and processes of ordering” love in light of modern understandings of human nature, including its evolutionary development (“The Order of Love and Recent Catholic Ethics,” *TS* 52 [1991] 255–88, at 265)

⁶² John XXIII, *Pacem in terris* nos 9–10, 132 As we shall see in our concluding section, respect for the neighbor’s dignity, although foundational for the Catholic Church’s social teaching, by no means exhausts the moral import of Christian charity

common good.⁶³ These conditions refer us, in turn, to our varied narrative communities, so that the distribution of duties correlative to human rights is governed, in part, by special relationships of membership; for example, parents have a primary obligation to feed their own children. The moral priorities of an equitable admissions policy can thus be established by ordering rights and duties consonant with the ideal of the common good and mediated by the principle of subsidiarity, which defines the scope and limits of justified state intervention.⁶⁴ Let us briefly elaborate the heritage's understanding of the rights of migrants and refugees.⁶⁵

In modern Catholic social teaching, the legitimate sovereignty of states in regulating immigration serves the global common good. This means that states are morally bound to respect and promote the basic human rights of both citizen and resident alien, especially the most vulnerable. Persons are entitled to be treated in accordance with their equal dignity. Such respect justifies preferential attention to those whose basic rights are most systemically imperilled, such as refugees, migrants, and of these, women and children in particular, who are especially vulnerable to exploitation. *Pacem in terris* thus affirms not

⁶³ For an analysis of basic rights and duties, see Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University, 1980) 5–87.

⁶⁴ In the words of Pius XI, it “is an injustice and at the same time a grave evil and a disturbance of right order to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies. Inasmuch as every social activity should, by its very nature, prove a help [*subsidium*] to members of the body social, it should never destroy or absorb them” (*Quadragesimo anno* no. 79, in *Catholic Social Thought* 60). David Hollenbach writes that the “principle of subsidiarity is the Catholic tradition’s shorthand expression for the importance of claims arising from the concrete experience of group life. It is an abbreviated way of stating the difference between society viewed as a mass of individuals unrelated except through the state and society considered as a people who are related and active in many diverse kinds of associations” (*Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition* [New York: Paulist, 1979] 157–58).

⁶⁵ See especially *Rerum novarum* nos. 32, 35; Pius XII, “The Anniversary of *Rerum novarum*”; *Exsul familia* (the entire document); *Mater et magistra* no. 45; *Pacem in terris* nos. 11, 25, 94–108; *Gaudium et spes* nos. 27, 66; *Populorum progressio* nos. 66–69; *Instruction on the Pastoral Care of People Who Migrate* (Sacred Congregation of Bishops); *Octogesima adveniens* no. 17; *Justice in the World* nos. 20–24; *Laborem exercens* no. 23; *Sollicitudo rei socialis* nos. 24, 38; *Redemptoris missio* nos. 37, 82; *Centesimus annus* nos. 18, 57–58; and the *Catechism of the Catholic Church* no. 2241. For an analysis of the implications of Catholic social thought in the American context, see Office for the Pastoral Care of Migrants and Refugees, National Conference of Catholic Bishops and the Department of Education, United States Catholic Conference of Bishops, *Who Are My Sisters and Brothers? Reflections on Understanding and Welcoming Immigrants and Refugees* (Washington: USCC, 1996), and *Today’s Immigrants and Refugees: A Christian Understanding* (Washington: USCC, 1988). For an ecumenical statement of the German churches, see “. . . und der Fremdling, der in deinen Toren ist: Gemeinsames Wort der Kirchen zu den Herausforderungen durch Migration und Flucht (Bonn: Kirchenamt der Evangelischen Kirche in Deutschland, und das Sekretariat der Deutschen Bischofskonferenz, in Zusammenarbeit mit der Arbeitsgemeinschaft Christlicher Kirchen in Deutschland, 1997).

only the commonly recognized right to emigrate, but the right to immigrate as well: "when there are just reasons for it," every human being has "the right to emigrate to other countries and to take up residence there." The loss of citizenship "does not detract in any way from [one's] membership in the human family as a whole, nor from [one's] citizenship in the world community."⁶⁶

In addition, the Catholic Church recognizes persons' right to change nationality for social and economic as well as political reasons. In view of the "common purpose of created things [and the mutually implicatory character of basic "positive" and "negative" rights], where a state which suffers from poverty combined with great population cannot supply such use of goods to its inhabitants . . . people possess a right to emigrate, to select a new home in foreign lands and to seek conditions of life worthy" of their common humanity.⁶⁷ Paul VI thus urged acceptance of "a charter which will assure [persons'] right to emigrate, favor their integration, facilitate their professional advancement, and give them access to decent housing where their families can join them."⁶⁸ Such a charter would recognize José, María, Jesús, and Guadalupe as full moral interlocutors—as indeed their namesakes were in Christian tradition.⁶⁹

The Catholic Church's social teaching will remain only aspirational unless it can also provide some practical priorities for determining obligations to near and distant neighbors in an equitable admissions policy. The graduated urgency of human rights and duties provides that those whose basic rights are most imperilled have the strongest claim. In descending order, priority would first be accorded victims of persecution, then those suffering the systemic deprivation of their basic rights (including subsistence), those suffering the denial of less basic rights, and finally those exercising their right to emigrate for economic advantage. The obligations falling upon states generally are specified further by the particular responsibilities deriving from special relationships with refugees or migrants: familial relationship, complicity of the host country in generating immigration/refugee flows,⁷⁰ and historical or cultural affiliations (e.g. patterns of migration). International policies, moreover, must ensure the fair distribu-

⁶⁶ *Pacem in terris* no 25, in *Catholic Social Thought* 134 See Hannah Arendt's remark that migrants' "loss of home and political status become identical with expulsion from humanity altogether" (*The Origins of Totalitarianism*, new ed [San Diego Harcourt Brace, 1973] 297)

⁶⁷ *Instruction on the Pastoral Care of People Who Migrate* no 14

⁶⁸ Paul VI, *Octogesima adveniens* no 17, in *Catholic Social Thought* 271

⁶⁹ In the words of Pius XII, "The emigre Holy Family of Nazareth, fleeing into Egypt, is the archetype of every refugee family Jesus, Mary and Joseph, living in exile in Egypt to escape the fury of an evil king, are, for all times and all places, the models of protectors of every migrant, alien and refugee of whatever kind" (*Exsul familia*, in *Chiesa e mobilita umana Documenti della Santa Sede dal 1883 al 1983* [Rome Centro Studi Emigrazione, 1983])

⁷⁰ See Walzer, "The Distribution of Membership" 20

tion of burdens (which countries should offer asylum) and benefits (which countries should benefit from immigration of skilled workers). The latter consideration applies domestically as well, since in implementing policy, the burdens of immigration should not fall disproportionately upon the most vulnerable citizens.

In a world ever more interdependent, the catholicity of the Church demands that citizens seek a "continual revision of programmes, systems and regimes" so as to guarantee the full and effective implementation of the basic human rights of the most vulnerable, such as those condemned to stateless existence in camps of first asylum.⁷¹ The virtue of solidarity with both near and distant neighbors enjoins hospitable treatment of those seeking to change nationality, assistance in their integration to a new homeland, and respect for their cultural heritage. Wealthier states must bear an equitable share of the burden borne by the poorer countries of first asylum. And where domestic laws and practices infringe upon refugees' or migrants' basic rights, the priority of natural or human rights calls for providing sanctuary.⁷²

Catholic social teaching seeks not only to protect and extend the legal rights of migrants, refugees, and their families, but, above all, to redress the "oppression, intimidation, violence and terrorism" that impel them to flee or render them stateless.⁷³ The duties of states to aid and protect migrants and refugees presume the antecedent duty of preserving an international social order (the global common good) in which the basic rights of the most vulnerable are protected. A recent report of the United Nations Development Programme shows that the opposite is occurring: "Since 1960 global inequality has increased beyond anything ever experienced . . . over the past 35 years the ratio of the incomes of the richest 20% to those of the poorest 20% has increased from 30 to 1 in 1960 to 61 to 1 in 1991 and to 78 to 1 in 1994."⁷⁴ It is obvious that population displacements will continue to occur so long as 1.3 billion people survive on less than the equivalent of one dollar a day, a billion people are illiterate and lack safe access to potable water, and some 840 million go hungry or face food insecurity.

⁷¹ John Paul II, *Dives in misericordia* no. 17.

⁷² For a fine assessment of the ethics of admissions policy from the perspective of both Roman Catholic and Protestant thought, including the role of sanctuary, see Dana W. Wilbanks, *Re-Creating America: The Ethics of U.S. Immigration and Refugee Policy in a Christian Perspective* (Nashville: Abingdon, 1996); see also Joseph L. Allen, *Love and Conflict: A Covenantal Model of Christian Ethics* (Nashville: Abingdon, 1984); Max L. Stackhouse, *Creeeds, Society and Human Rights: A Study in Three Cultures* (Grand Rapids: Eerdmans, 1984); and Dietmar Mieth and Lisa Sowle Cahill, ed., *Migrants and Refugees* (Maryknoll, N.Y.: Orbis, 1993).

⁷³ John Paul II, *Redemptor hominis* no. 17; see Drew Christiansen, "Movement, Asylum, Borders: Christian Perspectives," *International Migration Review* 30/1 (Spring 1996) 7-17.

⁷⁴ UNDP, *Human Development Report 1997* 107-10.

riety.⁷⁵ Only where the stranger is treated as neighbor will the gospel promise of solidarity (Matt 25:35) be redeemed as “the indispensable basis for authentic justice and the condition of enduring peace.”⁷⁶

THE CHRISTIAN SURPLUS OF MEANING

The story of migrants such as José, María, and their children varies with the telling, for what we “see” or “hear” is shaped by the moral metaphors invoked in our own narrative. Are they members or strangers, citizens or illegal aliens, a tidal wave of invaders hitting U.S. shores? Our ethical criticism aims to create the moral space in which a different story may be told, one populated not with abstract citizens or members, but with neighbors, near and distant. Love of neighbor, after all, is the supreme Christian commandment. It may be translated, in part, into the ethical maxim of equal respect for persons as moral agents.⁷⁷ Nevertheless, the Christian narrative of discipleship is not exhausted by respecting the equal dignity of moral persons and their cognate rights and duties. A surplus of meaning remains, which we want to explore in this concluding section.

The Gospels challenge the usual notion of neighbor. The great commandment of love is often regarded as the centerpiece of Christian ethics because it joins the twin tables of the law (Deut 6:5 and Lev 19:18, 33–34) as a “‘canon within the canon,’ a hermeneutical principle and an ethical canon by which the Torah can be judged.”⁷⁸ In Mark’s Gospel, a scribe asks Jesus, “Which commandment is the first of all?” And Jesus replies, “The first is, ‘Hear, O Israel: The Lord our God, the Lord is one; and you shall love the Lord your God with all your heart, and with all your soul, and with all your mind, and with all your strength.’ The second is this, ‘You shall love your neighbor as yourself’” (Mark 12:28–34).

Only in Luke do we find the full meaning of “neighbor.” Seeking to ensnare Jesus, a lawyer asks, “What must I do to inherit eternal life?” Jesus asks in reply, “What is written in the Law? What do you read there?” And the lawyer gives “the right answer” in reciting the great commandment (Luke 10:25–28). But the lawyer, seeking to justify himself, poses a further question, “And who is my neighbor?” (v. 29).

⁷⁵ Ibid. 5.

⁷⁶ Paul VI, *Octogesima adveniens* no. 17, in *Catholic Social Thought* 271. A more radical interpretation of current global inequality can be found in Michael Campbell Johnson, “A Civilisation of Poverty,” *The Tablet* [London], 12 July 1997, 888–90, and in Dean Brackley, “A Radical Ethos,” *Horizons* 24 (1997) 7–36.

⁷⁷ See Gene Outka, *Agape: An Ethical Analysis* (New Haven: Yale University, 1972); also his “Universal Love and Impartiality,” in *The Love Commandments: Essays in Christian Ethics and Moral Philosophy*, ed. Edmund N. Santurri and William Werpehowski (Washington: Georgetown University, 1992) 1–103.

⁷⁸ Wolfgang Schrage, *The Ethics of the New Testament*, trans. David E. Green (Philadelphia: Fortress, 1988) 71.

Jesus responds by telling the strange yet familiar parable of the Good Samaritan (Luke 10:29–37). It is familiar because the tale seems to be a hortatory “example story,” illustrating the great commandment. Yet it is strange, because as John Donahue observes, “Luke subtly alters the thrust of the parable.” Jesus does not so much answer the lawyer’s question as “describe what it means to be a neighbor, which then becomes the substance of [his] counterquestion in Luke 10:36, ‘Which of these three, do you think, was a neighbor to the man who fell into the hands of the robbers?’”⁷⁹ The lawyer’s response, “the Samaritan,” is marked with irony, since it is the despised schismatic of Samaria who reveals the meaning of the law to the lawyer.⁸⁰ And Jesus, with no less irony, then bids him, “Go, and do likewise.”

The parable plays off three sets of pairs: the Samaritan and the half-dead stranger, the lawyer and the Samaritan, and implicitly, the reader and the Samaritan. Jesus answers the lawyer’s initial question (“What must I do to inherit eternal life?”) by pointing to the Samaritan; one must see and have compassion even upon a half-dead stranger. It is not enough, says Jesus, to love one’s neighbor as oneself; the disciple must become a neighbor to the despised stranger if she or he is to follow Jesus on “the way.” In Jesus’ reading of the law, “the world with its sure arrangement of insiders and outsiders” is subverted by God’s reign.⁸¹

The question “Who is my neighbor?” seeks to discover the limits of love. Finally, however, it is not the lawyer (or reader) who sets the limits of love, even by extending them universally, e.g. to encompass the stranger in our midst. The question is turned back on the questioner: “Who will you be neighborly to?” The disciple is not the still point from which love radiates; rather what love requires, says Karl Rahner, is not merely this or that deed of love, but one’s very self “in the concreteness of one’s heart.”⁸² The Samaritan is moved in his inmost heart by compassion. This affection becomes a way of seeing, of perceiving, so that doing likewise comes to be the story of our lives. The

⁷⁹ John Donahue, “Who is My Enemy? The Parable of the Good Samaritan and the Love of Enemies,” in *The Love of Enemy and Nonretaliation in the New Testament*, ed. Willard M. Swartley (Louisville: Westminster/John Knox, 1992) 144.

⁸⁰ As Donahue notes, the lawyer’s response, “The one who showed him mercy” (Luke 10:37), alludes to the prophetic tradition of Hoseah 6:6 and Micah 7:8, whose authority was not recognized by Samaritans. Not only, then, “is the Samaritan a neighbor but he acts according to those scriptures which the lawyer himself recognizes as authoritative” (“Who is My Enemy?” 145).

⁸¹ Bernard Brandon Scott, *Hear Then the Parable: A Commentary on the Parables of Jesus* (Minneapolis: Fortress, 1989) 202.

⁸² Karl Rahner, “The ‘Commandment’ of Love in Relation to the Other Commandments,” in *Theological Investigations* 5, trans. Karl H. Kruger (New York: Seabury, 1966) 439–59, at 453; see also his “The Theology of Freedom,” in *Theological Investigations* 6, trans. Karl and Boniface Kruger (New York: Seabury, 1974) 178–96.

parable seduces us (see Jeremiah 20:7) by inviting us to make a decisive response and let itself become our story.⁸³

Compassionate seeing is at the same time the listening of memory, since Leviticus reminds us, "The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt: I am the Lord your God" (Lev 19:34). Loving the resident alien thus becomes the reenactment of the Exodus story and the revelation of Israel's identity. So too, the Christian follows Jesus' exodus to the Father by becoming neighbor to the *anawim* in the way (*hodos*) of discipleship (Luke 10:33).⁸⁴ Gustavo Gutiérrez writes that to "be a Christian is to draw near, to make oneself a neighbor, not the one I encounter in my journey but the one in whose journey I place myself."⁸⁵ Patristic testimony identifies Christ with the Good Samaritan, thus creating a final pair in the story.⁸⁶ Not only is the Samaritan identified with the half-dead stranger, and the reader with the Samaritan, but Christ is identified with the reader as she or he begins to act like the Samaritan. The disciple becomes what Christ is because Christ is first what she is,⁸⁷ a neighbor who "sees and has compassion" on our wounded humanity.

How we "see" José, María, Jesús, and Guadalupe in our midst thus becomes a trial of identity for Christians. Either we emulate Jesus by "seeing and having compassion" (Luke 10:33–34) or we emulate the priest and Levite who "saw and passed by on the other side" (Luke 10:31–33). If the latter, then we forsake our saving memory, our Christian story that must be proved in deed in the way of discipleship. Loving our neighbor as ourselves requires that, in respecting all, we respond in particular to those whose equal rights are most imperilled. Yet the parable of discipleship demands not only that we take "the victim's side," in Camus's words,⁸⁸ but that we take it as our own, entering into solidarity with the immigrant and refugee in our midst.

In conclusion, we note several pastoral implications of such an ethics of discipleship.

If we are to prove ourselves neighbors, then we must cultivate a compassionate "way of looking . . . attentive," in Simone Weil's words, to the immigrant or refugee "in all his truth." We must come, that is,

⁸³ Robert Funk, *Language, Hermeneutic, and Word of God* (New York: Harper and Row, 1966) 214, 220.

⁸⁴ For the theological significance of the "way" in Luke, see J. A. Fitzmyer, *The Gospel According to Luke I–X*, Anchor Bible 28 (Garden City, N.Y.: Doubleday, 1981) 169–71.

⁸⁵ Gustavo Gutiérrez, "Toward a Theology of Liberation" (1968), ed. and trans. Alfred T. Hennelly, in *Liberation Theology: A Documentary History* 62–76, at 74.

⁸⁶ See John Donahue, *The Gospel in Parable* (Philadelphia: Fortress, 1988) 133–34; Augustine, *Quaestiones evangeliorum* 2.19; see also *De natura et gratia* 43, 50.

⁸⁷ See Gerard Manley Hopkins, "That Nature is a Heraclitean Fire and of the Comfort of the Resurrection," in *A Hopkins Reader*, ed. John Pick (New York: Image, 1966) 80–81.

⁸⁸ Albert Camus, *The Plague* (New York: Alfred A. Knopf, 1960) 230.

to see the immigrant or refugee “not only as a unit in a collection, or a specimen from the social category labeled ‘unfortunate’, but as a man, exactly like us, who was one day stamped with a special mark by affliction.”⁸⁹ This involves not only learning of the cultural richness of the migrants’ heritage, but also unlearning the racial and ethnic bias embedded in the metaphors that “efface” them.⁹⁰ Our churches, organized nationally and even globally, but rooted locally, have a vital role to play in the public sphere. As Dana Wilbanks observes, “In the current international context, there seem to be few voices and little institutional weight to defend the cause of migrants in the face of national restrictiveness. For religious communities to persist in this public advocacy is a major challenge and responsibility.”⁹¹

This public advocacy, like the wise scribe of Matthew 13:52, will draw elements from the storehouse of religious metaphors and it will appeal to universally applicable ethical precepts of neighbor-love. Responding as neighbor to migrants will be joined to respecting one’s neighbor as a subject of dignity and bearer of rights. Our distinctive religious commitments thus underwrite our public advocacy, as is evident in the ecumenical and interreligious sanctuary movement of North America and Europe. In Wilbank’s words, “Christian and Jewish activists drew imaginatively on their narrative traditions as they responded to refugees in their midst. Sanctuary symbolized the responsibility of religiously motivated communities to protect persons seeking to escape from life threatening violence. . . . Sanctuary activists interpreted and explained the ethical basis for their action, but the deed of opening churches and synagogues as protective communities itself communicated the heart of the ethical perspective.”⁹²

As citizen-disciples see and have compassion, so compassion becomes a way of seeing, of wisdom—the Solomonic gift which 1 Kings 3:3–14 depicts as a “listening heart.”⁹³ There is no substitute for direct one-to-one contact with refugees and migrants. In our parishes, we can acquire discerning hearts by hearing refugees and migrants tell their own tales, stories which should rekindle the memories of an immigrant Church in the U.S. or Canada. “You shall not oppress a resident alien; you know the heart of an alien, for you were aliens in the land of Egypt”

⁸⁹ Simone Weil, “Reflections on the Right Use of School Studies with a View to the Love of God,” in *Waiting for God*, trans. Emma Graufurd (New York: G. P. Putnam’s Sons, 1951) 115.

⁹⁰ As Ismael García notes, “Day after day Hispanics live with the indignity of having their culture, language, sense of beauty, and way of life devalued and criticized as inadequate in providing resources to make sense out of life” (“Theological and Ethical Reflections on the Church as a Community of Resistance,” *Journal of Hispanic/Latino Theology* 4/3 [February 1997] 42–73, at 47).

⁹¹ Dana Wilbanks, “Response to Christiansen and Plaut,” *International Migration Review* 30/1 (Spring 1996) 27–36, at 27–28.

⁹² *Ibid.* 34.

⁹³ See Roland Murphy, “Wisdom in the Old Testament,” in *The Anchor Bible Dictionary* 6, ed. David Noel Freedman (New York: Doubleday, 1992) 920–31, at 925.

(Exod 23:9).⁹⁴ In seeing José, María, Jesús, and Guadalupe at the common eucharistic table, we come to discern the body of Christ (1 Corinthians 11:17–34) so often obscured by class division and ethnic strife.⁹⁵ Disciples of Jesus hear the truth of Robert Frost's poetry:

Before I built a wall I'd ask to know
 What I was walling in or walling out,
 And to whom I was like to give offense.
 Something there is that doesn't love a wall,
 That wants it down.⁹⁶

⁹⁴ Such listening necessarily affects the terms of theological discourse. As Ada María Isasi-Díaz observes, "Often we have seen the experiences of other marginalized groups, including Hispanics, molded to fit into the accepted formats of theological discourse. We believe this has led to distortions that have resulted in new ways of silencing these groups, such as using their experiences as examples to illumine answers to questions determined by those who control the systems, while never allowing the marginalized groups to pose the questions" (*En La Lucha/In the Struggle: Elaborating a Mujerista Theology* [Minneapolis: Fortress, 1993] 63). For further ethical criticism from an ecumenical Hispanic perspective, see the articles by Milagros Peña, Allan Figueroa Deck, S.J., and Ismael García in *Journal of Hispanic/Latino Theology* 4/3 (February 1997).

⁹⁵ See Raymond Facéline, "Une théologie en situation," *Revue des sciences religieuses* 48 (1974) 320, and the comments on Facéline's article in Robert J. Schreiter, *Constructing Local Theologies* (Maryknoll, N.Y.: Orbis, 1985) 39–49.

⁹⁶ Frost, "Mending Wall," in *Complete Poems of Robert Frost* 48.

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