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“The Rights of Migrants”

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THE RIGHTS OF MIGRANTS

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Abstract. Why do states provide migrants rights associated with citizenship? Existing accounts typically answer this question in terms of obligation – of a duty on the part of states to confer citizenship. Moreover, scholars tend to lump together the bundle of rights conventionally associated with citizenship when they answer this question. In contrast, this Article disaggregates the rights associated with citizenship, asks what both states and migrants want, and inquires into how the suite of rights associated with citizenship might advance those interests. States want to encourage migrants to enter their territory and to make country-specific investments, but have an interest in being able to remove immigrants or make their lives less comfortable if circumstances change. However, migrants will not enter and make country-specific investments if the state can easily remove them or change the conditions in which they live. Accordingly, the “optimal contract” reflects the tradeoffs between flexibility and commitment. We discuss ways in which basic rights to liberty and property, political rights including voting, and other rights may embody the optimal contract in different circumstances.

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INTRODUCTION

The legal protection of noncitizens living in a new state is a central issue for immigration law and theory. Most existing accounts of those rights are normative: they derive the optimal set of right from moral or political theories. Other accounts are based on interpretations of the U.S. Constitution.

Largely overlooked, however, is an equally important descriptive question: what accounts for the variation in the citizenship rights that migrants are given? Full citizenship rights can be thought of as the bundle of political and civil rights enjoyed by citizens. Migrants enjoy a subset of these rights, and different migrants are given different but overlapping bundles of rights. Why are migrants given any rights at all? Or, alternatively, why aren't they given all the rights of citizens? And if it is proper to give migrants a bundle of rights that fall short of the full panoply of citizenship rights, why do we observe so much variation, both across time and across countries? In this Article we try to begin answering these question.

Migrants' rights vary along two dimensions. First, they differ in their scope. In the United States, migrants are classified in many different ways, and each class enjoys a different bundle of rights. People who enter the country illegally have certain basic rights—to life, to property, to minimal process—but little more. People who enter legally have more generous rights but in most cases their rights are more limited than those of citizens. For example, tourists and the spouses of certain migrants have basic rights to life, property, criminal and civil process, and so forth, but do not have the right to work for pay, and they do not have the right to remain in the country beyond the period of their visa. Migrants with a visa have the right to work in certain positions but not the right to change jobs. Lawful permanent residents have the right to work as well as the other rights, but do not enjoy the right to vote. And whereas citizens cannot be “removed” (exiled), lawful permanent residents and other migrants can be removed (deported) for committing certain crimes, posing a security threat, and so forth. Lawful permanent residents are granted an additional important right: the right to become citizens after they have resided in this country for five years, passed a citizenship exam, and satisfied certain other conditions. Some migrants, but not others, are granted the right to acquire full citizenship rights through naturalization.

Migrants' rights also vary along a second dimension: their “strength,” or, more precisely, the ease with which the government can change them. At one extreme, rights could be administrative: the executive branch determines the rights of migrants at any time and can change them. Rights can also be statutory: Congress determines and changes rights. And rights can be constitutional, in which case they can be changed only by amendment or

through judicial interpretation of the Constitution. Migrants enjoy all three types of rights. The Constitution sets some basic minima for process rights, for example, which statutes and administrative regulations have developed. In addition to investigating the *content* of migrant rights, then, this Article also analyzes variation in their *strength*.

One type of right cuts across these two categories. Voting rights (as well as other rights of political participation) are important citizenship rights. The holder of voting rights has the power to affect political outcomes by influencing the selection of public officials. In one sense, voting rights are an aspect of the content of migrant rights: migrants who can vote have rights that other migrants lack. In another sense, voting rights affect the strength of rights, including themselves. Although in theory Congress could eliminate a migrant's voting right by repealing the statute that created it, doing so will be more difficult than repealing other types of migrant rights because migrants will likely vote against politicians who appear inclined to repeal their voting rights.

In the United States, nonresident aliens and other migrants rarely have voting rights, and when they do, they are at the municipal level and limited. However, in the past migrants have been granted more substantial voting rights at the state level, as we will discuss. In addition, voting rights remain an important aspect of the incentive system used to lure migrants to the United States, in the following sense: migrants are promised that if they qualify as citizens and become citizens, they will have the right to vote. We can thus think of contingent voting rights as an aspect of the bundle of migrant rights.

To explain the content and strength of migrant rights, we borrow the optimal contract framework developed by economists to analyze contractual behavior. Although migrants do not enter contracts with the U.S. government, their relationship with the U.S. government is analogous to a contractual relationship. Both sides gain from an implicit deal. The migrant enters the United States, invests in learning English and other aspects of American culture, and obtains a return in the form of higher wages, shares of public goods, and other benefits. The U.S. government—which we use as a stand-in for native citizens—gains in diverse ways. Taxes help finance public goods, labor costs are reduced, the migrant contributes to cultural and social life, and so forth.

In thinking about these issues, most people focus on the question of how the government should select among migrants. The world presents a large pool of potential immigrants, and states have to figure out how to separate

those immigrants it considers desirable from those it does not.¹ The debate focuses on the desirability of certain characteristics—for example, skills and familial relationships with American citizens. But there is another problem of equal importance, which is how the “contract” between the migrant and the U.S. government should be designed, once a particular migrant is selected. The main problem for the government is that a migrant who is highly desirable at time 1 might turn out to be undesirable at time 2. All else equal, the government would like to retain the option to remove any migrant if events change—a financial downturn, a security threat—such that the benefits from the migrant’s presence no longer exceed the costs.

However, the problem with such flexibility is that a migrant will not enter a country, or will enter but decline to sink roots in that country, if she knows that she can be removed at any time. Many migrants do best by making what we will call “country-specific investments”—like learning the dominant language and developing social networks—but a typically risk-averse migrant will not make such investments if she can be easily removed. Moreover, migrants will worry that the government will wield its removal power opportunistically, trumping up security threats or exaggerating financial downturns in order to justify deportation.

Governments, too, often want some migrants to make country-specific investments, so it is in their interest to guarantee a migrant’s right to remain even if bad events occur—at least, to a limit. It will therefore sometimes be in a state’s interest to tie its hands so that it cannot use its deportation power opportunistically. All else equal, the optimal contract will trade off the government’s need for flexibility and the migrant’s need for commitment. It does so in two ways: by granting migrants more or less generous rights; and by making it harder or easier for the government to change them.

One important contribution of this approach is that it helps expand the possibilities for legal design by showing why different packages of rights might be conferred on different groups of migrants. Much existing scholarship suggests that there is a relatively static, hierarchical relationship between various migrants’ rights.² On these accounts rights increase in lock-step with increasing “membership” in the receiving state. Rights are also arranged hierarchically, with rights like political participation almost always associated

¹ We focus on those screening issues in Adam B. Cox & Eric A. Posner, *The Second-Order Structure of Immigration Law*, 59 STAN. L. REV. 809 (2007).

² To be clear, there is some ambiguity in this literature about whether it is intended as a descriptive account of existing practices or instead as a normative account of what the structure of migrants’ rights should look like. Often the literature appears to make both claims.

with higher levels of membership than rights like occupational freedom. Our account abandons this idea of a lexical relationship between various rights associated with citizenship. It also abandons the prevalent assumption in the literature that all migrants should be accorded the same rights. Migrants come with various desires: some hope to come and work in a receiving state for a short time, others hope to remain for a long time but imagine eventually returning home, and others intend to remain permanently. Each of these groups of migrants will value rights differently: for some the right to remain for a guaranteed period of time will be far more important than occupational freedom; others will have the opposite preferences. As a result, our approach makes it possible to see why we should expect variation in the optimal contracts – variation that is hard to evaluate within the literature’s existing frameworks.

The rest of this paper unpacks our argument. Part I introduces the relevant conceptual distinctions and motivates the argument with a brief description of American immigration law and legal history. Part II provides a simple theoretical account of the “optimal contract” between migrant and government. Parts III through V brings in some real-world complications by relaxing the basic model’s assumption that the contract involves only two parties: Part III discusses the fact that migrants often come with families; Part IV explores the political economy of the host state; and Part V discusses ways in which the immigration policies of different countries interact.

The theme of this paper is that the “optimal contract” between migrant and government—that is, the package of rights that the migrant receives—depends on, and hence changes with, a host of exogenous variables. Rights will be weaker, for example, when governments expect that the risk of future adverse events are high, and stronger when governments gain more when migrants make country-specific investments. With an understanding of the relationship between the variables, one can explain some of the variation in the rights granted to migrants.

I. BACKGROUND

A. *Conceptual Distinctions*

In determining how many people to admit, and what type, the “host” (or “receiving”) country must also resolve a number of difficult questions regarding how these people, once on the host country’s territory, are to be treated. Consider the following baseline: migrants are treated the same as citizens. The baseline system entails that once a person is lawfully admitted into the host country, she would have the right to vote, to criminal process, and so forth; she would also have certain obligations—to follow the law, to

pay taxes, to serve on the jury. She could not be removed, for removal is identical to exile, and citizens may not be exiled.

In practice, this baseline never obtains. No state treats migrants exactly the same as citizens. To clarify the differences, we make several conceptual distinctions:

Rights versus obligations. Citizens have various obligations. Broadly, they must obey the law, which usually involves paying taxes, sitting on juries (in the United States), serving in the military (in many countries), and so forth. Citizens also have rights, such as the right to free speech, to a trial prior to punishment for crime, and to own property. There have been cases in history where noncitizens have had privileges not to obey the laws, or all the laws, that bind citizens. Today, these privileges are relatively minor—such as the privilege not to serve on a jury in the United States. For the most part, we will assume that citizens and noncitizens have the same obligation to comply with general law, such as tax law. Our focus is on rights.

Rights to political participation. In democracies, citizens have the right to vote, to join political organizations, to make political arguments, and to participate in other ways in the democratic process. Noncitizens generally have no voting rights; there are some minor exceptions. Noncitizens may also be subject to certain restrictions on lobbying. For the most part, however, noncitizens enjoy the same speech and association rights that citizens do. In principle, political participation rights could be disaggregated. Noncitizens could be given the right to vote but not to join parties, for example; or to vote on certain issues but not on certain other issues, or to vote for candidates for some offices but not for candidates of other offices.

Rights to remain. In the United States and most other countries, citizens have a right not to be exiled. Historically, exile was a common punishment, but no more. By contrast, noncitizens have circumscribed rights to remain. In the United States, noncitizens may be removed if they pose a security threat or commit a serious crime. In addition, noncitizens may be removed if their visa expires and they do not obtain the right to permanent residence; and noncitizens who leave American territory may, under certain circumstances, be denied reentry, unlike citizens. These rights could be further disaggregated; one could imagine that one has the right to remain unless, for example, a war involving one's country occurs.

“Basic” rights. Citizens in the United States and most other democracies have many other rights, including the right to criminal process if they are accused of a crime, the right to own property and to receive compensation if it is confiscated by the state, the right to bring civil actions, and so forth. In principle, noncitizens could be denied these rights, or given weaker

protections; at least in the United States today, they generally are not – though there are exceptions and ambiguities.³ The most important exception is the right to work: many migrants do not have the right to work or they do not have the right to change jobs. We will call these general or baseline rights “basic rights.”

The temporal dimension of rights. As a broad generalization, noncitizens gain more and stronger rights, the longer they lawfully remain in the host country. One might distinguish people on temporary visas, lawful permanent residents, and citizens. Our focus will be on lawful permanent residents, who are people given permission to remain in the country indefinitely. So, to keep things simple, we will compare the rights of lawful permanent residents (whom we will usually call “migrants”) and the rights of citizens. One further issue that arises is, at what point does the lawful permanent resident obtain the right to become a citizen.

The expressive value of citizenship. Citizenship may have distinctive value irrespective of the legal rights and obligations associated with it. Imagine that the formal status of “citizen,” a label, is a separate legal right. That label might itself be important, even if it does not directly create any formal rights or obligations.⁴ For example, the state could use the formal status as a signaling mechanism—as a signal to others about the person accorded the status, or as a signal to the person herself. To keep our analysis within reasonable bounds, we will ignore the expressive dimension of citizenship. Citizenship is a valuable status in large part because of the legal rights and privileges associated with it. Those rights will be our focus.

As we proceed with our analysis, we will hold the baseline rights of citizens constant and ask, what explains the difference between the migrant’s rights and the citizen’s rights.

B. *The Contingency of Migrant Rights in the United States*

Our general approach assumes that migrant rights are a policy choice. While this assumption is certainly an oversimplification, it is not contrived. The legal relationship in the United States between the bundled rights often associated with citizenship is complex, but a central feature is clear: the government retains considerable flexibility to adjust these rights.

³ Moreover, the historical account is somewhat different. For example, property ownership by noncitizens was a quite controversial in early America.

⁴ Consider the analogy to contemporary debates about gay marriage, where some argue that the legal label of “marriage” is important even if *identical* legal rights and obligations attach to both marriage and some other status like domestic partnership.

This is true even if we treat constitutional law as an exogenous constraint on government action. American constitutional law imposes only modest restrictions on Congress' authority to grant to, or withhold rights from, migrants who have not acquired the formal legal status of citizenship. Constitutional law requires the most with respect to basic rights: it obligates the state to afford all resident noncitizens basic criminal protections;⁵ to refrain from discriminating against noncitizens on the basis of race,⁶ and so on. As we saw before, the main exception is the right to work.

But modern constitutional law places few limits on the government's ability to adjust up or down the right to remain and the participation rights of noncitizens. The right to remain is almost entirely unprotected by the Constitution. The Supreme Court does place some *procedural* restrictions on deportation and may (though it is contested) prohibit the government from deporting noncitizens on the basis of their race or the content of their speech.⁷ Those limits aside, the government is free to remove noncitizens from the country for essentially any reason, and it can change retroactively the grounds of deportation.⁸ Matters are similar for political rights. There are a few constitutional protections: the First Amendment protects noncitizens' freedom to speak out on political matters. More tangentially, they cannot be excluded from some forms of government employment.⁹ Nonetheless, the government can deny the most valuable right of participation: the right to vote. And the government also has wide latitude to restrict the rights of noncitizens to contribute to election campaigns.¹⁰

For citizens, of course, matters are quite different. American constitutional law provides citizens an absolute right against exile and confers on them considerably more robust protection for political rights. Moreover, it prevents governments from circumventing these rights by stripping people of citizenship.¹¹

⁵ Wong Wing

⁶ Yick Wo

⁷ See *Yamataya* (procedural due process protections); *AADC* (selective deportation on the basis of First Amendment activity)

⁸ *Fong Yue Ting* (retroactive change to deportability grounds)

⁹ See, e.g.,

¹⁰ The constitutionality of campaign finance restrictions by noncitizens is somewhat uncertain [look into this]

¹¹ *Afroyim*

It is important to note, however, that nothing prevents the government from giving this more generous suite of rights to noncitizens. While constitutional law provides a floor of certain rights, it generally does not establish a ceiling. It need not be this way. The Constitution could prohibit the government from granting voting rights to noncitizens, or even from offering them the right of permanent residence without naturalization. And the Constitution does contain at least one such ceiling: it prohibits noncitizens from holding certain elected offices. A person must have been a citizen for many years to be eligible for election to the Senate or the House of Representatives (nine years for the Senate, seven years for the House).¹² To be eligible for the Presidency, a person must be not only a long term resident but a “natural born citizen, or a citizen of the United States at the time of the adoption of [the] Constitution.”¹³ In general, however, the absence of such ceilings is part of what gives the government such flexibility.

In practice, the United States does grant legal rights more generous than the Constitution would require. The generosity of rights mainly depends on visa status. In addition, migrants’ rights generally strengthen with their length of residency. This is true for access to public assistance, which federal law makes available to permanent residents after five years;¹⁴ for the right to reside, which immigration law protects somewhat more for long term residents;¹⁵ and for the right to vote, which is usually provided only upon naturalization after an extended period of residence.¹⁶ Second, the rights are often treated by American law as though there have a sort of necessary hierarchy – with basic rights at the bottom, the right to reside in the middle, and participation rights at the top. But there is nothing about American constitutional law that makes this hierarchy necessary.

The current law should not blind one to the possibility of different patterns, and indeed American history supplies a striking example that is germane to our focus on migrant voting rights. In the nineteenth century, when many parts of the country were sparsely populated, encouraging settlement was a priority. Migrants could provide much needed labor and, it was hoped, “raise land values, stimulate economic development, and generate

¹² U.S. Const. art. I, sec. 2.

¹³ U.S. Const. art. II, sec. 5.

¹⁴ 1996 Welfare law requirements.

¹⁵ See INA § 240A (describing “cancellation of removal,” which allows long term residents to avoid deportation in some situations where they have engaged in otherwise deportable conduct)

¹⁶ See INA §xx (setting out the durational residency requirement for naturalization).

tax revenues.”¹⁷ In 18__ the federal government authorized aliens to vote in the Northwest territories. And beginning in the 1820s, western states began conferring voting rights on so-called “declarant” noncitizens. Immigrants in this period could officially declare their intention to become citizens (by filing what were known as “first papers”) after living in the United States for two years. Just like today they were ineligible to naturalize until they satisfied the full five year residency requirement. But western states trimmed their wait for voting rights to a short two years by conditioning the franchise on the declaration rather than on naturalization.

The spread of declarant voting laws suggests that the franchise was a valuable inducement for immigrants. During a fight over the adoption of such a rule in Illinois, one legislator remarked that the right to vote was “the greatest inducement for men to come amongst us.”¹⁸ Thus, competition for settlers seems to have played an important role in the expansions of noncitizen voting. Eventually such rules would become common everywhere outside the densely populated Northeast. At one point fully XX states permitted declarant noncitizens to vote.

So the U.S. government, and the states as well, have had a great deal of flexibility in granting rights to migrants, and have used this flexibility for the purpose of attracting migrants and encouraging them to invest. We turn now to an analysis of the costs and benefits of the different rights allocations.

II. THE BASIC THEORY

To explore the question why migrants might be accorded a particular suite of rights, this Part first examines the reasons that aliens would value different types of rights in different ways. Noncitizens may value rights differently, depending on their purposes for entering a country, and the various institutional, political, and economic aspects of that country that attract (or repel) them. The Part then turns from migrants to states, examining the “costs” that states incur when they grant rights to noncitizens. Here, we focus on the citizens of these states and ask what they lose when they give rights to noncitizens, and thus what rights they would be willing to grant to noncitizens in order to obtain the benefits of migration into their country. Putting these arguments together, we develop several hypotheses that explain what conditions might prompt a state to give a particular bundle of rights to migrants.

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¹⁸ Keyssar at 38.

We begin with a simplified setup where a host country like the United States has migration policies that reflect the interests of its citizens. We assume that citizens benefit from a certain amount and type of migration. This assumption is uncontroversial; very few states, if any, prohibit immigration. However, there is a great deal of variation in how states benefit from immigration. Let us suppose that our hypothetical host state, modeled on the United States, gains from both unskilled and skilled labor. A larger workforce reduces the cost of goods and increases tax revenues that finance public goods, and while migration also reduces wages and increases congestion, we will imagine that our host country will choose a quantity of migration that maximizes net benefits. Note also that the host country will have varying preferences for different types of migrants: skilled versus unskilled, temporary workers versus people who intend to establish permanent residence, people who have family relationships with citizens, refugees, and so forth.

A. Demand Side: What Migrants Want

Migrants benefit from rights for the same reason that citizens do: rights protect them from the actions of individuals and governments that might harm their interests. All else equal, a migrant will gain when the host country grants her legal and constitutional rights. Legal rights protect her from other people, arbitrary actions by the executive branch, and so forth; constitutional rights protect her from the state.

Let us make these points more concrete. A person who lives in a foreign country and contemplates migrating to a receiving state must make two decisions: whether to enter or not, and the degree of country-specific investment to make. The first dimension is straightforward; the second requires some discussion.

Entering and living in a foreign country entails two types of costs: variable costs and fixed costs. Variable costs include the day-to-day costs of living and working—renting a residence, buying food, dealing with other people, and so forth. Many of these costs are financial; others are psychological or emotional but just as real—for example, the cost of being far away from one’s family or from native speakers of one’s language or from people of a common culture.

Fixed costs are those expenses that a person incurs in the course of obtaining skills or assets that enable her to reduce her variable costs over the long term. In this straightforward sense, the fixed costs are investments: one incurs the costs at some early time, and enjoys the returns (in the form of reduced variable costs) over a period of time. For example, a person might learn the language of the host country—prior to entry or after entry. Learning

the language is an investment; once the person learns the language, the variable costs of living in the host country will be lower. It will be easier to deal with people, fewer mistakes will be made, and translators and interpreters need not be hired. Other fixed costs include learning and absorbing cultural and social norms that enable one to interact more effectively with people in the host country; acquiring friends and loved ones in the host state; and so on.

These fixed costs are often, but not always, country-specific. An American who learns Japanese in anticipation of moving to Japan makes a country-specific investment: the American can enjoy the benefits of knowing Japanese only to the extent that she stays in Japan. To be sure, she may also enjoy these benefits by staying in her own country and dealing with Japanese people in commercial or social settings, or by enjoying Japanese literature, but these benefits are generally relatively trivial compared to the gains from being employed in Japan. A Japanese citizen who learns English also makes an investment, but this investment is not nearly as country-specific: she can travel to the United States, the United Kingdom, Australia, and other English-speaking countries, and indeed probably can obtain quite substantial returns even by staying in Japan. Still, we will generally refer to language-learning and related activities as country-specific investments.

As noted above, country-specific investments can take place prior to admission to the host country. But probably the most significant country-specific investments occur after admission. Many migrants learn the host country language only after migration; others improve their linguistic skills by interacting with citizens of the host country. Also of great importance, migrants make country-specific investments by learning social and cultural norms, developing friends and associates among members of the host country, and in a general way obtaining local knowledge that is necessary to live successfully. All these investments are country-specific because they are lost—that is, the return on the investments cannot be obtained, or can be obtained only in greatly diminished form—if the migrant is forced to leave the country prematurely.

Our basic claim is that many (but not all) potential migrants can benefit most from migration if they make country-specific investments and remain in the country long enough to obtain the full return on those investments, which may often be a lifetime. A migrant in this group will therefore naturally worry that the premise of a country-specific investment—that she will remain in the country for a long period of time (if she so chooses) and that, as we will explain, certain social and institutional features of the host country remain constant—may be incorrect. She will therefore only make country-specific investments if she can predict that this premise will remain correct with a high enough probability. (Other migrants, however, may have no desire to make a

country-specific investment and seek instead to migrate temporarily in order to engage in (typically) low-skill labor; these migrants are not the focus of our analysis.)

It should now be clear that our framework provides one central reason why migrants value rights. Rights protect their country-specific investments. Of course, minimal *basic rights*—such as the right to own property—matter to the migrant. If she cannot keep the returns on her investment—such as her paycheck—she will not make the investment. But these minimal rights will often be insufficient.

The *right to remain* is also valuable. One might think that as long as a migrant can keep her paychecks and sell her property before being removed, she should not need a right to remain. After all, these benefits should cover her variable costs from living in the host country, and so she gains on net. However, she values the right to remain in part because she cannot recover her country-specific investments unless she can stay in the host country for a long enough period of time. The longer the right to remain, the more valuable is the country-specific investment, and therefore—a point we will get to in the next section—the greater the country-specific investment that the migrant will make.

Political rights will also often be quite important to migrants. Even a migrant who enjoys the basic right to keep her property and the right to remain takes risks from migration. The migrant also cares about her general quality of life in the host country, and this includes such things as the quality of the schools (if she has children), the convenience of parks, the degree of public safety, and other goods supplied by the government. In particular, migrants will always be concerned about xenophobic reactions that result in harassment of migrants or new laws that limit their freedom. History shows with great clarity that a population that welcomes migrants when jobs are plentiful and the world is at peace will often turn against them during an economic downturn or an international crisis. Strong migrant rights bar such a reaction or mitigate its consequences.

Basic rights to ownership and the like, and the right to remain, will, if enforced, prevent the worst forms of harassment. But migrants would prefer greater protection. One might imagine that migrants would want some sort of guarantee that the host country does not change in some undesirable way. However, this is surely impractical. Conditions change and governments must adopt new policies to address new problems that arise. Thus, the migrant's most realistic protection against new policies that reflect change but that unreasonably disappoint the migrant's expectations is the right to vote and engage in other forms of political participation. The migrant can use her vote

to block policy changes that benefit citizens very little while harming migrants a great deal, but not to block policy changes that benefit citizens a great deal while harming migrants only a little—policy changes that are most likely justified by new conditions. To be sure, one vote doesn't make a difference; but when a large number of migrants have located in the host country, or within a particular town or other area of the host country, their combined voting power may limit the amount of official and unofficial harassment that would occur during a period of stress.¹⁹

Our final point is that basic rights, the right to remain, and political rights matter more to people who make greater country-specific investments, and therefore need a longer period of time, and freedom, in order to obtain the return. If migrants do not make country-specific investments, they may still value rights, but they will not value rights as much. For that reason, permanent migrants may value rights more than temporary migrants. Permanent migrants seek to establish a permanent residence in the host countries; for them country-specific investments are highly valuable. Temporary migrants seek to stay only for a limited period—to work, to obtain an education, to tour, to visit friends—and for them country-specific investments are often much less valuable. For example, a Russian exchange student is likely to value rights much less than a Japanese academic who joins a university faculty and expects to remain in the United States for the indefinite future.

To sum up, in our simple setup, migrants who make greater country-specific investments value rights more than migrants who make more limited or no country-specific investments. But migrants will value all rights at least a little. This point can be put in another way. Holding the type of migrant constant, a migrant or potential migrant will make greater country-specific investments, the greater are the rights protections in the host country.

B. *Supply Side: What States Want*

When states grant rights to migrants, they incur costs. Some of these costs are straightforward. If a migrant has a right to enjoy her property, then the state cannot confiscate her property and distribute revenues to grateful citizens. If a migrant has the right to criminal process, then the state cannot summarily throw her in jail if it suspects she committed a crime or poses a threat to others. Also the state must divert valuable police and judicial

¹⁹ As the discussion below will make clear, uncertainty about the future and changing circumstances are not the only reason migrants might value political rights. They are also valuable as a precommitment device. For case of exposition, however, we discuss precommitment in Section C below.

resources to the protection of migrants from citizens who seek to harass them. Thus, the state will incur costs if it confers basic rights on migrants.

Why, then, do states give migrants these basic rights? We could imagine a host country announcing that migrants are welcome but they have no rights. As a matter of historical practice, this type of situation sometimes occurs. But it is hard to imagine that the host country would attract many migrants. A migrant who entered a country where she was given literally no rights would take the risk of being immediately stripped of all her possessions. The government could take all her possessions and enslave or kill her. Ordinary people could do the same, and she would have no ability to call the government to her aid. Thus, a state would attract no migrants—except in unusual cases, such as a Wild West situation where people band into groups for protection and try to quickly exploit natural resources—unless it gave migrants at least minimal basic rights. For that reason, *basic rights* would seem to be a *sine qua non* of migration.²⁰

As we noted from the start, all states benefit from migration but states have different needs and interests. Consider a state that needs only seasonal unskilled labor from people who live just across the border. Suppose further that these people would earn a higher wage in the host state than they do at home. Such people, if granted only basic rights, would likely be willing to engage in seasonal migration, for their and the host state's mutual benefit.

Now let us consider the *right to remain*. Let us imagine that the state faces two possible futures: a “good condition,” where the current demand for the migrants' labor continues; and a “bad condition,” where the demand collapses because of an economic downturn, and local citizens turn against migrants and want them expelled. If the good condition occurs, then granting rights to remain is relatively cheap for the state. Although it might prefer to remove the alien to satisfy some passing political demand—perhaps reflecting temporary changes in public sentiment or institutional spasms or occasional opportunistic desires to extract revenues from them—the political benefits from such removal are likely to be minimal and hence the cost of the right to remain is low. But if the bad condition occurs, then granting rights to remain is highly costly. The state cannot satisfy popular demand to expel the migrants, and there will be political as well as financial costs from respecting the right to remain.

Clearly, the state has little reason to grant the right to remain to the seasonal migrants described above. Those reasonable migrants do not value

²⁰ However, as noted above, some basic rights—including the right to choose one's employer, or even to work at all—can be restricted.

the right to remain very much because they do not intend to remain for long periods and are much less likely to make country-specific investments. To put this point more precisely, the joint value of the migration for the migrants themselves and the host state is not maximized from a country-specific investment on the part of the migrants. Accordingly, the state does not need to grant the right to remain in order to secure the desired level of entry and investment.

Suppose, however, that a state seeks migrants who will settle permanently. The state might seek unskilled people or it might seek skilled people; for present purposes, the distinction is unimportant. What is important is that migrants who plan to settle permanently in the host state will need to learn the language and make other country-specific investments. More precisely, a migrant will obtain the highest return from settling in the country permanently if she first makes a country-specific investment in language and other local skills and continues to make country-specific investments once she arrives. Since she can obtain the return on the country-specific investment only if she can remain in the host country for as long as she wants, she will want more than basic rights: she will want the right to remain.

The problem for the state is that if it grants migrants the right to remain, it will not be able to remove them if circumstances change and the bad condition occurs. So the state will grant migrants the right to remain only if the expected cost of that right is less than the benefit to the state. The migrant might well prefer an absolute right to remain—that is, a right that prevails in the bad as well as in the good condition. But if the states can credibly promise to remove the migrant only in the bad condition, many people will still migrate and make country-specific investments—just as long as the bad condition is sufficiently unlikely, such as a major war or catastrophe.

Remember, of course, that migrants care about their environment, not just their right to reside in the host state. Basic rights can protect some aspects of their lives, but *participation rights* give them a way to affect the future bundle of public goods supplied by the government. Thus, participation rights are an important way migrants can improve their well-being in the host country. For the host state, however, participation rights may enable migrants to influence public policy in a manner that hurts the interests of citizens. Suppose, for example, that citizens have a strong preference for maintaining high-quality public parks. A class of migrants cares less about parks and more about the quality of the roads. If migrants have participation rights, then they could cause the government to reduce spending on parks and increase spending on roads. Ex ante, citizens will prefer their state not to grant participation rights to migrants, so as to maintain complete control over public policy.

The state will make the same cost-benefit calculation as it did before. If more migrants will enter and make optimal country-specific investments if they receive participation rights, such that the gains for citizens (in the form of lower taxes, cheaper goods, and so forth) are greater than the costs for citizens (in the form of congestion and public policy biased against them), then the state will grant participation rights to noncitizens. There is a further consideration here, however. Granting participation rights to migrants may be less costly to citizens, the closer the migrants' political preferences are to those of citizens. Thus, a state may be more willing to grant participation rights, as opposed to merely rights to remain, when the expected migration will consist of people very much like citizens. However, by the same token, those migrants may also value participation rights less because they do not fear that that people similar to themselves will vote for policies they dislike.²¹

As an aside, note that states will not be likely to "bribe" people to migrate by offering them significant cash payments. Such cash payments will not encourage people to make country-specific investments unless the payments are conditioned on those investments, which is likely to be impractical. Instead, states offer people legal rights that protect the value of their labor and other aspects of their lives, which should encourage people to make optimal country-specific benefits, as long as the state can keep its commitment not to renege on the rights guarantees or otherwise reduce the migrant's payoff.

C. The Optimal Content of Migrant Rights

To evaluate policy choices, we imagine two agents, a migrant and the state. At time 0, the migrant enters the state and has an initial choice to make a country-specific investment or not. The investment is costly, but has positive net present value for the migrant as long as she is permitted to stay for a sufficient length of time, during which she can recover the cost by working and earning a wage. (We focus here on financial costs for expository simplicity; but, of course, the model can encompass all sorts of nonmonetary costs and benefits.) The migrant earns a higher wage if she invests than if she does not invest. At the same time, the state benefits from the migrant's presence because she reduces labor costs and pays taxes.

At time 1, events change. Normally, the state has no reason to expel migrants or change the living conditions of migrants, but let us put this normal condition aside for expository clarity. Let's define the good condition as one in which the state gains by removing migrants or subjecting them to harsher

²¹ In Part III we elaborate on and relax this constraint, considering different ways in which participation rights might impose costs on, or in some cases bring benefits to, the host state.

conditions, but the gain is relatively low. The bad condition—a crisis, a war, an economic downturn, an influx of refugees—is the same except the gain is relatively high. The state gains from removing migrants in both conditions, but gains much more in the bad condition.

We assume that from the state’s standpoint, at time 0 the optimal policy, or contingent contract, is one in which the migrant can be removed, or her living circumstances worsened, if the bad condition occurs, but cannot be removed or otherwise harmed if the good condition occurs. The reason is the state gains more from time 0 taxes than it loses in time 1 if the good condition occurs, but the state gains less from time 0 taxes than it loses in time 1 if the bad condition occurs. Moreover, the migrant will enter and make relationship-specific investment only if she can recover that investment in time 1, and we suppose that she can, in an expected sense, as long as she can stay in the good condition and the probability of the good condition is high enough. Yet she knows that the state will have an incentive to remove her or make her life worse even if the good condition occurs. Thus, in order to encourage migration and investment, the state must commit itself not to remove the migrant, and to maintain her conditions, in the good condition but not in the bad condition.

An optimal “contract” between the state and migrant would provide that the state can remove the migrant if the bad condition prevails and not if the good condition prevails. How might such a contract appear in practice? History suggests two types of bad conditions: war (and other security alarms) and economic downturns. During wars, migrants (especially those from the enemy state) may be suspected of disloyalty and even espionage or sabotage. During economic downturns, native citizens might seek the expulsion of migrant who compete for scarce jobs. The optimal contract therefore might state that the migrant remains in the country unless a war or economic downturn occurs.

In practice, we observe migrant contracts that contain the war condition but not the economic downturn condition. Governments typically retain the right to deport migrants if war breaks out with the country of which they are nationals. Migrants probably understand these rules and indeed, as far as we know, migration between traditional enemies is unusual. An important exception is British migration to the United States during the first half of the nineteenth century but this case is unusual, given the historic ties between the two countries.

Why don’t countries also reserve an explicit right to deport migrants during economic downturns? We conjecture that the problem with such a rule is that economic downturns are hard to define—harder to define than a war. If

the law provided that governments can remove migrants if an economic downturn occurs, migrants might fear that the government will engineer economic numbers that reflect a downturn or seize on weak evidence to rationalize expulsions. But if the law is more specific, then the government might fear that it will exclude a genuine crisis that does not meet the law's definition. If governments reserved the right to deport migrants during economic downturns, then migrants would not have the security necessary to make country-specific investments and hence would not migrate or migrate but not invest.

States typically take another tack. Instead of reserving a right to deport under specified economic conditions, governments divide migrants into classes and reserve discretionary rights with respect to one class and not with respect to the other. In the United States, migrants can enter and belong to the first class with the expectation that if they remain in the country for a certain amount of time, they can enter the second class. For example, skilled workers can enter with an H1-B visa, and later obtain permanent residence. The effect of this system is a compromise between the two competing goals of encouraging entrance and country-specific investment, on the one hand, and government flexibility, on the other hand. During an economic downturn, the government can expel short-term migrants, or refuse to renew their visas, thus relieving some of the political pressure from native workers, while allowing long-term migrants to stay, thus encouraging some degree of country-specific investment for future migrants.

The classifications also reflect the government's interest in different types of migrants. Governments classify migrants according to how much the state desires a particular class of migrants, how much the successful migration of a particular class hinges on country-specific investments, and so on. Highly desirable migrants are given more generous rights; less desirable migrants are not. Migrants for whom country-specific investments are crucial are given more robust rights to remain than migrants who value entrance regardless of their ability to recoup any country-specific investment. But even highly desirable migrants do not have the right to preserve the conditions under which they enter; such a right would be much too costly. Occasionally states do give migrants some control over the conditions of their lives by giving them voting rights, as some American states did during the nineteenth century, but in the United States today those rights do not come until naturalization.

These arrangements are vulnerable to shifts in the underlying variables. Consider first our claim that a war is more easily verifiable than an economic downturn. This may well be true in general but there are telling exceptions. The conflict with Islamic extremists falls somewhere between a true war and a law enforcement operation. The U.S. government, likewise, did not expel

migrants from Arab and Muslim lands with heavy Al Qaida presence but it did subject these migrants to intrusive monitoring programs. These programs may well have seemed to Arabs and Muslims a breach of the implicit migration contract; for the U.S. government, a change in circumstances justified a change in the law. However one looks at it, migrants from the relevant countries will be more reluctant to enter the United States and to make country-specific investments. The U.S. government response has introduced uncertainty, which makes the war condition more like the economic downturn condition, possibly leading to a corner solution where few or no migrants enter and invest.

To sum up, the optimal contract will provide that the government may deport migrants if bad conditions occur, but if the bad condition is unverifiable, then corner solutions are likely—the government retains discretion to remove the migrant or alter conditions or the government loses that discretion or the bulk of it. We observe the non-corner solution most vividly in war-related government rights; otherwise, governments tend to divide people in classes that enjoy little protection or a great deal of protection. As a result, many migrants do not make country-specific investments; others do, either because they receive protection immediately or they are willing to risk removal during the first period in the hope of obtaining security starting in the second period.

When the underlying variables change, so should the law. If the technology for verifying conditions change so that verification becomes difficult, then a non-corner outcome might collapse into a corner solution—our Al Qaida example. If the risk of the bad condition increases, then migrants' rights should become weaker. And if the value of country-specific investments for countries increases—as might happen, as a country moves from an agricultural or traditional market economy to a “knowledge-based” economy—then migrants' rights should become stronger.

D. The Optimal Strength of Migrant Rights

The optimal contracting problem has an additional dimension not present in ordinary contractual relations, where it can be assumed that courts will enforce the contracts to which parties agree. Even if it were possible to describe precisely the good and bad states of the world, prospective migrants may worry that the state will renege on its obligations under the agreement. The state might retroactively change deportation policy in a way that makes many noncitizens removable even in the good state of the world. Or, short of deportation, the state might harass the migrants or otherwise make their lives miserable, akin to constructive firing in the employment setting. This raises

the problem of the strength of rights, or, more precisely, their degree of entrenchment.

Consider the difference between statutory and constitutional rights. If migrants are given an absolute right to stay and this right is statutory, then the state can eliminate this right merely by changing the law. Now, in fact, it might be difficult to change the law, in which case the right is robust. But it might also be easy to change the law. Alternatively, the right could be constitutional. If the right is constitutional, it can still be changed, but doing so will be more difficult. It should be clear that generous rights (such as an absolute right to stay) that are weakly entrenched may offer less protection than weaker rights (such as a right to stay unless there is a war) that are more strongly entrenched.

The three main source of rights can be arranged from weakest to strongest. Repeal of administrative rights can occur at the behest of the executive alone. Repeal of statutory rights requires the participation of Congress. Repeal of constitutional rights requires the satisfaction of various supermajority rules. All else equal, entry and country-specific investment will be greater when rights are more highly entrenched than when they are not. By the same token, the flexibility of the state is reduced. If it fails to anticipate a crisis or type of crisis, and thus does not incorporate an option to remove into the basic legal scheme, it will not be able to add such an option if the right to remain is sufficiently entrenched.

Now consider a third possibility: giving the migrant the right to vote. The right to vote is distinctive. Like the right to stay, it can (in principle) be statutory or constitutional, and thus can be more or less easy for other (citizen) voters to eliminate. Yet the migrant herself can exercise her right to vote and use it to elect officeholders who will support the migrant's rights. So the right to vote is, to a degree, self-entrenching. To be sure, it is worth little by itself; but if there is a critical mass of migrants, the right to vote can be quite powerful. Thus, unlike the right to stay, the value of the right to vote is a function of how many other migrants have that right, and how native citizens are likely to exercise their own votes. If few other migrants exist or few have votes, or if citizens make up a large majority and vote in blocs, then a migrant is not likely to value the right to vote. But in many cases, migrants will be able to form blocs and then make coalitions with other groups of citizens. This will allow them to protect whatever interests they value the most. This shows that participation rights can have distinctive value as a mechanism for overcoming immigration law's precommitment problem.

How might states choose among these options? Our starting point—that many migrants gain from making country-specific investments but states want

to be able to remove migrants in the bad condition—entails that some level of security less than absolute will prevail. Let's assume a baseline where the state simply exercises administrative discretion and can retain or remove migrants at will. Migrants might fear that the executive will remove them for political reasons even when the bad condition does not occur, and thus refrain from investing. How might a state improve on this outcome?

- First, a state might pass a statute that provides for fully secure rights. If migrants expect judges to interpret the statute fairly, and if the legislature can repeal the statute only with great difficulty—for example, only if an emergency (the bad condition) exists—then the statute might be an adequate solution. However, the legislature itself might be no less trustworthy than the executive.
- Second, a state might constitutionalize the statute, thus eliminating the ability of the legislature to overturn it. A state will do this if it expects that it can amend the constitution in an emergency or (what is more likely) that courts will fairly carve out exceptions for emergencies. Migrants would also need to trust the courts.
- Third, a state might instead grant the migrant voting rights, thus giving her the ability to block self-serving interpretations by the government or statutory revisions by the legislature. As we noted above, a state will most likely grant voting rights to migrants who share the basic values and preferences of existing citizens. Migrants will be most likely to value these rights if they believe they can form a coalition that is large enough to protect their interests.

It should be clear, then, that states can commit themselves in two ways, substantively and procedurally. If a law can reflect the optimal contract—that is, removal only in the bad condition—then it is optimal if it cannot practicably be changed but not if it can too easily be changed. If the law gives migrants blanket protections but can be changed with difficulty—and only, in practice, when the bad condition prevails—then such a law can be optimal as well. In the United States, the rights of long-term migrants have, over the centuries, become to a highly limited extent constitutionalized. Yet these constitutional rights remain minimal (and essentially procedural, not substantive). At the same time, the executive has gained increasing control over the rights of migrants, especially in the form of enforcement actions against migrants who have entered illegally. Thus, the strength of rights varies according to the type of migrant and the type of right in question, and, as we expect from our theory, the rights of short-term migrants are weakest, that is, easiest to change.

To sum up, migration policy presents a precommitment problem for the state. The state seeks to encourage migrants to enter and make country-specific investments so that it can obtain greater tax revenues and other benefits. At the same time, the state has a strong interest in being able to remove migrants, or significantly reduce their living circumstances, *ex post*. If the content of rights could be perfectly specified in advance—so that the state can take adverse actions against migrants if and only if doing is socially optimal for citizens from an *ex ante* perspective—then the rights should be the strongest possible. But because the rights cannot be perfectly specified in advance, the state faces a second-order tradeoff between granting weak rights (so that the state can change them at will but with the result that migrants will be reluctant to invest) and strong rights (so that migrants can invest but the state will not be able to change them when doing so is optimal).

III. MIGRATION AND FAMILIES

Our basic theory assumed just two agents – a monolithic state and a solitary migrant. In the remaining Parts we relax these constraints in three ways: first, to account for the fact that migrants are seldom solitary; second, to consider the reality that receiving states' policies are the product of the domestic political environment; and third, to assess the consequences of a world with multiple sending and receiving states. To begin, we briefly extend our analysis to an important area of immigration law—the treatment of family relations. States can encourage migrants to enter and invest by promising rights to their family relations such as children, but, as before, the state risks tying its hands in a way that may hurt it *ex post*.

Origin and Host Countries face similar choices with respect to the treatment of children and other family members. A migrant may have any number of family relationships, current (as of the time of migration) and prospective (after migration). Let us distinguish a few dimensions. First, at the time of arrival she may have many or few relatives, and these may be close or distant. Second, she may bring these relatives (some or all) with her or they may stay in the Sending State. Third, she may establish new family relationships in the Host Country—in particular, a spouse and children (but also in-laws, nephews, nieces, and so forth). Fourth, her new relations may have stronger or weaker connections with the Host Country (they might be noncitizens, for example). The Origin and Host Countries can make numerous choices about how to treat these relations and therefore the migrant herself, given that the migrant will care about maintaining these relationships and (usually) staying in proximity with her relations.

We can speak broadly of favorable family policies or unfavorable family policies, where the degree of favor refers to the extent to which the migrant

may exercise an option to enter with pre-entry family connections and to exit with post-entry family connections. To keep things simple, however, let us focus on the most important issue from the standpoint of policy: the rights of children.

Consider a migrant who enters the Host Country and then has a child while on that country's territory. The basic conceptual divide is between *jus sanguinis* and *jus soli*. *Jus sanguinis* provides that the child derives her citizenship from her parents: so a child of German citizens who is born in the United States has German citizenship. *Jus soli* provides that the child derives her citizenship from the state on whose territory she is born. So the child in our example would have United States citizenship. Actual laws deviate from these paradigms, and various rules resolve conflicts or permit dual citizenship. But we will limit ourselves to the paradigm cases.

What are the costs and benefits of the two systems? For the migrant, a host country with *jus soli* is more attractive than a country with *jus sanguinis* because only in the first country can her child, if born in the Host Country, have Host Country citizenship. Given that a child who is born and spends several years in the Host Country will be a native speaker of that language, and may have trouble learning the language of the Sending State, the migrant's interest in obtaining citizenship for her child may be very strong. To be sure, this citizenship might not be worth anything if she leaves.²² But, compared to *jus sanguinis*, *jus soli* gives the migrant the option to obtain citizenship for her child if she decides to remain permanently in the Host Country, so her child, as an adult, may stay as well.

At the same time, the migrant will also prefer the system of *jus sanguinis* in the Sending State. This ensures that if she decides to return, then her child will be able to return with her and reside permanently as a citizen.²³

Consider now the Host State's perspective. With respect to immigrants, it encourages immigration and country-specific investment by adopting *jus soli*. Immigrants are more likely to enter, and to invest in country-specific assets, if they expect children whom they bear in the Host Country to become citizens. The cost of *jus sanguinis* is that these children will have voting rights. Now, often this cost is very low. The children of immigrants often easily learn the

²² In theory, the children's citizenship in the Host Country may be limited by Sending State rules. In practice, however, this is seldom true.

²³ This point applies with diminishing force as generations pass. The migrant probably thinks very little about the rights of her great- or great-great-grand children. Some states, such as Japan (?), have a generational cutoff. For others, the only possible reason for allowing remote descendants of citizens to enter would be ideological or racist—as opposed to the instrumental reasons we have been discussing.

language of the Host Country and adopt the values and absorb the culture of the people who live there. However, in countries where assimilation is difficult, the cost could be very high. The Receiving State might fear that descendents of migrants will form an unassimilated and hostile group; and if the group has voting power, it may distort political outcomes away from what is preferred by native citizens and their descendents. If the Receiving State fears such an effect, it will prefer *jus sanguinis*, even though *jus sanguinis* will deter migration. Indeed, if *jus sanguinis* laws do not deter migration, they can create a self-fulfilling prophecy, as migrants teach their children the Sending State language so that the children will have a viable exit option, in which case these children may not learn the Receiving State language well enough for assimilation. It may not be a coincidence that *jus soli* prevails in the United States, with its successful history of assimilation, and *jus sanguinis* prevails in European countries such as Germany and France, which have unassimilated national minorities—but the direction of causality is unclear.

The Origin State can choose to benefit the emigrant by creating a system of *jus sanguinis*. If *jus soli* prevails, the emigrant's foreign-born children will not have Origin State citizenship. This lowers the value of the emigrant's option to exit the Origin State. By contrast, if *jus sanguinis* prevails in the Origin State, the emigrant can be sure that her children will be citizens in that state. Thus, the Origin State might use a system of *jus sanguinis* to encourage out-migration, and *jus soli* to discourage out-migration.

However, it should be clear that states need not have the same system for emigrants and immigrants. A country that seeks to encourage immigration and emigration, for example, might have *jus soli* for immigrants and *jus sanguinis* for emigrants. This is, in fact, close to the practical effect of United States citizenship policy. Various rules can also be used to soften the edges of the paradigm regimes. A *jus soli* state, for example, might allow a returning migrant to obtain citizenship status for children born overseas, with greater or lesser hurdles, such as waiting periods, fees, and so forth.

Our point, for now, is that what one might call child-citizenship rights—*jus soli*, *jus sanguinis*, and the variations—are similar to basic rights, participation rights, the right to stay, and dual citizenship rights. They can be used to give the migrant a more or less generous exit option, which in turn will modify the migrant's incentives to enter and make country-specific investments. In addition, they have more or less cost for the Receiving State, depending on the success with which the Receiving State assimilates the descendents of immigrants. Where assimilation occurs relatively easily—whether the result of good policy such as education programs, or of culture or tradition—*jus soli* will be the more attractive approach. Where it does not, *jus*

sanguinis will be more appealing, despite its adverse effects on the incentive to migrate and make country-specific investments.

IV. THE POLITICAL ECONOMY OF MIGRATION LAW

A. *The Structure of Democracy*

Our simple model above assumed that the cost of political participation by migrants stemmed exclusively from their potentially divergent preferences. The truth is more complicated. There are at least three different ways in which giving the right to vote to migrants might be detrimental to the existing political community. These possibilities flow from information issues, inculcation issues, and preference-satisfaction issues.

The first two possibilities are the traditional focus of the small literature on voting by noncitizens. The information issue arises because the state might worry that voters need certain information to cast intelligent ballots; without that information voters might vote in ways that are detrimental to the state and perhaps themselves. The concern is that new immigrants do not have sufficient information. The inculcation issue is related: the state might worry that new immigrants will vote in ways detrimental to the existing polity because they will initially not have absorbed the values of the existing community. Both of these concerns track parallel arguments in American voting rights jurisprudence. As recently as the 1960s several states (and some local governments) had durational residency requirements for voting. New residents were ineligible to vote until they had resided in the state for a fixed period—sometimes up to one year. When these laws were challenged in court, the states defended them on information and inculcation grounds. These arguments were squarely rejected by the Supreme Court.²⁴ But the Court did not reject the arguments as implausible; rather it concluded as a normative matter that these were impermissible concerns where inter-local or interstate (rather than international) migration was at stake.

The informational and inculcation issues are both transitional concerns. They suggest that the cost of conferring political rights on migrants might decline over time. If these were the only costs, they could be alleviated through durational residency requirements—such as the current five year residency requirement prior to naturalization—or by other mechanisms designed to lower information costs or reshape migrants' preferences. But even if migrants all have good information and fixed preferences, their expression of their preferences at the polls and in politics more generally could

²⁴ See, e.g., *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Carrington v. Rash*, 380 U.S. 89 (1965).

be detrimental to the existing polity. Whether the inclusion of a new group of immigrants in the polity will be beneficial or detrimental depends centrally on the way in which a particular state's democratic institutions function: whether they are best understood as a mechanism for aggregating preferences or promoting deliberation; for serving the interests of the median voter or organized interest groups; and so on. Of course, the "cost" of adding a new group of migrants also depends on what sorts of benefits or harms one is concerned with. Our aim here is not to provide a unitary theory of democracy or of the harms that might flow from participation. Instead, we suggest a few different theories of potential harms—and show that a state's preferences about the composition of the immigrant pool (ideological or otherwise) turns importantly on which type of harm most concerns it.

1. The welfare effect of voting rules. Consider first a simple preference aggregation model of politics, such as the median voter model. Under such a model, the effect of adding migrants to the polity depends on the distribution of preferences among the new immigrants and the relationship of that distribution to the distribution of preferences among the existing electorate. The difficulty with evaluating this effect is that one needs a theory about the welfare effect of voting rules. There is a large literature concerning this question, and we have little to add to the debate. For the purposes of illustration, however, a common approach is to treat a voting rule as welfare maximizing if it minimizes the sum of the distances (or the sum of squares) between each voter's ideal point and the policy outcome produced by the voting rule. On this theory, if voters' preferences are distributed in a single-peaked way (and if we care only about the preferences of the existing electorate) then it will be welfare-reducing to add voters whose ideal points are not distributed around the same median as the existing polity. In this account, the state will not be particularly concerned with the ideological homogeneity or heterogeneity of the immigrant pool. Choosing migrants such that the median migrant voter shares the preferences of the median voter in the existing polity will instead be the state's capital focus.

2. Efficiency of government. Governments produce public goods. A trope of local government literature is that the efficiency of public good production can be improved by increasing the homogeneity of the electorate. This can be true where there are economies of scale associated with public goods, or where supplying one public good interferes with the supply of another (this could be true because the goods themselves are in conflict, as with open spaces and highways, or because the production of public goods is costly and the government is fiscally constrained). If the efficient supply of public goods were all one cared about, then one would want to use immigration law to increase the homogeneity of the electorate.

3. Redistribution and rent-seeking. Governments do not just produce public goods. They also redistribute wealth. This raises a very different concern: that migrants—even migrants who have ideological preferences identical to existing citizens—might try to use their political power to redistribute the state’s wealth to themselves. If this is the state’s central concern, then it will worry much more about the organizational capacities of the immigrant pool rather than their ideological distribution. Migrants who can more easily overcome collective action problems and band together as a group will be more likely to engage in successful rent seeking. Shared cultural, ethnic, or linguistic identity might be one feature that facilitates such collective action—consider, for example, the Cuban immigrant community, whose political power has been widely documented.²⁵ Thus, a state concerned most about rent seeking might try to limit large scale migrations from a single source, to pick migrants with diverse ethnic and linguistic backgrounds, and so forth.

As should be clear from the examples, different theories about the structure and function of democracy lead to quite different, often conflicting prescriptions. For example, a government concerned about producing public goods efficiently might favor a homogenous migrant pool; but a homogenous pool of migrants is the last thing a government concerned about rent seeking would want.²⁶ Moreover, understanding more fully the political implications of immigration policy highlights a potential tension in a state’s immigrant-selection system. States select immigrants along several dimensions. One important dimension is the labor market dimension: state often choose immigrants who promote particular labor market goals. In the United States today, this might mean admitting a large number of low-skilled workers. But the state’s selection preferences regarding labor market might conflict with the state’s ideological selection preferences. Low skilled workers might turn out to have ideological preferences far from that of the existing electorate. Where this is true the state must make a trade-off: it must either compromise along

²⁵ See, e.g., Issacharoff, *Groups and the Right to Vote*.

²⁶ It is easy to add further tensions and complications. A state worried about long-term democratic dynamics might in theory like to use migration policy to make the state more homogenous – on the idea that homogeneity could reduce political conflict. But in a world where perfect homogeneity is impossible (perhaps even at the local level, but certainly at the national level), moving towards greater homogeneity could actually exacerbate political conflict by producing a large dominant political coalition and consistently disagrees with a smaller coalition that has different views.

one of these dimensions or attempt to avoid the compromise by admitting the immigrants while excluding them from participation in the political process.²⁷

This trade-off might help explain why the United States today contemplates the use of temporary migration programs (which really means a quite slow path to permanent residence and eventual voting) for low-skilled workers but a much quicker path for high-skilled workers. The comprehensive reform legislation that failed to make it out of Congress in 2007 reflected this structure.²⁸ Several versions of that legislation combined a large increase in the green-card quota for high-skilled workers with the creation of a large-scale temporary worker program for low-skilled workers.²⁹ The high skilled workers given green cards and admitted to lawful permanent residence would have been eligible to naturalize in five years. In contrast, the low-skilled workers would have had to work for at least four years (and typically longer) before becoming eligible to apply for lawful permanent residency – and their applications would be further delayed if they were unable to pass English and civics exams from which the high-skilled migrants were exempt. This would mean that low-skilled workers would have to wait nearly twice as long as high-skilled workers (under the best of circumstances) to obtain political rights. One account of this differential treatment is that the government believed that high-skilled workers are more likely – because of their countries of origin, their high levels of education, etc. – to have ideological preferences closer to those of the existing electorate in the United States.

B. *Internal Political Economy*

Up to this point, we have assumed that the state is a monolithic entity that steadfastly pursues the interests of its citizens. This oversimplification helps highlight some important dynamics, but it obscures the internal political economy of the state. Decisions about which immigrants to admit and whether (or how quickly) to confer voting rights are themselves the product of the existing political process. In this sense there is a very important and overlooked parallel between immigration law and the law of democracy: both contain a basic endogeneity because the legal rules regulate the boundaries that determine who will participate in the setting of future legal rules. This

²⁷ This also suggests that, on the margin, states will be more likely to try to attract ideologically dissimilar immigrants with other forms of security – such as security from deportation.

²⁸ See [cites to 2007 Senate comprehensive immigration reform bill]

²⁹ See [cites] (raising employment quota that goes mostly to high-skilled workers from 150,000 per year to 450,000 per year and alters the diversity lottery in some ways to promote the entry of even more high skilled LPRs); [cite] (providing eventual path to LPR status, through self-petition or through existing visa applications)

endogeneity is a central theme of modern voting rights scholarship. But it is largely ignored by immigration scholars.

Perhaps the most important possibility is that insiders will use immigration policy to try to lock themselves in power. They might attempt to do this in several ways. First, they might do so by keeping out migrants with different electoral preferences, or about whom there is more uncertainty about their preferences. These migrants might be excluded at the border; or the state might admit them but either deny them voting rights or delay their access to the franchise. This could be accomplished by making migrants ineligible for citizenship or by requiring a longer period of residence before the migrants are eligible for citizenship. Second, this dynamic could also operate in reverse, with political insiders encouraging immigration by potential supporters and speeding their access to the franchise (by, for example, shortening the naturalization period or granting voting rights prior to naturalization). A third possibility is that political insiders would encourage out-migration by political opponents, either by deporting them or by making their day-to-day lives much less desirable.

The third possibility seems quite unlikely in the United States. First, voters in national elections today are all citizens, and the Constitution prohibits the deportation of citizens. Second, the cost of exit from the nation is often quite high, so it is hard to imagine the state successfully encouraging or coercing voters to leave by making their lives more difficult. That said, there is some evidence that this strategy has been used at the local level.³⁰ And the deportation provision in the 1798 Alien and Sedition Act suggests that the possibility is not unheard of at the national level.

The first possibility seems considerably more plausible. In fact, some historical episodes in America are consistent with this explanation. Consider, for example, the rapid changes made to U.S. naturalization rules in the period immediately following the ratification of the Constitution. Over the course of a few short years in the 1790s, Congress sharply expanded the durational residency requirement for naturalization – from three years to five, and then from five to fifteen years. These changes had the effect of keeping some new migrants out of the voting booth for very lengthy periods of time by delaying access to citizenship; and even in situations where citizenship was not required for voting, it precluded office holding by migrants. On one account those

³⁰ One prominent example is __ Curley, the Irish American mayor of Boston, who over decades contributed to the dramatic depopulation of the city's anglo protestant citizens. See [cite Schleifer paper and 2007 paper]

rules were about the threat to the *nation* posed by migrants with radical (Jacobinal) political ideas.³¹

Since the Alien and Sedition Act episode, the naturalization delay has been formally stable in American immigration law. Lawful permanent residents have for the last 200 years been required to live in the United States for five years before becoming eligible to naturalize. Thus it is tempting to conclude that durational residency requirements have not been used to shape the composition of the electorate. But there are two important exceptions. First, until well into the twentieth century immigrants from Asia were ineligible to naturalize because of racial bias in the naturalization rules.³² Second, while the formal residency rule has remained fixed, other changes to the immigration law have created considerable variation in practice. Much of that variation is the product of changes in who falls into the legal category of lawful permanent resident. In the nineteenth century basically all immigrants fell into this category. But the twentieth century brought the growth of two new groups: temporary migrants who were entitled to enter for fixed periods of time, and so-called illegal immigrants who were not legally entitled to reside in the country. It might seem like a mistake to consider these migrants, as neither is formally on the path to citizenship. But in practice both groups often are. Modern immigration law sometimes offers temporary immigrants the option, after some period of time, to adjust their status to that of a lawful permanent resident. For such migrants, the effect of their initially “temporary” admission is to lengthen the period of residence required before naturalization.³³ Relatedly, unauthorized migrants have sometimes been provided the opportunity (through periodic legalizations, the INA’s cancellation of removal provisions, etc.) to become lawful permanent residents and eventually citizens.³⁴ But as a practical matter these immigrants face a much longer naturalization delay than those first admitted as LPRs.

³¹ Many historians have argued that these early changes to naturalization law were in part the product of a fight between nascent American political parties – an attempt by the emerging Federalist part to keep the government out of the hands of the Republicans. See, e.g., Sean Wilentz, *The Rise of American Democracy* (2008). That account is in many ways consistent with the account above.

³² See Adam B. Cox, *Citizenship, Standing, and Immigration Law* (outlining racial restrictions on naturalization, some of which remained until 1952).

³³ See [cite INA; Motomura discussion of use of temporary visas as transition mechanism to LPR status; casebook for same]

³⁴ See [1987 legalization; legalization provisions in failed 2007 legislation; INA § 240A (providing, through “cancellation of removal,” a mechanism for a small number of unlawful immigrants who satisfy a number of criteria to become legal permanent residents)].

Thus, longer naturalization periods might be evidence of attempted insider lockup. But a lag between admission and the acquisition of voting rights has a potential upside as well. Legal rules that delay immigrant access to the franchise (and that make it difficult for insiders to change that rule) can lessen the likelihood that insiders will attempt to manipulate immigration policy to advance their own political interests. They do so in two ways. First, the delay makes it more difficult for insiders to predict the electoral preferences of immigrants admitted under the system. Their preferences may be well known at the point of entry, but there will be considerably more uncertainty about what those preferences will look like years down the road. In this way naturalization lags operate somewhat as a temporal veil of ignorance. Second, the delay may reduce the incentive of political insiders to manipulate the immigration rules in self-interested ways. This is because political insiders likely have somewhat limited time horizons. While political parties may lower politician's discount rates to a certain extent, those politicians are still unlikely to care as much about elections several electoral cycles out than they are to care about the next few election cycles. Thus, naturalization lags may have a salutary effect on the political economy of migration policy.

Even putting aside the possibility of insider lock-up, focusing on the political rights of migrants makes clear that the political economy of migration policy is much more complicated than is often assumed. Consider policies concerning wealth redistribution. There is a large literature on the ways in which immigration and redistributive policies interact. The bulk of the scholarship focuses on the fiscal consequences of migrants – on whether they will be net payers or payees in the system. But the above discussion shows that such an approach is incomplete, because immigration policy will (unless migrants are excluded indefinitely from the political process) affect the composition of the electorate voting on such policies in the future. A few scholars have noticed this fact and attempted to model the disagreement over immigration policy that may arise between groups of voters with different preferences concerning redistribution in some future period.³⁵ Whether or not these efforts are persuasive, the important point is that these electoral consequences of migration policy will often be crucial to understanding the political economy of immigration law.

There is some historical evidence that support for immigration policy is affected by related sorts of interest group dynamics. Consider Claudia Goldin's fascinating study of immigration restrictionism during the first two decades of the twentieth century. The study highlights the role immigrants

³⁵ See [cites]

themselves can play in the political economy of immigration legislation. From the mid-1890s and until the passage of the National Origins Quota Act in 1921, anti-immigrant forces tried to close the door to immigrants. On several occasions Congress passed restriction literacy requirements that were vetoed by the President. Twice the House managed to override the presidential veto, but until 1917 both chambers could not together muster the votes needed to write the literary requirement into law. Goldin shows that the political power of the immigrants themselves were a central reason why it took restrictionist forces twenty years to succeed. Examining city-level data, she finds that increases in the percentage of foreign born in a city initially raised the possibility that the city's representatives in Congress would vote in a restrictionist direction—on her account, by depressing wage growth and producing a backlash among native voters. Once the foreign born fractions reached a certain level though—about 30 percent of the city's total population—almost all representatives voted against restriction. This finding “underscores the critical importance of reinforcing flows of immigration in building and maintaining the open immigrant vote.”³⁶

Goldin's work, together with the recent work on immigration and welfare policy, highlights the twin concerns a state might have about conferring political rights on migrants: first, that the migrants will change the sorts of public goods that the state provides; second, that they will affect the state's immigration policy itself. These twin concerns point to an overlooked design possibility: that migrants could be given voting rights with respect to one set of policies but not the other. This might initially seem implausible, because we generally don't think about extending the franchise in issue-specific ways. But it is important to realize that the most prominent contemporary proposals concerning noncitizen voting actually do embody this sort of separation. Today advocates of noncitizen voting argue most vociferously that immigrants should be granted the right to vote in local but not national elections. (In fact, a smattering of local governments around the country have responded and authorized noncitizen voting.)³⁷ The argument for local voting is usually cast in the language of membership and obligation: the claim is that noncitizens truly are “members” of their local community, even though they are not yet full members of the national community, such that they deserve (or local governments are obligated to provide them with) voting rights. But our approach suggests a quite different argument for local but not national voting rights. Local voting rights give immigrants considerably more control over

³⁶ See Goldin at 24 (arguing that flows were reinforcing from 1900 to 1910 but diluting from 1910 to 1920).

³⁷ See [cite Raskin, Rosenberg, etc]

many of the local public goods that most directly affect their daily lives—like public schools, zoning laws, and so forth. But local voting rights give them much less control over immigration decisions which are made principally by the national government. Thus, separating the local and national franchise for noncitizens may provide a rough and ready mechanism by which the state can give migrants some control over policies that affect them without raising the possibility of the immigration feedback loop that Goldin identified in the early twentieth century.

V. INTERACTION EFFECTS

The basic model in Part II assumed that there was only one state in the picture. In reality, multiple host states compete for migrants, especially wealthy and highly skilled migrants. Moreover, the preferences of sending states will often interact with receiving state preferences in ways that affect migrants' rights. This Part discusses some insights that follow when we relax the single-state-actor assumption in the basic model.

A. Interaction Effects and Market Segmentation

It is a familiar idea that states compete for certain migrants—those with particular skills, for example. It is a less familiar idea that the competition might affect a state's design of migration rights. As we have noted at various points, a state's optimal choice of migration rule may depend on the choice of other states. These interactions are sometimes obvious, and sometimes not.

Suppose that Origin State has a lot of sophisticated computer engineers who can earn higher wages in foreign states. Imagine there is only one possible Host State. Employers in Home State will compete for the engineers and will offer them a wage equal to their marginal productivity. This will in fact equal the wage of native workers with the same skills, or perhaps undercut it slightly as the market adjusts to the influx of labor. Whatever the case, the migrant workers will likely enjoy a considerable increase in their wage.

Now, the employers may be dissatisfied with this regime for, at least, two reasons. First, suppose that Receiving State law provides migrants with few rights, so that migrants make few country-specific investments. As a result, the migrants are less valuable to the employers than they would otherwise be. The employers might lobby the Receiving State government to improve protections for migrants. The costs will be largely borne by other citizens of Receiving State, who may be unable to organize to resist new migration laws. Or they might not; it is possible that greater protections for migrants would benefit nearly everyone or harm people very little.

Second, employers might try to use Receiving State laws to cartelize the migrant labor market. Because employers must compete for migrants, the migrants' wages will be relatively high. But suppose that a new law allows migrants to stay in the Receiving State only as long as they remain employed with a particular sponsoring employer. Such a rule will greatly decrease the bargaining power of the migrant once she arrives. To be sure, such a rule would reduce migration and also country-specific investment; but for individual employers, the gains could exceed the costs, some of which will be borne by others.

If, however, the number of possible Host Countries increase, then it will be more difficult for a particular Receiving State that seeks migrant labor to adopt laws that restrict the rights of migrant workers once they arrive. They will, in effect, be outbid by other Host Countries, which will provide a more appealing package of rights and privileges—for example, greater flexibility to change jobs or a much quicker and more certain path to citizenship. We might predict, then, that as the number of possible Host Countries increases, the legal packages offered to migrants will become more generous and uniform, perhaps approximating the rights and privileges of citizenship.

Another hypothesis is that market segmentation will occur. Suppose that there are two types of host countries: those that can easily assimilate migrants (the United States) and those that cannot easily assimilate migrants (Japan). It is cheaper for the easy-assimilators to offer generous migration rights such as quick paths to citizenship. These packages will attract a certain type of migrant—for example, younger people who seek to start families after migration. As a result, neither the Receiving State nor employers on its territory will need to “bribe” the migrant to come by offering generous pay. By contrast, the difficult-assimilators may have to offer financial inducements in order to compensate the migrant for the higher risk of removal or other adverse action. In these countries, guest- or contract-workers might be more common.

The possible interaction problems can be multiplied indefinitely. We have already discussed how states might compete with child-citizenship rights. Problems could also arise where conflicting citizenship rules lead to children having no citizenship—for example, if the two parents are from different countries, each of which grants citizenship rights only to children with two parents from that country. These problems—some of which are interesting, others of which are simply confusing—are best left to future work.

B. *Dual Citizenship*

Dual citizenship exists when a person is the citizen of two countries. Some nations permit dual citizenship and even citizenship in more than two countries; other nations forbid it. [examples] The phenomenon of dual citizenship raises some interesting questions within our framework.

Consider an example that simplifies the law but also brings out clearly the differences between the approaches. A person migrates from Sending State to Receiving State. Under the single citizenship approach, Receiving State grants the migrant citizenship rights only if she renounces her citizenship of Sending State. Under the dual citizenship approach, Receiving State grants the migrant citizenship rights even if she does not renounce her citizenship of Sending State. Note that Sending State faces the same choices: it can withdraw citizenship from migrants who accept Receiving State citizenship or it can permit dual citizenship. Thus, a person can have dual citizenship only when her sending and receiving state permit it. How might Receiving State and Sending State choose among these two approaches?

The main difference between the two approaches, from the Receiving State's perspective, is that the dual citizen maintains the right to the protection of Sending State. In practice, this right could mean different things. At a minimum, the migrant retains an exit option—the option to leave Receiving State and resettle in Sending State if conditions in Receiving State turn unfavorable. This right is clearly more valuable than the simple right to leave retained by the non-dual citizen because she may not be able to find an appealing country to accept her if she chooses to leave, and usually Sending State, as her native land, will be the most appealing alternative to the Receiving State. Dual citizenship could offer other protections. The migrant might have access to diplomatic protection of Sending State, for example, if Receiving State violates her rights.

From the Sending State's perspective, allowing outgoing migrants to retain citizenship creates obligations without any clear benefits. Sending State has an obligation to accept the migrant if she returns and also to offer diplomatic aid and protection in Receiving State. Thus, Sending State will grant dual citizenship rights only if it wishes to encourage emigration.

From an *ex ante* perspective—that is, at the time of migration—the Receiving State must weigh two competing factors. On the one hand, the migrant who is allowed to retain dual citizenship will have greater bargaining power once she arrives. For example, she may be able to persuade Sending State to put pressure on Receiving State if Receiving State is inclined to deprive migrants of certain rights or to ignore their interests. Thus, a state may strengthen its precommitment, and thus encourage country-specific

investment, by allowing the migrant to draw on the resources of the Sending State. On the other hand, the migrant will have more power to prevent Receiving State from making needed policy changes in response to crises or changes in preferences of native citizens. If the migrant remains loyal to the Sending State, and the crisis involves a breakdown in the relationship between the two countries, the migrant's citizenship-derived political power in the Receiving State may be deeply unattractive for the native citizens of that country.

Seen in this way, dual citizenship appears as just another right that, like basic rights, the right to stay, and participation rights, can be used to encourage migrants to enter and make country-specific investments but that, by the same token, tie the hands of the Receiving State and prevent it from modifying its demos if events change.

But dual citizenship also has distinctive features. Unlike the other rights, its value for the migrant (and hence for Receiving State as a commitment device) is a function of the interests and diplomatic power of Sending State. The value of dual citizenship for the migrant is high when two conditions are met. First, the Sending State is powerful enough that its diplomatic pressure on behalf of the migrant will affect the policies of the Receiving State. Second, the Sending State has an interest in protecting its overseas diaspora.

The first factor is straightforward; the second is more complex. Why would Sending State have an interest in protecting emigrants? There are a number of interconnected answers: to reduce population pressures, to obtain remittances, to establish links with other countries, to meet a demand for employment opportunities abroad. None of these possible motives is necessarily clear, however. Consider the Sending State's interest in remittances. On the one hand, by protecting emigrants, it encourages them to make country-specific investments, which should lead to higher wages and thus higher remittances. On the other hand, by protecting emigrants and encouraging them to make country-specific investments, it may cause them to become more deeply assimilated, and thus to lose their loyalty to the old country and the people who live there—driving down remittances.

A number of propositions follow. One is that, all else equal, countries with high internal demand for emigration will permit migrants to become dual citizens, and countries with high demand for immigration will permit migrants to become dual citizens. But our main point is different, and is taken from our discussion of participation rights. The Receiving State will be more likely to permit dual citizenship if it does not believe that the Sending State will use diplomatic pressure to advance the interests of migrants in a manner than injures Receiving State. As noted above, the likelihood that Sending State will

do this depends both on its interests and its power. Receiving State need not worry about a weak Sending State; it also need not worry if Sending State's migrant-derived interests do not differ much from the interests of Receiving State. This is most likely when the migrants have political preferences that are similar to those of Receiving State native citizens.

C. Refugees and Asylum-Seekers

Interaction effects are also important for refugee law. Refugees typically flee civil wars. By accepting refugees, Host Countries essentially grant them exit options that are conditional on the war or crisis reaching a threshold level of severity.

From the perspective of refugees or potential refugees, the exit option is of mixed value. On the one hand, the availability of refugee status gives one the ability to escape a dangerous situation. On the other hand, a person who is inclined to stay and fight will find that others will leave rather than join the fight if refugee status is available. So liberal refugee laws will encourage flight, but by the same token they might increase the incentive for governments or other groups to try to drive out populations that are not loyal to them, including ethnic minorities.

Even if this is the case, the humanitarian costs of civil war are too great for other countries to deny refugee status, and instead they try to deter flight by making refugee status unattractive. Refugees rarely receive generous rights; in many countries, they are confined to camps near the border of their home country. Because the cost of refugee flows fall disproportionately on neighboring countries, they may threaten to deny entrance unless other countries either accept a share of the refugee population or offer financial incentives. Recognizing this collective action problem, countries have developed various cooperation mechanism, including treaties.

By contrast, countries tend to treat asylum-seekers more generously. In the United States, asylum is granted to people who can demonstrate a likelihood of persecution if she returns to the Sending State. This policy originated in the Cold War, and was designed to embarrass communist countries by encouraging dissenters to leave for the west and publicizing their plight. Today, the rules remain as an all-purpose humanitarian benefit to anyone in the world, and are probably sustainable only because the number of people who are able to escape their countries, reach the United States, and meet the asylum requirements is relatively low.

The refugee is the extreme type of migrant who does not make a relationship-specific investment. The host state does not want her presence, grants her minimal rights (for example, to food and shelter in a camp), and will

remove her at the first opportunity. The person granted asylum, by contrast, is expected to assimilate and is given full rights.

CONCLUSION

[to come]