

# A JUST PUBLIC CHARGE RULE

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## Introduction

On February 24, 2020, the United States Citizenship and Immigration Services (CIS) implemented the Inadmissibility on Public Charge Grounds final rule. Let's call this instance of the rule Trump's Public Charge Rule or TPC for short. TPC is the codified criteria now used to determine eligibility for change of status, green cards, or visas. This means that applications will be rejected when it is determined that the applicant may become or is *likely* to become a fiscal burden for the taxpayer in terms of social benefits. (CIS, 2021a).<sup>1</sup> The main goal is to identify immigrants who are potentially unable or will be unable to support themselves (or are supported by their families). This is achieved by tracking the immigrant's dependence on financial or social support. Those who required assistance during twelve of the last thirty-six months will be considered a public charge and thus denied a green card or residency. The rule exempts refugees, asylum seekers, children, and teenagers with "special immigrant juvenile status" and some other victims of abuse and violence (CIS, 2021b; CIS, 2021c).<sup>2</sup> Notably, TPC expanded the meaning of "public charge" and "public benefits" (present in previous legislation) thus

<sup>1</sup> "The 2019 Public Charge Final Rule is no longer in effect, and DHS will partner with federal agencies to ensure impacted individuals are aware" (CIS, 2021a).

<sup>2</sup> "That was in place before the Public Charge Final Rule was implemented. In addition, USCIS will no longer apply the separate, but related, "public benefits condition" to applications or petitions for extension of non-immigrant stay and change of non-immigrant status." (CIS, 2021b).

"On March 9, 2021, the Seventh Circuit Court lifted its stay and the U.S. District Court for the Northern District of Illinois's order vacating the Public Charge Final Rule went into effect. When the vacatur went into effect, USCIS immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. USCIS continues to apply the public charge inadmissibility statute, including consideration of the statutory minimum factors in the totality of the circumstances, in accordance with the 1999" (CIS, 2021c).

establishing a forward-looking test to determine *the likelihood* of dependence on public programs and specifying a standard that Homeland Security employs to predict if an alien is likely to become a “public charge” at any time in the near future and is therefore inadmissible and ineligible for admission or adjustment of status.

Biden’s administration is expected by many to revoke TPC, but the formal rulemaking process will take time. His administration may also choose simply to not enforce it. Regardless of what happens to TPC while I wrote these lines, I believe it is important to have a broader discussion about the justification and scope of TPC, PCR, and similar immigration policies in order to identify whether conditions exist under which such policies are morally required or even permissible. There is also the issue of how we can measure public burden in a meaningful, normative way if people who represent a burden at admission later become active, cooperating members of society. This is why I question in this chapter the morality of public charge.

There are several familiar approaches to the morality of public policy. Here I will take the framework of normative theory of international relations, global ethics, and normative political theory. Some theorists will assess the consequences of public policy, deeming inadequate the policy that delivers detrimental consequences and, conversely, judging adequate public policy that produces good consequences (Macedo, 2018; Miller, 2005). Some others invoke a concept of justice in order to ask what justice requires from our institutions or public policy (Walzer, 1980; Wellman, 2008). Still a third view will ask a methodologically prior question about what is morally permissible and required in terms of public policy. I take this last path in the hope of preserving a more pluralistic normative approach that allows the consideration of several claims and different levels of analysis (Camacho-Beltrán, 2019; 2020).

The agenda of this paper runs as follows. In section two, I lay out what defenders of TPC have to say in favor of this policy and I examine some straightforward objections to the consequentialist defense of TPC. These objections, however, do not preclude the possibility of reinstating PCR in some other fashion, so in section three I offer an account of the normative core of PCR. I capture the normative core straightforwardly and center it around the value of self-sufficiency and the principle of membership. This in turn is easily connected in section four with familiar justifications for exclusion grounded in rights and obligations. These justifications are each flawed, but perhaps

they could work together in order to sustain PCR, working out a sort of pluralist justification. So, I reconstruct the justification in this pluralist way only to find out that the pluralist defense may ground TPC in certain circumstances, but under these circumstances, we know it seems to favor more inclusion than less. Finally, in section five I show the plausibility of the account by employing it for analysis in the case of El Salvador.

## **A Philosophical Ground for TPC on Consequences**

According to its supporters, the TPC establishes a move in the right direction to emulate some of the positive traits of the Canadian immigration system, which gives greater weight for eligibility to educational background, occupation, and language proficiency. The Canadian system has been defended in consequentialist terms. Consequentialism is a kind of moral assessment or evaluation of actions or policies that attributes moral properties mainly to consequences (Pettit, 1997). Under this view, border policy such as TPC is morally right if and only if, as a consequence, it maximizes some function of welfare or social utility (Sen, 1985). In this vein, by increasing regular admissions of skilled immigrants relative to the unskilled, the Canadian system avoids the detrimental effects that immigration sometimes have over the wedges of low-skilled citizens and residents; and at the same time lowers the wages of the better off (Borjas, 1990: 176-77; Macedo, 2018: 290). So, it is possible that TPC may be defensible in the same terms as the Canadian system.

Following that path, there are at least two major lines of defense. First, as explained above, TPC reduces discretion in the interpretation of the rule on Public Charge by laying down the framework, detailing the circumstances, and establishing the prospective character of public charge judgments (DHS, 2021). For this prospective analysis, TPC requires factoring in age, health, family status, assets, resources, financial status, education, skills, and self-sufficiency. By reducing arbitrariness and discretion, TPC seeks to protect resources and benefits that are desperately needed by worst-off residents and citizens. This entails that would-be immigrants seek inclusion *for the right reasons*, and also ensures that the availability of public benefits are not an incentive for immigration to the United States (DHS, 2021). For instance, immigrants who seek to change their status are generally required to continue to be

self-sufficient and not remain in the U.S. with the purpose of relying on any public benefits (DHS, 2021).

Second, the emphasis on self-sufficiency may also protect the interest of guest workers, as it requires that immigrant workers receive adequate income and resources to support themselves without resorting to seek public benefits. The detrimental effects of unskilled immigration over low-income residents and citizens have been profusely measured and studied (Wasem, 2012: 3, 7-8).<sup>3</sup> According to a popular view, high levels of unskilled immigration have tended to lower wages overall by increasing the labor supply. Keeping the wages of newly arrived immigrants above the federal line of poverty also protects the wages of low-income residents and citizens.

If the consequentialist defense of TPC is sound, then it is not only morally permissible but even morally required (as a requirement of basic justice). But this is too quick, because requirements of justice also compel us to protect the interests of the less well-off abroad. In this vein TPC may come up short. In order to comprehend this, notice that TPC has at least four kinds of major detrimental effects that are objectionable in consequentialist terms. First, it is likely to affect some of the most vulnerable people holding temporary humanitarian statuses. The welfare rules vastly limit these benefits almost entirely to U.S. citizens, refugees and asylees, and green-card holders. Non-citizens, who are both eligible for benefits and subject to TPC's test at the green-card application stage, fall into a very limited set of mostly humanitarian immigration statuses. Second, it has serious chilling effects, effectively causing people to withdrawal (justifiably or because of misinformation) from essential public benefit programs (providing food, housing, and medical needs to citizens, people holding temporary humanitarian statuses, and other family members who are directly targeted by the rule). (Batalova et al., 2019; Kerwin et al., 2018: 3, 9).<sup>4</sup> Third, the implementation of a forward-looking

<sup>3</sup> See also the controversial analysis of Borjas (1990).

<sup>4</sup> "TPC is likely to make millions of people in immigrant households—both citizens and noncitizens—fearful (i.e., people disenrolling from or not applying for benefits for themselves and other family members) of receiving public benefits. According to Migration Policy, more than 10.3 million noncitizen adults and children live in families in which at least one person receives either cash or noncash benefits. Disenrollment of social benefits such as SNAP (Supplemental Nutrition Assistance Program) and Medicaid could seriously spoil children's academic success and long-term economic self-sufficiency effectively creating the problem that it allegedly attempts to solve. Disenrollment of other programs may be detrimental to integration of low-income, working-class immigrants and their families to local communities and society as a whole" (Batalova et al., 2019).

test required by TPC is likely to affect future green-card applications. In order to make forward-looking judgments and predict future dependence on social benefits, officials look at multiple factors, including: income, assets, educational attainment, English skills, etc. Finally, it should be stressed that TPC increases chances of deportation by establishing certain kinds of identity or profiles corresponding to deportable subjects relying on public benefits (De Genova, 2002: 439). TPC establishes a conceptual and interpretative link between the need and employment of social benefits and deportability (Valenzuela and Camacho-Beltrán, 2021).

The detrimental effects that TPC causes are obviously unfortunate, but it is not apparent why they are morally wrong and should be avoided or removed. In order to explain this as a kind of wrongdoing, it is useful to remember the rationale behind asylum and refuge. Everyone has a basic fundamental right to settle in a place where a reasonable safe life is viable. So, asylum and refuge are ways to provide a mandatory form of humanitarian relief that cannot be exported or given away but can only be provided within the jurisdiction of a legitimate, just state at the request of the person in peril (Walzer, 1980: 49-50). The refugee regime created by the Geneva Convention meets some of these duties along with the U.N. High Commissioner for Refugees (UNHCR). The number of this type of requests has been constantly growing from a few thousand in the 1970s to several million (in 2011, the UNHCR had over ten million refugees under its care) (UNHCR, 2012). Allegedly, in order to deal properly and specifically with the numerous requests of asylum and claims of refugees, the U.S. has created various other categories of temporary humanitarian relief. But the rationale behind these categories remains the same: to provide the kind of mandatory assistance that can only be provided within the territory. This differential consideration seems to be inflicting disproportionate burdens over those under humanitarian statuses, only to avoid costs to the taxpayer (provided that the harm to the wages of lower-skilled native workers may be also addressed by means of taxpayer-funded social programs). This differential consideration seems wrong or at least morally arbitrary because it prevents the U.S. from offering the same kind of protection implicated in the rationale that motivates humanitarian statuses, asylum, and refuge protections in the first place. A moral justification for this differential consideration should be provided or the arbitrariness of this should be removed (Buckinxy and Filindra, 2015).

## Identifying the Normative Core of the Public Charge Rule (PCR)

TPC may be morally impermissible or at least morally arbitrary, but this does not preclude the possibility of restating the Public Charge Rule in different terms or to provide a justification for differential treatment among different statuses. So, it is worth exploring these possibilities, in order to identify the normative core of PCR and to offer some conceptual clarity about what kind of interests are being protected. There is a chance that this will allow me to establish certain links to familiar moral justifications for exclusion of would-be immigrants. In turn, this may help to offer a general assessment of the plausibility of obtaining a justification for some other forms of PCR.

The normative core of the rule could be seen already in the Immigration Act of 1882, which first introduced PCR. In a nutshell, it established some of the first criteria under which authority is permissibly used to expel immigrants from the U.S. (Immigration Act, 1882a). According to this document, there are grounds for exclusion for “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge” (Immigration Act, 1882b).

The most obvious normative problem with this rule (apart from the plainly unacceptable discriminatory language) is that it admits a broad space for interpretation regarding which level of self-sufficiency is required, who should be considered a public burden, and what kind of public burdens justify exclusion or deportation. This leaves to the discretionary action of courts and implementing agencies the decision about who is likely to become a public charge. However, the statements by Congress included in the Immigration and Nationality Act of 1952 offer some clarity on this regard. *Self-sufficiency* is regarded by Congress as the core principle encompassing immigration policy since the 1882 immigration act. This means that the American people expect would-be immigrants “who aspire to be included, to rely on their talents, efforts and their own resources or their families.” Aliens must be motivated to share their resources and talents with the American people instead of exploiting the society by relying on its public system of benefits (GPO, 2021). So, consider the following clarification on the requirement of would-be immigrants: “*self-sufficiency*: would-be immigrants should embody the ideal of self-sufficiency. This means *i*) that upon inclusion they will rely

solely on their talents, efforts and their own resources (or their families) to sustain themselves and *ii*) they have something to offer to current members and residents in terms of their resources and talents.

If this interpretation of self-sufficiency is sound, it seems that the legacy of the 1882 act established a conceptual link between the need for public institutional support with exclusion and deportability, regardless of the moral claims of admission that individuals may have, according to their condition of vulnerability and need. But this seems to be at odds with principles of public morality. For instance, note that almost the opposite view applies to residents and citizens. Political morality seems to require members of a political community to be strongly concerned with the fate of their fellow human beings. This is clear because no citizen or resident gets disenfranchised or deported when she suffers a terrible accident that prevents her to be self-sufficient, and no child with cognitive disabilities is denied citizenship. In fact, applied ethicists now look for new forms to make sure that children and people with cognitive challenges are guaranteed certain kinds of political participation that allow them a full manifestation of their citizenship (López-Guerra, 2012). So, it seems that self-sufficiency implies the opposite principle for citizens and residents. Consider the following requirement: “*mutual concern*: members of a political community should establish and maintain domains of freedoms and forms of mutual concern *for one another* that are morally defensible and valuable.”

The tension may be resisted by suggesting that *mutual concern* plays the role of a principle about the moral character of states or political communities, whereas *self-sufficiency* merely functions as a principle of prudence regarding the interest of such communities. But this is too quick. As opposed to *de facto* regimes that exercise political power arbitrarily following the whip of a tyrant or the short-sighted interests of a social class, states with a moral character aspire to establish and exercise political power over their citizens and residents, according to standards of public morality such as legitimacy and justice (Miller, 2005: 374). For instance, for liberal democracies, sovereignty is not absolute or supreme. Instead, sovereignty-rights should be constrained by moral values and standards if political power is exercised legitimately (Buchanan, 2002). Yet by itself, *mutual concern* does not exclude outsiders or foreigners from its scope in order to make them subject to self-sufficiency only. So *mutual concern* must also imply *membership*: the right of political

self-determination of a political community of mutual concern consists in the exercise by its members of rightful control over that societal composition as they see fit, including the right to exclude whomever they see fit in accordance with their interest to preserve relationships of justice among them.

As *mutual concern* is a general principle of morality with no determined scope, its scope is constrained by *membership*. Indeed, the exact nature of the moral character of a specific state may vary greatly. Rawlsians famously claim that states should be fair systems of social cooperation between free and equal members. Libertarians on the contrary claim that states ought to be more similar to associations of mutual benefit. But the problem with these familiar views is that exclusionary borders are difficult to tide with these conceptions of the moral character of states, as in principle it seems that anyone willing to participate in the association or the society should be welcome.<sup>5</sup> Instead, *mutual concern* seems to imply an intergenerational enterprise with a unique character that provides strong rights of self-determination that extend even over the composition of the group. If *self-sufficiency* were a principle of prudence and *mutual concern* were a principle establishing the moral character of states, then *membership* must be a principle regarding the moral character of borders.<sup>6</sup> It establishes that a certain kind of partiality is morally permissible among citizen and residents that cannot be generally established with outsiders (Carens, 2013: 181).<sup>7</sup>

What matters here is to see the conceptual continuity between a conception of the moral character of states and borders with the moral permissibility of a prudential principle such as self-sufficiency. That is, the moral justification of *self-sufficiency* may be parasitic to the plausibility of *mutual concern* and *membership*. Put in another way, *self-sufficiency* seems to require that states are morally permitted to give more weight to the interests of citizens

<sup>5</sup> For the claim that a system of social cooperation implies open borders see Yong (2017). For the claim that libertarianism requires open borders see Steiner (2001). I've discussed these implications in Camacho-Beltrán (2015).

<sup>6</sup> This section relies on previous work. I've previously discussed the general traits of the morality of immigration controls in Camacho-Beltrán (2017). I discussed the moral scope of principles such as *membership* in Camacho-Beltrán (2019). The plausibility of partiality among members is discussed in Camacho-Beltrán (2020).

<sup>7</sup> In order to establish partiality-based relations outside the members of a political community and trump the partiality established among them, one needs to form a deeply meaningful bond such as those established with foreign-born spouses or children. That is why states with a moral character in their border policies normally recognize rights of family reunion.



and residents than to the interests of would-be immigrants. If this kind of partiality is justified, then the kind of differential concern that PCR requires may be justified as well. In order to be sure about this we need to unpack the claims implied by *membership*.

## A Philosophical Ground for PCR

There are at least two kinds of arguments that could provide moral support for *membership*. Arguments of the first kind are grounded in collective rights of association which are analytically embedded in a commonsensical notion of collective rights of self-determination.<sup>8</sup> Proponents of the right to exclude—grounded in members' collective rights—argue that states, as any other association, are at liberty to refuse to associate with any would-be immigrant according to their own interests (Wellman, 2008). The case for exclusion grounded in collective rights may be invoked to justify PCR. In order to understand this, suppose that we launch a charity association. All help is welcome, but certainly members would need the disposition and capacity to help. If someone has difficulties supporting herself, she may certainly qualify to receive help, but the association may be justified in rejecting her application for membership. This means that the charity association is not under obligation to accept her as member. She will be a burden for the group instead of a source of support. It is in the interest of the group to acquire new members, but those new members should be at least self-sufficient enough so as to provide support for the group instead of requiring it. All things being equal, states are collectives that assume many forms of collective care. So it is also possibly in their legitimate interest to acquire members that could provide support instead of demand it. As a result, states may have also a right to reject would-be immigrants if they are more likely to become a burden than a cooperating member of the society (Wenar, 2005).<sup>9</sup>

<sup>8</sup> This account is expanded and presented, examined, and discussed in Wellman and Cole (2011). Complementary discussion could be found in Camacho-Beltrán (2015) and Fine (2010).

<sup>9</sup> This narrative of brute bare rights is very compelling for many American citizens and residents. As a matter of cultural particularity, many American citizens believe that any threat or decrease to liberty-rights is unacceptable or at least it should be resisted. However, in reality no theory of absolute or bare rights may be coherently defended; not even for the case of liberty-rights. For an overview see Wenar (2005).

The problem with the argument of the right to exclude, as it is, is that the argument seems formulated in a rather simplistic fashion and is unable to take into account the complexities of rights to exclude from territorial states (Wenar, 2005).<sup>10</sup> The argument as it is, simply assumes a connection between rights of disassociation and territorial rights of exclusion. But the right not to associate with someone is not equivalent to the right to prevent someone from entering somewhere. An additional argument explaining the appropriate relation between states, peoples, and land must be provided (Moore, 2015). Furthermore, the right not to associate with low-income, low-schooled would-be immigrants is clearly limited by other rights; firstly, by the individual rights of natives to associate with those would-be immigrants (Steiner, 2001). But other rights such as rights of reparation or rights to be protected may complicate the normative scene. Hence, a good explanation of the nature of a putative right to exclusion should explain the complex relation between all the rights implied or relevant for territorial and collective exclusion.

Now arguments of the second kind are grounded in collective special obligations. Typical special obligations arise from consent as is the case of promises or contracts. But associative special obligations arise from the roles we find ourselves in, regardless of consent, as it is the case with children's obligations toward parents or siblings. In the same vein, proponents of this argument hope that citizens and residents are engaged in morally meaningful relations of socialization and mutual care in a way that establishes mutual associative obligations between them and toward each other (Miller, 2016).<sup>11</sup> Citizens and residents are engaged with each other in a way that they are not with outsiders (Horton, 2006; 2007; Simmons, 2002).<sup>12</sup>

<sup>10</sup> Recall that in its contemporary meaning, having a right means to specify the scope and limits of the protection of that interest which is said to be protected by a right in a way that remains compatible with rights of everyone else. In order to be limited and specific, another important trait of the contemporary conception of rights is that they function as a sort of shorthand for what in reality stands for a complex net or molecule of right-incidents that together explain the nature, scope, and limits of a particular right. For a discussion about this canonical Hohfeldian analytical account of the form of rights see Wenar (2005). As a result, no right is absolute and even human rights have limits. To be sure, sometimes we obtain better accounts of some rights when we offer the adequate set of boundaries and constrains appropriate for that right (Wenar, 2005).

<sup>11</sup> David Miller is the key proponent of this view. He has developed this argument over the years. The completer and more self-contained version of this argument can be found in Miller (2016); see particularly the chapter on "Closed Borders."

<sup>12</sup> For a complete defense of the case for associative political obligations see Horton (2006). In defense of associative political obligations: Horton (2007). For discussion see Simmons (2002).

The kind of support that the argument of obligations could offer to PCR is straightforward. If the argument from the position of obligations *i*) finds a normative way to explain how certain obligations are obtained only among citizens and residents and not between insiders and outsiders; and also *ii*) finds a way to show that those obligations of mutual care are indeed obligations of distributive justice and may be disrupted if less-educated would-be immigrants with low income represent a public charge; then citizens and residents may defensibly exclude those flagged by PCR, because they could jeopardize the unique and intrinsically valuable relations of mutual care and justice that residents and citizens have over time created and sustained. Finally, it purports to be grounded in claims over territory: in this view, a cultural group with the power to socialize individuals as members by means of sustaining a unique culture combines the group's culture with its land in such a way that, over the course of generations, it becomes impossible to detach the culture from the land, without inflicting over that group a tremendous form of morally impermissible harm (Moore, 2015: 6; Miller, 2007: 218).

The argument would certainly work if the creation of obligations suddenly stops at the border, preventing the creation of transnational and global obligations. But there are several cases that empirically challenge the alleged particularity of associative obligations: in the first place, the case of border communities divided by the border that still establish consented and associative obligations to deal with shared problems. In the second place, communities of immigrants living for a long time in a place where—regardless of their migratory status—establish associative obligations toward other members of the community, residents and citizens. Finally, we have the case of regional development where several countries establish strong commercial, financial, diplomatic, cultural, and security-keeping bonds, and their intense relations give rise to associative obligations that go beyond signed agreements and treaties. There is not enough space here to discuss all of them in detail. But what all of these examples have in common is the fact that the conditions of possibility for associative obligations to obtain may be presented in different degrees, regardless of border lines or nationality. So again, the argument is too simplistic to deal with the complexities of reality.

Now, if we take a step back, it seems that the arguments for exclusionary rights and obligations may do better against the simplicity charge if they complement each other. So perhaps a more complex account of exclusionary

rights could be developed by showing the correlations between all the relevant obligations and rights among residents and citizens. This alternative version should take into account transnational rights and obligations in order to show—as opposed to merely assume—that the balance of rights and obligations among residents and citizens does not apply to outsiders and would-be immigrants. From these requirements we may obtain the following desiderata:

**GLOBAL SELF-SUFFICIENCY:** should be supported by a *consequentialist argument* that globally assesses the beneficial and detrimental outputs of implementing PCR. But it would be wrong only to factor out the direct consequences of PCR over just one group (even if advantageous) in isolation from the rest of the foreseen direct and indirect consequences. Now of course it would be foolish and supererogatory to expect an exhaustive account of consequences as in the flapping butterfly analogy that causes a storm. Establishing a criterion that could determine which consequences should matter is a familiar problem of consequentialism that I cannot work out here. Suffice it to say that there are well-known accounts of consequentialism that deal with the problem by distinguishing intended, foreseeable, probable, and degrees of proximity of consequences (Sosa, 1993; Railton, 1984). A full picture though could include direct and indirect effects that may be pinned down by duties of domestic, international, and global justice. In any case, this implies that we should weigh the positive effect that PCR has over the wages of less well-off natives against the negative effects that it could produce over natives and vulnerable would-be immigrants within U.S. territory and abroad.

**INTERNATIONAL MEMBERSHIP:** should be supported by a more or less complete account of obligations. It will be plainly flawed if we conceptually isolate the kind of obligations that we may encounter mostly among citizens and residents and then claim that the boundaries of those obligations constitute moral boundaries that compartmentalize the obligations insiders may have with outsiders. This amounts to taking the effect for the cause: we exercise coercive exclusionist policies in order to curtail obligations acquired with people outside of our borders, only to claim that the obligations we maintain solely with residents and citizens justify those same immigration policies. (I analyze this argument in Camacho-Beltrán, 2020). This means that we recognize the moral stance of consented obligations such as those present in international covenants and treaties. But for the very same moral reasons that ground that kind of stance, we ought to recognize at least a parallel set of involuntary obligations that arise as the result of the detrimental effects of our international accords and actions; and the associative obligations that arise as a result of the international relations we establish, and the role we, as members of a state, play in the world.

TRANS-TERRITORIAL MUTUAL CONCERN: should be supported by a more or less complete account of the rights of citizens, residents, and immigrants. It would be incomplete to put forward an account of the collective rights of self-determination and association of states and peoples without weighing those rights against the rights of individual citizens and residents and the different rights of different kinds of immigrants. Rights are not absolute and specifying the content of a right requires establishing its limits. Thus, all the competing rights involved in immigration issues should be drawn in order to see their mutual support and limits; in this way, the legitimate interest of more inclusion that citizens, residents, and would-be immigrants themselves have could be weighed against the interest of exclusion sustained by different anti-immigrant groups. This is tricky because rights have a cost that is not always transparent to public opinion. For instance, preventing immigrants from filling positions in the job market often has net operative costs that later are transferred to the consumer. Offering a complete picture of rights interaction may show that not everyone interested in keeping immigrants out is willing to pay the cost of it, and therefore is not willing to exercise that particular right.

To sum up, it may be true that we need to look into rights and obligations in order to establish requirements of justice to protect less well-off residents and citizens by means of implementing policies such as PCR. That is the normative core explained by *self-sufficiency*, *mutual concern*, and *membership*. But the simplicity challenge and the desiderata show that the defender of exclusionary policies does not get to cherry-pick the rights, consequences, and obligations that serve to justify PCR. Instead of an ad hoc account of consequences, rights, and obligations, the defender of exclusionary policies needs to show that PCR can stand on its own in a complete normative analysis as the one suggested by the desiderata.<sup>13</sup>

## Working Out a More Complete Normative Panorama

In order to see the plausibility of this kind of pluralist analysis, consider the case of El Salvador. The standard analysis from *self-sufficiency*, *membership*,

<sup>13</sup> It is very important to stress that the normative scheme drawn by this pluralistic account of consequences, rights, and obligations cannot at all be subsumed into an account of charity or humanitarian obligations. Humanitarian or Samaritan duties can be discharged at discretion. Instead, obligations of justice are mandatory because they specify what we owe to each other, as a matter of moral principle. This point is actually unchallenged by the defender of exclusionary policies such as PCR.

and *mutual concern* is straightforward: the U.S. recognizes some charity duties to be discharged as it sees fit with Salvadorans by setting up several humanitarian statuses for aid. But at the end of the day, the Salvadoran government is taken as generally responsible for the well-being of its people as much as the responsibility the U.S. government has with its own people requires it to sometimes implement exclusionary policies such as PCR (CIS, 2001; 2006).

Under this analysis, U.S. immigration policy comes out as generous, because it sustains admission of refugees and various humanitarian statuses even though it imposes limits to admissions such as those established by PCR. But, as I suggested, this analysis may be flawed as it is simplistic and it cherry-picks the consequences, rights, and obligations that in turn may be useful to defend the kind of immigration policy pursued by those interested in more exclusion. But those interested in more exclusionary admissions have to show that, all things considered, they have exclusionary rights over the benefits and privileges they seek to defend by excluding others from their production and enjoyment.

This is precisely what *global self-sufficiency*, *international membership*, and *trans-territorial mutual concern* seek to pin down. So now let's see how a more complete normative landscape may be worked out in the case of migrants from El Salvador.

U.S. citizens and residents willingly exercise their rights of association with Salvadorans: U.S. corporations benefit from operations in El Salvador mainly through the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) (ITA, 2021). Salvadorans exercise their associative rights as well: Local producers export to the U.S. only manufactured products with little added value such as apparel products (77 percent) and agricultural commodities such as coffee, tea, and sugars.

For the standard analysis from *membership* this will be the only account of rights required. In the same vein, from *mutual concern* we will consider only the fulfilment of the obligations arisen by the consent to these agreements and contracts because it is assumed that no obligations of distributive justice are obtained in the international realm, as there is no global coercive system (Nagel, 2005). But, as I have suggested, this is too quick and we have to take into account involuntary obligations that in turn give rise to other rights.

Salvadorans and U.S. citizens/residents are of course expected to honor their contracts and agreements. But in order to avoid reductionism and sim-

plicity, we must take into account involuntary obligations that arise from roles and actions of both Salvadorans and U.S. citizens/residents. Despite the fact that the doctrine of sovereignty requires us to consider states as having equal stand, admittedly El Salvador and the U.S. do not establish relations as equals and as a result they play different roles to one another.

U.S. companies and corporations have been able to introduce products with high added value such as aircraft and equipment of different sorts to the Salvadoran market, along with other desperately needed commodities like fuels, cereals (yellow corn, rice, and wheat), soybeans, and cotton. As a result, the bargaining power of U.S. corporations and companies is disproportionately high against the interests of local farmers and producers, so the trade agreement is much more beneficial to U.S. corporations. These imbalances weaken local industries and produce economic dependency on the United States. This asymmetry of bargaining power and relations of dependency give rise to a collective choice of roles: U.S. citizens and residents may choose to play either the role of caretaker for the vulnerable or the role of dominator that takes advantage of the vulnerable.

This may sound too quaint or informal to constitute part of international political deliberation. Yet, if states have a moral stand, they are bonded also to play a role relative to other states and to the context in which they act and maintain relations. Accordingly, given the circumstances and the asymmetry between El Salvador and the U.S., the latter is bound to choose between mitigating the adverse effects of maintaining asymmetrical relationships while reducing the asymmetry by providing support, or allow a *laissez-faire* state of affairs where U.S. citizens get protected but Salvadorans are left to suffer all the consequences of the asymmetrical relations, or some other choice in between. The asymmetry exposes Salvadorans to the wrongs of corporate plundering and extraction of resources.

Had the U.S. chosen to ignore its associative duties of care, then it would have damaged the Salvadorans and therefore would have acquired other kinds of special duties of reparation. But instead of *laissez-faire* or protection, the U.S. picked intervention. At the beginning of the twentieth century, President Roosevelt attributed to the U.S. the right to exercise an "international police power" in Latin America. This police power amounts to coercion, violation of national self-determination, and manipulation to protect the interests of the U.S. in the region instead of protecting Salvador-

ans from asymmetry. Here is where special obligations and consequentialism meet, justifying strong duties of reparation.

Indeed, there are other kinds of involuntary obligations such as those created by past acts of harm. (I thereby follow the discussion of Espindola, 2021). Again, as states are believed to have moral stand, they are bound by duties of compensation. These duties are conventionally understood since Aristotle as duties of corrective or commutative justice (Aristotle, 1998: V 1). As one part has been wronged, say the victim, the wronging part, say the perpetrator, is bound to equalize or repair the inequality generated by the wrongdoing. The reparation takes place when the victim receives goods in a process where the perpetrator owns the wrongdoing by specifically acknowledging his or her participation and responsibility over the wrongdoing (Walker, 2015; Nozick, 1974). In short, the perpetrator is not only bound by Samaritan duties toward the victim. Whether duties of distributive justice could be global or not, the wrongdoing gives rise to a special relation between the victim and the perpetrator who as a result acquires stringent duties of justice that require the perpetrator to provide just treatment to the victims (Falk, 2006).

The U.S. has a long history of intervention in El Salvador. The benevolence or malevolence of these interventions could be discussed further (McPherson, 2016; Schenoni and Mainwaring, 2019). But I am going to assume that intervention is a *prima facie* wrong and raise duties of reparation by itself. Further duties of reparation could be aggregated as a complete normative analysis of the motives, and consequences of these interventions could be offered. At the beginning of the twentieth century, British and U.S. nationals owned most of the coffee plantations and railways, with the detrimental effects on the local economy discussed above. When the impoverishment of the population hit rock bottom, a guerrilla of indigenous farmers led by Farabundo Martí burst onto the scene in 1932 (Payés, 2007). The U.S. sent naval support to contain the peasant rebellion and support dictator Maximiliano Hernández Martínez.

After the peasant revolution, the U.S. intervened several times in support of Martínez and other corrupt dictators alike. Notably in the sixties, the promise of free elections was curtailed by a right-wing coup. According to Fabio Castillo, former president of the Universidad de El Salvador (Hernández, 2013), the U.S. directly facilitated the coup fearing that the result of free elections wouldn't serve its interests. Throughout the eighties,



the U.S. sided with the authoritarian government against the Farabundo Martí National Liberation Front (FMLN). The U.S. CIA funneled up to US\$2.1 million to finance political parties and influence the outcome of the 1984 election (Taubman, 1984).

As I stressed above, the consequences of U.S. intervention in El Salvador need to be studied and discussed in detail because often judgment about detrimental consequences is mediated by values, biases, and interpretation of facts. But at least I can invoke the following instances. In 1981, the U.S.-trained Atlacatl battalion was infamously involved in the El Mozote massacre, where almost a thousand unarmed civilians (women and children included) perished. During the eighties, an estimated 80,000 people died in this U.S.-fueled war. In the terrain of the detrimental effects of US nationals' exercise of rights, the CAFTA-DR increased influence over domestic trade and regulatory protections, producing strong protests from unionists, farmers, and informal economy workers. One ominous example of this ensued in 2014 when the U.S. government pressured the Salvadoran government to abandon the acquisition of corn and bean seeds from small domestic producers (Family Agriculture Plan) in favor of transnational agricultural corporate interests. A violation of the CAFTA-DR was invoked as justification, but regrettably the U.S. State Department never procured any proof that the purchase of seeds by the Salvadoran government program constituted a violation of the CAFTA (CISPES, 2014). Overall, without palliative measures for the detrimental effects they produce, agreements such as CAFTA-DR produced great harm among local producers, making it impossible for local industry to survive. As a result, El Salvador currently has a trade deficit of US\$673.71 million (April 2021) (*Trading Economics*, 2021).

Despite the detrimental consequences of U.S. relations with El Salvador and the history of intervention, even in the worst moments of the war, President Reagan refused to recognize violations of human rights and a mere 3 percent of Salvadoran cases of asylum were approved. Later at the beginning of the nineties, the U.S. Congress passed legislation designating Salvadorans for Temporary Protected Status until in 2018 President Trump revoked this status for 200,000 Salvadorans living in the United States (Acevedo, 2018). According to *The New York Times*, the recent U.S. deportations of Salvadorans exposed them to great harm back home and perhaps even boosted gang recruitment.

This is only an incomplete account of the rights, obligations and consequences; yet as it is, it is enough to show what happens when we expand the scope of concern and analysis to a more complete picture of the interaction of relevant rights and obligations, avoiding simplicity and circularity in the justification of exclusionist policies such as PCR. Even though we accept the claim purported by defenders of PCR that immigration policy may be grounded in rights, obligations, and consequences, the case of El Salvador shows contradictory consequences of a deportation policy. The rights of Salvadoran migrants are not pitted against the obligations of U.S. residents toward their country of origin; in any case, the detrimental consequences of U.S. foreign and trade policy toward El Salvador leave ground for larger inclusion and for the reinstatement of TPC.

## Conclusions

Defenders of TPC argued that it may be evaluated in similar consequentialist terms as the Canadian system. The Canadian system is sometimes said to increase the regular admission of skilled immigrants relative to the unskilled. As a result, it is understood as avoiding the detrimental effects that immigration sometimes have over the wages of low-skilled citizens and residents and at the same time it may lower the wages of the better off. TPC allegedly achieves similar results by reducing discretion in the interpretation of the Public Charge Rule through laying down the framework, detailing the circumstances, and establishing the prospective character of public charge judgments. Also, by making sure would-be immigrants seek inclusion for the right reasons, it is supposed to ensure that the availability of public benefits does not constitute an incentive for immigration to the United States. The emphasis on *self-sufficiency* is crucially believed to protect the interest of workers.

The problem with this line of defense is that requirements of justice also compel us to protect the interests of the less well-off abroad. TPC expanded the meaning of public charge, and public benefits present in previous legislation established a forward-looking test to determine the likelihood of dependence on public programs. This may affect some of the most vulnerable, that is, displaced people holding temporary humanitarian statuses.

It also has chilling effects by effectively causing people to withdraw from essential public benefit programs. Disenrollment of other programs may be detrimental to integration of low-income, working-class immigrants and their families, as well as to local communities and society as a whole. TPC increases deportability, so deportation becomes a punishment for presumable administrative violations. This means TPC is morally arbitrary, because it establishes some kind of unjustified differential consideration that prevents the U.S. from offering the same kind of protection to those under humanitarian statuses. We know this because the rationale that motivates humanitarian statuses, asylum, and refugee protections is the same.

A further question is: Can PCR be formulated in different a way, so that it may be able to abide by requirements of justice or public morality? This question leads to other parasitic problems such as the way to determine under what grounds a state may deny admittance to would-be immigrants that potentially may represent a burden during some period of time, or how we can measure public burden in a meaningful normative way if the people who may represent a burden upon admission later become active cooperating members of society. I claim that we should present a more complete picture of relevant obligations and rights in order to better understand the role that “charge” or burden ought to play in rights of exclusion. This will in turn produce an account of *just public charge*.

During his remarks at the Munich Security Conference (February 19, 2021), President Biden declared that “America is back.” This could mean that Biden administration is trying to lead the defense of objective moral values such as fair terms of cooperation, freedom, or dignity against authoritarian regimes. But in order to do that, public policies such as PCR must show coherence of value.

This chapter proposed to identify PCR’s normative core with the principles of *self-sufficiency* and *membership*. This established a conceptual link between the need for public institutional support with exclusion and deportability, regardless of the moral claims of admission that individuals may have, according to their condition of vulnerability and need. In contrast, almost the opposite view applies to residents and citizens. So, in order to constrain the scope of *mutual concern* to exclude the people from whom we should expect *self-sufficiency*, *mutual concern* should be taken as limited by an intergenerational enterprise with a unique character that provides strong rights

of self-determination that extend even over the composition of the group; so we get the principle of *membership*, but this strategy failed because it may be too simplistic for the task in hand.

Proponents of the right to exclude grounded in members' collective rights argue that states as any other association have the liberty to refuse to associate with any would-be immigrant. Proponents for exclusion from the obligations of members argue that citizens and residents are engaged with each other in a way that they are not with outsiders. This engagement, though initially accidental, over time is morally meaningful because it constitutes ways of socialization, means for interpretation, shared meanings and relationships of mutual care. I hope I have shown that both arguments share the same flaw: oversimplification. Once we look closer, we can realize that *i*) group rights are not necessarily territorial; *ii*) borders are not necessarily exclusionary; *iii*) rights and obligations are trans-territorial; and *iv*) rights of self-determination or strong associative obligations do not entail justification for exclusion.

The U.S. has returned to the G-7, as well as coming back to the Paris Agreement on climate change and the World Health Organization. The discourse of democracy and defense of human rights have returned, as seen in the U.S. stance regarding the Myanmar junta and the Saudi war in Yemen. But along with these actions that put U.S. policy in the right direction to be joined by its moral principles, there are other actions that detach principles from praxis even further (Wertheim, 2021; Reuters, 2021; *The New York Times*, 2021; Kitroeff, 2021; Kitroeff and Shear, 2021; Friedman, 2020). About 13,000 asylum seekers were camping under a bridge that connects Ciudad Acuña with Del Rio in Texas in 2021. In September that year, the U.S. started flying out migrants from a Texas border regardless of their heart-breaking claims. In order to prevent these cases of unease of principles I proposed to extend the focus and scope of the analysis of rights and obligations at least for analyzing cases of public charge. I argued that once the U.S. administration employs a more complex outlook the same rights and duties that allegedly ground public charge sometimes point out to more inclusion and even reparation.

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