CHAPTER I

New Migration Justice Challenges and How to Solve Them
An Overview

I Introduction

Our contemporary moment presents significant new justice challenges for people on the move. Anti-migrant sentiment has emerged in several ways. By executive order, the USA has adopted immigration policy that looks remarkably similar to a Muslim ban. There are new threats to deport long-settled residents, such as the so-called Dreamers. Our defunct refugee system has not dealt adequately with increased refugee flows, forcing desperate people to undertake increasingly risky measures in efforts to reach safe havens. Increased migration flows over recent years appear to have contributed to a rise in right-wing populism, apparently driving phenomena such as Brexit and Trumpism. In this book, I address such migration justice challenges. I offer a comprehensive framework that can assist in responding to these developments, offering the tools we need to understand what justice requires for people on the move.

Given that many of the phenomena I aim to address have presented themselves as challenges only in the last couple of years, there is little sustained philosophical work on my core problems, and less on how to bring them together into one unified, comprehensive framework for thinking about justice and migration issues that can be used to evaluate policy concerning migration.[1] While I focus on some highly prominent topics, the framework can be applied to many other kinds of migration

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[1] There are, of course, important exceptions. For some significant examples aiming to offer reasonably comprehensive accounts see Joseph Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), David Miller, *Strangers in Our Midst* (Cambridge, MA: Harvard University Press, 2016), and Sarah Song, *Immigration and Democracy* (New York: Oxford University Press, 2018). There are excellent extended treatments of particular issues, especially on the right to exclude. See, for instance, Christopher Heath Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (New York: Oxford University Press, 2011); and Christopher Bertram, *Do States Have the Right to Exclude Immigrants?* (Cambridge: Polity, 2018). There is also much excellent work on refugees, as I briefly discuss in Chapter 6. However, my account differs from all of these in aiming to offer a comprehensive framework for evaluating a wide range of current issues concerning

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issues. In the next section, I discuss a sample of the core problems that my analysis aims to address.

2   Some Core Issues This Work Aims to Tackle

There are several kinds of prominent cases that present new challenges worthy of further philosophical work. I start with the 2017 executive order to ban people from seven predominantly Muslim countries from entering the USA. This case shatters many common assumptions about what states may not permissibly do in the name of self-determination. For some years, a state's banning admission for people of particular religious groups has typically been taken as *clearly* morally wrong.[2] But events of 2017 have forced us to consider what compelling arguments are available to justify this assumption and, thereby, to meet this challenge to settled views about migration justice.

Lurking in the background of this case is a second obstacle, concerning the perception of increased security and terrorism threats associated with migration. How should one make sense of these alleged threats, especially in a "post-truth" environment, one in which different parties proffer their own so-called evidence, sometimes of dubious veracity, in favor of their preferred views? The threat of terrorism and security issues were part of the alleged justificatory narrative for the ban, along with the introduction of several measures, such as suspension of refugee admissions and new extreme vetting procedures for all who aim to arrive in the USA. Are there new security and terrorism threats that warrant more draconian screening arrangements? What should we make of rhetoric to suggest that the threats are worse than ever? Even if there are such threats, what measures may we adopt to protect ourselves that are both reasonably effective and consistent with the demands of justice?

A third challenge arises from recent research in the area of development, peace, and conflict studies that forces us to rethink how we should help refugees effectively.[3] How to treat refugees fairly has been a significant

migration and justice, with special attention to being able to address particular challenges that have arisen over very recent years.

[2] Carens, *Ethics of Immigration*, 174, and Miller, *Strangers in Our Midst*, 95.

[3] Some particularly important works I discuss include Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (New York: Oxford University Press, 2017); Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, and Nando Sigona, "Introduction: Refugee and Forced Migration Studies in Transition." In Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, and Nando Sigona (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford: Oxford University Press, 2014); Michael Clemens, Cindy Huang, and Jimmy Graham, *The*

concern for some time now. Drawing on this new research, we should rethink common assumptions about how to assist. For instance, the analysis casts doubt on the assumption that increasing admission or resettlement targets presents constructive solutions for all refugee situations. Broadening consideration to include assisting internally displaced people, along with others in host and home countries affected by refugee flows, we will need to reconsider different sets of solutions to these complex issues and the role multiple agents can, and should, play in addressing refugee problems.

A fourth challenge arises from recent policy announcements to deport long-settled members of communities that are declared as unauthorized or illegal migrants, such as the Dreamers or those from the Windrush generation. The case of the Dreamers seems particularly poignant. These migrants were brought by their parents to the USA illegally, often while they were very young. The reversal of Obama era legislation that allowed Dreamers to remain, calls into question another position that seemed to reflect widely shared views about what justice requires for long-settled irregular migrants who arrived as children.

Several other apparent difficulties will be addressed, sometimes more briefly, throughout this work. For instance, one challenge seems to stem from new social science research, especially from psychology, that suggests increasing levels of immigration may be bad for robust democracy, harmonious communities, and civic accord.[4] Immigration has also been linked to several phenomena such as a rise in right-wing populism, nationalism, Brexit, Trumpism, and a decrease in support for institutions that support social and global justice projects, along with a rise in ethnocentrism. Are

Economic and Fiscal Effects of Granting Refugees Formal Labor Market Access (Washington, DC: Center for Global Development, October 2018); Michael Clemens, Cindy Huang, Jimmy Graham, and K. Gough, *Migration Is What You Make It: Seven Policy Decisions That Turned Challenges into Opportunities* (Washington, DC: Center for Global Development, 2018); C. Huang, S. Charles, L. Post, and K. Gough, *Tackling the Realities of Protracted Displacement: Case Studies on What's Working and Where We Can Do Better* (Washington, DC: The Center for Global Development and the International Rescue Committee, 2018); C. Huang, *Global Business and Refugee Crises: A Framework for Sustainable Engagement* (The Tent Foundation and the Center for Global Development, 2017).

4 For some of these concerns see, for instance, Jonathan Haidt "When and why nationalism beats globalism," *The American Interest*, 12 (1) (2016) available at www.the-american-interest.com/2016/07/10/when-and-why-nationalism-beats-globalism/; Will Kymlicka, "Solidarity in diverse societies: beyond neoliberal multiculturalism and welfare chauvinism," *Comparative Migration Studies*, 3 (17) (2015): 1–19; and Keith Banting and Will Kymlicka (eds.), *The Strains of Commitment: The Political Sources of Solidarity in Diverse Societies* (Oxford: Oxford University Press, 2017).

increasing levels of immigration bad for social or global justice projects? A careful analysis of the evidence is warranted.

I aim to address such problems in this work. The foundations for the framework are built in Chapters 2 and 3. Subsequent chapters develop and apply parts of the framework to specific issues. I next give a very concise chapter-by-chapter overview of how the book unfolds.

3   An Overview of the Chapter Contents

In the next chapter, Chapter 2, I briefly review some salient history concerning human migration to place migration issues in some context. I also begin to develop my normative framework.

In considering what just arrangements for human beings involve, we should pay special attention to our human needs, protecting basic liberties, fair terms of cooperation, and relevant social and political support necessary to sustain justice in diverse communities. Given its neglect, I note the significance of needs, especially our moral agency needs, in discussing matters of justice. I note how practices for delivering on justice will develop in particular locations. People's located life plans deserve respect, but this is complicated by the located life plans of others, histories of injustice, and the right to continued occupation of territory. This last issue, involving rightful claims to occupy territory, is particularly pressing if anyone is to have a defensible right to exclude others, as many migration policies presuppose. How can any current occupants of territory justifiably prevent anyone from migrating into their space, given our knowledge of how most settlements came into being? Perhaps no one has the legitimate authority to exclude anyone from moving into particular places? What case can be made that states and the boundaries they vigilantly guard are justified?

We see how good administration, and so administrative units, will play an important part in securing justice, though the argument does not point in favor of these units taking any particular shape. The state can play a valuable role in delivering on justice, as one kind of permissible administrative unit, among others. As I argue, delivering on our lofty justice ambitions also requires attention to some quite practical details. For instance, competent administration is important for adequate planning associated with meeting needs, protecting basic liberties, securing fair terms of cooperation, along with promoting the relevant conditions necessary to sustain enduring cooperative communities.

In our contemporary world, states perform central administrative functions, though various configurations could do what is required. States currently exist within a state system, which is the main administrative structure governing the people of the world. So, it is worthwhile to consider whether our contemporary arrangements – our state system – is just and, if not, what modifications are required. That is the focus of Chapter 3.

Chapter 3 seeks a justification for states' claims to have rights to self-determination that entail the right to control admission to their territory. Today, we live in states that assume they have certain rights and that agents of the state may act in certain ways that privilege the interests of their citizens. Our current arrangements may seem natural to us, perhaps the way things have always been. But, in fact, they have not always been this way. And they might indeed change in the future. So, we have reason to inquire: What justification can be offered for the assumed default position encompassing the state system, along with state claims to self-determination and strong rights to control borders? And, importantly, what compelling justification can be offered to "outsiders," those who currently find themselves beyond those borders and who might like to cross them?

In seeking a justification, we discover that in order for states to have robust rights to self-determination within a state system, they will also have many responsibilities. So, while there is much talk about the rights of states to self-determination in migration justice discussions, when we understand how the justification for this right must go for it to be defensible, the argument also generates strong obligations. States have responsibilities to promote conditions that support self-determining, just communities. Recognition of this point is not only missing in many of the conversations about migration justice, but must be part of the justification for any compelling argument for the right to self-determination to have force, so its importance deserves highlighting. A state's ability to exercise political power legitimately depends on its respecting human rights adequately and cooperating in a host of transborder activities, programs, and institutions that have as their aim securing robust arrangements capable of effective human rights protection. So, as I develop these ideas, there are important human rights standards that constrain legitimate states' abilities to act. In addition, there are important contribution requirements that states must meet in order to exercise power legitimately. Performance on both of these dimensions affects whether or not we have a legitimate state system, along with whether there are adequate contingency arrangements in place to deal

with important shortfalls. Contribution to the legitimacy of the state system is an especially underappreciated area that is also importantly relevant to whether states have robust rights to self-determination. And without such rights, states may not have the justified rights they think they do have concerning control over who enters and remains on their territory.

I consider some of the core elements brought into view by this justification for the right to self-determination within the state system. For instance, respect for human rights plays a key role in understanding all of these core notions. I consider which human rights and other important features of contemporary human rights practice play this important role.

Having defended the core theoretical elements needed over Chapters 2 and 3, I begin to address the contemporary challenges, applying key parts of the framework and developing others in subsequent chapters.

Chapter 4 spotlights migration policy that seeks to exclude by limiting those who practice certain religions from gaining admission to a territory. I focus attention by asking: What is wrong with a ban on Muslims? Is a ban on Muslims impermissible because it violates human rights? While some think it is difficult to make such arguments directly, I offer an argument that is grounded in core aspects of the practice of human rights. Drawing on core elements of the argument discussed in Chapter 3, concerning the conditions states must satisfy in order to exercise power legitimately, we see that there are important internal and contribution requirements that enacting a Muslim ban fails to meet.

As I argue, a legitimate state cannot embrace a migration policy that bans Muslims from being admitted without such policies undermining the state's claim to legitimacy. I show how such policies violate key legitimacy requirements, by failing to meet both internal and contribution criteria. For instance, I show why such policies have important repercussions for citizens, threatening a range of rights including the right to freedom of religion and non-discrimination. I also demonstrate why such policies clearly violate requirements central to conventions on the elimination of discrimination, hatred, and intolerance, which are all prohibited by essential internal legitimacy requirements. In addition, such policies violate core contribution requirements. As one example, Muslim bans fail to meet accountability standards, according to which states are accountable for human rights protection, both to internal and external stakeholders. Muslim bans fail to be accountable to peoples (both Muslim and non-Muslim) across the world, along with Muslims and non-Muslim residents within the country. Furthermore, agents of the state have responsibilities to protect and promote the necessary conditions for a legitimate state

system. The right of a state to self-determination is conditional on its discharging its responsibilities to promote conditions that can support self-determining, just communities. Too many of these conditions would be violated by Muslim ban policies.

In Chapter 5 I consider the challenge presented by new threats to deport long-settled members of communities who do not formally enjoy the legal status of citizen, but rather are classed as "undocumented," "irregular," or "illegal" migrants. These include the Dreamers, the Windrush generation, and those with Temporary Protected Status who have had that status revoked under the Trump presidency. To assist our analysis, I differentiate between five kinds of cases that raise slightly different issues, even though there is some commonality. I show why deportation, or even threats of deportation, for the long-settled involve grave injustices on a par with violating some of our most basic human rights. Indeed, evicting long-settled members would undermine legitimacy in several ways. Such actions threaten states' rights to exercise power legitimately by undermining core internal, system, and contribution requirements. And I show why the arguments used in defense of community members' alleged rights to continued occupation would be undermined by such evictions. In such cases, states may not claim a justifiable right to continued occupation nor can they claim that such a right entitles them to evict long-settled members of the community residing on that territory.

Chapter 6 covers some reasonably new challenges associated with massive refugee populations. Contemporary discussion of refugees in the normative literature has so far focused predominantly on a small set of questions: Who qualifies as a refugee? Do high income states have obligations to admit refugees? If so, under what conditions, and how many are they obligated to admit? What grounds obligations toward refugees? While all of these questions are important, there has been a substantial lack of attention to a question that is more fundamental, and shapes the grounds and content of responsibilities in connection with refugees. The question that is ripe for more sustained analysis is: How can we help refugees in ways that are effective for all key stakeholders? Key stakeholders in refugee policy include refugees, internally displaced populations who have not yet crossed a border, those left behind in states of origin, and those states and their citizens that bear the burden of hosting large refugee populations. I explore options that aim to offer good solutions for host and home countries, for the roughly 10 percent of refugees who typically make it to high income countries and the approximately 90 percent who do not. While there is still some scope for resettlement policies to play a role, many

local solutions closer to the source of the crisis are often available and preferable. These can take different forms, and some of this variety is explored. Many of these solutions may be described as providing incubator zones for development – they focus on meeting a wide range of current needs of the displaced populations (such as for autonomy, work, opportunity, and community) while also preparing that population for life after conflict ends. Addressing such needs in ways that promote the interests of many other stakeholders can yield effective courses of action worthy of our support.

As I argue, ideally, robust comprehensive solutions to the refugee crisis share several features, such as the following three: First, solutions should be able to accommodate the vast numbers of displaced people (at present over seventy million).[5] Second, solutions should also aim to take account of the current and longer term needs of the displaced populations, along with those of other stakeholders. Third, they should not undermine, and should ideally facilitate, post-conflict recovery (where refugees are fleeing violence). As I argue, particular kinds of development oriented proposals meet these criteria well. There is a good case to be made that we should support these proposals and that they can help us outline the contours of our responsibilities in connection with refugees.

As my analysis shows, the shape and content of our duties to large scale refugee populations is quite different from what much normative theorizing suggests. On the empowerment promoting model I explore, we should be supporting more beneficial policies, including (where appropriate in particular circumstances) supporting and subsidizing enterprises that generate jobs, ensuring favorable trading arrangements are available (such as tariff free access to high income country markets), supporting policy conducive to stabilizing post-conflict societies, such as assisting with education and training, and, of course, playing our part in any resettlement programs that are still needed to supplement the programs focusing on development and post-conflict recovery.

Armed with this analysis of why our current refugee regime is inadequate, we are in a good position to discuss how reforms are needed to secure the legitimacy of the state system. As I highlight, our current institutions are failing many refugees and internally displaced people. These institutions need to be dramatically reoriented. I argue for a number

[5] See the United Nations High Commissioner for Refugees (UNHCR) website for constantly changing figures (www.unhcr.org). For a recent report see BBC, "More than 70 million displaced worldwide, says UNHCR," June 19, 2019.

of reforms. For example, I argue that global migration governance institutions are necessary and need to incorporate certain key ingredients. We need to allow for relevant beneficial partnerships, such as making policy space for business and civil society actors to play important roles, along with state actors. We need to ensure that local partners who have innovative and effective ideas about how to assist in specific contexts can be included in relevant programs that the international community helps support. Other desirable institutional changes include managing our refugee processing more fairly, so that refugees may apply for asylum in processing centers that are more proximate to the high need areas. Refugees should be able to apply for asylum in embassies within the country or nearby border locations, in efforts to minimize the amount of hardship asylum seekers currently suffer.

So, in short, the three traditional approaches to addressing the plight of refugees (namely, voluntary repatriation, local settlement, and resettlement), must be expanded. Given the scale of the refugee problems, we need to supplement these with new approaches, especially as persisting human rights violations in countries of origin make repatriation options less likely and give us important reasons to consider broadening the option set that we are able to provide refugees. I discuss a range of reforms that would better safeguard the human rights of displaced people or those vulnerable to displacement. In the absence of good faith and credible efforts at making such changes, our current arrangements for assisting refugees cannot be regarded as adequate. A state system that offered these up as the ways for dealing with refugees could not be legitimate.

Chapter 7 focuses on justice for temporary labor migrants, which involves vast numbers of migrants in our contemporary world. In some countries, foreign nationals make up over 50 percent of the labor force, and frequently more than 80 percent in countries in the Middle East. Though I survey a range of relevant normative issues concerning temporary labor migration, I focus especially on new sources of concern. For instance, given the scale of temporary labor migration, there are market opportunities that private recruitment companies have been keen to seize. Recruitment companies have often operated in a context where they have been guilty of serious deception, fraud, abuse, and failures to protect migrants, with both destination and home countries failing to take responsibility for oversight.

Labor migration is often characterized as beneficial to the migrants, along with both sending and receiving countries. While this is, on balance, true in many cases, there is also evidence that such arrangements can be

highly detrimental to the migrants, especially under conditions of extreme power disparities. While the logic of mutual advantage has a place in considering labor migration justice, especially considering the scale of global unemployment and vulnerable employment, there should be important constraints on such programs. The constraints include requirements to ensure good measures are in place that can offer reasonable human rights protections for migrant workers. They also include requirements to protect against creating certain kinds of highly detrimental effects for non-migrants. As we discuss which rights deserve protection, we also notice that there is some scope for migrants to trade off protection of certain rights in exchange for labor market access, if they so choose. I develop principles to help us navigate which rights are "tradable" and which deserve rigorous protection.

In Chapter 8, I discuss how to deal with alleged new terrorism and security threats posed by migration. Fears concerning terrorism and security seem to have significantly set back the prospects for migration justice recently. I discuss some of the problems associated with assessing the weight that should reasonably be placed on terrorism and security in a world of strongly divergent ideological viewpoints, partisan news outlets, and the phenomenon of fake news. While there is some threat level, key issues include deciding what measures would be effective in combating it, while being commensurate with that threat level and not ignoring the opportunity costs pursuing such policies might entail, especially ones that might better promote the goals of a strong and inclusive society capable of resilience to such threats. I also consider whether some risks can be further reduced without compromising our values, principles, and other important justice goals. There are important concerns that arise about the measures we should take to protect against the perceived threat when they violate other demands of justice. For instance, excessive public expenditure in one domain when further outcome gains are insignificant and other important basic rights remain unaddressed, is relevant to assessing how well justice is achieved in particular societies.

I analyze why security threats get to be so readily coupled with migration issues. Here we find some familiar dynamics along with some new developments. Politicians have often been successful in adopting such strategies as scapegoating and exclusionary constructions of national identity. New developments include changing demographics and structural changes that have resulted in limitations on long-time residents' upward mobility, which can promote conflict and resentment. These sentiments