

Towards a Non-Positivist Approach to Cosmopolitan Immigration: A Critique of the Inclusion/Exclusion Dialectic and an Analysis of Selected European (Im)migration Policies*

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This interdisciplinary paper identifies principles of an affluent country (im)migration policy that avoids: (1) the positivist inclusion/exclusion mechanism of liberalism and communitarianism; and (2) the idealism of most cosmopolitan (im)migration theories. First, I: (a) critique the failure of liberalism and communitarianism to consider (im)migration under distributive justice; and (b) present cosmopolitan (im)migration approaches as a promising alternative. This paper's central claim is that cosmopolitan (im)migration theory can determine normative shortcomings in (im)migration policy by coupling elements of Frankfurt School methodology to case studies of (im)migration regimes. Lastly, I apply this analytical procedure to recent special changes in Spanish and UK immigration law.

Keywords: *Immigration, Cosmopolitanism, Distributive Justice, Habermas, Critical Theory*

1. INTRODUCTION

This paper addresses an important issue for international justice: (im)migration rights. Both social science and political philosophy have produced growing bodies of literature responding to the issues of cross-border human migration, an increasing phenomenon due to globalization. However, often these literatures are not in communication because political philosophy generally prioritizes a normative approach that social science methodology mostly excludes. This interdisciplinary paper attempts to bridge this gap.

A primary aim of the paper is to establish some principles of an affluent country (im)migration policy that avoids: (1) the positivist inclusion/exclusion mechanism characteristic of most liberalism and communitarianism; and (2) the abstract idealism of most normative cosmopolitan (im)migration theories. Section II, a literature overview, presents: (a) how most liberal and communitarian theories fail to consider (im)migration as a domain subject to distributive justice; and (b) why cosmopolitan (im)migration approaches represent a promising alternative. Section II concludes by identifying this paper's central claim: we can improve the capacity of cosmopolitan (im)migration theory to determine normative shortcomings in this policy domain by coupling elements of first-generation Frankfurt School dialectical methodology to case studies of actual (im)migration regimes. Section III critiques cosmopolitan and liberal (im)migration theory for excessively abstract normative principles that do not adequately address the radical facticity of the relative interest positions of people in flow-origin and flow-target countries. I particularly criticize liberalism's asymmetrical emigration/immigration rights and use a methodology derived from first-generation Frankfurt School dialectics to model an alternative approach to (im)migration norms based on linking identified theoretical/discursive contradictions to socio-ethical injury. Finally, section IV applies the analytical procedure outlined in section

* This work was supported by Hankuk University of Foreign Studies Research Fund of 2010.

III to examine two case studies. Recent special changes to Spanish and UK immigration law are used to elucidate the viability of the principle of (im)migration rights as restitution for historical injustice.

2. LITERATURE OVERVIEW

In addition to the theoretical and empirical study of (im)migration by political scientists, economists, and sociologists, political philosophers have contributed to (im)migration studies by addressing its normative aspects: e.g., in terms of justice (primarily (re)distributive and social), communitarian rights and the exclusivity to which nation-states are ostensibly entitled as a function of their character as “political associations,” and contemporary politico-economic cosmopolitanism.¹ Much of this (im)migration literature is devoted to either critiquing the legitimacy of entry and settlement restrictions (this amounts to arguing for more open borders), or justifying them in their current/future forms.

Walzer (1983: 41-42, 63; 2002) and Meilaender (2001: 1, 163) represent a communitarian perspective endorsing restrictive entry/settlement controls as means of preserving a potential flow-recipient country’s cultural self-determination and character. Both authors also proffer variants of this claim specifically centered on protecting the decision-making integrity of a country’s *political* culture and institutions (Walzer 1983: 40-41; Meilaender 2001: 81-82, 167). Following Seglow (2005), polities are considered “like clubs or associations... with the freedom to decide who is privileged to be admitted,” a position also articulated by the liberal egalitarianism of Barry (1992: 284) and Miller’s liberal nationalism (2005: 199-200). The salient point of these positions is that the right of a polity’s citizens to construct and maintain their political association is (usually) more essential than the interest of migrants in cross-border movement, from which priority follow restrictive state controls on the entry/settlement of immigrants.

Central to these conclusions are the arguments that justice ((re)distributive, social) is not a relevant category for evaluating (im)migration claims. This notion cuts across various political ideologies. Walzer’s communitarian support of restrictive (im)migrant entry/settlement controls posits that those wishing to migrate to a different country have practically no recourse to justice to resist exclusion by the target polity (Walzer 1983: 61). As is well-known, in his *Law of Peoples* Rawls declines to extend the domain of distributive justice internationally. That liberal justice stops at the nation-state border has stark consequences for (im)migration, as Rawls reasons that entry/settlement restrictions are a strong, essential (however “qualified”) prerogative of the nation-state (Rawls 1999: 39, n. 48). It is not necessarily the case, however, that excluding (im)migration issues from the purview of distributive justice entails support for restrictive admittance policies, as Seyla Benhabib’s work has proven. Certainly she argues that the level of cooperation in global socio-economics and politics is currently too underdeveloped to fit within the range of domains applicable to traditional distributive justice. This leads her to privilege democratic

¹ Here I note three points. First, the cosmopolitanism addressed in this article is essentially contemporary political cosmopolitanism. Second, the frameworks listed above for considering (im)migration are neither exhaustive nor mutually exclusive. Lastly, a family of approaches neglected by my list is that of economic arguments (e.g., those based on the phenomenon’s utility). Length constraints preclude examining these arguments.

sovereignty vis-à-vis global justice claims,² such that justice is not a very salient category for examining international migration (Benhabib 2004: 72-73, 95-105). Yet her work defies simple synopsis: its cosmopolitan appeal for “porous” borders finds an important ground in the nexus of discourse ethics (especially concerning human rights) and cultural hybridity, which function together to strengthen deliberative democracy both within the polity and internationally (Benhabib 2002: 152-154; 171-177).

The most significant currents of thought considering (im)migration through the prism of justice do so in terms of the global extensibility of justice ((re)distributive, social) global. This serves as a remedy to cases where liberals and communitarians arbitrarily circumscribe justice within the nation-state. Cole (2000: 13, 43-59) and Dummett (2001: 22-26) are exemplary: the former argues against the notion of restricting liberty (freedom of movement qua a “basic liberty” for all persons) based on the arbitrariness of a person’s birth locale, while the latter defends more open borders insofar as (im)migration is necessary for equal opportunity (considered a primary good of all persons in a regime of global justice). Kymlicka (2001) notes two liberal problems concerning international rights allocation (including the right to migrate in order to secure membership in a different polity from one’s own). First, most liberal arguments *illicitly transform* from *person* to *citizen* the category of agent under consideration for receiving the political goods of distributive justice. This rhetorical elision ignores how socio-political exclusion or inclusion is unmerited and thus irrelevant to liberal moral and justice claims. The membership question begged, thus is conjured away the entailment that self-consistent liberal theory would grant wide (im)migration rights founded on distributive justice claims extensible internationally because aliens are persons (ibid.: 249-252). Second, most liberal theories precipitously accept a radically counterfactual—yet fundamental—political assumption: namely, conceptually borders are considered an unconditioned, immutable framework in which arguments about justice are advanced, and are thus outside liberalism’s domain (ibid.).³ Ultimately Kymlicka’s arguments support the *conditional* applicability of the calculus of the original position as a way of granting the right to free(er) (im)migration (ibid.: 270-272). Stated differently, he acknowledges justice as a category relevant to (im)migration by conditioning the permissibility of states’ restrictive entry/settlement policies on their fulfillment of international justice obligations vis-à-vis less well-off states that are the preponderant source of cross-border migration (ibid.).

Because cosmopolitanism developed significantly as a response to liberal unwillingness to extend justice claims internationally, generally cosmopolitans engaged with (im)migration theory skew toward considering it as having an essential *internal* relation to justice.⁴ What is

² In an earlier work, she contextualizes her cosmopolitan (im)migration argument (a “third” way between “open borders” universalism and restrictive border controls) by commenting that human rights considerations beg political theory to “reconcile” the “fair treatment of aliens and others” with “claims to sovereign self-determination” (Benhabib 2002: 152). See also *The Rights of Others*, which reiterates that solving the (im)migrant rights question vis-à-vis communitarian and civic-republican claims of restrictive border prerogatives (grounded in “thick” conceptions of citizenship) demands “reconciling democratic politics with global egalitarian aspirations” (Benhabib 2004: 102).

³ Kymlicka (2001: 252) is particularly critical of Rawls(ians) on this count.

⁴ Benhabib’s (im)migration theory—which accepts liberal constraints on extending distributive justice globally—is remarkable (among other reasons) because it is unconventional in this regard, while also justifying “porous” borders via other cosmopolitan principles.

this exactly? Certainly communitarianism, and most “anti-international distributive justice” strains of liberalism (especially liberal nationalism), object to the extension of distributive justice internationally because their conception of distributive justice *presupposes a delimited polity including some people and excluding others*. Resting on a dialectic of inclusion and exclusion, the solidarity of members of *bounded polities*—today mostly sovereign nation-states—is thus taken as a *necessary* condition for just distribution of political and social goods. By contrast, according to their respective perspectives, most cosmopolitans argue that such a delimiting is either not really necessarily prerequisite to distributive justice at all, or no longer salient due to the border-effacing effects of globalization, or both. Given these possibilities *(im)migration rights become internal to justice because justice cannot plausibly be confined to the vacuum of a closed-system polity*. That is, cosmopolitan rights to justice via (im)migration are generated from the consideration that nation-states are embedded in a transnational order developed enough⁵ to legitimately demand that a nation-state’s (and its population’s) articulated justice principles should account for the expectations of justice principles claimed by other nation-states (and their populations).⁶

Beyond this, there is no cosmopolitan consensus about which principles and consequences of justice are salient for (im)migration. Carens (1987, 1992, 1994, 1999, 2001) developed seminal contributions to cosmopolitan theorizing of open borders, arguing that cross-border migration rights should constitute a fundamental liberty guaranteed by international justice. Tan (2004: 176) argues that distributive justice models must be linked to deliberative democracy extended internationally: affluent countries’ restrictive entry/settlement requirements “can be justly maintained only in a context of a global arrangement [of distributive justice] that those kept out can reasonably accept as reasonable.” Seglow (2005: 329-330) argues that well-off countries are obliged to establish comparatively (to the present) open (im)migration in the absence of international social justice achieved by a global minimum income (which mitigates (economically) induced migration anyway).

In comparison to cosmopolitanism’s accounting for pervasive, deep, fluid global interdependence, communitarianism and liberalism are anachronistically based and focused on comparatively closed and static territoriality. Thus they are unresponsive to contemporary cross-border human mobility, both forced and unforced. Communitarian justifications for restrictive (im)migrant entry/settlement requirements are flawed because generally communitarianism does not adequately account for modern/contemporary polities’ high-degree of internal diversity. Our world’s modern heritage of intra-nation-state heterogeneity renders counterfactual communitarianism’s central argument for refusing (im)migrants: cultural/political identity preservation. This is apart from most communitarians’ questionable position that justice is irrelevant to (im)migration because the category ostensibly ends at the state border, upon which is based the supposed naturalness that cultures and/or polities qua

⁵ Consider the rise of (albeit inadequately enforced) humanitarian law (including human rights conventions and *jus ad bello/jus in bello* laws of war), complex transnational political and socio-economic interdependences, and international and/or regional governance and systems-steering mechanisms (WTO, IMF, EU/ECB, UN, etc.).

⁶ This conclusion also reflects cosmopolitan arguments’ general aim of indicating how the nation-state is not the only (or best, largest) political unit in which obtain substantial, duty-generating solidary relations between persons. Consequently cosmopolitan social membership posits transnational citizen relations not directly mediated by the state.

“political associations” arrogate to themselves the legitimate authority to membership exclusivity as a function of the right to self-determination. Concerning liberals, the misapprehension of justice’s geographic extension is not the only reason for their support of (im)migrant entry/settlement strictures. Many liberal theories compound this misapprehension through the aforementioned (terminological) slippage of “person” to “citizen” and the blunt illogic of a (usually) tacitly assumed asymmetry between emigration and (im)migration rights. I address this latter issue in section III. There I argue, following Cole’s [2000] analysis of this asymmetry, that it represents a fatal contradiction in liberal theory.

As this literature review intimates, I think cosmopolitanism represents a theoretically, empirically, and normatively superior framework for (im)migration issues. Still, cosmopolitan (im)migration approaches merit critique. It is in this context that I address (im)migration issues in the following sections. First, taking it as canonical, I critique aspects of Habermasian cosmopolitan (im)migration theory. I show that its normativity is excessively abstract and leads to concrete, practical policy recommendations only with difficulty (I also indicate why this is problematic). Following from this critique I correct the identified deficiencies by offering a reframed analytical foundation. Namely, I import into Habermas’s approach a component of first-generation Frankfurt School critical theory because one of its central philosophical insights is that we can diagnose socio-ethical injury via the analogical relation of contradiction in political discourse to antagonism in the material social world, a relation itself derived from the insight that concepts and reality are dialectically related. Second, following my sketch of the contribution that a revived first-generation critical theory approach can make to cosmopolitan (im)migration theory, I delineate a variation of cosmopolitan “porous borders” based on the principle of (im)migration rights as restitution for historical injustice. Central to this section is the elaboration of two case studies: (1) 2009 British legislation permitting (im)migration of former Gurkhas, and (2) the Spanish government’s 2007 policy granting (im)migration rights to descendants of those exiled from Spain during the Franco dictatorship. These two examples not only demonstrate some principles of a restitutive (im)migration policy, which I indicate can/should be realized more extensively, but also do so by embodying how (im)migration as an ethico-political phenomenon has a concrete dimension—proceeding from actuality to theory—that complements the standard normative model of thinking that proceeds from theory to application in actuality.

3. THE CONSTRAINTS OF COSMOPOLITAN (IM)MIGRATION THEORY’S NORMATIVITY

(Im)migration debates are often Rorschach blots. Cultural conservatives and economic protectionists see receiving countries threatened by potential national security and public order breaches, socio-cultural discord, and declining middle-/lower-class living standards (e.g., (im)migrant induced unemployment and downward wage-pressure). True universalists fail to view the complexity of (im)migration beyond idealist notions of freedom of movement: this failure includes the inability to accept political reality and a blindspot regarding the possibility of emigration’s negative effects on sending countries.

The Rorschach scenario is particularly true of flows of economic migrants (as opposed to refugees and/or asylum seekers) from poor to wealthy countries. If the political, economic, and sociological worlds have reached varying conclusions about the *pragmatic, empirical*

desirability of this type of (im)migration, the critical theory world increasingly has used its philosophical impulses to contribute towards understanding the phenomenon's *normative* dimensions. Jürgen Habermas is exemplary in this regard, as he argues that the issue of international cross-border migration should not be considered from a perspective unduly privileging the point of view of relatively affluent receiving countries: “[W]e must also take the perspective of those who come to foreign continents seeking their well-being, an existence worthy of human beings” [Habermas 1998: 230]. This conclusion, a cosmopolitan adaption of the maximin criterion, opens up into a bright-line inductive claim: “One can cite good grounds for a moral claim [for supporting increased (im)migration of poor country inhabitants to wealthier societies]. People do not normally leave their homelands except under dire circumstances; as a rule the mere fact that they have fled is sufficient evidence of their need for help” [ibid.: 231].

If the maximin criterion is the clearly implied foundation of Habermas's statement regarding prosperous nations' ethical responsibility to be more willing recipients of migratory flows from poor countries, a crux of the overall philosophical problem of (im)migration remains unarticulated. This is the problem of arbitrariness: some people are born in generally well-off countries with advantages for realizing a fulfilled life, while others are born in generally poor countries with built-in disadvantages for living “an existence worthy of human beings.” Neither class of people is responsible for its birth circumstances; thus neither class can be attributed to deserve its lot in this regard. The arbitrariness of this state of affairs is considered a *fortiori* the case insofar as the relative affluence of an individual's birth country—the determinate factor for one's capacity to lead a fulfilled life—is largely based on historical contingency (boundary establishment, natural endowments, war outcomes, etc.). Especially for universalists the consequence of such arbitrariness for moral reasoning about (im)migration is that where one is born and lives ought not play a role (or only a minor one) in determining the allowability of cross-border migration. But beyond woolly idealism where this set of considerations for (im)migration circumstances cashes out is the difficult issue of rights: “The question of whether a *legal* claim to immigration exists over and above a moral claim is particularly relevant in the current situation, where the number of people wanting to immigrate manifestly exceeds the willingness to receive them” [ibid.: 230]. Normatively, Habermas applies a maximin-based approach to conclude that cosmopolitans—who generally apply justice obligations directly from world-citizen to world-citizen—should support the argument that the arbitrary birth circumstances of those from disadvantaged societies demand interest in remedy via (im)migration greater than that of preventing the possible marginal decline in life fulfillment (due to problems associated with (im)migration) of members of societies arbitrarily born into affluent circumstances. But Habermas answers his own rhetorical question by attenuating the transition from ethical calculus to *droit opposable*: he acknowledges that his moral reasoning “do[es] not, to be sure, justify guaranteeing *actionable legal* rights to immigration[,] but a *moral obligation* to have a liberal immigration policy that opens one's society to immigrants” [my emphasis] [ibid.: 231].

Cosmopolitans invested in promoting actual increases in enforceable rights to international (im)migration are bound to be disappointed by the connection of Habermasian reasoning to rights-enabling policy. From a policy perspective Habermas surrenders the possibility of a transmission belt between ethical obligation and legal right because his reasoning contains a *petitio principii* that stacks the deck and avoids the central question (relevant to policy formulation): accounting for and arbitrating between interests. Generating

logical, impartial judgments by avoiding the consideration of particular interests is the ostensible virtue of moral theories deploying the abstraction of the veil-of-ignorance (informing Habermas's approach here), but it is difficult to make moral arguments based on the notion of *à priori* nondifferentiable interests contribute to policy precisely because policy choices are conditioned by *known* relative positions of interest. Habermas (and others) attempt to square this circle; hence his hedge that his reasoning cannot "justify guaranteeing actionable legal rights" but does demand a "moral obligation to have a liberal immigration policy." In his own vocabulary, Habermas's reasoning and conclusion sever the "internal relation" of ethics and law—i.e., justice.

This results not from the nature of cosmopolitanism, but rather from applying to a *concrete* problem a Rawlsian methodological approach coupling the *abstraction* of the veil-of-ignorance device to the maximin principle. In the case of (im)migration, the counterfactual nature of the veil-of-ignorance—the interest-excluding device in Habermas's ethical reasoning—is peculiarly unsuited to the issue to which it purports to be applicable because the arbitrariness of the interest positions is so radical in this case. That is, because we consider there to be no assignable blame/merit for people's relative positions of interest (as either wishing to (im)migrate or to prevent incoming (im)migrants), there is no moral intuition (regarding, say, one group's obligation to the other) that can complement and make thicker (provide substantive⁷ justification for) the moral judgment arising from the ostensibly content-empty procedural reasoning given with the adoption of the veil-of-ignorance and maximin principle. As each interest position is evacuated of merit and/or blame with respect to its occupancy, the respective agents' interest positions become an irreducible fact and thus disproportionately significant to the problem at issue.

One might retort, "So what? Habermas is doing moral reasoning, not policy decision-making; he is not obligated to reach more than a moral judgment." This retort is shortsighted. Rather, as concerns moral reasoning motivated by politics and political philosophy (classes to which (im)migration belongs), it is the case that if there were no interests attendant to a policy decision, then there would be no disputed moral claims that reasoning could resolve (with the further goal of providing arbitrated guidance toward action). In the case of (im)migration as explicated so far, the claims of interest are the source of the need for ethical thinking, and moral reasoning that avoids addressing the source of its *raison d'être* is unsatisfactory. Indeed, if Habermas's *liberal* cosmopolitan approach to (im)migration were possible, it would not be necessary.

Cosmopolitans' untying the Gordian knot of ethico-legal decision-making involving (im)migration demands Solomon's wisdom for solving interest disputes, not the counterfactual procedural formalism of Rawls. Famously, of course, through their implication as a foundation for communicative rationality Habermas imported Rawlsian justice principles into the political aspects of his pragmatic discourse theory. He further elaborated this complex of notions by admixing it with Kantian ethics applied to democratic theory (both traditional and international, the latter contra Rawlsian minimalism), and the resultant deliberative-democratic "public use of reason" occurs in multi-level spheres of discourse whose intersubjective-speech-act, proceduralist, content-neutral nature is key to the

⁷ We are discussing a moral argument in the context of its impact on the defining of rights and translation into policy. Particularly the latter of these tasks requires its moral basis to have a substantive element so that the moral component is compelling enough to bind us to promote and uphold it via legal measures.

Habermasian liberal cosmopolitan ideal.

This adoption of liberal tenets into Habermas's political philosophy in general and cosmopolitanism in particular fit with his distancing from the original philosophical contribution of first-generation Frankfurt School critical theory. Adorno's and Horkheimer's rebarbative dialectical gymnastics in part were derived from remnants of onerous metaphysical commitments. Thus Habermas's departure from first-generation critical theory is understandable. But in part the corpus of the first-generation of the Frankfurt School was so rebarbative because its interdisciplinary commitments implicated genuine complexity—investigation of objects through a method simultaneously empirical, theoretical and normative.⁸

This procedure registered recognition of how concepts and reality interact. Indeed one of the most interesting arguments advanced by the Frankfurt School's first-generation is the following: material social antagonisms are to the empirical world what contradictions are to theory or discourse. Consider this claim to be early critical theory's contribution to the development of moral realism in particular and in general the notion that ethical ideas have cognitive content (a notion Habermas elaborates in his own way). This claim of an analogical relation of material social antagonism to theoretical or discursive contradiction starts from the axiom that the analysis of socio-political, economic, and cultural forms must not be separated from an epistemology wherein the practice of forming concepts becomes an integral object of investigation.⁹ This insight recognizes that concepts are themselves complex social phenomena that manifest, in microcosm, a social whole by which they are produced *and in which they also reflexively intervene*. The upshot is that an immanent critique of the structure, function, and content of these critical concepts *is* critical social theory, and indeed directly connected to the concrete, material social world. For instance, on the one hand, a given concept (say, the concept of the socially contracted state, or globalization, or, (im)migration) is itself partially generated by the set of phenomena organized by the concept itself; on the other hand, from the perspective of theory the concept is a necessary but insufficient condition for the possibility of the phenomena organized by it.¹⁰

Habermas's adoption¹¹ of Rawlsian liberalism's counterfactual ideal-procedural approach

⁸ See Horkheimer (1982; 1993).

⁹ This reflects the Frankfurt School's research procedure during its early period, when it was still attempting to make critical social theory a dialectical interpenetration of philosophy and social science. Especially in Horkheimer's vision theory was deployed with an implicit view toward its being suitable as a device for understanding selected social phenomena. But Horkheimer emphasized how simultaneously there was to be a concentration on investigating the empirical dimension of these socio-political phenomena via the interpretative framework of theory, *but in such a way as to indicate that this latter is a valid, justified theoretical framework for understanding the socio-political phenomena because they demonstrate the characteristics of the theoretical elements* (Horkheimer: 1982; 1993). See XXX (2008).

¹⁰ I owe this formulation to Max Pensky, who calls these thoughts a "welcome inheritance of first-generation critical theory." See Pensky (2008: 37-38).

¹¹ In the 1950s Habermas was still involved in following the thread of first-generation critical theory, seeking to execute interdisciplinary studies by combining normative, theoretical, and empirical approaches to problems examined via philosophy, socio-economics, politics, etc. See XXX (2008) for my account of this program. Habermas drifted from this program, moving to incorporate

into his political theory not only necessitates the aforementioned *petitio principii* (assuming out of existence the real-world political interest conflicts that generate his moral reflections); rather it also means that his (im)migration theory is reconciled with the sterile separation of moral obligation and legal force (manifested in the inability to assert (im)migration *rights*) because it overlooks a key philosophical insight derivable from the concrete relation of concept and reality, from the organic interrelation of object qua real-world-object and object qua object of thought. Namely, that material social antagonisms are to the empirical world what contradictions are to theory or discourse has a functional register: this analogy permits one to diagnose injury to rights through its expression in the contradictions of ethico-legal theory or discourse.¹² Put another way, if above I stated that the analogy is a contribution to the development of moral realism in particular and in general the notion that ethical ideas have cognitive content, then the early Frankfurt School added the claim that cognitive content (theoretical or discursive contradiction) has an ethical dimension.

In order to sketch how such a diagnosing of social pathology might proceed, an example is useful. Examining two sections of French law reveals the way in which analysis of discursive contradiction indicates a corresponding material social antagonism. Legislative act L.622-1 *categorically* prohibits all persons, including French citizens and legal residents, from knowingly providing any aid and assistance to illegal and/or undocumented (im)migrants in France [Légifrance].¹³ Penalties range up to five years in prison and a €30,000 fine [ibid.]. French penal code article 223-6 obligates all individuals in France to provide aid and assistance, *without exception* but consistent with their safety, to other individuals they consider to be in emergency need [Code pénal français]. Violations of article 223-6 stipulate penalties up to five years in prison and a €75,000 fine (the same order for those of L.622-1) [ibid.]. Thus, when deciding whether or not to provide aid or assistance to someone whom it can be reasonably inferred one should know is an illegal, undocumented (im)migrant, but who the (potentially) aiding individual also can reasonably infer is in distress significant enough to be reasonably considered an emergency, the (potentially) aiding individual cannot act in conformity with the law.

Consider this in light of Adorno's claim that his way of studying discursive contradiction was "dialectics as the ontology of the wrong state of things (die Ontologie des falschen Zustands)." That is, discursive contradiction's organic relation to an antagonistic social whole implicates socio-ethical injury. Applied to this case of French law, far from this situation being hypothetical, L.622-1 has been used to prosecute humanitarian aid agency workers¹⁴ providing care to illegal (im)migrants in need of assistance in France's Nord-pas-

analytic/language philosophy into his discourse theory and liberalism into his political philosophy (thus generating the "generations" of the Frankfurt School).

¹² Note that I am not claiming that all social antagonism (and a fortiori socio-ethical injury) is an expression of theoretical/discursive contradiction. The possibilities for the former (antagonism and/or injury) are not exhausted by the reach of the latter. That is, insofar as the latter is treated as a sign of the former, the latter's presence is a sufficient (but not necessary) condition for the indication of the former.

¹³ Due to its categorical nature, the relevant section prohibits the provision of *emergency assistance and humanitarian aid* to such (im)migrants.

¹⁴ The French Immigration Minister—born in Marrakech, the son of a Lebanese mother—has stated in a press communiqué supporting French alien laws that no individual in France has ever been legally "condemned for assisting, accompanying, or sheltering an undocumented alien" [Besson April 7,

Calais region. Normally such workers are protected from the consequences of these contradictory legal obligations by extra-legal, *ad hoc* arrangements with law enforcement authorities. This fact is itself significant, as the perceived necessity for recourse to a state of exception is evidence that the discursive contradiction in the law indicates a corresponding social antagonism.

The methodological point I have articulated so far reflects back to a substantive one; also here the effects of my outlined approach depart from those of Habermas's thinking on the same issue. Because of the concrete organic relation of discursive contradiction and social antagonism given with my outlined approach, diagnosing the case's pathology in its theoretical dimension naturally permits moving to the demand for a concrete solution to the "the wrong state of things," e.g. a change in enforced legal norms. Because of the abstract approach Habermas deploys—the result of his importation of Rawlsian liberal methodology—his diagnosis of (im)migration policy ills does not lead to bridging the gap between identifying the injury and demanding its remedy via legal policy.

As a tool for avoiding the merely abstract application of *à priori* correct categorical principles to socio-political issues (like (im)migration), approaching discursive contradiction and social antagonism as internally linked in such a way that analyzing the contradiction functions to diagnose the corresponding social antagonism (and attendant socio-ethical injury) can be done in multiple domains. Another situation where this critical approach is applicable is France's criteria for non-EU-25 economic¹⁵ (im)migrants' legalization: obtaining a residency permit is possible only if the economic (im)migrant already possesses a work permit, and obtaining a work permit is possible only if the economic (im)migrant already possesses a residency permit. Like Escher's famous *Drawing Hands* lithograph (two hands drawing each other into existence), France's criteria for economic (im)migrants' obtaining legal status are paradoxical because they are simultaneously mutually exclusive and mutually conditioning. The seemingly abstract discursive contradiction of French statutes concerning economic (im)migrants' legalization process manifests a concrete social antagonism, socio-ethical injury.¹⁶ Thus economic (im)migration statutes in play here *in theory* are intended to provide economic (im)migrants with a path to social inclusion (and its material and legal benefits), while *in practice* this regime's effect is social exclusion (and the suffering attendant to its material and legal deprivations).

If the Escher-esque scenario exhibits the connection of social antagonism and discursive contradiction as a micro-phenomenon in the (im)migration system, then the macro-systemic dimension is given with the asymmetry of labor and capital mobility in the current global

2009]. In response, the French aid organization GISTI published a document listing 32 separate cases since 1986 in which individuals in France were arrested, convicted, and sentenced (including fines and prisons terms) for aiding undocumented immigrants [Gisti]. French human rights organization LDH reported that on February 18, 2009 a volunteer for the domestic humanitarian aid association Restos du coeur was arrested for offering food and clothing to undocumented (im)migrants in need of assistance in the Calais area [LDH April 8, 2009].

¹⁵ This adjective distinguishes these (im)migrants from those gaining legal entry to the French immigration system via family reunification. Refugees/asylum applicants are processed through procedures.

¹⁶ Beyond entry/settlement refusal forcing potential (im)migrants to either stay in a poverty stricken country or attempt dangerous illegal (im)migration, injuries include forced deportations to war zones, indefinite detention, split families, etc.

economic order. Globalized capitalism, whose enabling policies are underpinned by neoclassical theory, is predicated on (generally) free, cross-border flows of economic production factors. The ostensible objective of deregulated flows is that they produce maximal universal well-being via markets' efficient equilibration and clearing mechanisms. Actuating this is supposedly the "invisible hand," the economic manifestation of Hegel's "cunning of reason." The operative principle here is GIGO (garbage in, good out). A panglossian economic sausage-grinder, capitalism is imagined as a giant machine into which are fed on one end inputs of amoral individual desires; after processing via the machine's self-interest "transmogrifier," out of the machine's other end exits the output of universal material well-being, the best of all possible worlds. Put in more sophisticated language, the neoclassical theory underlying the global market capitalist system exhibits a fundamental contradiction: namely, that the particular pursuit of utility maximization leads to maximized universal utility and therefore the greatest self-interest satisfaction for the greatest number.

However, this theoretical contradiction is internally linked to an (im)migration-related social antagonism, a socio-ethical injury diagnosable via the theoretical contradiction's visibility. The truth of the contradiction is that currently global capitalism requires asymmetry of capital and labor mobility; this is exploited through locational competition in order to exert downward pressure on unit-wages, thus increasing profitability.¹⁷ This allows efficient capital returns and enables the ostensible realization of capitalism's panglossian promise, insofar as capital returns are the metric by which the aforementioned maximal universal utility is ascertained. Downward wage pressure is effected by keeping some populations—e.g., potential (im)migrants from poor countries—relatively immobile compared to capital and thus susceptible to exploitation in wage negotiations, a leverage position that capital would lose were cross-border movement of labor possible to the same extent as with capital.¹⁸ Indeed some production factors are freer than others. Despite market capitalism's supposed basis in free flows of economic production factors, the economic system's efficiency imperative contradicts its universality imperative, with the combined result being two connected social antagonisms: some populations suffer socio-economic exclusion via exclusive (im)migration policies.

The contradiction of universal and particular impulses is also present in the ways (im)migration is addressed by liberalism, the political ideological system with the greatest affinity to market capitalism. Indeed one of the best (im)migration examples illustrating

¹⁷ See Castles and Miller (2009: 26, 68).

¹⁸ *Ibid.*: 57. Also, I herewith answer two "comparing apples and oranges" objections to this argument. First: the argument that capital is necessarily more mobile than labor because it is electronic, does not have to be socially "integrated," etc. The answer is that cross-border capital transactions could be taxed to reduce its mobility to the level where the locational competition advantage derived from labor-capital mobility asymmetry is eliminated. Second: the objection that comparing labor and capital mobility is invalid because cross-border capital mobility does not implicate national security, terrorist, and law enforcement issues inherent in human mobility, which for this reason must be restricted. The response is that even within only the last 12 years successive economic crises (Asian in 1997-1998 and worldwide in 2008-2009) occasioned by globalized financial flows led to widespread misery. The difficulties they caused have led to calls for a Tobin tax. No one knows for certain how many people suffered/died from economic deprivation resulting from these financial events, but intuitively one would think that this number is not less than the number who suffered/died from cross-border terrorist attacks committed by (im)migrants over the same period.

Frankfurt School critical theory's understanding that discursive contradiction indicates a corresponding social antagonism, and thus socio-ethical injury, is that liberalism exhibits a problematic asymmetry between the rights of immigration and emigration. As Phillip Cole claims, most liberals "argue for a constrained right of immigration without taking into account the implications this has for the moral right of emigration, which they take to be unconstrained" [Cole 2000: 44]. Here is the problem: (1) Emigration is an *inalienable, essential* right¹⁹ of persons in most reasonable liberal conceptions of legitimate polities; (2) in the contemporary world emigrating from such a polity necessarily entails crossing borders to enter another. Thus, given (2), (1) means that the right to emigration from a polity necessarily implies an equal right to (im)migration into another polity. Therefore, finally, (3) insofar as liberal (im)migration theories do not admit of (im)migration rights in at least as strong a form as they grant emigration rights, these theories are either self-contradictory or dishonest. The point is not that liberal (im)migration theory's incoherent asymmetry proves that liberal political theory must abandon the support of strict (im)migration policy, but rather that *if* liberalism defends this prerogative, then logically it must sacrifice the requirement that liberal polities have no right to control agents leaving the polity [ibid.: 46].

Cole masterfully dismantles liberal (im)migration arguments that reject this "illiberal symmetry" due to its unpalatable consequences for emigration, but, given the incoherence of "liberal asymmetry," do not own up to the fact that illiberal symmetry or liberal symmetry are the only available intellectually consistent positions [ibid.: 43-59].²⁰ His wrecking of the logical foundations of typical liberal asymmetrical privileging of emigration over (im)migration is so devastating that my further efforts here would be redundant. I thus content myself to supplementary remarks, as my point is not to dissect the weakness of liberal (im)migration theory, but rather to establish that the weakness demonstrates how the nature of fundamental discursive, theoretical contradiction in (im)migration theory lets us identify an important instance in which (im)migration policy qualifies as a social antagonism. Beyond reinforcing adverse material consequences (poor living standards, etc.) for the potential (im)migrant, this antagonism entails a socio-ethical injury in the following way: "the asymmetry view has a level of complexity that is often overlooked. It is not simply that agent P [e.g., the non-citizen] has the moral right to do X [exit a polity] but no moral right to do Y [enter a polity], but *also* that agent Q [e.g., the citizen] has the right to do both" [ibid.: 45]. That is, one problem with the orthodox liberal position on strict border control rights is that it rejects illiberal symmetry while not acknowledging that its advancing of liberal asymmetry entails a differential treatment of citizens and non-citizens that is completely positivistic and morally arbitrary, and thus indefensible given liberalism's own justice criteria.

With this discussion of arbitrariness we find ourselves back at the position with which we began our critique of Habermas, particularly with respect to his importation of liberal methodological commitments into his cosmopolitan understanding of (im)migration.

¹⁹ This stems firstly from the notion—derived from social contract theory—that being an equal political consociate arises from a free (voluntary) ascriptive act. Given that humans are born into a place without choice, and given that sovereign polities do not cede a part of their territorial sovereignty to someone desiring to stay in its boundaries sans subjection to its laws, functionally this volitional requirement entails the ability to exit the polity.

²⁰ Cole's further arguments support "liberal symmetry," which has the practical effect of substantially freeing cross-border (im)migration.

Although our critical analysis until now has circled back to its beginning, in a crucial respect an advance has occurred. Precisely due to the abstract way that orthodox liberal (including liberal cosmopolitan) (im)migration theory accounts for the arbitrariness of persons' inclusion/exclusion from politics we showed that it is tenuous for such approaches to determine that a particular type or instance of inclusion/exclusion is unjust. Arguments accepting both the parameters of abstract methodology and real-world arbitrariness tendentially degenerate—according to one's perspective—into either defenses or attacks of the *fact* of inclusion/exclusion as a morally relevant consideration for an (im)migration regime. Where fate reigns, ratiocination finds place for socio-ethical injury only with difficulty. But my outlined procedure exploiting the dialectical relationship of real-world social antagonism to theoretical or discursive contradiction allows identification of the concrete socio-ethical injury via critiquing *immanently* the theory or discourse. Thus, in the case of (im)migration theory, critiquing the theory or discourse on its own terms permits leveraging its incoherence into a foundation for legal change in the concrete regimes to which the theory corresponds. In this way also we have advanced beyond the *cordon sanitaire* that the arbitrariness problem imposes on the moral and legal universes of (im)migration addressed by liberal approaches, even one as informed by cosmopolitanism as Habermas's.

Despite this progress it is still true that we are no closer to positively *solving* the (im)migration problem: we have merely progressed negatively, that is, in identifying it as a problem and establishing a framework for understanding (im)migration differently. In the following section I present and analyze two (im)migration models that illustrate cosmopolitan (im)migration theory as an approach escaping the arbitrariness trap by appealing to principles of Frankfurt School critical theory.

4. BEYOND THE ARBITRARINESS PROBLEM: TRANSFORMING SPECIAL CASES OF BRITISH AND SPANISH (IM)MIGRATION POLICY INTO MODELS WITH MORE GENERALLY APPLICABLE UNDERLYING PRINCIPLES

Here is the central ethico-legal question arising from the embeddedness of (im)migration in an arbitrary context: Why should people in country X (especially if relatively affluent) accept (im)migrants from country Y (especially if relatively poor), if the influx of the latter might contribute materially to lower living standards in the former? This remains difficult to answer concretely so long as only abstract theory is deployed in the orthodox philosophical procedure of generating principles and applying them to cases. But one need not be constrained to this procedure. As mentioned above, the dialectical connection of contradiction in theory or discourse to concrete social antagonism (ultimately qua ethico-legal injury) is predicated on the dialectical relation of real phenomena and the concepts expressing them. Not only does this permit the diagnostic method already outlined, but also solving the theoretical conundrum of (im)migration ethics can be routed through the application of actuality to theory. The normal ethical calculus of proceeding from theory→reality is reversible, if one identifies an actual situation whose disposition is diametrically opposed to the self-contradictory structure of the theory at issue. Insofar as we identified theoretical contradiction as an indicator of an ethical problem, finding its converse structure in actuality means solving the problem without violating the is-ought proscription. Moreover, simultaneously such a discovered solution has the obvious advantage of being

concrete, thus short-circuiting the timid abstraction of which I earlier accused Habermas's otherwise well intentioned and argued cosmopolitan view on (im)migration ethics.

It is in this context that I introduce two (im)migration cases conforming to the approach just outlined:

First, in 2007 the Spanish government passed Ley 52/2007, the Historical Memory Law (HML), which entered into force in December 2008 and will remain in force until December 2010 [Ley 52/2007]. This law's seventh supplemental provision permits acquisition of Spanish citizenship (*de origen*) by descendants—including both children *and grandchildren*—of Spanish nationals (regardless of current citizenship status, whether they are alive, etc.) who lost or were forced to forfeit Spanish citizenship consequent to exile during the Franco dictatorship [ibid.: Disposición adicional séptima]. Now, while true that Spain is a *jus sanguinis* country, citizenship on this basis is guaranteed “only to persons whose father or mother was originally Spanish and born in Spain” [Ley memoria]. However, the HML extends acquisition of Spanish citizenship of origin to those whose father or mother was originally Spanish, but not born in Spain (i.e., immediate descendants of exiles born overseas) [Ley 52/2007: op. cit.]. Moreover, not only does the HML broaden citizenship acquisition along this axis, it even grants citizenship rights to *further descendants*: grandchildren of those who lost or forfeited Spanish citizenship due to exile during Franco's rule have the right to claim Spanish citizenship (the law specifies that this covers those persons whose father or mother was born after the exiled grandparent lost his/her citizenship, and, additionally, the grandparent does not have to have been a Spanish citizen *de origen*) [ibid.; Ley memoria]. Although in some sense a “right of return,” effectively the HML serves as a legal (im)migration pathway for thousands of residents of poor South/Latin/Central American countries, who would not otherwise have a right to legal inclusion in Spanish society on Spanish territory.²¹

Second, as of 2009 the UK has developed a policy for automatically admitting Gurkhas as immigrants [Number 10]. This measure followed a 2008 High Court ruling that declared that previous UK handling of Gurkha immigrant applications was unlawful [BBC]. Gurkhas are mercenaries—principally from Nepal and India—who began serving in the British south/eastern Asian colonial armies in the 19th century. Gurkha brigades still exist (accounting for 3% of UK Army personnel, and 8% of infantry), and their base has now been transferred from Hong Kong to the UK, which means that current Gurkhas serve while officially in British residence and for this reason gain immigration rights after discharge [Immigration Matters]. Prior to the 1997 base relocation, however, immigration possibilities were greatly restricted for post-discharge Gurkhas. According to the new scheme, the approximately 36,000 Gurkhas (and their spouses/dependents) who served for at least four years and retired before 1997 will be eligible for immigration into the UK under new guidelines guaranteeing settlement rights [Number 10].

Why do I cite these two particular policies as instantiations of concrete law contributing to ethical theory concerning (im)migration, as I argued is more generally permissible according to the dialectical method derived from first generation critical theory? Here I recall that a condition of advancement for this notion is that actual policy solves the types of

²¹ The law grants reduced residency periods prior to taking Spanish citizenship, exemption from work visa requirements, and other abatements of (im)migration laws [Ley 52/2007]. *Global Mobility Report* estimates that 200,000 Cubans qualify under the terms of the HML [GMR]. Many more qualifiers come from Argentina, Chile, etc.

theoretical contradiction in (im)migration that I have elucidated until now. That is, the contradiction is solved insofar as the law qua discursive event does not exhibit the types of contradiction displayed in the given example of France, or the asymmetries of labor/capital mobility and immigration/emigration. Both in general and in the specific cases of the described (im)migration policies, good solutions to genuine contradictions avoid them, reject their terms. In the case of (im)migration as we have presented it so far in liberalism (including liberal cosmopolitanism), the source of the theoretical contradiction has been the premise that the positions of potential (im)migrants and target polity citizens are morally indistinguishable because morally arbitrary. This assumption has been the key one leading to contradiction because not being able to choose a morally relevant criterion for deciding which agent merits preferential consideration leads to selection on the grounds of facticity, a positivist approach that begs the question (as discussed in section III's discussion of Habermas). Thus the solution to the (im)migration contradiction is a matter of defeating the arbitrariness problem—this is accomplished by the British and Spanish (im)migration cases.

All that is to say, (1) in general, from the perspective of generating theory, the law manifests concretely a principle that overcomes the type of discursive contradiction demonstrated so far in this essay; and (2) from this principle a coherent theory can be constructed. Thus, specifically in the outlined case studies, the principles overcoming the arbitrariness problem are the following. The overwhelming majority of British residents owe a colonial debt to a specific foreign population; on their behalf, the British government acknowledges that fairness demands that they should rectify that debt; and to this end it is implementing a policy obligation permitting said population to (im)migrate. Call this an example of *the principle of (im)migration as redress for historical exploitation*. The overwhelming majority of Spanish residents enjoy rights and affluence by virtue of citizenship status denied to others who rightfully (*ceteris paribus* and excepting the diaspora effects of a specific historical circumstance) would also enjoy these rights and affluence; on their behalf, the Spanish government acknowledges that because the historical exclusion was ethically/politically wrong the respective enjoyment or suffering of its effects currently is not merit-based and thus violates ethico-political principles; and, to the end of rectifying the historical wrong, it is implementing a policy obligation permitting the descendents of the wronged population to (im)migrate. Call this an example of *the principle of (im)migration as redress for political dispossession*.

The principles of the redressing of historical exploitation and political dispossession allow us to extrapolate a more general principle broadly applicable in cases where there obtains an underlying situation similar to the ones giving rise to the aforementioned specific principles. Call this more general principle *the principle of (im)migration rights as restitution for historical injustice*. The concept is the following: the people of X (a socio-economically affluent country and flow-target), whose socio-economic affluence is significantly a product of acts rendering its people historically socio-economically indebted to the people of Y (a socio-economically disadvantaged country and flow-origin), whose socio-economic disadvantage results significantly from the past acts of X, should rectify the past injustice via (im)migration rights for the people of Y. With the general principle given here not only is its determination of when there obtains an injury analogous to that of the outlined specific principles, but also the proposed remedy is analogous.

Following from this last claim there are further facets of the general principle to be considered:

First, the aforementioned analogous relation of the general and specific remedies rests on

the fact that the respective remedies are similarly proportionate to the underlying wrong (that is, the remedies' effects are in each case roughly similar with respect to how they address the historical injury). All further specific applications of the general principle should display a similar ratio of restitutive force to underlying wrong.

Second, as is usually the case with the application of general principles, the identification of specific instances in which it is valid is a complex task. That is, when considering proposing the principle of (im)migration rights as restitution for historical injustice, one should decide whether the latter occurred (according to the definition and context given in this paper) and which parties (peoples, nation-states) we should consider involved. Here I will briefly elaborate two negative determining factors and identify one possible positive criterion of inclusion in an (im)migration scheme based on the general principle.

(a) One reasonable ground of a country's exemption from the general principle of (im)migration rights as restitution for historical injustice is illiberalism. One reaches this conclusion by considering the nature of the general principle qua result of immanent critique. The general principle derived proximately from the need to overcome the arbitrariness problem; but in our analysis this arbitrariness problem is only identifiable as a problem because it displays the contradiction of *liberal* asymmetry (of emigration and immigration). Thus the general principle (as remedy) does not apply to illiberal countries because they do not maintain one of the terms necessary to render the contradiction. Indeed, as Cole states, a possible (odious) solution to liberal emigration/immigration incoherence is to deny citizens' emigration rights.

(b) A second reasonable ground of a country's exemption from the general principle would be its failure to reach a certain level of affluence, which functions as a proxy for a country's economic ability to integrate expected (im)migration flows. To this end a per capita, PPP-adjusted GDP threshold could be introduced. For instance, countries with per capita GDP less than 60% of mean/median GDP of the 20 founding member states of the OECD would be exempted from the (im)migration obligation given with the general principle. Countries above the threshold that also have (im)migration obligations in all other necessary respects would have their responsibilities established along a graduated scale (*ceteris paribus* more affluent countries would have more responsibilities than less affluent ones).

(c) These grounds of exclusion mean that most countries in the world would not be subject to the general principle. As for positive indicators, countries with a history of exploitative colonialist or hegemonic activities vis-à-vis other countries' populations would be likely candidates obliged to inclusion within schemes implementing the general principle (granted the constraints imposed by the grounds of exclusion). Realistically, this would include the U.S.A, Japan, many European countries, and some Gulf states. For instance: the U.S.A. would likely have (im)migration responsibilities to Mexico, LACAS countries, and the Philippines; France would likely have responsibilities to countries in Africa (especially North Africa), the Middle East, and Vietnam; the U.K. would likely have responsibilities to India, Pakistan, African countries, and the Middle East; Spain would likely have responsibilities to LACAS countries.²² I note in passing that the colonial heritage of forcing the colonized populations to adopt the colonizers' language and culture would likely simplify

²² In many instances these (im)migration connections were present, at first via labor (im)migration and then family reunification (Castles and Miller 2009). Recently many of these countries have taken measures to curtail legal (im)migration, which has led to increased illegal (im)migration.

the integration of (im)migrants into target countries' societies.

Third, the general principle's further specific application will also have to solve adaptability problems. In order for the further specific applications of the general principle to conform to the character of the principle's specific iterations in the British and Spanish cases, proposed (im)migration remedies must be conceived in a way that deals appropriately with the different historical and current conditions relevant to each case. For instance, one challenge will be deciding the scope (and thus scale) of the application of the general principle in each further specific case.

Fourth, the proper extension of the general principle to other specific cases will encounter the argument that it is impracticable in a way not found with the simple examples of Britain and Spain. For instance, the issue of identifying eligible (im)migrants might be more difficult than for Gurkhas and Spanish descendents. But this impracticability likely is a function of large scope. Absent contrary evidence, we should assume that a large scope for adopting such an (im)migration principle arises from the historically indebted society (X) having a proportionately larger debt to the disadvantaged society (Y). As X benefitted greatly at the unjust expense of Y, X thus has a great incumbent obligation, and one way that this great obligation will express itself is that X will have great demands placed on it to determine how to shape the scope of the remedy in light of the scope of the historical injustice.

Fifth, the principle articulated here does not exclude/replace development aid intended to reduce the push factors in flow-origin countries. Nor does the principle preclude other (im)migration schemes that do not impinge on the principle. Targeted aid (a form of reparations) could be demanded from potential receiving countries as an offset for their intake obligations.

Sixth, the general principle should be qualified by technical concerns. For example, these include: (a) minimizing cream-skimming and (im)migrant self-sorting effects (which negatively impact sending countries); (b) presenting convincingly the principle's implementation in a way that is politically palatable in the receiving country (circular and guest-worker (im)migration could be significant in this context); (c) appropriately targeting entry/settlement quotas so that sending countries can integrate (im)migrants, thereby remaining attractive to (im)migrants and satisfactory (as a habitat) to already-present residents [i.e., it is important to prevent unmanaged (im)migration from undermining the pull factors (high life quality, available employment, social cohesion, national security, etc.) that make (im)migrants desire to move to the receiving country]. The aforementioned graduated scale of economic integration potential would be a crucial place to start in this regard. This complexity is not an objection to the general principle; rather the onus it represents is part of the burden of (im)migration as restitution for historical injustice. No doubt other technical implementation issues will present challenges, a fact opening up the (im)migration theme to a role for consequentialist (e.g., economic) approaches.

In conclusion I note that the fact that the operation of this (im)migration principle would require complex management schemes—especially socio-economically—leads to a possible institutional role for cosmopolitan conceptions of (im)migration. The articulated general principle has the virtue of arising from immanent critique, the analysis of the organic connection of contradiction in theory to concrete social antagonism, a process for identifying socio-ethical injury derived from first-generation Frankfurt School critical theory's understanding of how concepts and reality are dialectically related. The result is that the procedure avoids the arbitrariness problem, but the price is that the general principle—because its remedy is routed through nation-state obligations—violates valuable cosmopolitan

commitments to locating socio-ethical and legal solidarity claims in transnational identification of world-citizens. Certainly cosmopolitan values are not excluded from the principle's ethical framework—they could be in force as moral motivation necessary for preparing the political ground for the principle's implementation. Still, consistent with its *raison d'être*, a more robust role for cosmopolitanism in (im)migration could be founded institutionally precisely in instances where nation-state interest-mongering would retard cooperation necessary for the principle's functional establishment. Here I am thinking of problematic questions of eligibility (which countries would be obligated to receive, which countries would have the right to send), remedy scope, flow volume, and the other technical issues adumbrated above. Cosmopolitan values could be robustly recuperated within the general principle's framework through the introduction of international commissions or international "(im)migration tribunals" tasked with resolving these issues in light of global interest.

Article Received: 03-Mar-2010 Revised: 04-May-2010 Accepted: 09-Jun-2010

REFERENCES

- Barry, Brian, 1992, "The Quest for Consistency: A Sceptical View," in *Free Movement: Ethical Issues in the Transnational Movement of People and of Money* (B. Barry and R. Goodin, eds.), 279-287. New York: Prentice-Hall.
- BBC, 2009, "Fury Over Gurkha Settlement Plan," (4/24/09). At: http://news.bbc.co.uk/2/hi/uk_news/8014265.stm.
- Benhabib, Seyla, 2002, *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton, NJ: Princeton University Press.
- _____, 2004, *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge, UK: Cambridge University Press.
- Besson, Eric, 2009, "Communiqué de presse," of April 7, 2009. At: http://www.gisti.org/IMG/pdf/lettre_besson_20090407.pdf.
- Carens, Joseph, 1987, "Aliens and Citizens: The Case Open Borders," *The Review of Politics* 49(2): 250-273.
- _____, 1992, "Migration and Morality: A Liberal Egalitarian Perspective," in B. Barry and R. Goodin, eds., *Free Movement: Ethical Issues in the Transnational Movement of People and of Money*, pp. 25-47. New York: Prentice-Hall.
- _____, 1994, "The Rights of Immigrants," in J. Baker, ed., *Group Rights*, 142-163. Toronto: University of Toronto Press.
- _____, 1999, "Reply to Meilaender: Reconsidering Open Borders," *International Migration Review* 33(4): 1082-1097.
- _____, 2001, "Cosmopolitanism, Nationalism, and Immigration: False Dichotomies and Shifting Presuppositions," in R. Beinerand and W. Norman, eds., *Canadian Political Philosophy: Contemporary Reflections*, 17-35. Oxford: Oxford University Press.
- Castles, Stephen and Mark Miller, 2009, *The Age of Migration* (4th ed.), Basingstoke, UK: Palgrave Macmillan.
- Code pénal français. Book II, Title II, Chapter III, Section 3, Article 223-6. *De l'entrave aux mesures d'assistance et de l'omission de porter secours*, At: <http://www.codes-et->

- lois.fr/code-penal/article-223-6.
- Cole, Phillip, 2000, *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Edinburgh, UK: Edinburgh University Press.
- Dummett, Michael, 2001, *On Immigration and Refugees*. London: Routledge.
- GISTI (Groupe d'information et de soutien des immigrés). 2009. "Délit de solidarité: Bessonment!" (2009, unknown post date). At: <http://www.gisti.org/spip.php?article1399>
- GMR (Global Mobility Report), 2009, "Spain's Cuban Grandchildren Get Passports" (2/9/09). At: http://www.globalmobilityreport.com/50226711/spains_cuban_grandchildren_get_passports.php.
- Habermas, Jürgen, 1998, *The Inclusion of the Other: Studies in Political Theory*, Cambridge, MA: MIT Press.
- _____, 2001, *The Postnational Constellation: Political Essays*. Cambridge, MA: MIT Press.
- Horkheimer, Max, 1993, "The Present Situation of Social Philosophy and the Task for an Institute for Social Research (1931)," in *Between Philosophy and Social Science: Selected Writings*, Cambridge, MA: MIT Press.
- _____, 1982, "The Social Function of Philosophy (1939)," in *Critical Theory: Selected Essay*, New York: Continuum.
- Immigration Matters, 2009, "Victory for Gurkhas in Battle to Settle in the UK," (5/21/09). At: <http://www.immigrationmatters.co.uk/victory-for-gurkhas-in-battle-to-settle-in-the-uk.html>
- Kymlicka, Will, 2001, "Territorial Boundaries: A Liberal Egalitarian Perspective," *Boundaries and Justice: Diverse Ethical Perspectives* (D. Millerand and S. Hashmi, eds.), 249-275. Princeton, NJ: Princeton University Press.
- Légifrance. Book VI, Title II, Chapter II, Article L622-1, *Code de l'entrée et du séjour des étrangers et du droit d'asile*. At: http://www.legifrance.gouv.fr/affichCode.do;jsessionid=1AC7AE3B2EADB8C2DBBF3FB24778E324.tpdjo14v_1?idSectionTA=LEGISCTA000006147789&cidTexte=LEGITEXT000006070158&dateTexte=20080505.
- LDH (Ligue des droits de l'homme), 2009, "Le petition: Modifier la loi pour supprimer le délit de solidarité" (4/30/09). At: <http://www.ldh-france.org/Nous-etions-20-000-le-8-avril>.
- Ley memoria, At: <http://leymemoria.mjjusticia.es/paginas/en/descendientes.html>.
- Ley 52/2007. Historical Memory Law. At: http://leymemoria.mjjusticia.es/paginas/en/ley_memoria.html
- Meilaender, Peter, 2001, *Towards a Theory of Immigration*, Basingstoke, UK: Palgrave Macmillan.
- Miller, David, 2005, "Immigration: The Case for Limits," in A. Cohen and C. Wellman, eds., *Contemporary Debates in Applied Ethics*, 193-206. Oxford, UK: Blackwell.
- Number 10, 2009, "Press Release" of May 21, 2009. At: <http://www.number10.gov.uk/Page19381>.
- Pensky, Max, 2008, *The Ends of Solidarity: Discourse Theory in Ethics and Politics*, Albany, NY: SUNY Press.
- Rawls, John, 1999, *The Law of Peoples*, Cambridge, MA: Harvard University Press.
- Richey, Mason, 2008, "What Can Philosophers Offer Social Scientists?; or The Frankfurt School and Its Relevance to Social Science: From the History of Philosophical Sociology to an Examination of Issues in the Current EU," *International Journal of Interdisciplinary Social Sciences* 3/6: 63-72.

- Seglow, Jonathan, 2005, "The Ethics of Immigration," *Political Studies Review* 3: 317-334.
- Tan, Kok-Chor, 2004, *Justice Without Borders: Cosmopolitanism, Nationalism, Patriotism*. Cambridge, UK: Cambridge University Press.
- Walzer, Michael, 1983, *Spheres of Justice*. New York: Basic Books.
- _____, 2002, "Universalism, Equality, and Immigration," in Herlinde Pauer-Struder, eds, *Constructions of Practical Reason: Interviews on Moral and Political Philosophy*, 194-210. Stanford, CA: Stanford University Press.

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