

## Ethical Obligations to the “Unwanted”

*“The Mexican Government is forcing their most unwanted people into the United States. They are, in many cases, criminals, drug dealers, rapists...”*

-Donald J. Trump during his presidential campaign (June 2015)

### **Introduction**

Last summer, I worked for the Public Defender Service for the District of Columbia. As a Spanish-speaking Intern Investigator, I spent my days taking crime scene photos and interviewing witnesses in the Latin American immigrant communities of D.C., helping to prepare clients for court, and translating for attorney-client meetings at the D.C. jail. I was working at the intersection of two areas that have long confused and fascinated me: criminal justice and immigration. In fact, I was working with undocumented immigrants facing felony charges: the very people emphasized and caricatured in Donald Trump’s presidential campaign throughout 2016 to justify his stance on both tighter law enforcement and immigration policies.

It is not difficult to understand the strategy of demonizing undocumented immigrants who have been charged with committing crimes; this has broad emotional appeal and taps into the fear that grips many. In my internship, I was working with those labeled as “criminals,” and with those said to have no legitimate claim to staying in this country. More importantly, I was working with some of the most vulnerable members of our society in their greatest moments of need. Their attorneys worked zealously on their behalf, motivated by a fierce desire to tip the scales toward justice in an adversarial system. Everyone at the Public Defender Service shared an understanding that our clients were not necessarily the unscrupulous threats to our society that dominant political rhetoric would lead us to believe; these were people deserving of compassion.

As I came to know some of our clients, I found myself fixated on the question of how this country justifies its treatment of undocumented immigrants and those charged with crimes. These are members of our society who share in our daily lives, and who we choose to cast off and forcibly remove from our midst. When an undocumented immigrant is sentenced to at least 12 months in prison, regardless of the nature of the criminal charges, he/she becomes a priority for U.S. Immigration and Customs Enforcement, and must face deportation after serving the sentence. Thus, the severity of punishment for crime is dramatically higher for undocumented immigrants. We might think of undocumented immigrants as the “unwanted” members of our society, and of undocumented immigrants charged with crimes as the pariahs within this group. The following is my attempt to explore the possible ethical justifications for treating those in the broader category of the “unwanted” differently than we would hope to be treated ourselves as members of a so-called liberal democracy. I find that a restrictive immigration policy is not ethically compatible with liberal democratic ideals.

### **Ethical Obligations to the “Unwanted”**

What, if any, are the ethical obligations of liberal democracies to the “unwanted”? This question is critically important to immigration debates because our normative judgments about immigration policy are necessarily grounded in ethics. Four main questions will guide the discussion in this paper. First, what are the generally accepted ethical principles of liberal democracies? Second, what are the prevailing arguments about the ethical obligations of liberal democracies to the “unwanted”? Third, in what ways do these arguments align or conflict with the generally accepted ethical principles of liberal democracies? Finally, what does this tell us

about the ethical obligations of liberal democracies to the “unwanted,” and what are the practical implications?

Before I begin answering these questions, I need to define the “unwanted” as all those who wish to gain legal status in a liberal democracy and who are denied this opportunity. As such, there may be many “unwanted” members of our communities who are actually wholeheartedly accepted and wanted by many, such as by neighbors and employers, but who are apparently “unwanted” by the state, which denies them legal recognition and the privileges it affords. Note that I use quotation marks around the word unwanted to emphasize the complexity of this designation. In fact, many members of this group may actually be *needed* by the state for economic reasons (for example, the U.S. increasingly depends on low-skilled Mexican migrants as laborers in fields such as agriculture and construction), despite its unwillingness to grant them legal status. The controversy around the ethical obligations of liberal democracies to the “unwanted” stems from the fact that some people believe that liberal democracies have a very limited ethical obligation to the “unwanted,” and they seem to afford special moral consideration to legal residents and to citizens of their states that they do not afford to the “unwanted.” Others argue that liberal democracies have very demanding ethical obligations to those who wish to enter their territory (or to those who have already entered), whether these people are wanted, needed, or neither.

To answer my first question, I must outline the generally accepted ethical principles of liberal democracies. The word ‘liberal’ in this case refers to classical liberalism, which emphasizes the rights of the individual and upholds personal, political, and economic freedom. The definition of democracy, though familiar, bears repeating: it is a representative system of government by all eligible members of a population. Therefore, by definition, liberal

democracies generally accept the principles of freedom, political justice, and equality. Though in practice these principles may be present in liberal democracies in varying ways and degrees, it is clear that they generally serve as guiding ideals. I will thus take a general commitment to the principles of freedom, political justice, and equality as the starting point for this discussion of the ethical obligations of liberal democracies to the “unwanted.”

Regarding my second question, I want to outline the prevailing arguments about the ethical obligations of liberal democracies to the “unwanted.” Those who have addressed the question of the ethical obligations of liberal democracies to the “unwanted” or to immigrants more broadly fall into two main camps: on the one hand, those who emphasize the rights and concerns of the state and the existing community against those of newcomers, and on the other hand, those who emphasize the rights and concerns of newcomers against the state they have entered or wish to enter. Michael Walzer, for example, famously argues that control over membership is necessary for groups to retain distinctiveness and cohesion. According to Walzer, without admission and exclusion, “there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life” (62). Christopher Heath Wellman also argues that states have a right to deny entry to unwanted would-be immigrants, appealing to the principle of freedom of association in addition to that of political self-determination. Wellman writes that “freedom of association entitles one to *not* associate with foreigners, including potential immigrants, as they see fit” (13). David Miller asserts that even if we take the equal moral worth of individuals as a starting point, there may be a responsibility for the state to protect basic interests of all people to the extent that it can, but this does not mean that the state is required to ensure equal opportunity. Miller further argues that states have two good reasons to restrict

immigration: the preservation of culture and population control. Michael Blake has argued that, like individuals, states have a right to avoid unwanted obligations imposed on them, so it is permissible for them to restrict immigration when immigrants represent an imposition of unwanted obligations.

On the other hand, there are those who emphasize the rights and concerns of immigrants or would-be immigrants against those of the state. Joseph Carens argues that a true commitment to the equal moral worth of individuals provides no justifiable grounds for restricting immigration. He has also argued that “the moral right of states to apprehend and deport irregular migrants erodes with the passage of time” as “their membership in society grows in moral importance, and the fact that they settled without authorization becomes correspondingly less relevant” (2009). Phillip Cole asserts that in the context of moral egalitarianism, the distinction between members and nonmembers of a political community would need moral justification in order to justify a difference in the rights or treatment afforded to each group; he suggests that “many attempts to show that members do have the right to exclude nonmembers assume the moral validity of the members/nonmembers distinction, although they claim to establish it” (186). Cole also appeals to the principle of freedom of mobility, asserting that we should seek symmetry between the right to emigrate and the right to immigrate. Chandran Kukathas similarly defends free immigration based on the principles of freedom and humanity. Javier Hidalgo responds directly to Michael Blake’s argument about a state’s right to restrict immigration in order to avoid the unwanted obligations that immigrants would impose on them. Hidalgo argues that we do not actually have rights to avoid unwanted obligations, so Blake’s argument for immigration restrictions does not hold. Tally Kritzman-Amir and Thomas Spijkerboer argue that because the right of individuals to be protected is more important than the competing rights of

states, such as sovereignty, states have an ethical obligation to help refugees at their borders (7). Seyla Benhabib argues that it is important to bring into consideration the “associative obligations among peoples arising through historical factors” in the discussion of the ethics of migration. Finally, Michael Huemer argues that the U.S. government “knowingly and coercively imposes severe harms on millions of human beings” through its restriction of immigration. Since it is morally impermissible to knowingly and coercively impose severe harms on others without good reason, and since desires to limit marketplace competition or to preserve culture do not constitute good reasons, it is morally impermissible for the U.S. to restrict immigration.

Most of the arguments outlined above are about the ethics of immigration restrictions and not directly about the ethical obligations of liberal democracies to the “unwanted.” Immigration restrictions, however, are a state’s mechanism for dealing with the “unwanted.” If a state admittedly wanted all immigrants, then they would have no need for restrictions. Arguments about the ethics of immigration restrictions are therefore relevant and helpful to the discussion of the ethical obligations of liberal democracies to the “unwanted.”

Now let me examine the ways in which these arguments align or conflict with the generally accepted ethical principles of liberal democracies that I outlined above. The arguments in favor of immigration restrictions, and therefore supporting the idea that states have a lesser ethical obligation to the “unwanted,” appeal to concerns about communal integrity, freedom of association, and the right to avoid unwanted obligations. Do these concerns align with the liberal democratic principles of freedom, political justice, and equality? Concerns about communal integrity align with these principles to the extent that we believe they can only be realized within strong and stable communities. Even if we believe this to be true, it is implausible that our communities will remain exactly the same over time, and for many, this is undesirable as well.

Furthermore, even if strong and stable communities were possible and desirable, it seems that liberal democracies must admit the primacy of the principles of freedom, political justice, and equality over concerns about the nature of community. By definition, liberal democracies prioritize such individual rights. In other words, concerns about communal integrity may be valid and may align with principles of liberal democracies, but communal integrity does not seem to be strictly *required* by these principles.

Another concern mentioned above is the principle of freedom of association. At first glance, freedom of association seems to align perfectly with the ethical principles of liberal democracies. These principles, however, demand a limit to freedom of association in its negative form, that is, the freedom *not* to associate. Consider public schools, for example. Students do not have the freedom *not* to associate with other students on the basis of race, socioeconomic background, or ethnicity. Though the freedom of association supports their right to create clubs and make friends of their choosing, students cannot demand that certain groups of students be left out of the classroom. Wellman's assertion that "freedom of association entitles one to *not* associate with foreigners" is therefore implausible and even dangerous (13). If we are entitled not to associate with foreigners, then are we also entitled not to associate with other groups that may already be members of our society? Though we might have the freedom not to accept foreigners or any number of people into our personal lives (as friends or houseguests, for example), it is clear that in the public sphere (such as in public schools), there must be limits to our freedom not to associate with others. An extensive freedom not to associate conflicts with the ethical principles of liberal democracies.

The right to avoid unwanted obligations is another concern supporting the argument for immigration restrictions. Hidalgo uses the example of the right to have a child to argue that we

do not in fact have a right to avoid unwanted obligations. When a couple chooses to have a child, they impose (potentially) unwanted obligations on others in the community, who will have to provide services for and otherwise contribute to the wellbeing of the child. To say that the couple violates others' rights to avoid unwanted obligations would curtail a fundamentally important freedom in liberal democracies: the freedom to reproduce. It would further violate the principles of justice and equality, as people would be treated differently based on when they were born (that is, new generations would not be permitted a chance to live at all, because they might impose obligations on existing generations). I agree with Hidalgo that we do not have a right to avoid unwanted obligations; such a right would seriously conflict with the ethical principles of liberal democracies.

The arguments against immigration restrictions, and therefore supporting the idea that states have greater ethical obligations to the "unwanted," appeal to concerns about the equal moral worth of individuals, to freedom of mobility, to associative obligations, and to the protection of individuals. Do these concerns align with the liberal democratic principles of freedom, political justice, and equality? Concerns about the equal moral worth of individuals certainly align with liberal democratic principles, as this idea serves as their very foundation. As Carens and Cole argue, if we are committed to the equal moral worth of individuals, then there is no moral distinction between members and nonmembers of our society. Even if national borders were created through complex historical and social processes, it is clear that they are arbitrary and thus morally irrelevant to those who are born after such borders are already in place. A person's place of birth is arbitrary and morally irrelevant. If national borders are morally irrelevant, then whether a person is currently on one side of a border or another must be morally irrelevant as well. That is, the distinction between members and nonmembers in a given society



may be socially, practically, administratively, and legally, but *not morally or ethically*, relevant. In other words, if the liberal democratic principles of freedom, political justice, and equality are based on the assumption of the equal moral worth of individuals, then we have the same ethical obligations to nonmembers as we do to members; we have the same ethical obligations to the “unwanted” as we do to the wanted.

It seems implausible that concerns about freedom of mobility conflict with liberal democratic principles in any way, as freedom of mobility is just one kind of the many freedoms that liberal democracies typically uphold. Concerns about associative obligations appear to be similarly aligned with liberal democratic principles. Benhabib stresses the importance of “associative obligations among peoples arising through historical factors.” She uses the example of the longstanding dependency of agricultural fields in California upon the often undocumented Mexican migration into the United States. The idea here is that this long-term association carries with it certain obligations of the U.S. to the Mexican workers. The idea of associative obligations rests on notions of reciprocity and fairness, which are intimately linked to the liberal democratic principles of political justice and equality. Given the long-term use of and dependency on Mexican labor in places like California, and the great economic benefit that this represents to the U.S., reciprocity and fairness seem to require that the U.S. confer greater benefits on Mexican workers than it currently does (Mexican workers typically face low wages and precarious working conditions).

Arguments against immigration restrictions based on concerns about the protection of individuals are also necessarily aligned with the ethical principles of liberal democracies. Liberal democracies are founded on the belief in the primacy of the rights of individuals. Democracy is designed to represent the rights of individuals by soliciting their opinions, requiring their

consent, and through continued checks on those in power. A state may have legitimate concerns about such risks as economic disadvantages for its members, threats to political sovereignty, and the erosion of communal integrity. If it is committed to the primacy of the rights of individuals, however, as a liberal democracy ostensibly is, then it cannot restrict immigration if this means failing to protect the individual. As Kritzman-Amir, Spijkerboer, and Huemer suggest, immigration restrictions violate liberal democratic principles by failing to protect the rights of individuals.

Finally, what does it tell us about the ethical obligations of liberal democracies to the “unwanted” when we hold up arguments about immigration restrictions against the generally accepted ethical principles of liberal democracies? What are the practical implications? If liberal democracies are committed to their foundational ethical principles, then their immigration policies must reflect and align with these principles if they are to avoid incoherence and even hypocrisy. My analysis therefore suggests that liberal democracies must reject both the idea of an extensive freedom *not* to associate, and the idea of a right to avoid unwanted obligations. They may take concerns about communal integrity into account, but only as long as this does not undermine the primacy of the rights of individuals. Liberal democracies must take seriously arguments against immigration restriction based on concerns about the equal moral worth of individuals, freedom of mobility, associative obligations, and the protection of individuals. When they take these arguments seriously, liberal democracies will find that they have a great ethical obligation to the “unwanted,” that is, they have the same ethical obligations to the “unwanted” as they do to the wanted in their states.

## Conclusion

In conclusion, I have been unable to find a plausible ethical justification for treating those in the broad category of the “unwanted” differently than we treat citizens of our liberal democracy. Moreover, I have found that a restrictive immigration policy is not morally compatible with the liberal democratic ideals of freedom, political justice, and equality. Liberal democracies are not morally justified in deporting undocumented immigrants or rejecting asylum-seekers; if they are to remain morally coherent, they must in fact grant membership and eventually citizenship to these “unwanted” groups. Our liberal democratic ideals carry with them significant ethical obligations to the “unwanted,” and these obligations extend even to the relatively small group of undocumented immigrants who have been charged with crimes in this country. I hope that this discussion of the ethical obligations of liberal democracies to the “unwanted” might serve as a point of departure for exploring how our commitment to liberal democratic ideals should inform immigration policy.

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