Border control and the common good: Recognizing the responsibilities of policymakers within a Catholic ethic of migration

Author: Brett O'Neill

BORDER CONTROL AND THE COMMON GOOD
Recognizing the Responsibilities of Policymakers Within a Catholic Ethic of Migration

A Thesis
Submitted in Partial Fulfillment
of the Requirements for the Licentiate in Sacred Theology (S.T.L.) Degree
from Boston College, School of Theology and Ministry

By: Brett O'Neill, S.J.

Mentors:
Professor Kristin Heyer (primary) and Professor Andrea Vicini, S.J.

Date: April 17, 2020

Acknowledgements

I am most grateful to my family, the Australian Jesuit Province, and the Peter Faber Community for their care and support during this academic program.

I am also grateful to my mentors, Professors Kristin Heyer and Andrea Vicini, S.J., who have encouraged my project and expanded my outlook.

I recall, especially in this project, my friends and former colleagues at the (now-named) Australian Government Department of Home Affairs, who continue to do their best in a challenging policy environment. I admire their often-underacknowledged integrity in serving the common good. I also acknowledge my former colleagues at Jesuit Social Services, Melbourne, with respect and admiration for their work in accompanying marginalized migrants, refugees, and people seeking asylum.

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Introduction

A Christian ethical approach to migration must bear in mind the injunction of Christ to 'welcome the stranger' (Mt 25:35) and prove ourselves neighbours even to those beyond our communal boundaries (cf. Lk 10:25-37). Such sentiments animate Church teaching and advocacy on global migration, which typically proceeds from the rights and interests of migrants, arguably among the more disenfranchised and vulnerable 'strangers' of our world community. While Church teaching recognizes the right of sovereign states to regulate migrant movement across borders, this right sits in tension with the concurrent right of people to migrate for the sake of better living conditions. Pope Francis has admirably provided prophetic leadership on the global stage in drawing attention to the interests of migrants and refugees. He has called for nation-states to move beyond fear and instead pursue policies of welcome. Promoting an attitude of 'encounter', he invites people to 'stand in the shoes' of migrants.[1]

There is, however, a complementary ethical value in also 'standing in the shoes' of sovereign nation-states. By 'standing in their shoes' we can better appreciate the perspective of those public policymakers charged with the responsibility of promoting the common good of their nation, particularly in the regulation of people movement across national borders. Such a perspective need not neglect nor dismiss the interests and disempowered perspectives of migrants. However, in order to more meaningfully reflect on the complex ethical landscape of global migration, it seems necessary to complement the Church's support for migrants with a more comprehensive appreciation for the rights and duties of sovereign states in exercising their

[1] Francis, Apostolic Exhortation on the Call to Holiness in Today's World *Gaudete et Exsultate* (March 19, 2018), §102, at the Holy See, http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20180319_gaudete-et-exsultate.html.

responsibilities. 'Welcoming the stranger' can be a challenging task for those publicly charged with such duties.

This thesis seeks to explore the tension between the rights of migrants and the right of states to regulate their borders, in Catholic social teaching. It will identify the legitimate interests of states and further clarify how they may justifiably regulate migrant admission in a way that is consistent with this teaching. It will survey the broader policy perspective of policymakers and take seriously their responsibility to manage complex, competing priorities. It will explore how border control measures can both promote and frustrate the global common good.

Ethical reflection on the duties of states in relation to border control is becoming increasingly important. The unprecedented and growing scale of forced displacement and irregular migration warrants sophisticated moral reflection. The Church must necessarily work with nation-states in seeking just solutions to this growing crisis. It is therefore imperative for the Church to take their interests seriously and appreciate the broad, complex dynamics of migration facing public policymakers which cannot be easily addressed.

The thesis is structured in order to establish the need for further evolution in Church teaching on the duties of states in relation to border control. It contrasts Catholic social thought on this matter with a glimpse into the challenging perspective of state agents charged with responsibility for this policy area. After exploring the place of the nation-state within Catholic social thought, it situates border control policies within this framework, in order to identify opportunities for developing more appropriate Church advocacy approaches.

The first chapter surveys Catholic social teaching on migration, with reference to key magisterial documents over the last century, particularly as it has been articulated and applied during the pontificate of Pope Francis. The Church's rich teaching on migration recognizes its

positive value in addressing global inequality, fostering human fraternity, and stimulating cultural development. This teaching asserts dual rights: the right to migrate and the right not to have to migrate, presupposing an understanding of migration as a means to escape poverty. This gives rise to the Church's assertion that nation-states' right to regulate borders is subordinate to the needs of migrants, commensurate to states' capacity to accommodate them. As an apt illustration, the Holy See's diplomatic efforts during negotiations over the 2018 Global Compacts on migration and refugees provides a unique insight into its attempts to work constructively with global policymakers, as well as the challenges of translating Catholic social teaching into the prevailing nation-state system.

The second chapter provides an overview of the global migration landscape, in order to better reflect the difficult context of policymakers' responsibilities. It explores the legitimate interest of states in controlling borders, establishing that, while this can frustrate the interests of migrants, it may not necessarily undermine the common good. The chapter provides general data on global migration dynamics and introduces issues of irregular migration, human trafficking, people smuggling, remittances, and forcible displacement, among others. This sets out the grand scale and complexity of people movement, providing some insight into the perspective of those international policymakers charged with managing this complex environment.

In light of this perspective, the third chapter seeks to qualify the apparent prevailing emphasis in Catholic social thought on the rights of migrants. It will establish a need for appropriate border control measures that can arguably remain in line with Catholic social thought and make a productive and positive contribution to the common good. Moreover, this chapter broadly explores the role of the nation-state within Catholic social teaching in order to establish and delineate its rights and duties, both within and beyond their borders. This chapter considers

how the pursuit of national interest (as distinct from nationalistic distortions) can fit within a Christian cosmopolitan framework. It suggests opportunities for Catholic advocacy to work more prophetically and constructively with policymakers, in a way that may prove ultimately more effective for promoting migrants' interests.

Chapter 1 – Catholic Social Teaching on Migration and Border Control

The Catholic Church has a long tradition of concern for migrants. This concern recognizes the particular vulnerability of people on the move who may not enjoy the full rights and opportunities available to citizens in their new lands of residence. The first part of this chapter will survey and explore modern Catholic social teaching as it relates to global migration, identifying its key themes and tensions and how they have been expressed in the advocacy and activities of Pope Francis, who has made migration a key focus of his papal ministry.
This pontificate has coincided with a dramatic increase in forced migration and in the profile of irregular migration in developed countries. This crisis prompted the United Nations to negotiate a Global Compact on Migration to promote international cooperation. The second part of this chapter will survey the Pope and Holy See's advocacy efforts on behalf of migrants during the Compact's negotiations, over 2016-18. This analysis will illustrate how the Church's teaching has been applied in the pursuit of just and practical outcomes for migrants, as well as how this approach sits in tension with the interests of sovereign states charged with the duty to regulate borders for the good of their nations.

Catholic Social Teaching on Migration

Catholic social teaching on migration draws from the Church's identification with the story of the people of Israel, whose wandering and experiences of exile were the context for God's revelation and ethical reflection. This people encountered God in the very experience of exile and a long, wandering search for a homeland. This story of exile continued in the life of Jesus, God's definitive revelation to the world, who was born into a poor, disempowered family

that was forced into immediate exile after his birth (Matt 2:13-23). Identifying as a person on the move, with nowhere to lay his head (Matt 8:20), Jesus called his followers to encounter him in the stranger among them (Matt 25:35) and to prove themselves a neighbor (Luke 10:25-37). Jesus gave his life in love for people of all nations, redeeming the tragedy of sin, and draws all peoples into communion with God. Church teaching reflects the Church's make-up as a transnational community progressively realizing this communion across boundaries, as the Body of Christ. This teaching primarily affirms the dignity of each human person, made in the image and likeness of God (Gen 1:26-27), which remains regardless of their legal status in their community. It also affirms their claim to share in the earth's resources for their welfare, calling for greater solidarity among people to overcome inequality.[2]

For Daniel Groody, the dignity of the human person made in the *imago Dei* provides the foundation for a theology of migration, one that overcomes the alienating categorization of migrants according to their status.[3] In his survey of emerging migration theology, Gioacchino Campese illustrates how the Christian tradition presents Jesus as the "paradigm of the migrant, of the border-crosser, and therefore as the God-made-flesh who can fully understand the precarious and vulnerable condition of the migrant and the refugee."[4] Conversely, the 'migrant' is a "metaphor of the true Christian believer, who, even though he or she has a homeland, lives in it

[2] See: Vatican Council II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* (December 7, 1965), §69, at the Holy See, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html; John Paul II, Encyclical for the Twentieth Anniversary of Populorum Progressio *Sollicitudo Rei Socialis* (December 30, 1987), §§39-40 at the Holy See, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html.

[3] See: Daniel G Groody, "Crossing the Divide: Foundations of a Theology of Migration and Refugees," *Theological Studies* 70, no. 3 (2009): 642-48.

[4] Gioacchino Campese, "The Irruption of Migrants: Theology of Migration in the 21st Century," *Theological Studies* 73, no. 1 (2012): 22.

as though a foreigner and a stranger."[5] This metaphor is further elaborated in the image of the 'pilgrim Church;' a wandering Church that simultaneously serves as a hospitable refuge for the marginalized.[6] Peter C. Phan reiterates similar reflections and creatively presents the Holy Spirit, paralleling the drive of impersonal market forces, as the 'push' and 'pull' of God's kingdom: "the Holy Spirit can be said on the one hand to "push" migrants out of their poverty and inhuman living conditions… On the other hand, the Holy Spirit as the entelechy of history can also be said to 'pull' migrants toward its final goal."[7]

Modern Catholic social teaching from the magisterium has tended to emphasize migration as a means to pursue improved living conditions. While Pope Leo XIII, in *Rerum Novarum*, promoted the living wage as an antidote to the need to emigrate, later Popes explicitly asserted a right to migrate and underscored the responsibilities of states to accept migrants.[8] This right arises from the need to seek conditions more conducive to human welfare, which cannot be met in one's home country. The Church also affirms a related right of families to

[5] Ibid.

[6] See: ibid., 24.

[7] Peter C. Phan, "Deus Migrator—God the Migrant: Migration of Theology and Theology of Migration," *Theological Studies* 77, no. 4 (2016): 864.

[8] In *Rerum Novarum* Pope Leo XIII suggested that if wages were sufficient: "men would cling to the country in which they were born, for no one would exchange his country for a foreign land if his own afforded him the means of living a decent and happy life." Leo XIII, Encyclical Letter on Capital and Labor *Rerum Novarum* (May 15, 1891), §47, at the Holy See, http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html. The 'right to migrate' was explicitly established by Pius XII and repeated by both John XXIII and Paul VI. See: Pius XII, Apostolic Constitution on the Spiritual Care of Migrants *Exsul Familia* (1952), at the Holy See, http://w2.vatican.va/content/pius-xii/la/apost_constitutions/documents/hf_p-xii_apc_19520801_exsul-familia.html; John XXIII, Encyclical on Establishing Universal Peace in Truth, Justice, Charity, and Liberty *Pacem In Terris* (April 11, 1963), §25, at the Holy See, http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html; Paul VI, Apostolic Letter *Octogesima Adveniens* (May 14, 1971), §17, at the Holy See, http://w2.vatican.va/content/paul-vi/en/apost_letters/documents/hf_p-vi_apl_19710514_octogesima-adveniens.html.

migrate as a unit or, if separated, to be reunited across borders.[9] However, these rights presume the ability to enter a new country and the hospitality of foreign states.

It is arguable that modern Catholic social teaching on migration presents this phenomenon as a redeemable tragedy; one that is driven by sinful social structures, but yet also represents a providential movement towards greater universal communion. The teaching's emphasis on migration as driven by a tragic need to pursue better living conditions can create a tension, then, with the complementary right of states to regulate border entry. As we shall see, Pope Francis's admirable efforts to promote the interests of migrants and refugees reflect this particular emphasis and illustrate the tensions between migrants' and states' rights.

Tragedy and Opportunity

The Church's magisterial ethical reflection on migration paradoxically describes this phenomenon as both an expression of sinful social structures as well as a providential means for achieving universal communion. At the Second Vatican Council, the Church Fathers noted the many people "being induced to migrate on various counts, and are thereby changing their manner of life."[10] In *Laborem Exercens,* Pope John Paul II considered the conditions giving rise to migration as sinful.[11] This implies migration is largely an experience of coercion, whereby sinful structures force people to move in search for better conditions, against a preference to remain at home. This thinking gives rise to the Church's repeated assertion of a right to emigrate

[9] See: John Paul II, Apostolic Exhortation on the Role of the Christian Family in the Modern World *Familiaris Consortio* (November 22, 1981), §77, at the Holy See, http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html.

[10] Vatican Council II, *Gaudium et Spes*, §26.

[11] See: John Paul II, Encyclical on Human Work *Laborem Exercens* (September 14, 1981), §23, at the Holy See, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html.

as well as a prior right *not to have to emigrate*: a right to have social and economic needs met in one's home country, guaranteed by governing authorities.[12]

Yet the 'tragedy' of migration prompted by sinful structures can also be transformed into an opportunity. A 2004 Instruction from the Pontifical Council for the Pastoral Care of Migrants and Itinerant People, which provides a thorough summary of Church reflection on this matter, described migration as "the birth-pangs of a new humanity," suggesting a richer, dual view of migration as both a painful tragedy and an opportunity to promote universal communion.[13] The situation of forced migrants, in particular, illustrates "the deep wounds that sin causes in the human family."[14] It manifests the sinful structures at work that give rise to persecution, maintain injustices, and frustrate solutions. However, migration, even when it is forced, can also provide an opportunity to overcome division and realize a greater human fraternity that transcends all boundaries. Although it may be expressive of scandalous inequality, migration can also paradoxically offer "a providential opportunity for the fulfillment of God's plan for a universal communion."[15] Encounters between migrants and host communities serve to stimulate growth in

[12] See: John Paul II, Address to Congress on Pastoral Care of Migrants (October 9, 1998), at the Holy See, http://w2.vatican.va/content/john-paul-ii/en/speeches/1998/october/documents/hf_jp-ii_spe_19981009_migranti.html. This right is reaffirmed in Pontifical Council for the Pastoral Care of Migrants and Itinerant People, Instruction [The Love of Christ towards Migrants] *Erga migrantes caritas Christi* (2004), §29, at the Holy See, http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents/rc_pc_migrants_doc_20040514_erga-migrantes-caritas-christi_en.html.

[13] Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *Erga migrantes caritas Christi*, §§9 & 12. See also: ibid., §§18, 22, & 103. Pope Francis repeated this idea in: Francis, Message for the World Day of Migrants and Refugees 2017 (September 8, 2016), at the Holy See, http://w2.vatican.va/content/francesco/en/messages/migration/documents/papa-francesco_20160908_world-migrants-day-2017.html.

[14] Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *Erga migrantes caritas Christi*, §12.

[15] Ibid., §12; see also §§9, 18, 22, & 103. Pope Francis repeated this idea in: Francis, 2017 World Day of Migrants and Refugees Message.

the community's character and expand its cultural horizon.[16] The foreigner disturbs the new community in the same way that God disturbs and stimulates God's people:

> The "foreigner" is God's messenger who surprises us and interrupts the regularity and logic of daily life, bringing near those who are far away. In "foreigners" the Church sees Christ who "pitches His tent among us" (cf. Jn 1:14) and who "knocks at our door" (cf. Ap 3:20).[17]

Such a view of migration as concurrently a product of sin as well as a means for God's providential action is not necessarily at odds in the Catholic Tradition. In Scripture, the suffering and exile of the People of Israel was cause for God's loving self-revelation. In the Church's liturgical tradition, the *Easter Exsultet* paradoxically exclaims the beneficial outcome of original sin in Christ's incarnation and redemption: "O happy fault, that earned so great, so glorious a Redeemer!" Even the tragedy of forced migration, then, can have a prophetic role in realizing God's plan for humanity.[18]

This emphasis on migration as a regretful, yet redeemable, consequence of sinful structures can be problematic, however. While this approach may reflect the experience of many who are compelled to migrate for reasons of survival, it does not reflect the whole picture of global migration. This view neglects the personal agency of those who choose to migrate, as well as the broader range of factors that influence their decision-making, such as aspiration, family

[16] See: Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *Erga migrantes caritas Christi*, §§101-03.

[17] ibid., §101.

[18] Daniel Groody similarly draws attention to the paradoxes of the Christian tradition applied to migration. He notes that "The expulsion from Eden of Adam and Eve, the original *imagines Dei*, and their border-crossing into the land beyond, names the human propensity to move toward a state of sin and disorder (Gen 3:1–13). Sin disfigures the *imago Dei*, resulting in a fallen world that creates discord in relationships." In response, "Christ is the perfect embodiment of *imago Dei* and the one who helps people migrate back to God by restoring in them what was lost by sin… Through the *Verbum Dei*, Jesus' kenosis and death on the cross, God overcomes the barriers caused by sin, redraws the borders created by people who have withdrawn from God, and enters into the most remote and abandoned places of the human condition." He concludes, "The incarnation has much to say about a God who crosses borders in order to forge new relationships and the challenge to all human beings to do the same." Groody, "Crossing the Divide: Foundations of a Theology of Migration and Refugees," 648-9, 66.

reunification, transnational relationships, or even curiosity. This narrow emphasis on coerced migration gives rise to a tension when the Church-upheld 'right to migrate' meets the rights and responsibilities of sovereign states.

Border Control in Catholic Social Teaching

Church teaching holds in tension both the right to migrate and a 'complementary' right of nation-states to regulate their sovereign borders. If the right to migrate emerges out of a need to pursue better living conditions, where one's well-being is frustrated by sinful social structures, this right presumes the ability to enter another state. In what may seem an apparent contradiction, the Church concurrently maintains the right of sovereign states to regulate the entry of migrants. This right, however, is subordinate to concerns for the common good and can only be exercised for just reasons. As Pope Pius XII suggested, it would be unjust for an underpopulated and prosperous nation to restrict migration in order to maintain the status quo, when there are other populations in need of living space to flourish.[19] This principle was utilized and developed in a joint US-Mexican Bishops' statement of 2003, which applied this teaching to their context. The bishops recognized the legitimacy of state regulation of border controls, but also states' responsibility to accommodate migration flows for those seeking a better life when the receiving state has the capacity to admit them. The bishops considered the two competing rights of migrants and states as complementary, not contradictory.[20]

[19] See: Pius XII, *Exsul Familia*, quoting his December 1948 letter to American Bishops.

[20] See: United States Conference of Catholic Bishops and Conferencia del Episcopado Mexicano, *Strangers No Longer Together on the Journey of Hope* (January 22, 2003), §39, At USCCB: http://www.usccb.org/issues-and-action/human-life-and-dignity/immigration/strangers-no-longer-together-on-the-journey-of-hope.cfm. As summed up by Michael Blume, "So can states limit or control migration? The answer is 'Yes, but…' " Michael A Blume, "Migration and the Social Doctrine of the Church," *Center for Migration Studies special issues* 18, no. 2 (2003): 65.

This tension sets up a seemingly irreconcilable conflict between Church teaching and the interests of individual nation-states. While the Church, by its nature, maintains a universal outlook and reach, nation-states, by definition, are primarily concerned for their own territorially-defined population.[21] As nation-states prioritize concern for their own citizens, migrants and other non-citizens within and outside their borders are only of secondary and peripheral concern, relative to their national interest. Given the Church's 'preferential option for the poor,' it is unsurprising that the Church would take up the cause of those so easily overlooked by nation-states, appealing to the common dignity of all humanity that surpasses all other considerations. The Church's universal concern is expressed in *Gaudium et Spes*'s assertion that we should "make ourselves the neighbor of every person without exception" and actively help each one that comes in our path.[22] In *Pacem in Terris,* Pope John XXIII appealed to the human dignity found in common membership of the human family, which surpasses any division created by particular citizenship.[23] Likewise, Pope Benedict XVI considered the obligations arising from the Good Samaritan parable having a universal reach, particularly in a globalized world in which the needs of strangers outside our nation are becoming ever more proximate: "Anyone who needs me, and whom I can help, is my neighbour. The concept of

[21] The control of a territorially-defined population provides nation-states with legitimacy, competency, and purpose. Accordingly, this population forms states' overriding concern and thus democratic governments are accountable to their citizens in pursuing national interests. Note here the prevailing definition of state sovereignty under international law, which provides that "a state as a person of international law should possess the following qualifications: a. a permanent population; b. a defined territory; c. government; and d. capacity to enter into relations with the other states." See *Convention on Rights and Duties of States Adopted by the Seventh International Conference of American States*, Montevideo, December 26, 1933, Article 1, LNTS vol. 1965, p.19, https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166aef.

[22] Vatican Council II, *Gaudium et Spes*, §27.

[23] See: John XXIII, *Pacem In Terris*, §25.

'neighbour' is now universalized, yet it remains concrete."[24] In light of this, migrants' pursuit of a better life can seem to have ethical primacy over states' right to regulate borders for their nations' good. This teaching appears to place the Church inherently in tension with nation-states' interests, for whom "the right of territorial exclusion has become a defining prerogative of sovereignty."[25] The irreconcilability of this tension makes the Church's approach seem intractably antagonistic to the nation-state.[26] However, as David Hollenbach acknowledges,

> Religiously and theologically, the most attractive stance remains a radical cosmopolitanism that calls for fully open borders. For Christians, such openness will be seen as a characteristic of the fullness of the reign of God. This reign, however, has not yet fully come. As we wait for its full coming, we live "between the times" and must grant priority to some migrants over others as we make choices about migration policy.[27]

[24] Benedict XVI, Encyclical on Christian Love *Deus Caritas Est* (December 25, 2005), §15, at the Holy See, http://w2.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est.html.

[25] Richard Shapcott, *International Ethics: A Critical Introduction* (Cambridge, UK: Polity, 2010), 88. Some consider that, by proclaiming that state sovereignty is not so absolute, Church teaching effectively endorses open borders. For example, some percieve an unexpected agreement between traditional foes: "While they use different justifications, libertarians and the Catholic Church reach the same conclusion: open borders are the only correct and just way to handle migration problems." Bridget Kratz and Walter E. Block, "Libertarianism and Catholic Social Teaching on Immigration," *Journal of Markets & Morality* 15, no. 1 (2012): 22. This sentiment appears in others who interpret Catholic social teaching as suggesting that the "goal of a well-functioning liberal democracy should be to transform strangers into citizens", and that within its framework, "the 'illegality' of … territorial admissions should represent no more than a hurdle to citizenship"; see: Vincent D. Rougeau, "Catholic Social Teaching and Global Migration: Bridging the Paradox of Universal Human Rights and Territorial Self-Determination," *Seattle University Law Review* 32 (2008): 345, 47. However, as the Church maintains the complementary right of states to regulate borders, one cannot argue that open borders is a necessary consequence of this teaching.

[26] For example, John XXIII saw the modern nation-state system as inadequate for "promoting the common good of all peoples" and called for the creation of an empowered public authority with a worldwide reach to address global problems, a call echoed in Pope Francis's *Laudato Si'*. See: John XXIII, *Pacem In Terris*, §§132-37; Francis, Encyclical on Care for Our Common Home *Laudato Si'* (May 24, 2015), §175, at the Holy See, http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html. In a similar vein, Anna Rowlands takes a cynical view of nation-states' interest to "consume the labour of the migrant other" yet also restrict their permanent presence. She pits Catholic social teaching as inherently in opposition to states' interests, whereby faith communities are called to "engaging a willingness to 'get in the way' of the State… [as it] is right to do so and a condition of knowing God… it steadies the self-harming hand of modernity, challenging… the inevitable temptations of sovereignty." Anna Rowlands, "The State Made Flesh: Catholic Social Teaching and the Challenge of UK Asylum Seeking," *New Blackfriars* 93, no. 1044 (2012): 190-91.

[27] David Hollenbach, "Migration as a Challenge for Theological Ethics," *Political Theology* 12, no. 6 (2011): 812.

As we shall later see, the tensions between competing rights maintained in Church teaching have borne out in its public advocacy on migration.

Pope Francis and the Contemporary Migration Crisis

Pope Francis's pontificate has coincided with the dramatic rise in irregular migration and refugee outflows. As such, he has made migrants and refugees one of the defining priorities of his pontificate.[28] This was symbolically demonstrated in the choice of his first pastoral visit outside of Rome, to the island of Lampedusa, in July 2013, drawing attention to irregular migrants and refugees dangerously crossing the Mediterranean Sea. There, he called out the 'globalization of indifference' to those who had lost political membership and were thereby neglected by a world community that seemed blind to their precarious situation.[29] Since this landmark visit, calling attention to the 'globalization of indifference' towards migrants and refugees has become a recurring theme for Francis. In his first message for the World Day of Migrants and Refugees, in 2014, Francis emphasized the scandal of global poverty, alluding to the sinful structural forces that force people to move. He called for leaders to "confront socioeconomic imbalances and an unregulated globalization, which are among some of the causes of migration movements in which individuals are more victims than protagonists."[30]

[28] See: Archbishop Bernardito Auza, Pope Francis and the Global Challenge of Migration (November 14, 2018), at the Holy See, https://holyseemission.org/contents//statements/5bef396e41385.php.

[29] During Mass, the Pope lamented the many lives lost on this crossing and the prevailing indifference to this tragedy: "Today no one in our world feels responsible; we have lost a sense of responsibility for our brothers and sisters... The culture of comfort, which makes us think only of ourselves, makes us insensitive to the cries of other people… leads to the globalization of indifference." Francis, Visit to Lampedusa: Homily (July 8, 2013), at the Holy See, http://w2.vatican.va/content/francesco/en/homilies/2013/documents/papa-francesco_20130708_omelia-lampedusa.html.

[30] Francis, Message for the World Day of Migrants and Refugees 2014 (August 5, 2013), at the Holy See, http://www.vatican.va/content/francesco/en/messages/migration/documents/papa-francesco_20130805_world-migrants-day.html. He warned that "Migrants and refugees are not pawns on the chessboard of humanity. They are

His concern was also expressed through his prophetic gesture of 'adopting' three Syrian refugee families from the island of Lesvos in Greece to live in the Vatican, in 2016, illustrating his challenge for receiving countries to hospitably embrace migrants and refugees.[31] In 2017, he established a 'Migrants & Refugees Section' in the Vatican Dicastery for Integral Human Development, reporting directly to him, in order to drive the Holy See's action in these matters.

The Pope's messages on migration seek to reorient people's attitudes, transforming migration from a threat to be feared to an opportunity for an encounter. In his 2013 Apostolic exhortation, *Evangelii Gaudium*, Francis called "all countries to a generous openness [to migrants] which, rather than fearing the loss of local identity, will prove capable of creating new forms of cultural synthesis."[32] While host communities may be tempted to consider migrants and refugees a threat, they should rather see them as an opportunity for an enriching encounter.[33] In his 2018 address to diplomats accredited to the Holy See, Francis noted that the topic of migration tends to stir up 'primal fears' and reminded states of their "primary responsibility for accepting newcomers."[34] In his homily on the 2018 World Day of Migrants and Refugees, he

children, women and men who leave or who are forced to leave their homes for various reasons, who share a legitimate desire for knowing and having, but above all for being more."

[31] While visiting refugees on the island, he declared: "I want to tell you that you are not alone" and to those giving them hospitality he assured: "You care with tenderness for the body of Christ, who suffers in the least of his brothers and sisters, the hungry and the stranger, whom you have welcomed." Francis, Meeting with the People of Lesvos and with the Catholic Community: A Remembering of the Victims of Migration (April 16, 2016), at the Holy See, http://w2.vatican.va/content/francesco/en/speeches/2016/april/documents/papa-francesco_20160416_lesvos-cittadinanza.html.

[32] Francis, Apostolic Exhortation on the Proclamation of the Gospel in Today's World *Evangelii Gaudium* (November 24, 2013), §210, at the Holy See, http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html.

[33] For example, Francis called "all countries to a generous openness [to migrants] which, rather than fearing the loss of local identity, will prove capable of creating new forms of cultural synthesis", ibid.

[34] Francis, Address to the Members of the Diplomatic Corps Accredited to the Holy See for the Traditional Exchange of New Year Greetings (January 7, 2019), at the Holy See, http://w2.vatican.va/content/francesco/en/speeches/2019/january/documents/papa-francesco_20190107_corpo-diplomatico.html.

lamented that "we often refuse to encounter the other and raise barriers to defend ourselves. Local communities are sometimes afraid that the newly arrived will disturb the established order, will 'steal' something they have long labored to build up."[35]

Pope Francis has also tended to emphasize the sinful structures that drive migration and to depict borders as inherently divisive. In his 2016 message for the World Day of Migrants and Refugees, he called nations to "eliminate those imbalances which lead people, individually or collectively, to abandon their own natural and cultural environment."[36] In his 2016 homily on the island of Lesvos, he decried the erection of barriers that "create divisions instead of promoting the true progress of peoples, and divisions sooner or later lead to confrontations."[37] During his journey to Morocco, Francis called attention to "arid and inhospitable" attitudes and called for people "to assist rather than isolate, to build up rather than abandon," suggesting also that "the builders of walls… will become prisoners of the walls they build."[38]

Accordingly, Francis calls nation-states to provide hospitality, rather than be preoccupied with border control. He appeals to the common humanity of migrants, calling people to consider common human fraternity over national protection, inviting them to "stand in the shoes of migrants."[39] While reassuring diplomats that "the Holy See has no intention of interfering in decisions that fall to states," the Pope has also reminded states of their responsibilities to

[35] Francis, Homily at the Eucharistic Concelebration for the World Day of Migrants and Refugees (January 14, 2018), at the Holy See, http://w2.vatican.va/content/francesco/en/homilies/2018/documents/papa-francesco_20180114_omelia-giornata-migrante.html.

[36] Francis, Message for the World Day of Migrants and Refugees 2016 (September 12, 2015), at the Holy See, http://w2.vatican.va/content/francesco/en/messages/migration/documents/papa-francesco_20150912_world-migrants-day-2016.html.

[37] Francis, Meeting with the People of Lesvos.

[38] Francis, Apostolic Journey to Morocco: Meeting with Migrants (March 30, 2019), at the Holy See, http://w2.vatican.va/content/francesco/en/speeches/2019/march/documents/papa-francesco_20190330_migranti-marocco.html.

[39] Francis, *Gaudete et Exsultate*, §102.

welcome migrants and lamented measures to restrict new entries.[40] The Pope's appeal to asserting common humanity, warranting generous welcome to all migrants, is suitable for a Church "without frontiers."[41]

Global Compact for Migration

Francis's heightened advocacy for migrants also coincided with international negotiations over the Global Compact for Migration and the Global Compact for Refugees. The Holy See played an active role in these negotiations, advocating strongly for the protection and welcome of migrants and refugees. The negotiations and the Holy See's advocacy provide an apt illustration of the Church's social teaching as it may be applied to the complex contemporary global dynamics of migration and border control. While the Global Compact for Refugees marked a significant achievement in cooperation, the negotiations over the Global Compact for Migration, in particular, can provide a useful insight into the Church's ethical approach to border control, as this Compact dealt with broader matters of irregular migration, in which states' responsibilities are not so clearly defined. The Holy See's advocacy among international policymakers during these negotiations highlights some of the tensions between Church teaching and the realities faced by those charged with managing global migration movements in view of their nation's interests.

[40] Francis, 2019 Address to the Diplomatic Corps; Francis, Address to the Members of the Diplomatic Corps Accredited to the Holy See for the Traditional Exchange of New Year Greetings (January 8, 2018), at the Holy See, http://w2.vatican.va/content/francesco/en/speeches/2018/january/documents/papa-francesco_20180108_corpo-diplomatico.html.

[41] Francis, *Evangelii Gaudium*, §210.

Background

In 2016, in the context of massive irregular migration flows that were having an impact on developed nations in Europe and North America, the United Nations (UN) convened a summit on refugees and migrants in order to develop a new and coordinated approach to the global management of refugee and migration flows. In a report completed in preparation for this summit, the UN Secretary-General noted that, "In 2015, the number of international migrants and refugees reached 244 million, an increase of 71 million, or 41 per cent, from 2000. International migrants as a proportion of the global population increased from 2.8 per cent in 2000 to 3.3 per cent in 2015."[42] He also noted the estimated 50,000 people who have died undertaking irregular journeys in the previous two decades.[43] The increased rate of migration and the risks undertaken in irregular migration warranted enhanced international cooperation.

The summit produced the 'New York Declaration' of September 19, 2016. This declaration recognized both universal claims of human rights as well as the sovereign responsibilities of national governments. It acknowledged "a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centered manner… through international cooperation."[44] The declaration committed UN member states to work towards addressing a number of pressing issues warranting cooperation which would be negotiated through two Global Compacts. The summit and its declaration set in motion a comprehensive series of multi-faceted consultations with non-government agencies and a final

[42] UN General Assembly, *Report of the Secretary-General - In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, A/70/59, (April 21, 2016), §12, 4, https://refugeesmigrants.un.org/sites/default/files/in_safety_and_dignity_-_addressing_large_movements_of_refugees_and_migrants.pdf.

[43] See: ibid., §29, 8.

[44] UN General Assembly Resolution 71/1, *New York Declaration for Refugees and Migrants*, A/RES/71/1, (October 3, 2016), §11, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1.

series of inter-governmental negotiations on the Global Compacts, one for refugees and another for migrants.[45] In December 2018, the process toward the Global Compacts concluded in Marrakesh, Morocco. The Global Compacts were then formally endorsed at the UN General Assembly by a vast majority of member states.

Holy See's Advocacy on the Global Compact for Migration

In their advocacy over the Global Compact for Migration, the Pope and his representatives have promoted four key verbs as reflective of the appropriate response to the migration crisis: 'welcome, protect, promote, and integrate.'[46] These verbs largely informed the Holy See's advocacy strategy over the negotiation process. During the inter-governmental negotiations on the Global Compact for Migration, the Holy See called for recognition of people's prior right to remain and to enjoy conditions that do not compel people to migrate.[47] It called attention to adverse drivers of migration, asserting people's right to migrate for a better life, called for increased migration pathways and the assurance of family reunification in

[45] This level of international cooperation was significant as the first major undertaking to facilitate a coordinated, multilateral approach to migration in which migrant-receiving countries were key players. An earlier multilateral treaty, the *International Convention on the Protection of the Rights of All Migrant Worker and Members of Their Families*, has achieved very little success in facilitating international cooperation on migration. At present, only fifty-four states are parties to this convention and none of these are major migrant-receiving countries. It means this binding treaty has only a minimally effective impact on the protection of migrants. It is not surprising that a non-binding agreement was chosen as a more preferable framework for the Global Compacts, in order to gain the assent of more countries. See the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, New York, December 18, 1990, UNTS vol. 2220, p.3, UNGA Doc: A/RES/45/158, https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-13&src=TREATY.

[46] In 2018, the Migrant & Refugees Section published a 20-point action plan to shape multifaceted Catholic advocacy on these global compacts, building upon these four key verbs; see: Migrants & Refugees Section, Towards the Global Compacts on Migrants and on Refugees (2018), at the Holy See, https://migrants-refugees.va/wp-content/uploads/2018/03/Legal-size-ENG-2nd-Edition-Towards-the-Global-Compacts-2018-EMAIL.pdf.

[47] See: Archbishop Bernardito Auza, General Statement at the Sixth Round of the Intergovernmental Negotiations on the Global Compact for Safe, Orderly and Regular Migration (July 9, 2018), at the Holy See, https://holyseemission.org/contents//statements/5b4396ad52efe.php; Cardinal Pietro Parolin, Intervention During the General Debate of the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration (December 10, 2018), at the Holy See, https://holyseemission.org/contents/statements/5c0eedec6a86e.php.

migration processes. The Holy See also advocated that held detention be considered a measure of last resort, as well as for alternatives to detention.[48]

In general, the objectives outlined in the Global Compact for Migration align well with the interests pursued by Pope Francis and his representatives during its negotiation. These objectives incorporate a number of the key interests affirmed in Catholic teaching on migration. These interests include the Compact's affirmation of the international community's preference to "create conditions that allow communities and individuals to live in safety and dignity in their own countries," which aligns with the Holy See's position on the prior right not to have to emigrate.[49] While the Compact falls short of suggesting any right to migrate, as per the Catholic position (affirming, rather, the "sovereign right of States to determine their national migration policy"),[50] it promotes "the realization of the right to family life" and family unity within migration processes.[51] The Compact also primarily "places individuals at its core," aligning well with a fundamental concern for human dignity within Catholic social teaching.[52] The Holy See delegation also had success in the Compact's objective to make held detention an option of last resort and in pursuing appropriate alternatives.[53] These achievements suggest the Holy See

[48] For an overview of the Holy See's advocacy approach across the negotiations see: Michael Czerny, "The Global Compact for Migration," *La Civiltà Cattolica, English Edition* 3, no. 2 (2019); Auza, Pope Francis and The Global Challenge of Migration. For specific interventions of relevance, see: Auza, General Statement at the Sixth Round of the GCM Negotiations; Archbishop Bernardito Auza, General Statement at the Opening Session of the Third Round of the Intergovernmental Negotiations on the Global Compact on Safe, Orderly and Regular Migration (April 3, 2018), at the Holy See, https://holyseemission.org/contents//statements/5ace82734e56b.php.

[49] UN General Assembly Resolution 73/195, *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, (December 19, 2018), §13, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195. This inclusion appears to be in line with the Holy See's advocacy; see: Auza, Pope Francis and The Global Challenge of Migration.

[50] UN General Assembly Resolution 73/195, *Global Compact for Safe, Orderly and Regular Migration*, §15(c).

[51] Ibid., §21(i).

[52] Ibid., §15(a).

[53] See: ibid., §29.

succeeded in a number of qualitative ways in its negotiating agenda and in giving voice to the interests of migrants.

The Global Compact on Migration faced some significant setbacks, however, that now limit its overall effectiveness. In December 2017, the Trump administration announced the United States' withdrawal from the Global Compact, citing concerns over the Compact's potential to "undermine the sovereign right of the United States to enforce our immigration laws and secure our borders."[54] Explaining this decision to the UN General Assembly, President Trump asserted "the right of every nation in this room to set its own immigration policy in accordance with its national interests." He suggested, rather, that exclusionary policies through enhanced border enforcement measures would ultimately prove more beneficial:

> Only by upholding national borders, destroying criminal gangs, can we break this cycle and establish a real foundation for prosperity… Ultimately, the only long-term solution to the migration crisis is to help people build more hopeful futures in their home countries. Make their countries great again.[55]

Louise Arbour, the UN Special Representative facilitating negotiations, described the withdrawal of several countries as 'puzzling,' given the Compact explicitly recognizes states' sovereign right

[54] Secretary Rex W. Tillerson, "U.S. Ends Participation in the Global Compact on Migration," *U.S. Department of State* (December 3, 2017), https://www.state.gov/secretary/20172018tillerson/remarks/2017/12/276190.htm.

[55] President Donald J. Trump, "Remarks to the 73rd Session of the United Nations General Assembly," *White House* (September 25, 2018), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-73rd-session-united-nations-general-assembly-new-york-ny/. President Trump's preference for state-building in place of expanding migration pathways is undermined, however, by his withdrawal of aid to sending countries in Central America. The United States' withdrawal was followed in suit by a series of other countries, citing similar concerns. Australia indicated several misgivings during negotiations and ultimately announced its withdrawal from the Global Compact in November 2018, fearing it would only serve to encourage irregular migration. Several central and eastern European countries also disengaged with negotiations on similar grounds. See: Scott Morrison, Peter Dutton, and Marise Payne, "Global Compact for Migration," *Parliament of Australia* (November 21, 2018), https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressrel%2F6345600%22; Henry Sherrell, "Australia and the Global Compact on Migration," *Australian Parliamentary Library* (March 15, 2019), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2019/March/Australia_and_the_Global_Compact_on_Migration.

to manage their borders and immigration policy.[56] Ultimately, five countries voted against endorsement at the UN General Assembly (including, notably, the United States, Israel, Hungary, and Poland) and twelve abstained.[57]

The negative reaction of a number of key destination and transit states undermines the potential for international cooperation in addressing migration problems. While the vast majority of UN-member states voted to endorse the Global Compact for Migration, the reluctance of key states to cooperate with it, particularly those traditionally open to immigration, should give pause. Their 'puzzling' reaction makes sense in the context of domestic political concerns over migration within those countries. The Global Compact's negotiation period also coincided with a rise of reactionary nationalist and populist movements that have capitalized on fears over mass irregular migration.[58] These movements emerged largely in response to perceptions that uncontrolled migration threatens national identity, social cohesion, and well-being.

The Compact's call for an increasing supply of regular migration pathways may be perceived, in

[56] See: Edith M. Lederer, "UN Envoy Disappointed at Nations Reneging on Migration Deal," *Associated Press* (November 27, 2018), https://www.apnews.com/404c8d097f7245d493c0622786ad134d. Additionally, the agreement is non-binding and provides, at most, only normative influence in interpreting existing international human rights law as applied to migrants. It relies on good faith cooperation between participating countries, rather than any obligation.

[57] See: UN General Assembly, "General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants," *United Nations* (December 19, 2018), https://www.un.org/press/en/2018/ga12113.doc.htm. While the Global Compact is non-binding and reliant on good faith cooperation, a UN-sponsored Migration Network will foster its continued implementation under the auspices of the International Organization for Migration; see: António Guterres, "Remarks on UN Network on Migration," *United Nations* (December 9, 2018), https://www.un.org/sg/en/content/sg/speeches/2018-12-09/remarks-un-network-migration.

[58] For an overview of rising xenophobic populism around the time of the Compacts' negotiations, see: Elizabeth G. Ferris and Katharine M. Donato, *Refugees, Migration and Global Governance: Negotiating the Global Compacts* (New York: Routledge, 2019), 17-20; Bimal Ghosh, *Refugee and Mixed Migration Flows: Managing a Looming Humanitarian and Economic Crisis* (Cham, Switzerland: Palgrave Macmillan: 2018), 92-114. As Arash Abizadah notes, "anti-immigrant populations in prosperous liberal countries are themselves often motivated by a sense of their own voicelessness and impotence in the face of larger social forces; they often fail to empathize with foreign migrants and migrants' human rights because they see themselves as the victims of migration"; see: Arash Abizadeh, "Closed Borders, Human Rights, and Democratic Legitimation," in *Driven from Home: Protecting the Rights of Forced Migrants*, ed. David Hollenbach (Washington, D.C.: Georgetown University Press, 2010), 160.

this view, as a legitimization of irregular migration and an affront to states' rights to exclude from national membership.

Despite the aspirational efforts of the Holy See in influencing the international community towards greater accommodation of migrants (both regular and irregular), these efforts have been matched by contrary reactions from receiving populations. This means either that the Church and the international community must intensify their efforts to promote hospitality and accommodation of migrants, regardless of status, or they must also consider the legitimate concerns of affected states.[59]

The Pope has asked peoples of the world to "stand in the shoes of migrants."[60] In the tradition of Catholic teaching and its 'preferential option for the poor,' it is not unexpected that the Pope would emphasize the position of some of the most vulnerable and disempowered members of the world community, especially those forced to migrate due to persecution or economic distress. This tradition privileges poor and vulnerable migrants, not only because of Christ's identification with them, but because their disempowered position means they lack the strength of voice afforded to citizens and nation-states.

However, in the face of the apparent impasse over the rights of migrants and sovereign rights to control borders, it may also be valuable for the Church to reciprocally 'stand in the shoes of nation-states,' in order to better consider the responsibilities and perspectives of those charged with policymaking. This perspective, encompassing more expansive migration

[59] Here, the transformation of the local response to asylum seekers and other irregular migrants on the island of Lesvos is illuminative. In 2016, Pope Francis praised the generous efforts of island residents for their humanity, who "have welcomed with great openness the large numbers of people forced to migrate." Francis, Meeting with the People of Lesvos. In 2020, the situation had drastically changed, with local openness to 'encounter' arguably transformed into fear and exclusion; see: Matina Stevis-Gridneff, "Vigilantes in Greece Say 'No More' to Migrants," *New York Times*, March 7, 2020, https://www.nytimes.com/2020/03/07/world/europe/greece-turkey-migrants.html.

[60] Francis, *Gaudete et Exsultate*, §102.

narratives, may serve to challenge underlying assumptions over just solutions to the global migration crisis and question the presumption that nation-states' interests are irredeemably egoistic. It may also provide a more balanced view of the mixed success of the Global Compact for Migration.

Conclusion

The Holy See's recent intensive focus on migration, particularly demonstrated in the context of negotiations over the Global Compact for Migration, provides an insight into the tensions between Church teaching and states' border control responsibilities. Under Pope Francis, the Church has admirably and consistently drawn attention to the vulnerable situation of those who are on the move in order to pursue better lives. His influence on the Global Compact for Migration helped to produce an agreement that largely reflects the Holy See's agenda and serves the interests of migrants. Undoubtedly, the Pope and the Holy See played an invaluable role in humanizing the Global Compact for Migration, countering the self-interest of nation-states.

The Pope rightly seeks to transform fear of 'others' into an openness to 'encounter'. However, his optimistic challenge for the international community to embrace migrants (regardless of status) with generous hospitality is being matched instead by increasingly exclusionary policies in receiving countries. The Church can despair at this setback or look at this issue with fresh eyes. This situation either confirms the Church and nation-state as inherently mutually antagonistic or reveals the Church's deficiency in properly appreciating nation-states' morally-legitimate interests. This suggests, at the very least, a need for further reflection on both the right to migrate and states' responsibilities for pursuing the good of their nations.

Such reflection needs to take policymakers' perspectives and their complex responsibilities seriously. The Holy See and nation-states may well have equally legitimate, but divergent, views on how 'fear' can be transformed into 'encounter'. This further reflection means 'standing in the shoes' of *both* migrants and policymakers. In this way, the Church may better serve its mission of realizing universal communion and welcoming Christ in the form of the stranger.

Chapter 2 – Immigration Policy in the National Interest

The Holy See's approach to migration emphasizes the sinful structures at work to compel people to move across borders for a better life. Under this paradigm, a generous welcome from nation-states to migrants, both regular and irregular, is the appropriate moral response. However, by 'standing in the shoes' of nation-states' policymakers, we may better explore whether this accurately reflects the broader dynamics of migration and how states may most appropriately and charitably respond. If the story of migration is not as easily reducible to 'desperate peoples driven from their homes by impersonal economic and social forces in search of a better life', then a blanket, unconditional welcome, often implied in Church statements, may not necessarily prove to be the only morally legitimate solution. It may warrant considering further, in good faith, the value of enforced border controls regulating immigration in light of Catholic social teaching.

While the Church has an admirable concern for the interests of vulnerable migrants and refugees, it is free of the responsibility for dealing with the complex challenges of migration flows. It may be concerned for the interests of migrants, yet it does not face the moral responsibility of weighing up these interests with those of destination and origin societies. Public policymakers, charged with safeguarding the interests of their nation-state and mutual international interests, must bear this grim responsibility. In order to provide balance to the Church's reflections on the ethics of migration and border control, it is necessary to also stand in the shoes of policymakers who face the difficult task of managing the impact of migration on their national communities. This will better support the task Pope Francis has set for the Church: "As the Church accompanies migrants and refugees on their journey, she seeks to understand the

causes of migration, but she also works to overcome its negative effects, and to maximize its positive influence on the communities of origin, transit and destination."[61]

This primarily means viewing migration through the lens of policymakers in those predominantly migrant-receiving countries who dominate migration governance. These officials control the policy levers that have the greatest potential influence on global migrant flows and enjoy a disproportionately dominant voice in international cooperation efforts. For this reason, it is necessary to consider especially their perspectives and their typical rationale for immigration regulation measures. One should bear in mind, though, their privileged position, their self-interested policy pursuits, and their countries' share of responsibility for prompting migrant outflows. While this may be a challenging and uncomfortable perspective, it is nonetheless valuable for better informing a credible ethical critique.

From a broad view of contemporary global migration, we can appreciate both positive and negative effects of migration on origin and destination countries, as well as the ambiguous effects of border control measures. While migration has long been part of the story of humanity, and the overall rate of international migration has been relatively stable, our present era is marked by an increase in long-distance migration facilitated by the broader forces of globalization. The era is marked by freer flows of goods, communication and transport, yet also by more sophisticated regimes of migrant regulation, which are in turn matched with increasingly sophisticated (and often risky) means to circumvent controls.

Under the current world order, policymakers are driven by the pursuit of their national interests. As such, they see the world through the lens of self-interest, one that shapes their cooperative efforts with other nations. This driving national-interest is not necessarily ethically

[61] Francis, 2014 World Day of Migrants and Refugees Message..

illegitimate, though it has great potential for the abuse and disregard of vulnerable migrants. Before proceeding to an ethical reflection on states' border control policies and efforts in the national interest, it is important to first map out the broad and highly-charged landscape in front of policymakers, in order to better appreciate its complexities and ambiguities. This exploration may challenge some assumptions about migration dynamics that may be found among critics of border regulation and perhaps even within Church reflection. Governmental migration regulation may appear *prima facie* unfairly coercive and unjust, but with a better appreciation for policymakers' perspectives we may acknowledge their dilemmas and more clearly discern the rationale for such regulation, before proceeding to reflect on their ethical legitimacy.

The Global Migration Landscape

From the view of policymakers, global migration patterns present both opportunities for nation-building as well as threats to national security. In this current era, migration flows have become more complex and politically prominent, suggesting this may be aptly described the 'age of migration.'[62] While migration has long been part of the human story, promoting human development and cultural evolution, it is in our era that international migration, particularly over long distances, is becoming a realistic prospect for a greater proportion of the world's population. This provides the opportunity for high-income countries to attract migrant workers to meet labor demand. However, migration also poses the most apparent threat to the sovereignty of nation-states. As such, migration has become a more politically prominent issue, particularly in recent years which have seen a rise in nationalist and populist movements in reaction to the

[62] For a justification of this description, see the authors explain their book title in: Hein de Haas, Stephen Castles, and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World* (New York: Guilford Press, 2020), 11-12.

perceived threat of immigration. This is reflected in increasing political rhetoric asserting border control and advocating barriers.

Since the end of the Second World War, international migration has become increasingly globalized, with a more diverse range of countries entering migration systems and a strong growth in long-distance intercontinental and inter-regional migration.[63] Migration flows have been dramatically reversed from the previous era: colonizing outflows from high-income countries have been transformed into a movement from low-middle-income countries towards high-income countries. The flow of international migration over this last half century has arguably been shaped by patterns of trade liberalization that promoted flows of goods and capital across borders and between continents. This has been accompanied by technological innovations that have enhanced means of communication and transport. These innovations have made relocation less daunting and more affordable; they have fostered transnational relationships, even across long-distances, making migration a more feasible option for many people.[64]

According to the United Nations, in 2019 there were an estimated 271.6 million international migrants across the globe, constituting around 3.5 percent of the world population.[65] These reflect a growth in migrant numbers, from 2.8 percent of the world's

[63] See: ibid., 9.

[64] As de Haas et al. acknowledge, while the rate of international migration has remained relatively stable, contemporary migration is marked by increasing inter-continental movement. This is likely facilitated by easier modes of communication and travel, which have "enabled migrants to remain in almost constant touch with families and friends back home and to travel back and forth more often, and to maintain multiple and transnational identities." Ibid., 9, 12.

[65] See: UN Department of Economic and Social Affairs, "International Migrant Stock 2019," *United Nations*, https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates19.asp. These data are based on a definition of an 'international migrant' as either the 'foreign-born' population of a country, or 'foreign citizens.' This means these data may not reflect the full picture of international migration, as they may exclude foreign-born naturalized citizens of a country, as well as those not foreign-born yet ineligible for citizenship. See: UN Department of Economic and Social Affairs, "International Migrant Stock 2019: Documentation," *United Nations* (August 2019), https://www.un.org/en/development/desa/population/migration/data/estimates2/docs/MigrationStockDocumentation

population in 2000, meaning that the global number of international migrants is growing at a rate marginally faster than the world's population.[66] In the developed 'global north', international migrants amount to 12 percent of the population, while in developing countries of the 'global south' international migrants constitute two percent of the population.[67] Migrant workers account for nearly two thirds of international migrants.[68]

Global inequality is arguably at the heart of migrant flows. While labor demand may be considered the primary driver for international migration, wealth inequality between countries provides the incentive for migrant workers to supply that demand.[69] Global inequalities have likely also contributed to the instabilities that have given rise to the conflict and corruption that have displaced record numbers of people today. Some may argue that population movements in reaction to global inequality are only likely to accelerate to the point of being excessive and

_2019.pdf. For a broad, navigable, and interactive overview of international migration data, see: International Organization for Migration, "Migration Data Portal," accessed January 20, 2020, https://migrationdataportal.org.

[66] UN Department of Economic and Social Affairs, "International Migrant Stock 2019: Ten Key Messages," *United Nations* (September 2019), https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationStock2019_TenKeyFindings.pdf. Note that de Haas, Castles, and Miller caution that, while this may seem a substantial increase, "in relative terms international migration has remained remarkably stable, fluctuating at levels of around 3 per cent of the world population." See: de Haas, Castles, and Miller, *The Age of Migration*, 4.

[67] See: UN Department of Economic and Social Affairs, "Population Facts," *United Nations* (September 2019), https://www.un.org/en/development/desa/population/migration/publications/populationfacts/docs/MigrationStock2019_PopFacts_2019-04.pdf.

[68] See: International Organization for Migration, *World Migration Report 2020* (Geneva: International Organization for Migration, 2019), 33.

[69] As Paul Collier argues, "Mass international migration is a response to extreme global inequality… Most developing countries are now rapidly converging on the high-income countries: this is the great story of our time. Mass migration is therefore not a permanent feature of globalization. Quite the contrary, it is a temporary response to an ugly phase in which prosperity has not yet globalized." Paul Collier, *Exodus: How Migration Is Changing Our World* (New York: Oxford University Press, 2013), 271. However, this focus on inequality should be qualified by recalling the demand-driven nature of labor migration, as "most migrants would not have migrated if there were no jobs and opportunities available to them." de Haas, Castles, and Miller, *The Age of Migration*, 361. Note also that wealth disparity can only go so far to account for migration. Relationships, family responsibilities, cultural links, religious values, structural barriers, and social support networks (among others) are also significant factors in decisions to migrate. Migration is therefore further facilitated once supportive family networks and national diasporas are present in destination countries. For an overview of migration systems theory, which explores this dynamic, see: ibid., 68-71.

ultimately harmful to all parties, warranting intervention.[70] As such, it is important to explore the dynamics of labor migration as well as the complex challenges presented by the current scale of the forced displacement producing refugees and asylum seekers, before considering potential policy interventions.

Labor Migration

For policymakers in receiving countries, migration provides the significant economic benefit of meeting domestic labor needs. In particular, labor migration allows for the possibility of attracting valuable, skilled workers that can fill skills gaps and bolster industries with an educated workforce. It can also provide a supply of low-skilled workers to meet unmet demand. Destination countries, not unexpectedly, enjoy the bulk of the benefits of labor migration and are thereby empowered in their economic progress.[71] In contrast, excessive rates of emigration from developing origin countries can deplete their share of skilled workers needed to meet their own labor demands, resulting in the so-called 'brain drain'. While the emigration of skilled labor can amount to increased remittance rates to origin countries, it also means that skilled labor is not available in origin countries to directly contribute to their ongoing development: for some countries, excessive rates of "emigration of the innovative drains the society of the very skills it most needs to adopt and adapt to modernity."[72]

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[70] See: Collier, *Exodus*, 26.

[71] Note however, that the primary beneficiaries of migration are typically migrants themselves. Despite the significant costs on migrants in uprooting their lives and reestablishing themselves in an unfamiliar environment, migrants receive an economic boon that they would otherwise not enjoy in their home countries. As Collier notes, "Migrants face costs of overcoming the barriers to movement that are substantial, but they reap economic benefits that are much larger than these costs. Migrants capture the lion's share of the economic gains from migration." Ibid., 22. However, one must also recognize that migrants also typically face barriers to recognition of their skills in receiving countries, which may mean a need to work in roles that do not correspond to the level of expertise gained in their home country.

[72] Ibid., 252.

Migrating in the pursuit of work opportunities requires sufficient resources and abilities. While inequalities between nations can serve a significant role in impelling large numbers of people in developing countries to seek economic opportunities elsewhere, the prospect of migration is really only available to those relatively fortunate enough to afford the costs of travel and relocation. This means that, while migrants may often be (at least initially) more vulnerable and poorer in the context of their destination countries, they are largely drawn from among those relatively better-resourced of their origin countries. Accordingly, Paul Collier draws attention to those who may be overlooked in migration discourse: "Migrants are usually drawn from the better-off in their own countries because the poorest cannot afford the cost of migration. The neediest are the people who are left behind."[73] This can also suggest, however, that an increasing rate of migration from developing countries may well reflect improving economic conditions in those nations. The fact that more people are acquiring the means to travel and relocate through migration can indicate economic development, rather than poverty, as this is sometimes interpreted.[74]

[73] Ibid., 257. Collier concludes: "This is the great moral challenge of our age, and softheadedness about migration is not the remedy." There are, of course, exceptions to this pattern, particularly in situations of forced displacement.

[74] Hein de Haas demonstrates, with reference to the 'migration hump' theory, how migration can be both a cause and effect of development: "It is often implicitly or explicitly assumed that development has the effect of linearly decreasing emigration, which tends to be seen as the outflow of poverty, crises and general misery. However, the paradox is that the process of social and economic development in its broadest sense tends to be associated with generally higher levels of mobility and more migration, at least in the short to medium term… The idea that development leads to less migration is based on the popular notion that the poorest, 'the hungry and the desperate'… have the highest tendency to migrate. In reality, migration is a selective process. The poorest tend to migrate less than those who are slightly better off." Furthermore, "alleviating absolute poverty and achieving some degree of 'development' in the form of increasing income, education and access to information not only enable but also motivate more people to go abroad. As long as aspirations increase faster than the livelihood opportunities in sending regions and countries, social and economic development will tend to coincide with sustained or increased out-migration." Hein de Haas, "Turning the Tide? Why Development Will Not Stop Migration," *Development and change* 38, no. 5 (2007): 832-33.

With the growth of international migration, remittances have become increasingly significant for a number of developing economies. Remittances - funds transferred by international migrants to family and networks in origin countries - make a valuable contribution to the economies of origin countries.[75] Such funds transferred to developing countries vastly exceed official foreign aid and, for many developing countries, remittances constitute a significant proportion of their Gross Domestic Product.[76] Yet the benefits of remittances can be spread unevenly, largely among emigrants' already relatively well-resourced networks. This can contribute to deepening inequality within origin countries and add to the incentive for further emigration.

Refugees and Asylum Seekers

The United Nations High Commissioner for Refugees reports that, at the end of 2018, there were approximately 70.8 million people forcibly displaced from their homes across the globe, on account of persecution, war, or other violence. The great majority of these people (41.3 million) are displaced within their home countries; however, 25.9 million people are refugees, having been forcibly displaced beyond the borders of their home countries due to persecution.[77]

[75] The World Bank estimates that remittances totaled US$689 billion in 2018. Unsurprisingly, given its large stock of international migrants (approximately 50.7 million international migrants), the United States is the highest contributor of remittances, with US$68 billion transferred from the United States to other nations, out of the global total of US$633 billion in remittances sent in 2017. See: International Organization for Migration, *World Migration Report 2020*, 3, 35-6.

[76] As the International Organization for Migration reports, "In 2019, in current USD, the top five remittance recipient countries were projected to be India (82.2 billion), China (70.3 billion), Mexico (38.7 billion), the Philippines (35.1 billion), and the Arab Republic of Egypt (26.4 billion)… In relative terms, the top 5 countries projected to receive the highest remittances as a share of gross domestic product (GDP) in 2019 were: Tonga (38.5% of GDP), Haiti (34.3%), Nepal (29.9%), Tajikistan (29.7%), and the Kyrgyz Republic (29.6%)." See: International Organization for Migration, "Migration Data Portal: Remittances," (2019), accessed January 20, 2020, https://migrationdataportal.org/themes/remittances.

[77] For a broad overview of the most recent human displacement data, see: UNHCR, *Global Trends: Forced Displacement in 2018* (20 June 2019), 2, https://www.unhcr.org/en-us/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html. This is also easily accessible through the UNHCR's website: UNHCR, "Figures at a Glance,"

The number of forcibly displaced people has grown dramatically in recent years. In 2010, the UNHCR had reported 33.92 million persons of concern, while in 2000, it reported 21.87 million.[78] Around 84% of refugees (that is, those displaced outside their country of origin) are now hosted in developing regions, typically in countries neighboring their own.[79] The burden of hosting the most vulnerable groups of people is being placed on developing nations, which can only provide limited support, without any long-term security. It means that the great majority of refugees are living in fairly difficult circumstances, without a certain future. The UNHCR also reports that just over half the world's refugee population are under the age of 18.[80]

The UNHCR typically identifies three 'durable solutions' to resolve refugee crises: return to countries of origin, integration into host countries, and resettlement in third countries.[81] Given that the crises that have provoked large scale refugee movements have proven intractable, return is not a viable option for most refugees for the foreseeable future. Refugee outflows are vastly outnumbering returns, which means refugee numbers are compounding.[82] As refugee host

United Nations, accessed January 20, 2020, https://www.unhcr.org/en-us/figures-at-a-glance.html. Note that de Haas, Castles and Miller caution that 'forced migration' is something of a misnomer, given that "virtually all migrants face some level of constraints limiting their agency, such as access to money and border restrictions. At the same time, refugees fleeing persecution and violence still need some agency in the form of access to resources *in order to be able to flee*." de Haas, Castles, and Miller, *The Age of Migration*, 33. It cannot be denied, however, that while agency and resources are a factor here, 'forced' remains an appropriate adjective, given that violence and oppressive forces provide the primary factors for displacement.

[78] For comparative data on annual global refugee numbers, see: UNHCR, "Population Statistics," *United Nations*, accessed January 20, 2020, http://popstats.unhcr.org/en/overview.

[79] See: UNHCR, *Global Trends: Forced Displacement in 2018*, 2, 17-18.

[80] See: ibid., 3.

[81] For an overview, see: UNHCR, *The 10-Point Plan in Action, 2016 Update, Chapter 7: Solutions for Refugees* (December 2016), https://www.refworld.org/docid/583714a44.html.

[82] In 2018, there were 2.8 million new refugees and asylum seekers, while only 600,000 refugees returned to their home countries in 2018. See: UNHCR, *Global Trends: Forced Displacement in 2018*, 2-3.

countries tend to be middle to low-income countries, whose capacity to absorb large foreign populations is constrained, integration is not practically possible.[83]

The resettlement places available in third countries to refugees falls well-short for meeting current needs. Of all the refugees across the globe in 2018, the UNHCR identified 1.2 million people it considered particularly vulnerable and in need of resettlement in a permanent home.[84] This need was identified on account of the intractable situation of their status, in that they are not likely to return to their country of origin in the foreseeable future, and their particular vulnerabilities: family groups, unaccompanied minors, women at risk, and security in refugee camps. In 2018, of those 1.2 million particularly vulnerable people identified as warranting resettlement, only 92,400 people were resettled across 25 third countries.[85] While increasing numbers of people are being identified as being vulnerable and in need of resettlement, there are progressively fewer options for them.

The absence of any realistic durable solution for the overwhelming majority of refugees creates a compelling incentive, for those with adequate resources, to pursue asylum in third countries by irregular means. It encourages those with sufficient resources, ingenuity, and ability to undertake often-risky, irregular cross-border journeys. However, this also means that the bulk

[83] In 2018, 62,600 refugees were naturalized as citizens in their countries of refuge, mostly in middle- and high-income countries. See: ibid., 33.

[84] See: UNHCR, *Projected Global Resettlement Needs 2018* (June 12-14, 2017), 10, https://www.unhcr.org/en-us/protection/resettlement/593a88f27/unhcr-projected-global-resettlement-needs-2018.html.

Note that, in 2020, the UNHCR projects that 1,440,408 people will need third country resettlement. See: UNHCR, *Projected Global Resettlement Needs 2020* (1 July 2019), 10, https://www.unhcr.org/en-us/protection/resettlement/5d1384047/projected-global-resettlement-needs-2020.html.

[85] See: UNHCR, *Global Trends: Forced Displacement in 2018*, 32. "Canada admitted the largest number of resettled refugees (28,100). The United States of America was second with 22,900. Other countries that admitted large numbers of resettled refugees during the year were Australia (12,700), the United Kingdom (5,800) and France (5,600)." The United States formerly provided, by a significant margin, the highest number of refugee resettlement places in the world (though not per capita); however, the Trump Administration's dramatic reduction in refugee resettlement places has caused significant strain on an already under-resourced resettlement system.

of those the UNHCR identifies as most in need of resettlement, arguably the most vulnerable and excluded of migrant groups, have neither any realistic chance of third-party resettlement nor do most have the prospect of seeking third-country asylum through irregular means.

Migration Governance

The complex landscape of international migration presents nation-states' policymakers with significant challenges and opportunities. Migration can be a source of either prosperity or instability for both sending and receiving countries. Migration flows can promote greater international interconnectedness, proving mutually beneficial for states, but they can also threaten domestic stability. Policymakers are charged with carefully managing the inevitable flow of migration movements prompted by global inequality, injustice, and conflict. They must balance the benefits and costs of border control measures to suit their national interests in terms of their domestic needs and their international relations.

Migration provides host countries with the benefit of an expanded pool of workers and can enrich the cultural diversity of receiving countries. The inclusion of new migrant groups can enhance the well-being of host countries with new and diverse perspectives, thereby stimulating cultural development. However, migration can also, conversely, present a challenge to social cohesion, particularly when it is met with xenophobic attitudes in a receiving community. Paul Collier draws attention to the impact of migration on 'mutual regard,' which qualifies its benefits for host communities: "There is gain from greater cultural variety, offset by the adverse effect of diversity on mutual regard, and the potential weakening of a functional social model by diasporas attached to dysfunctional social models."[86] This calls for generous attitudes by

[86] Collier, *Exodus*, 135-6. As Collier later dismally reflects, "while migration does not make nations obsolete, the continued acceleration of migration in conjunction with a policy of multiculturalism might potentially

receiving communities to the new residents that are enriching them; yet this also highlights the need for adequate migration regulation to prevent the development of xenophobic attitudes that arise from perceived threats. This regulation must also be mindful of host communities' infrastructure and social welfare programs, as a "relatively free international labor market is not without its costs. Migrants can displace some local labor; a large-scale influx can put a burden on housing, education, and social services and depress wages."[87]

Migration flows tend to develop a self-perpetuating momentum. While the pursuit of economic opportunities may prompt some emigration from origin countries, this may commence slowly, given the lack of support and facilitation networks in destination countries. Once diasporas and supportive networks are established in destination countries, these can facilitate and resource further migration from their origin countries: "Transnational networks have become more dense and efficient, linking the sending and receiving societies. These networks help to lower the costs and the risks of migration, making it easier for people to move across borders and over long distances."[88] This means that drivers of migration can continue to accelerate even once the initial economic attraction subsides. Once the momentum develops and migration networks are established, ongoing migration flows can be difficult to control by governments. Collier

threatening their viability. Absorption has proved more difficult than anticipated… Such evidence as we have is that continually increasing diversity could at some point put these critical achievements of modern societies at risk." Ibid., 244.

[87] Myron Weiner, "Ethics, National Sovereignty and the Control of Immigration," *International Migration Review* 30, no. 1 (1996): 183.

[88] James F Hollifield, "The Emerging Migration State," *International Migration Review* 38, no. 3 (2004): 901. Such networks may also "play a vital role in helping people circumnavigate the challenges involved in irregular migration." They are also "are especially important in providing the organisational infrastructure required for people to migrate clandestinely or irregularly." Marie McAuliffe and Khalid Koser, *A Long Way to Go: Irregular Migration Patterns, Processes, Drivers and Decision-Making* (Canberra: Australian National University Press, 2017), 18.

(perhaps too boldly), warns, "Left to itself, migration will keep accelerating, so that it is liable to become excessive."[89] Others rightly caution against such 'doomsday scenarios,' suggesting

> the threat of 'foreigner hordes' is manufactured by politicians and reproduced by sensationalist media. Such crisis narratives are often shrouded in pseudo-scientific reasoning according to which massive poverty, inequality, climate change and population growth would fuel a migration wave that will threaten welfare, security and social cohesion in nations.[90]

Policymakers face the daunting task of harnessing the broad benefits of migration for their national interest as well as curtailing its potential challenges. This means employing border control measures that seek to regulate movements across borders and counteract immigration momentum. These measures are often interpreted as restrictive and exclusionary; however, they may be more suitably characterized as 'selective.' Arguably, many destination states' immigration policies are more liberal than they are restrictive, seeking to attract and amplify the number of skilled workers in demand by domestic industries. These policies can ensure that migration is responsive to market demand and contribute to the nation's economic interests. In this perspective, such 'liberal' immigration and border control policies act as a filter, rather than a tap that can be opened or closed.[91] These policies are instruments nation-states use to select desirable migrants from the large supply available to them and to prevent the entry of 'unwanted' migrants before they lay claim to particular rights upon entry.[92] These instruments

[89] Collier, *Exodus*, 26. Collier takes this further (perhaps with overly dire exaggeration), suggesting: "it would be possible for the free movement of migrants to come close to emptying some poor societies and producing majority-immigrant populations in some rich ones." Ibid., 246.

[90] de Haas, Castles, and Miller, *The Age of Migration*, 246. Note also their direct criticism of Collier for illustrating "the flawed nature of popular views that represent contemporary global migration as a massive move or 'exodus'… from the global South to the global North." Ibid., 7.

[91] See: ibid., 249, on their interpretation of policies being more liberal than restrictive, see 54-55 and 68-70.

[92] Border controls and immigration policies, as expressions of state sovereignty, may be limited by states' international human rights and other treaty obligations, which may afford particular rights to non-citizens upon entry into states' territories. For this reason, border control policies can extend beyond the border to ports of embarkation in order to prevent 'unwanted' migrants from claiming such rights. Hence, de Haas, Castles and Miller highlight

require careful and consistent management to ensure they are both effective and in line with states' human rights obligations.

Border control policies can also foster social cohesion by regulating migration in a way that promotes integration and absorption. Well-regulated immigration can be positive for both migrants and host communities in fostering meaningful integration through employment, meeting real labor needs and offering needed skills while also promoting cohesion. Well-managed migration programs can maintain public confidence and avoid populist swings towards irrational and counter-productive anti-immigration reactions. These reactions commonly occur in response to perceptions of high rates of immigration, which can seem overwhelming and threatening to some host communities:

> Sudden surges and historically large flows of migrants can result in public backlash against political parties, government institutions, and migrants themselves… Long-standing policies may be overturned and replaced with counterproductive measures; disapproval may spill over into support for anti-immigrant political parties.[93]

There are a number of tools available to policymakers to regulate immigration. To better target labor demand, nation-states can formulate selective visa criteria, such as setting educational or qualification standards, as well as quota systems. For greater control of border crossings, states can employ a wide variety of measures, such as border patrols, surveillance, enhanced biometrics techniques, carrier sanctions, and pre-board screening. In order to enforce immigration law, states employ a number of enforcement mechanisms, including detention, removal and employer sanctions. These instruments can be used to enhance states' abilities to

how "Increased openness towards high-skilled workers has coincided with attempts to restrict the rights of low-skilled workers and to prevent the arrival of asylum seekers and prospective undocumented workers." Ibid., 268.

[93] Pia M. Orrenius and Madeline Zavodny, "Creating Cohesive, Coherent Immigration Policy," *Journal on Migration and Human Security* 5, no. 1 (2017): 190.

target particular skills to meet domestic labor demand and to prevent or discourage the entry of 'unwanted' migrants who can strain resources and lay claim to certain rights upon arrival.[94]

Irregular Migration

Any government regulation of migration means that those who circumvent government controls, either by crossing borders without authorization, remaining longer than permitted, or breaching their visa conditions, can be designated 'irregular migrants.'[95] The vast majority of migrants cross borders by regular means and maintain a legal permission to reside in their host countries. Despite some popular perceptions and exaggerations, irregular migrants very likely constitute only a minor proportion of the migrant population. However, given the nature of irregular migration, being clandestine or subject to arbitrary changes in legal status, its prevalence is difficult to quantify.[96]

Arguably, the growing phenomenon of irregular labor migration has emerged out of two contradictory global movements of our era: the freer movement of goods and capital across

[94] This is perhaps one of the more disturbing features of border controls. As many nation-states have signed on to international human rights instruments that guarantee the right to seek asylum, for example, they have concurrently erected barriers in order to deny the possibility of claimants asserting this right. This suggests either a perversion of these instruments' intention, or states' will to exercise greater selectivity in managing asylum flows, given the overwhelming numbers of displaced people and diversity of comparative need within these populations. States may place heavier controls into regulating the entry and assessment of asylum seekers given that, "As economists point out, we get more of what subsidize… The more benefits we offer asylum seekers (legal aid, free housing, medical care, food, employment), the more people are likely to seek asylum." Weiner, "Ethics, National Sovereignty and the Control of Immigration," 193.

[95] Tendayi Bloom cautions that the imprecise terminology employed in migration governance can be problematic and potentially dangerous in how states designate 'irregular' status. Citing Rohingya in Myanmar and Haitians in the Dominican Republic, Bloom highlights that nation-states have power to exploit migration discourse by arbitrarily rendering unwanted residents as 'irregular migrants,' even without any cross-border movement. See: Tendayi Bloom, "When Migration Policy Isn't About Migration: Considerations for Implementation of the Global Compact for Migration," *Ethics & International Affairs* 33, no. 4 (2019): 485-88.

[96] The international Organization for Migration notes that, because of the diverse range of ways in which people's migration status can become irregular and countries' differences in recording data, it is difficult to estimate global numbers. See: International Organization for Migration, *World Migration Report 2020*, 28.

borders under global trade liberalization, and the simultaneous tightening of border control regimes which is raising increasing barriers to labor migration. Goods move freely across borders under diminishing trade barriers, while laborers are shut out by visa and border control regimes.[97] These paradoxical patterns perhaps unintentionally fostered the growth of irregular migration, through people smuggling and human trafficking networks, as the means to meet informal labor needs. As a result, migrant flows, which typically follow patterns of trade, were left to resort to organized crime in order to facilitate irregular border crossings, leaving them vulnerable to exploitation. For refugees and asylum seekers, given the mode of their forced displacement and the lack of durable solutions, irregular migration into third countries (for those with the ability and means to do so) may offer the only prospect of a viable future.[98]

The smuggling of migrants by irregular means has become a lucrative business for criminal networks, yet can place migrants in significant danger.[99]

[97] James Hollifield describes this as the 'liberal paradox': "Since the end of World War II, international economic forces (trade, investment, and migration) have been pushing states towards greater openness, while the international state system and powerful (domestic) political forces push states towards greater closure. This is a liberal paradox because it highlights some of the contradictions inherent in liberalism, which is the quintessentially modern political and economic philosophy and a defining feature of globalization." Hollifield, "The Emerging Migration State," 886.

[98] Note that the term 'irregular migrant' is imprecisely applied to refugees and asylum seekers, given that the right to seek asylum across international borders is 'regular' and protected under non-derogable international law (concerning *non-refoulement*), meaning their border entry cannot technically be termed 'irregular'. While economic migrants and refugees/asylum seekers are typically treated as distinct categories, in practice this is typically blurred, resulting in so-called 'mixed flows.' For example, refugees may be understandably motivated by economic concerns in seeking third country asylum. Both economic migrants and asylum seekers are likely to resort to the same irregular routes and smuggling syndicates. These mixed flows can be problematic, as Bimal Ghosh observes regarding recent irregular migrant flows to Europe. "If the sheer magnitude of the flows and the rapid shifts in the routes and modes of movement maneuvered by the traffickers have added to the difficulty in managing the flows, their predominately mixed composition - asylum seekers, poverty-driven economic migrants and persons deserving humanitarian protection all bundled together - has made the situation much worse. Not only has it made the screening process more onerous and time-consuming, it has also made some states less welcoming to the new arrivals." Ghosh, *Refugee and Mixed Migration Flows*, 38.

[99] The United Nations Office on Drugs and Crime reports that, in 2016, "at a minimum, 2.5 million migrants were smuggled for an economic return of US$5.5-7 billion." See: UNODC, *Global Study on Smuggling of Migrants 2018* (Vienna: United Nations Office on Drugs and Crime, 2018), 5, 22-23. Between 2014 and 2019, the International Organization for Migration recorded 34,597 people who have died attempting to migrate, largely by irregular means (noting this is not an exhaustive record), underscoring the significant risks taken for such journeys. See: International Organization for Migration, "Missing Migrants," accessed January 20, 2020,

Despite using border controls, nation-states can become economically reliant on the informal labor of irregular migrants. While irregular labor migration is subject to enforcement by government officials, it can be implicitly condoned through their inaction. Once a number of businesses rely on the cheap labor afforded by an informal workforce of undocumented migrants, governments may be pressured to ignore it. This can leave irregular migrants vulnerable to exploitation and underpayment, potentially creating an underclass within destination societies, all without recourse to the oversight mechanisms available to citizens and regular migrants.
A reliance on low-skilled migrant labor can also potentially have a negative impact on the domestic labor market, particularly if an informal workforce undercuts wages. This reliance has the potential to shut out low-skilled citizens people from the workforce and push down wages more broadly, due to oversupply.[100]

Effectiveness of Border Control Regimes

The introduction of restrictive border control policies has the effect of excluding some of the most vulnerable and poorest members of the world community from the pursuit of economic progress and from safe and secure living conditions. This is especially egregious when some of the most popular destination countries themselves share in the responsibility for perpetuating international economic inequality and contributing to displacement-producing instability.

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https://missingmigrants.iom.int. For an overview of the dangers encountered in migrant smuggling, see: UNODC, *Global Study on Smuggling of Migrants 2018*, 39-42.

[100] Filling unmet labor needs with a migrant workforce can also have opportunity costs, where, for example, businesses would otherwise have an incentive to innovate with more efficient processes to meet production needs. As Myron Weiner argues, "Technological and managerial innovations are more likely to occur when labor costs go up. Unemployment will decline. Previously excluded or restricted groups - the disabled, women, minorities - are likely to be pulled into the labor force." Weiner, "Ethics, National Sovereignty and the Control of Immigration," 183.

In addition, these policies can also have unintended consequences that ultimately counteract receiving states' own policy objectives.

Restrictive border control measures, aimed at discouraging 'unwanted migrants' may simply have the effect of encouraging long-term irregular migration, rather than circular migration that is more responsive to changes in labor demand and conducive to return.[101] Furthermore, these measures may only divert inevitable migrant flows into alternate, irregular migration pathways.[102] These pathways can be risky, given the lengths that must be taken to avoid or circumvent official border crossing points. Such measures can encourage the growth of people smuggling and human trafficking criminal networks: "As borders are fortified and become less accessible, migrants and asylum-seekers alike take ever-riskier journeys. More people are turning to smugglers to facilitate their travel, and more are being abandoned and exploited by those smugglers."[103] As restrictive policies escalate, people smuggling ventures can respond with ever more sophisticated and riskier responses that may place even more people in danger of harm or death. Increasingly restrictive border control regimes mean that governments are progressively spending more on enforcement measures, which raises legitimate questions about their overall cost-benefit.[104]

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[101] As de Haas, Castles and Miller argue, "Paradoxically, irregular migration is often a *consequence of* tighter control measures, which have blocked earlier forms of spontaneous and more circular mobility," counterproductively encouraging permanent settlement and encouraging undocumented migration. Additionally, "Immigration restrictions simultaneously reduce immigration and return, which renders the effect on net migration and the growth of migrant communities theoretically ambiguous." de Haas, Castles, and Miller, *The Age of Migration*, 12-13, 269.

[102] As the UNODC notes, "Increased border enforcement efforts in geographically limited areas often result in displacement of smuggling routes to different borders, smuggling methods or to other routes… Only policies that integrate different types of interventions and broaden the geographical spectrum to include countries of origin, transit, and destination can be successful in the long term." UNODC, *Global Study on Smuggling of Migrants 2018*, 12.

[103] Ferris and Donato, *Refugees, Migration and Global Governance*, 9.

[104] For example, the United States budgeted US$ 4.7 billion for border patrol in 2019, compared to US$ 1.055 billion in 2000. Since 2003, it has spent "an estimated $330 billion on the agencies that carry out immigration enforcement." American Immigration Council, *The Cost of Immigration Enforcement and Border Security* (October

One is left to wonder, then, whether border control policies can really ever be effective. Perhaps they can only momentarily frustrate and redirect inevitable flows of migrants, which may ultimately prove more responsive to the overwhelming forces of labor demand and global instability. While restrictive policies aim to combat the onward movement of refugees and asylum seekers, it is unlikely they can address the underlying drivers of their irregular movement, namely forced displacement and lack of durable solutions.[105] For some, the "persistence of undocumented migration illustrates how even sophisticated forms of border controls do not manage to stop people from entering a country."[106] This means border controls may be self-defeating, only serving to initiate a "self-perpetuating process: border controls create problems (such as smuggling or trespassing), which can then call for more control" whereby the "evolution of migration controls towards greater harshness might eventually backfire and threaten the liberal principles and freedoms that lie at the core of democratic societies."[107]

These considerations can lead to the conclusion that, given the inevitability of migration flows and the resulting escalation of border controls, the more appropriate policy response is instead the relaxation of controls (or their complete removal) and the regularization of irregular migrants. However, these responses neglect the underlying reasons that had originally justified border controls and could have counterproductive unintended consequences, as, for example, "a legalization program may result in yet more illegal inflows or visa overstays in hopes of another

2019), 1-2, https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf.

[105] Noting studies arguing that the reduction of asylum seeking coincides more with the decline in violence rather than the introduction of restrictive policies, see: Timothy J. Hatton, "The Rise and Fall of Asylum: What Happened and Why?," *The Economic Journal* 119, no. 535 (2009): F208-9.

[106] Antoine Pécoud and Paul de Guchteneire, "Introduction: The Migration without Borders Scenario " in *Migration without Borders: Essays on the Free Movement of People*, eds. Antoine Pécoud and Paul de Guchteneire (New York: Berghahn Books, 2007), 5.

[107] Ibid., 6.

amnesty, undermining the goal of less unauthorized immigration."[108] The accommodation of large migrant flows risks creating an incentive for a further influx and the potential strain on nations' capacities, which had originally warranted the need for border control.

There remain good reasons, then, for policymakers to assert and better refine border control measures. Arguably, the persistence of irregular migration through people smuggling and trafficking may be due to uneven control policies and the inconsistent application of enforcement measures. For example, if, once people succeed in circumventing border controls, they can remain uninhibited in a country and able to access informal labor (while governments turn a blind eye to employer complicity), then the incentive for irregular migration remains.[109] The problems of increasing irregular migration may largely be addressed by removing this incentive and enforcing control policies consistently, informed by a fuller appreciation of the complex factors at play.[110]

It remains in states' self-interest to combat irregular migration, particularly the exploitative criminal networks that undermine border regimes, in order to discourage dangerous journeys and prevent the emergence of a social underclass vulnerable to exploitation. Yet the potential solution, if not the relaxation of controls, requires instead the ever-increasing tightening of exclusionary measures, increased border protection or investment in more consistent

[108] Orrenius and Zavodny, "Creating Cohesive, Coherent Immigration Policy," 189.

[109] Orrenius and Zavodny argue that states must also pursue consistent enforcement measures, both at the border and within territory, recalling that "From the 1960s until the early 2000s, the United States emphasized border enforcement while largely neglecting interior enforcement. This was policy inconsistency: potential unauthorized immigrants outside the country faced far more barriers than unauthorized immigrants already in the country… Lax interior enforcement undermined strict border enforcement." Ibid., 182.

[110] As de Haas, Castles and Miller caution, it is important for policymakers to have "a thorough understanding of migratory processes in all their complexity," aware that restrictive policies have only limited effect when they are working in the face of structural drivers of migration that make people movement inevitable, whether that be by regular or irregular means. de Haas, Castles, and Miller, *The Age of Migration*, 269-70. One must also recognize the persisting incentives of family reunification and economic and political pressures, which are not easily addressed and call for generous policy responses to facilitate regular migration.

enforcement mechanisms. Such mechanisms may be an uncomfortable solution, as they will impact harshly on the vulnerable migrants who had resorted to irregular means and may also damage industries reliant on informal labor.[111] However, it is ultimately in states' continued self-interest to regulate the movement of people into their territory, for the sake of domestic stability and to influence immigration to be most economically beneficial for them, minimizing as far as possible the 'inevitable' flows of irregular migrants.[112]

Moreover, 'selective' immigration policies, although they may limit the outflow of people from developing countries seeking improved conditions, may ultimately have a beneficial impact on those origin countries. As Collier argues, these policies can provide an incentive for more people in origin countries to acquire the skills and education that are in demand in destination countries: "an unintended effect of these restrictions is to increase the demand for education in poor countries: educational attainment is the passport out."[113] This can have a positive net effect on the development of origin countries, as some people will inevitably elect not to emigrate, providing a wider pool of skills that can contribute to local economic well-being and development. In this way, "the possibility of migration stimulates the supply of talent rather than draining away a fixed stock."[114] This is a compelling argument for the implementation of selective immigration policies, one that suggests mutual benefits for both sending and receiving countries.

[111] This response may either be "interpreted as evidence of government inability to prevent irregular entry of stay or alternatively as evidence that sovereign states are able to adapt to the realities of international population movement." Ibid., 262.

[112] "The inability of states to have total control over who enters and who overstays their visas is no more an argument against control than the persistence of crime is an argument for ending the enforcement of criminal law." Weiner, "Ethics, National Sovereignty and the Control of Immigration," 185.

[113] Collier, *Exodus*, 158.

[114] Ibid., 217. He further suggests that, on account of the added incentive for education in emigration countries, educationally-based restrictions "can lead to a net benefit - the brain gain" (252).

A disturbing feature of some border control regimes is their apparent intent to prevent the entry of asylum seekers so that they are unable to lay claim to their rights under international law. Yet, as we have seen, the current number of refugees and asylum seekers worldwide is tragically overwhelming and durable solutions are inaccessible to the vast majority because of the lack of resettlement places and the enduring nature of contemporary conflicts. In this context, any policy addressing third-country asylum seeker movement is morally complex and ambiguous. It is not in the interests of destination states to encourage these third country movements, nor will these movements likely benefit the most vulnerable of refugees. Policies intending to prevent the entry of those with the means to seek third-country asylum may be defensible if they are also coupled with targeted policies to accommodate more vulnerable refugee populations through generous resettlement programs and to alleviate the burden on refugee-hosting developing countries. Disappointingly, the actions of the United States, Australia, and the United Kingdom (for example) to combat third-country asylum movements have not been matched with generous outreach to vulnerable refugee populations. In all, given the complex needs and competing moral claims of a diverse range of refugees and asylum seekers, policymakers must address these issues with more sophisticated and generous responses.

Conclusion

Church teaching on migration holds in tension the view that migration is both caused by sinful structures and yet also provides a means for the realization of universal communion. In a similar way, the complex landscape of international migration before policymakers presents paradoxes that are not always apparent in common narratives on migration. As we have seen, international migration is symptomatic of vast global inequalities, prompting citizens and

workers from the developing world to seek opportunities elsewhere. The overwhelming numbers of people forcibly displaced indicate a fractured world. Yet the increasing rates of migration from developing countries can also represent, rather, a hopeful sign of development, indicating that increasing numbers of people are emerging from poverty and are acquiring the means, aspirations and capabilities to migrate. Labor migration can offer a bright future for migrants, yet can also have negative impacts on their origin countries. Border controls, though they are coercive and limiting on prospective migrants, can play a positive role in stimulating economic development and broadening the pool of skilled workers in origin countries.

While it may be tempting to portray international migrants largely as victims of self-interested and exploitative nation-states, international migration is a far more complex, multi-faceted phenomenon. Migration has both negative and positive effects, largely benefitting receiving states and those people with the means and resources to migrate. States, acting in their national interest, seek to harness these benefits and minimize the disadvantages by employing border controls. Indirectly, these can have (albeit, unintended) positive impacts on developing origin countries and arguably create conditions for stable, long-term development in both destination and origin countries.

The record numbers of people forcibly displaced across the world requires a generous and creative response from the international community. In the absence of durable solutions, third-country asylum flows are understandable; yet this is not an option available to the most vulnerable of refugees in most need of it, nor is it an adequate solution for the broader problem of forced displacement. States arguably have a legitimate interest in curtailing and preventing third-country asylum flows in order to pursue generous managed resettlement programs as well as alternative efforts to address long-term displacement.

Some critics appear to suggest that the appropriate response to global inequality is to relax or completely remove border controls so that all may be free to seek better opportunities, without having to resort to irregular migration with its accompanying risks of harm and exploitation.[115] However, from policymakers' perspectives, more open and undermanaged migration is not always beneficial to all parties, nor does it necessarily create conditions that promote the well-being of the most vulnerable and poor of the world community.

Under the current international migration regime, destination countries and those with the means to migrate, typically from the relatively wealthier tier of origin countries, are largely the greatest beneficiaries of migration. This raises a number of issues of justice that are not always apparent in common ethical reflection on migration. Is it right that destination countries, typically economically dominant and often responsible for creating and perpetuating economic inequalities and instability, should then benefit from immigration at the further expense of developing origin countries? Does this simply amount to a reverse form of colonialism that only amplifies injustice? How can the benefits of migration flow to the poorest people in origin countries who do not have the means to migrate? How can the world community best support the most vulnerable of refugees?

Nation-states' use of border controls appears to be a continuing part of our current world order, as part of managing migration for their national interest. These controls largely appear to contribute to the well-being of the receiving state, and (although unintentionally) can do the same for origin states. Yet these measures also exclude and impact negatively on the most

[115] For a prominent example of this position, see: Joseph Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013).

vulnerable and needy of the world community, despite their potential benefits for developing origin countries.

Having considered the challenging perspective before policymakers, we can proceed to a more informed ethical reflection on the use of border controls for the national interest.

The Christian tradition calls on states to 'welcome the stranger', being open to encounter rather than build walls. One wonders if this openness may also be possible under well-managed migration programs utilizing effective border controls, which may, paradoxically, create riper conditions for meaningful and lasting encounters with strangers.

Chapter 3 – Border Control and the Universal Common Good

The view of migration dynamics from the perspective of policymakers can challenge the prevailing narrative that often frames the Catholic approach to the ethics of migration and border control. As we saw in the first chapter, the Catholic magisterial approach to migration considers that migrants are primarily driven to move in order to obtain more favorable conditions of life. This approach emphasizes, then, the obligation of states to accept those people seeking conditions for human survival and flourishing, and that states may assert border restrictions only for just reasons to protect the relative good of their communities. The view from policymakers suggests a much more complex picture, in which a simple narrative is not always helpful for either framing the issues nor for formulating comprehensive, just, and compassionate policy responses.

This chapter will explore how this prevailing narrative in Church thinking may be more appropriately recast in light of the policymaker's view. The Church rightly champions the rights of migrants with whom it identifies and who bear the disempowered brunt of nation-states' policies of control. However, this advocacy can set it irreconcilably against the interests of nation-states who, from their own perspective, also have rightful cause to manage migration flows. The preceding chapter painted a complex picture in which migrant flows do not neatly match the predominant view of migration that tends to animate the approach of Catholic magisterial documents. This approach appears to be informed by a narrow view of migrants being driven from home for the sake of survival, but whose aspirations are halted by egoistic nation-states unjustly protective of their own national well-being. The preceding chapter

questions what appears to be the underlying intuition that open, unregulated migration will necessarily result in just outcomes for all in need.

The Church's approach to framing migration may be useful in formulating a greater sense of meaning for people on the move and for galvanizing public advocacy on their behalf. However, it provides only limited ethical guidance for those policymakers charged with devising pragmatic policy responses to the complex dynamics of migration.[116] This limit suggests a need for some development in Church thinking on migration, in order to take the responsibility of policymakers more seriously and to be more prepared to confront the messiness of their policy landscape. This can help the Church make a more credible and critical approach to correcting the typically cold and calculating view of policymakers, too often narrowly focused on economic development rather than integral human development. If Church advocacy on migration is to be taken seriously by policymakers it must be well-informed, otherwise it will appear only naïve and unpersuasive.

This chapter will also, then, explore how the pursuit of national interest can be framed within Catholic social teaching. This may provide a path to acknowledging the complex realities confronting nation-states, as well as better identifying how nation-states can more nobly rise up to their responsibilities. I would like to suggest that the national interest also includes the development of a national character that is oriented towards the universal common good.

[116] As Matthew Carnes argues, "Perhaps the greatest challenge to an enriched dialogue between the theologians and philosophers examining the common good and empirical researchers in the political science tradition is to find a common language and a set of standards for their shared discourse. Too often, it can seem that these are on wholly different tracks. Normative analyses - and Catholic reflection on the common good - frequently propose visions of goals or outcomes that are logically consistent, and even highly attractive, but that seem distant from the messiness of the real world." Matthew Carnes, "Contributions of Contemporary Political Science," in *Empirical Foundations of the Common Good: What Theology Can Learn from Social Science*, ed. Daniel K. Finn (New York: Oxford University Press, 2017), 20.

With such contours in place, this thesis may conclude with an exploration of areas for more effective Church advocacy for the interests of migrants, in light of the legitimate interests of nation-states in executing their own immigration and border control policies. In this, Church thinking should be challenged to move beyond intractable positions that frustrate both the interests of nation-states and the universal common good and to embrace positions that, perhaps counterintuitively, may better serve to foster justice, solidarity, and national hospitality.

Re-thinking a Catholic Approach to Border Control

The Church's magisterial approach to migration ethics and states' border control has tended to stand on the side of migrants and emphasize their particular rights to migrate. This solidarity is understandable and commendable on account of the disempowered and vulnerable position of migrants. In the nation-state system governing global society, non-citizen residents face unique barriers to the human flourishing citizens enjoy though civic participation and the state's protection of their rights; this is especially so for the undocumented. The Church preferentially stands on the side of migrants, as it does for all the poor and marginalized, identifying Christ among them. As discussed in the first chapter, this is also because migrants may be considered an icon for the Church: a prophetic reminder of its pilgrim and missionary condition as it seeks universal communion.[117] This identification can appear to place Christian ethical approaches to migration in irreconcilable conflict with those who bear responsibility for responding to migrants on behalf of nation-states:

[117] See: Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *Erga migrantes caritas Christi*, §§17-18, 103.

> The missionary freedom of those in Christ places them in tension with the ways of nation-states… that restrict and punish acts of migration. Will the migrant people of God uphold laws that regard migrants as aliens? Will they serve in branches of government that enforce immigration laws predicated on the existence of aliens?... Will God's migrant people resist calling their fellow migrants 'aliens'?[118]

Church teaching on migration has tended to emphasize the vulnerability of migrants as those who have been driven from their homes in order to seek basic living conditions. This is demonstrated in its emphasis on people forced to move and its insistence on the primary right not to have to emigrate. The preceding chapter, from policymakers' perspective, challenges the Church's magisterium to formulate a more nuanced and comprehensive view, in light of the dynamics of migration. The Church's magisterial view indicates some underlying assumptions that may be challenged in light of the broader dynamics of migration flows. While global inequalities between wealthy and developing nations do indeed provide a significant driving factor for people movement, it may be problematic to frame migration as simply the transnational movement of the poor for the sake of survival. As has been demonstrated in the preceding chapter, while relative poverty and the desire for improved living conditions may play a part, migration is largely an option for those with the means, resources, and capabilities to uproot their lives and resettle in a foreign land. Emigration is not an option available to all of the poor in developing countries, meaning that, while having regard for migrants, we cannot lose sight of those left behind. This should raise questions for Catholic thinking on whether people movement across national borders is necessarily an adequate or just solution to the complex problem of global poverty. Additionally, increased migration flows can reflect the emergence of

[118] Robert W. Heimburger, *God and the Illegal Alien: United States Immigration Law and a Theology of Politics* (New York: Cambridge University Press, 2018), 59-60.

developing countries out of poverty, indicating a hopeful sign of people accumulating at least the means to seek even better living conditions elsewhere.

Policymakers' perspectives suggest that the Church's framing of migration primarily in terms of people being driven by poverty for the sake of survival provides only a sketchy reflection of the broader dynamics of migration. This framework demands a more nuanced and sophisticated development, one that does not lose sight of the poor who are left with no option to migrate, nor of those origin communities that receive mixed results from emigration. This perspective also suggests the need for further development, in light of these complex factors, in the consideration of the responsibilities of states towards those seeking to immigrate.

This reconsideration needs to find a more constructive framework for considering states' responsibilities on border control and their approach to responding to the needs of refugees and asylum seekers.

Nation-States' Border Control Obligations

As surveyed in the first chapter, prevailing Church magisterial teaching holds that nation-states maintain the right to regulate their borders, but this right is subordinate to the rights of migrants to seek better living conditions where the hosting state has the space and means to accommodate them. This teaching is most clearly articulated in the 2003 United States-Mexican Catholic Bishops' statement, *Strangers No Longer*. The bishops argued,

> While the sovereign state may impose reasonable limits on immigration, the common good is not served when the basic human rights of the individual are violated. In the current condition of the world, in which global poverty and persecution are rampant, the presumption is that persons must migrate in order to support and protect themselves and that nations who are able to receive them should do so whenever possible.[119]

[119] United States Conference of Catholic Bishops and Conferencia del Episcopado Mexicano, *Strangers No Longer Together on the Journey of Hope*, §39. The bishops appeal to papal teaching, by Pius XII (in *Exsul Familia*)

This teaching presupposes that border restrictions unfairly aim to prevent the entry of people who are driven to migrate out of necessity for their own survival. In this view, it is manifestly unjust to bar admission to desperate people, when accommodating resources are plentiful.

The policymakers' perspective suggests rather the need for a more nuanced ethical framework for considering states' responsibility to subordinate their right to regulate borders to the rights of migrants seeking better living conditions. The teaching presupposes that opening borders freely to migrants in need, where there is capacity to accommodate them, has a constructive impact for migrants but only a negligible impact on either sending or receiving countries. This neglects the countervailing factors we saw in the preceding chapter that might suggest open migration may be detrimental to both countries, even as it may be comparatively beneficial to migrants themselves.

Arguably, many wealthy, developed nations are already facilitating large scale migration, commensurate with their ability to accommodate migrants. However, given the overwhelming demand from prospective migrants, they need to regulate demand through 'selective' migration policy instruments such as skills criteria and capped family reunion provisions. These instruments can help to fashion an impartial (though not perfect) method for regulating demand for immigration places. In the context of the United States, Mark Amstutz highlights:

> The challenges US government officials face in seeking to establish a humane and just immigration system and to ensure its rules are enforced impartially and consistently. This is a difficult task in a world where millions of people from foreign countries… would love to come to the United States to work, settle, and become citizens. The US government has established a highly complex immigration system involving many different types of visas, each with its own requirements, coupled with annual caps for each visa category as well as annual country ceilings.[120]

and John XXIII (in *Pacem in Terris*), that assert the right to migrate and the responsibility of states to accommodate migrant flows of the needy. Ibid., §30.

[120] Mark R. Amstutz, *Just Immigration: American Policy in Christian Perspective* (Grand Rapids, MI: William B. Eerdmans, 2017), 7-8. Amstutz is especially critical of the US Catholic bishops' advocacy on immigration matters, especially as it appears in *Strangers No Longer*: "The Catholic Church's approach to US immigration

Selective policies based on required skills and education may appear to be coldly self-serving, designed to benefit receiving states economically to the detriment of needier migrants. However, given the great demand for immigration in developed countries, selecting immigrants on the basis of skills and education may be arguably defensible (for economic migration, though not refugee resettlement), in that it provides a relatively less arbitrary manner for accommodating new members, one that sensibly facilitates immigrants' integration and civic participation through employment. This is not a perfect system, from a Catholic ethical viewpoint, as it prioritizes those already privileged enough to develop skills and excludes the poor and most needy. It also fails to address the demands of reparative justice where receiving states have contributed to the structural drivers of migration. Moreover, it serves to advance the economic interests of developed countries, further compounding their economic strength at the apparent expense of sending countries. However, the previous chapter should offer caution to any intuition that a more open migration system necessarily serves the interests of all the poor in sending countries. As Mark Amstutz argues (echoing Collier),

> If the goal is to advance human rights and prosperity in the world, one needs to nourish nation-states that are strong and benevolent, effective and democratic. Providing economic resources to failed states is unlikely to foster humane regimes. And simply allowing people from poor, failing states to migrate to prosperous countries is also unlikely to promote the well-being of such societies, because the people most willing and able to migrate are not the ones who are most impoverished.[121]

policy fails to accurately represent the complexity of the moral dilemma involved. Instead, its calls for a more flexible and humane policy, one that is welcoming to strangers regardless of whether they arrived legally or not, is unpersuasive… Given the Catholic Church's eagerness to advance immigration reform, the advocacy campaign has contributed little to the policy debate and called into question the bishops moral authority as well." Ibid., 160. He calls out their "Little appreciation for, or understanding of, the constraints that are brought to bear on government officials in devising just migration policies," as well as their tendency to "view the world through the lens of utopian idealism." Ibid., 225, 26.

[121] Ibid., 84.

The use of 'selective' immigration policies to regulate demand for immigration places, while not ethically perfect, may well offer mutually positive effects to both sending and receiving countries. The flow of remittances from skilled workers can provide significant income support for developing economies, while 'selective' policies may serve to stimulate an incentive for skills development, providing net benefits for sending countries.

Catholic teaching on migration has tended to emphasize that national borders are not absolute but subordinate to the fundamental human rights of migrants. In Catholic social teaching private property is similarly considered subordinate to the universal destination of goods.[122] As the protection of private property is considered a defensible and prudent social organizing principle, so too might we analogously consider the maintenance of national borders as having a useful organizing principle that shouldn't be overlooked too lightly. Church teaching must be careful not to minimize too easily the right (and arguably the duty) of states to regulate their national borders, in the same way that it would be cautious against calling for the radical redistribution of private property in the service of the universal destination of goods.

Responding to Refugees and Asylum Seekers

The complex picture of displaced people across the globe requires a more constructive response from the Church in helping to formulate an ethically responsible policy response. At present, the Church's magisterial advocacy appears to call for the unconditional embrace of refugees and asylum seekers at countries' borders and the removal of barriers to their entry. Given the large scale and complex dynamics of human displacement across the world, there is

[122] Kristin Heyer draws attention to this analogy: "While the Catholic social tradition recognizes the right of sovereign nations to control their borders, as with the right to private property, sovereignty is not an absolute right." Kristin E. Heyer, *Kinship across Borders: A Christian Ethic of Immigration* (Washington, D.C.: Georgetown University Press, 2012), 113.

need for a more sophisticated theological ethical guidance. David Hollenbach has made a valuable contribution to developing a Catholic ethical approach to the global refugee crisis. He argues that the fundamental human dignity of those facing persecution overrides the significance of national borders:

> When migrants have been driven across borders by existential threats to their lives or basic rights, countries with the capacity to make them have a duty to do so. This is a consequence of the fact that our common humanity relativizes the moral significance of national borders. The borders of nation-states are important means for the protection of the human dignity and human rights of citizens of these states. They protect people against domination or colonial exploitation by powers with no interest in their well-being and freedom. Borders, however, are not moral absolutes. If the dignity of fellow humans can be protected only by granting them asylum in another country, the moral relevance of national borders will be diminished.[123]

Hollenbach's argument is certainly persuasive in regard to refugees and asylum seekers entering countries of first asylum with the aim of seeking immediate safety from violence and persecution.[124] However, the situation becomes more complex when nation-states must also respond to claims of third country asylum, address irregular migration flows with their accompanying criminal smuggling enterprises, and determine how they may better cooperate with the international community to respond to forcibly displaced populations worldwide.

Tragically, the massive scale of forced displacement means that there is necessarily a hierarchy of needs among refugee and asylum seekers cohorts. While the forcibly displaced are among the world's most vulnerable populations, on account of their non-citizen status in host communities and lack of state protection in their home countries, there is a diverse range of needs among them. These various needs must be triaged by those nation-states with capacity to

[123] David Hollenbach, *Humanity in Crisis: Ethical and Religious Response to Refugees* (Washington, D.C.: Georgetown University Press, 2019), 103.

[124] I note that nation-state practice is largely in line with this moral principle, given the universal acceptance (even in the breach) of the non-derogable principle of *non-refoulment* in international law, prohibiting the forcible return of refugees to places of persecution.

assist. While there is an unprecedented number of vulnerable refugees in the world, those nations with the capacity to assist must unfortunately make morally tough choices weighing up those who are more vulnerable than others.

The movement of third-country asylum seekers provides significant moral challenges for receiving countries. This term refers to the onward movement of refugees and asylum seekers from countries of initial asylum towards countries that provide more favorable conditions. These asylum seekers make a clear moral claim on the nation-state and are the most visible cohort to receiving states' populations. However, while their status as asylum seekers makes their situation morally compelling, they may arguably not constitute the more vulnerable of the world's displaced population warranting reception; namely those remaining in countries of first asylum, facing massive threats to their livelihoods and who are likely unable to afford this onward movement. Nation-states may be justified in discouraging such third-country movement, given this may involve the use of criminal and exploitative smuggling services undertaking dangerous journeys.

This raises questions for how policymakers are to weigh competing moral claims of asylum seekers and refugees, given the incapacity to respond to all, on account of the massive scale of forced displacement.[125] Does an asylum seeker have a moral claim on a third country just because they made it to their border? How does this moral claim balance with that of other refugees who may be unable to reach a third country border but who arguably may have greater vulnerabilities? David Hollenbach offers the Kew Gardens Principle as one instrument for weighing up the moral claims of refugees and asylum seekers. This involves five criteria:

[125] I note here Alexander Betts and Paul Collier's creative policy proposal for the creation of autonomous safe havens for refugee populations in countries of asylum. See: Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (New York: Oxford University Press, 2017), 127-55.

> (1) There is a critical *need*; (2) one has *proximity* to the need; (3) one has the *capability* to respond with some effectiveness… (4) one is likely the *last resort* from whom help can be expected… (5) help can be provided without *disproportionate harm* to the one providing the assistance.[126]

This is a useful model for weighing up a state's moral responsibility to refugees and asylum seekers. Hollenbach sensibly clarifies that proximity needs not be considered to be physical as, in this age of globalization, national governments have access to information about the comparative needs of the global refugee population. The criterion of proximity can be arguably met when nation-states are aware of the needs of one cohort of refugees that outweighs the needs of another.[127] The criterion of proximity may well be heightened when nation-states have historic or cultural ties to the refugee cohort. Their moral responsibility to assist is especially heightened to the degree a nation-state has contributed to the disruption (economically, militarily or otherwise) that gave rise to displacement.

The tragic reality of forced displacement today, particularly in its unprecedented scale, requires a generous, proactive, and cooperative response by the international community. It is appropriate for the Church to advocate for greater generosity and stir up the consciences of all humanity in a position to assist.[128] However, its advocacy must also appreciate the challenges faced by policymakers in addressing this complex reality and offer more sophisticated ethical guidance beyond an unconditional and open welcome, one that reflects the competing needs between the diverse range of refugee populations. The welfare of some of the most vulnerable

[126] Hollenbach, *Humanity in Crisis*, 99.

[127] See: ibid., 99-100.

[128] As Hollenbach argues: "A genuine sharing of responsibility for the massive movement of refugees today requires the rich nations of the Northern Hemisphere to admit sizably larger number of displaced people. Shared responsibility also calls for increased financial and political support for the poor and fragile states that already host most of the world's refugees today. The countries of the global north have the capability to admit more refugees and to aid those countries already hosting so many refugees. Because they have the ability to assist those in deep need, they have a responsibility to do so." Ibid., 110-11.

members of the world population are at stake if we only give priority to those refugees and asylum seekers who are visible at one's border.

National Interest and the Common Good

This exploration of Catholic advocacy and teaching on migration and nation-states' perspectives has illuminated some of the tensions between the two. Nation-states, as defined by their control of a population bound by territory are primarily concerned with their national interest while the Church tends to take a more universal view.[129] The Church's preferential attention to the needs of migrants can be at odds with nation-states' primary concern for the pursuit of their own national interests. These tensions reflect the broad divide between cosmopolitan and communitarian frameworks in international relations.

In the field of international ethics, two dominant ethical frameworks provide competing paradigms for considering the moral relationship between political communities and external strangers: communitarianism and cosmopolitanism. Communitarianism reflects the prevailing international practice of nation-states. This framework asserts the priority of the political community, whose well-being takes precedence over the needs of the stranger beyond them. By contrast, cosmopolitanism emphasizes instead the community's common humanity with the stranger, warranting their equal concern: "a cosmopolitan framework is one in which no individual person or group of people is ruled out of moral consideration a priori or by virtue of their membership of different communities."[130]

[129] Lisa Ferrari illustrates the differing worldviews by noting that "the Church calculates its worldly interests by considering divine intervention and the universal human impact of pursuing those interests. Few, if any, states claim to use such criteria in policymaking." Lisa L. Ferrari, "The Vatican as a Transnational Actor," in *The Catholic Church and the Nation-State*, eds. Paul Christopher Manuel, Lawrence C. Reardon, and Clyde Wilcox (Washington, D.C.: Georgetown University Press, 2006), 36.

[130] Shapcott, *International Ethics*, 14.

Communitarian and cosmopolitan approaches to the political community's relationship to the stranger are marked by competing goods. The communitarian approach upholds the good of the community as a stabilizing force for its members. The cosmopolitan approach upholds, by contrast, the good of all members of common humanity. The key moral question for evaluating these approaches is "whether community rights trump individual rights and whether outsiders' interests should count as much as insiders."[131] Communitarians promote the good of the individual by offering the stability of identity and conditions for human flourishing, thereby promoting social cohesion among the political community. The sovereign maintenance of boundaries protects a valuable good: borders "stabilize collective identity, both bridging spaces of mutual recognition and dividing groups of people from each other".[132] The stability of populations also contributes to predictable economic conditions, whereas uncontrolled migration can threaten this with a negative impact on both the community and its newly arrived strangers. The communitarian approach remains open to incorporating new members seeking better living conditions, so long as this is mutually-beneficial and not at the expense of the community's well-being.

The communitarian approach is reflected in nation-states' pursuit of their national interests. For cosmopolitans, the pursuit of the national interest may be viewed as exclusionary and uncooperative, as if it necessarily equates to an egoistic drive for nation-states to consolidate and protect their power and economic development. Nation-states can indeed pursue national interest with the sole goal of protecting and advancing their nations at the expense and

[131] Ibid., 88.

[132] Marianne Heimbach-Steins, "The Ambivalence of Borders and the Challenges of an Ethics of Liminality," in *Living with (out) Borders: Catholic Theological Ethics on the Migrations of Peoples*, eds. Agnes Brazal and Maria Theresa Davila (Maryknoll, NY: Orbis Books, 2016), 236.

denigration of other nation-states. National interest may be construed (perhaps unfairly) as the blind pursuit of a state's own economic and political progress without moral regard for the welfare or exploitation of other states. In this light, all exercises of state authority, and in particular the assertion of territorial border controls, are suspect. By contrast, some Catholic cosmopolitan approaches can overly emphasize the rights of humanity universally above the rights of states. In doing so, they undermine the legitimacy of nation-states' political authority.[133]

However, an exploration of Catholic social teaching with regard to political authority can indicate that this is not necessarily the full picture of national interest. National interest can also be viewed as the exercise and protection of a minority group's self-determination under the principle of subsidiarity. I would also argue that the development of national character and the exercise of common virtue, with an outward concern for the universal common good, may also be contained under the broad umbrella of national interest. The common effort of societies such as nation-states to act morally and in charity is arguably in the state's interest for both national morale and for its overall well-being and growth towards perfection.

The divide between opposing perspectives can either undercut constructive dialogue or, conversely, provide the space for creative tension, stimulating further growth. In order to move beyond intractable positions that undermine the authority of the state and render credible dialogue problematic, if not impossible, it is important to explore how an understanding of the nation-state can be construed within Catholic social teaching. This will allow us to better appreciate and acknowledge the legitimate function and authority of nation-states, as well as

[133] Here I would note the views of William Cavanagh and Anna Rowlands. See: William T. Cavanaugh, "Killing for the Telephone Company: Why the Nation-State Is Not the Keeper of the Common Good," *Modern Theology* 20, no. 2 (2004); Rowlands, "The State Made Flesh: Catholic Social Teaching and the Challenge of UK Asylum Seeking."

allow for more targeted advocacy efforts that call nation-states onwards in their responsibilities towards the universal common good.

Political Authority Oriented to the Common Good

In the contemporary Westphalian global political order, the nation-state system forms the framework for the exercise of political authority. Primary political authority is invested across fragmented political communities marked by territorial control. The nation-state, as a political community, is distinct from other forms of community in that it binds its members together within a particular, exclusive claim to territorial control, under a common government, and, often, through a common national narrative. Like other forms of community, nation-states have a role in shaping the identity of its members and offer the means for communal cooperation that can promote each individual member's flourishing. Under Catholic social teaching, political authority over any human society must, by its nature and purpose, be directed towards the service of the common good:

> Men, families and the various groups which make up the civil community are aware that they cannot achieve a truly human life by their own unaided efforts. They see the need for a wider community, within which each one makes his specific contribution every day toward an ever broader realization of the common good. For this purpose they set up a political community according to various forms. The political community exists, consequently, for the sake of the common good, in which it finds its full justification and significance, and the source of its inherent legitimacy.[134]

The principle of the common good orients all members of the human family to work together for the benefit and fulfilment of all. It means human society should be animated by the goal of promoting the good and flourishing of all people. In Catholic social teaching, according to the magisterium, the common good may be understood as "the sum of those conditions of

[134] Vatican Council II, *Gaudium et Spes*, §74.

social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment."[135] The principle of the common good upholds the common dignity and equality enjoyed by every human person; it directs human society to the protection and enhancement of human life, recognizing that the human person is socially-oriented and inclined to cooperation.[136] Each person, then, must "harmonize their own interests with the needs of others," for their own personal pursuit of fulfilment.[137] According to this principle, "the social order and its development must invariably work to the benefit of the human person."[138]

Political authority serves to organize social life in order to protect individual interests from harm and to promote their flourishing.[139] In light of the human person's inclination towards relationship and society, some form of political authority is necessary to regulate relationships and establish good social order.[140] Catholic teaching recognizes that political authority is ultimately a gift from God, yet properly constrained by limitations.[141] While some form of political authority is necessary for the functioning of society, it is not absolute, nor can any

[135] Ibid., §26.

[136] In their discussion of the common good the Council Fathers proclaimed "the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable. Therefore, there must be made available to all men everything necessary for leading a life truly human." Ibid.

[137] John XXIII, *Pacem In Terris*, §53.

[138] Vatican Council II, *Gaudium et Spes*, §26.

[139] As J. Brian Benestad notes, political authority serves to restrain from harm and promote human flourishing: "The Church's social doctrine still holds that the attainment of the common good requires the political community, institutions of civil society and individuals both to restrain evildoers and remedy unjust situations, and to promote the practice of virtue, while preserving or establishing good mores and institutions." J. Brian Benestad, *Church, State, and Society: An Introduction to Catholic Social Doctrine* (Washington, D.C.: Catholic University of America Press, 2011), 83. Robert Heimburger presents a similar overview of Pope Leo XIII's construction of political authority, which then serves his argument that immigration authority ought to be used only to avert harm. This is unpersuasive, as we can alternatively see that immigration authority to regulate and restrict entry can also be used constructively for nation-building. See: Heimburger, *God and the Illegal Alien*, 124-32.

[140] See: John XXIII, *Pacem In Terris*, §46.

[141] As Pope Leo XIII taught: "As the power to rule comes from God, and is, as it were, a participation in His, the highest of all sovereignties, it should be exercised as the power of God is exercised – with a fatherly solicitude which not only guides the whole, but reaches also individuals." Leo XIII, *Rerum Novarum*, §35.

particular form be considered divinely ordained. Charles Curran argues that, under Catholic social teaching, the state is 'natural, necessary, and good':

> Human beings are social by nature… The Creator has made us this way so that we need to live in various structures and associations such as the family and political community to achieve our own fulfillment and happiness. Gods design for human beings reveals itself in the social nature that is ours. No person is an island. Because the state owes its existence to creation and human nature, it is not only natural and necessary but also good. The state or the political community… has a positive function to promote public well-being and private prosperity.[142]

The human person and the family unit are prior to the organization and ordering of society under political authority and, as such, their integrity must be respected.[143] Political authority, then, must not be invested with excessive powers, but constrained and respectful of the principle of subsidiarity by which lower social units ought to exercise decision-making power to the fullest extent appropriate to them. Political authority serves to promote solidarity among its members and their growing flourishing. As Christ's example demonstrates, authentic authority is exercised as service: "Christ reveals to human authority, always tempted by the desire to dominate, its authentic and complete meaning as service".[144]

The common good is a responsibility of all members of human society. It is the fundamental orientation of political authority, yet also a responsibility held across all segments

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[142] Charles E. Curran, *Catholic Social Teaching, 1891-Present: A Historical, Theological, and Ethical Analysis*, *Moral Traditions Series* (Washington, D.C.: Georgetown University Press, 2002), 138. For Curran, the state is 'natural' and necessary in the sense of being an organic development of human social organization; it is good because humanity is fundamentally good. I note that William Cavanagh is critical of Curran's interpretation, arguing instead that "the state is not natural, but a rather recent and artificial innovation in human political order." Cavanaugh, "Killing for the Telephone Company: Why the Nation-State Is Not the Keeper of the Common Good," 244. I note Cavanagh's antagonism towards the nation-state system risks pitting the Church intractably against any human system of organization.

[143] "The human being and the family are prior to the state in ontological importance, and in God's plan they come before the state and cannot be subordinated to the state. Thus, the person and the natural society of the family constitute strong limits on the role and function of the state." Curran, *Catholic Social Teaching, 1891-Present*, 141.

[144] Pontifical Council for Justice and Peace, Compendium of the Social Doctrine of the Church (April 2004), §383, at the Holy See, http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html#Meaning%20and%20primary%20implications.

of society and by individuals. The common good is a dynamic concept, it evolves and develops according to the shape and development of society. One cannot observe or describe a perfect society that has achieved the common good. As Hollenbach cautions, "The common good that can be achieved in history is a pluralistic ensemble of goods. All of these goods can really though imperfectly, reflect the ultimate good of the communion of all persons with God and each other in the reign of God and the communion of saints."[145] Rather, the common good is a principle that orients society towards the flourishing of all. It is directed to the good of each individual member of society and to the good of all creation. The principle provides an interpretive key for evaluating social structures and the moral quality of political authority:

> Commitment to the common good involves employing a certain corrective bias in evaluating prospective courses of action. In this capacity the concept of the common good functions as a hermeneutical principle, a lens that sharpens our vision for certain features of the political landscape that, for various reasons, are often distorted or otherwise lost to view.[146]

Catholic social teaching boldly proclaims the responsibility of the whole world community for the universal common good. While the common good has traditionally been used as an organizing principle making sense of the exercise of authority over political communities, Catholic social teaching has drawn increasing attention to the responsibility for the global common good and the lack of an effective world authority to govern it. In his encyclical letter *Pacem in Terris*, John XXIII argued that, given the global "problems of utmost gravity, complexity and urgency," the nation-state system, despite the best of intentions, is inadequate to address them on account of a lack of sufficient authority:

[145] David Hollenbach, *The Common Good and Christian Ethics* (Cambridge, UK: Cambridge University Press, 2002), 243.

[146] William A. Barbieri, "Beyond the Nations: The Expansion of the Common Good in Catholic Social Thought," *The Review of Politics* 63, no. 4 (2001): 749-50.

> We are thus driven to the conclusion that the shape and structure of political life in the modern world, and the influence exercised by public authority in all the nations of the world are unequal to the task of promoting the common good of all peoples.[147]

This leads him to ambitiously call for the establishment of a world authority commensurate to the task of advancing the universal common good:

> Today the universal common good presents us with problems which are world-wide in their dimensions; problems, therefore, which cannot be solved except by a public authority with power, organization and means co-extensive with these problems, and with a world-wide sphere of activity. Consequently the moral order itself demands the establishment of some such general form of public authority.[148]

This call for a world authority reflects the expansion of the concept of the common good beyond the confines of the nation-state. As William Barbieri suggests, "The initial impulse driving the expansion of the common good is the imperative to combat the tendency to myopia, chauvinism and violence inherent in an exclusive focus on the national state."[149] A need for such a world government is evident in the lack of effective mechanisms to impartially manage the goods common across national boundaries. Yet despite the calls of recent popes, the prospect of an adequate world authority ordered to the universal common good is unlikely to come to fruition. As Charles Curran concludes on this matter,

> The problems are huge. Experience shows that the powerful nations of the world will not give up their power or sovereignty to a world order. How is this worldwide structure to come about? Who will bring it into existence? How exactly will it be structured? The pitfall always remains that in the context of human limitation, human sinfulness, and the lack of eschatological fullness, such a situation will benefit the powerful and exclude the powerless and the marginalized. The only worldwide political order today is the United Nations - which is quite weak and needs constant strengthening. I seriously doubt if a just and effective global political structure will ever come into existence in the real world.[150]

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[147] John XXIII, *Pacem In Terris*, §134-35.

[148] Ibid., §137.

[149] Barbieri, "Beyond the Nations: The Expansion of the Common Good in Catholic Social Thought," 738. He notes that this also raises a further problem: "What is to stop the common good conceived on global terms from dominating, and ultimately absorbing, the notion of the common good of particular states?" Ibid., 743.

[150] Curran, *Catholic Social Teaching, 1891-Present*, 158.

However, there is still room for imagining some broad structure to coordinate nation-states' and international organizations' cooperative progress toward the common good:

> Yet a global entity exercising all the powers displayed by today's nation states seems neither feasible nor, ultimately, desirable. It would, on the whole, be a mistake to conceive of a supranational order purely on the analogy of the nation state. What the idea of the global common good calls for, rather, is a new, diversified conception of sovereignty that reflects the pluralism of a polity made up not only of states, but of relatively independent actors…[151]

Absent of an overarching world authority, it is left to nation-states to manage global common goods and to administer and protect fundamental human rights. Nation-states may indeed be wary of a world authority, on account of the risk of overreach that may undermine their sovereignty and legitimate exercise of subsidiarity. The nation-state is not a divinely ordered form of social organization.[152] Yet this is the system of authority now in place, one that is unlikely to evolve significantly in the foreseeable future.[153] We are left to work through this system, despite its inadequacy (as identified by John XXIII) for advancing the universal common good. As W. David Clinton argues:

[151] Barbieri, "Beyond the Nations: The Expansion of the Common Good in Catholic Social Thought," 752. Andrew Essig suggests that existing arrangements in international relations are already orienting nations to the universal common good and have potential to foster further cooperation towards it: "International law has the strong potential to become the guarantor of peaceful relations among states and peoples by providing an ordering force for the regulation of human affairs. As states cooperate in the proper formulation of international law and the creation of international organizations, they are directing their authoritative power to the promotion of the international common good." Andrew Essig, "A Catholic Critique of International Relations Theory," in *Toward the Common Good: A Catholic Critique of the Discipline of Political Science*, ed. Robert F. Gorman (Plymouth, UK: Scarecrow Press, 2011), 136.

[152] In his survey of the development of the modern nation-state system of global governance, David Hollenbach demonstrates that "the system of sovereign nation-states is not the only way to organize the world. The global political system can change and develop," suggesting that a new order of governance is emerging which "appeals to the ideas of human dignity and human rights as limits to state sovereignty." Hollenbach, *Humanity in Crisis*, 66-7.

[153] As Mark Amstutz notes, "Cosmopolitans rightly insist that people are morally more important than states, but such a claim is meaningless if institutions are not available to secure and protect those rights." Amstutz, *Just Immigration*, 95.

> If world politics remains the politics of a society of independent states then it remains important to know what the ends of states are. This can help to make the world of states more ethically tolerable. Promoting justice in world politics may not mean overcoming national interest, but rather working through it.[154]

Clinton concludes, "Promoting justice in a world of states means, in part, working with their evolving national interests. It means seeking to nudge in desirable ways the shifting definition of a legitimate state interest."[155] Similarly, Mark Amstutz argues from a realist position that: "the challenge of advancing justice in the international community - and, more specifically, the task of devising morally just immigration practices - must begin with the recognition that nation-states are the fundamental units of the contemporary global order."[156]

I note that for some Catholic ethicists the task for the Church is, rather, to downplay the status of the nation-state. For example, William Cavanagh argues:

> The urgent task of the Church, then, is to demystify the nation-state and to treat it like the telephone company. At its best, the nation-state may provide goods and services that contribute to a certain limited order—mail delivery is a positive good. The state is not the keeper of the common good, however, and we need to adjust our expectations accordingly. The Church must break its imagination out of captivity to the nation-state. The Church must constitute itself as an alternative social space, and not simply rely on the nation-state to be its social presence. The Church needs, at every opportunity, to "complexify" space, that is, to promote the creation of spaces in which alternative economies and authorities flourish.[157]

However, this is not a constructive position. It leaves the Church only intractably antagonistic to the nation-state without recognizing its legitimate function of regulating human society.

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[154] W. David Clinton, "The National Interest: Normative Foundations," *The Review of Politics* 48, no. 4 (1986): 497.

[155] Ibid., 517.

[156] Amstutz, *Just Immigration*, 2.

[157] Cavanaugh, "Killing for the Telephone Company: Why the Nation-State Is Not the Keeper of the Common Good," 266-7. Cavanagh also suggests that "In regarding the nation-state as responsible for the common good, the Church's voice… becomes muted, pushed to the margins." Ibid. 268. I would argue, rather, that the Church's voice becomes muted when it does not take the responsibilities of nation-states seriously. Cavanagh's attitude does not allow for any moral guidance for those charged with exercising governance.

It overamplifies the role of the Church to an unrealistic degree, without offering any alternative model for the better functioning of human society. For Church advocacy to be effective and productive, it must work with social organization as it is now constructed, while holding out hope for its progressive transformation, in order to progress our advocacy on behalf of those who are marginalized within this form of organization.

The contemporary Westphalian nation-state system is legitimately criticized for perpetuating inequalities and for hampering international cooperation over issues of global concern. The nation-state system can seem inadequate to the task of advancing international justice and defending human dignity. The continuing violence of economic exploitation, military interventions, and environmental degradation (not to mention the perilous state of non-citizens vulnerable and under-protected by this system) suggests that a world order structured around the nation-state can be scandalously inadequate. We must, however, work constructively within this particular social order. Our task is, perhaps, to enhance and ennoble the nation-state system to better serve the universal common good. This may mean advancing a communitarian approach tempered by a cosmopolitan outlook. As Mark Amstutz argues,

> Since the ideals of caring for neighbors and welcoming strangers are insufficient in themselves to guide policy-making, the promotion of just migration will necessarily entail communitarian principles building on the existing institutions that structure contemporary international affairs. Consequently, the cosmopolitan ideals that undergird much of the analysis and political advocacy of Christian groups on US immigration should be supplemented with precepts from a communitarian perspective.[158]

[158] Amstutz, *Just Immigration*, 100. I also note Grégoire Catta's helpful exploration of the distinction between moral and political cosmopolitanism in Catholic social teaching, in Grégoire Catta, "Francisco De Vitoria's Moral Cosmopolitanism and Contemporary Catholic Social Teaching," *Journal of the Society of Christian Ethics* 36, no. 2 (2016): 71-74.

Cultivating National Character

Despite its apparent inadequacy for the grand task of advancing the universal common good, the nation-state system can still serve a positive role in protecting the rights and interests of smaller units of global society. While the nation-state system may indeed be flawed and vulnerable to a destructive egoism, it can also serve the positive functions of protecting cultural and social diversity and limiting the tyranny of the majority. Nation-states at least offer a means to promote the flourishing of their own unit of global society, expressing the relationship of subsidiarity to the common good.[159]

Arguably, for subsidiarity to function in the prevailing nation-state system, states must be able to maintain some degree of control over a territorially-defined population. Immigration and border control policies protect the stability of the national population and create conditions for their flourishing, free from the flux and uncertainty of massive population and social change. They protect, to a large extent, the preservation of local cultures. Despite their shortcomings, in this system it remains up to nation-states to protect fundamental human rights, in the absence of any other practical international means for doing so.

An enclosed society of the nation-state must also be judged by its orientation to the universal common good. As a territorially defined entity, nation-states are necessarily concerned primarily with the particular common good of its own people. Yet the cultivation of human

[159] As William Barbieri expresses this relationship, "Placed within the context of the supranational common good, the principle of subsidiarity offers a means of coordinating the global level of community with lower level groups, including nation-states. On the one hand, it preserves the integrity of the goods of smaller groups by placing them beyond the legitimate purview of any global political authority. On the other hand, it establishes the primacy of the supranational common good over more local conceptions in any matters which can be shown to depend for their resolution on concerted global action." Barbieri, "Beyond the Nations: The Expansion of the Common Good in Catholic Social Thought," 745.

flourishing and promotion of solidarity within nation-states can provide hope for the possibility of cultivating an analogous solidarity beyond national boundaries. As W. David Clinton argues,

> A willingness to devote some of one's time to preserving the polity and its liberties on the national level corresponds to a willingness to act according to interest and not sheer cupidity on the international. A policy grounded in the protection of states' interests is not a lofty doctrine, but if it teaches statesmen temperance, moderation, foresight and self-command, it will have raised the ethical level of international behavior.[160]

The pursuit of the national interest does not necessarily demand a selfish egoism directed solely to one's own nation. While the pursuit of national interest more efficiently promotes the good of a particular and stable portion of the world's population, I would also like to suggest that one overlooked element of the national interest is the cultivation of national character. As nation-states ought to protect the interests of its members and promote their growth in virtue and solidarity, this should in turn contribute to the cultivation of a shared and generous outlook beyond their borders. The pursuit of national interest, then, ought to maintain an international outlook that is oriented towards cooperation for the sake of the universal common good. In this way, nation-states can reach the full stature of their purpose and meaning.[161] Such an outlook should include a culture of hospitality for strangers and respect for the shared sense of human dignity for all. It should be concerned for the rights of those who do not enjoy full membership of their communities, seeking to incorporate them and facilitate their civic participation.

The cultivation of national character relies on the possibility of maintaining a stable population. As Dorian Llywelyn suggests, "The healthier the national identity of any one nation, the stronger its potential contribution to international peace."[162] This means that even the

[160] Clinton, "The National Interest: Normative Foundations," 515.

[161] "Just as the moral actions of an individual are accomplished in doing what is good, so too the actions of a society attain their full stature when they bring about the common good." Pontifical Council for Justice and Peace, Compendium of the Social Doctrine of the Church, §164.

[162] Dorian Llywelyn, *Toward a Catholic Theology of Nationality* (Plymouth, UK: Lexington Books, 2010), 17.

national interest oriented towards the universal common good must maintain territorial control and employ measures to regulate migration. In this way, border controls and enforcement of immigration regulation can legitimately complement the pursuit of the common good.

While nation-states are primarily self-concerned, other forces and communities (both within and transcending it) have an important role in expanding its moral horizons beyond its boundaries to consider strangers. The cosmopolitan impulse in Catholic social thinking contributes to this moral expansion. The narrative of the Gospel and the Catholic tradition stirs in people across political boundaries, drawing them together in genuine communion. The Church, then, as a transnational organization with a cosmopolitan outlook provides a refreshing force pushing the nation-state outward from within towards encounter. This marks a continuation of the Church's evangelizing mission:

> if national salvation is to be truly salvific in the life of the nation, it must fully incorporate all the implications of the Christ-event - collective responsibilities as well as rights, justice and charity toward other nations, particularly less powerful ones - ensuring that cherishing national identity is balanced by a concern for the international common good.[163]

The Church can have a key role in forming the political community's moral character. As some suggest, it is the role of the Church to be subversive, to offer prophetic signs of hospitality to the stranger in order to call the community forward. The Church acts as a foil, then, to the self-enclosing overreach of the nation-state.

[163] Ibid., 216.

Conclusion

The prevailing communitarian framework that furnishes nation-states' relationships with strangers serves a necessary function. It protects the stability of communities while cultivating conditions for their flourishing. Their regulated incorporation of strangers and their right to exclude strangers, while distasteful to many, fulfill this function. The communitarian framework may even instead, ironically, foster enhanced openness to outsiders. Members of political communities are more likely to be open to an encounter with strangers and receptive to their regulated admission when their own communal identity is secure. This means that exclusion can, counterintuitively, foster inclusion.

This communitarian approach combined with a cosmopolitanism outlook affirms being both grounded in one's own identity as well as open to encountering difference.[164] One's grounded and secure sense of identity, in turn, provides space for moral concern for the stranger. Nation-states provide a stability that allows identities to be grounded and secure, placing them in good stead for encountering difference, which, rather than overwhelming them, can prompt delight in diversity and an evolution in their worldview.

The nation-state and the Church appear to operate in diametrically opposed frameworks with regard to care for the stranger. I would like to propose, however, that their functions are ultimately complementary. Transcending forces, like the Church, need political communities to enforce exclusion for the sake of their local communities' stability and identity. Conversely, nation-states need the Church and other leavening forces to animate the community's moral character. These forces promote fruitful encounters with strangers and thereby contribute to the

[164] This is perhaps in line with Anthony Appiah's notion of 'rooted cosmopolitanism'. See Kwame Anthony Appiah, *The Ethics of Identity* (Princeton, NJ: Princeton University Press, 2005).

community's moral evolution. Such mutual dependence must often be left unacknowledged and unspoken in order to maintain their creative tension.

Conclusion: Opportunities for More Effective Church Advocacy

The Church rightly calls for nation-states to respect and uphold the human dignity of migrants and provide a hospitable welcome to those in need seeking better living conditions. From a realist perspective, this must necessarily be pursued within the current structure of world order.[165] It is important for Church advocacy to be pragmatic and to acknowledge the legitimate interests and mechanisms of nation-states. While the nation-state system may be flawed, it also has potential to be at the service of the universal common good.

The functioning of the nation-state and the promotion of the common good requires the maintenance of a stable population. This means that migration regulation and the enforcement of border controls is a necessary aspect of national governance. As we have seen, nation-states' assertion of border controls and the regulation of migrant admission (including the exclusion of prospective migrants) can be legitimately interpreted as contributing to the good of both sending and receiving states.

It is important, then, for Church advocacy on behalf of migrants to move beyond simplistic narratives of people on the move seeking conditions for survival and to avoid antagonism to nation-states' legitimate interests. This may mean recognizing the rights of states to enforce border controls for the sake of reducing incentives for dangerous irregular journeys and combatting exploitative smuggling and trafficking operations. While Catholics can have a legitimate variety of opinions over border controls, we can also acknowledge that states'

[165] I note that it is arguable the Holy See's diplomatic activity already reflects a realist approach to international politics: "The Vatican insists on objective moral principles while pragmatically realizing that practical realities frequently result in sub optimal outcomes. Indeed, Holy See diplomacy displays many characteristics of a classic realist approach to global politics…" A. Alexander Stummvoll, *A Living Tradition: Catholic Social Doctrine and Holy See Diplomacy* (Eugene, OR: Cascade Books, 2018), 178. See also 40-42 on the key dilemma between prophecy and prudence in the Holy See's international advocacy.

enforcement of border controls against irregular migrants does not necessarily contradict the common good. If the Church wishes to be credible in its advocacy, it must also appreciate the difficult decisions faced by policymakers who see the reality of global migration in much more complex terms than is often reflected in Church teaching. This may mean there is need for Church thinking and advocacy on migration to be prepared to concede the right of nation-states to use coercive enforcement measures (consistent, of course, with fundamental human rights and without contravening the principle of *non-refoulement*). This requires a more pragmatic appreciation for the bigger picture of public policy, in which uncomfortable decisions must be made for the sake of greater needs that are not always immediately apparent.

Conceding nation-states' rights to enforcement measures need not mute the Church's advocacy on behalf of migrants. Rather, it may amplify its credibility to advocate more effectively for the human rights of migrants, even as enforcement measures are carried out.[166] This may also allow for a more convincing voice in advocating to expand family reunification provisions in immigration programs. Advocacy for family reunification programs can easily coopt the language of national interest, highlighting the benefits of reunited families for the sake of more cohesive and supportive units of society.[167] With a more credible voice that pragmatically appreciates the legitimate purposes of border controls, the Church may be in a more enhanced position to call for justice tempered with mercy for those who fall through the

[166] William O'Neill cautions that borders are always subordinate to the human rights of migrants: "The graduated urgency of basic, mutually implicative human rights claims establishes the relative (lexical) priority of migrants' claims. As in modern CST, the legitimate sovereignty of states in regulating immigration subserves the global common good, so that states are morally bound to respect and promote the basic human rights of both citizen and resident alien, especially the most vulnerable." William O'Neill, "A Little Common Sense: The Ethics of Immigration in Catholic Social Teaching," *American Journal of Economics and Sociology* 71, no. 4 (2012): 993. This does not mean that migrants' interests override enforcement of border controls, but that their basic human rights must be respected and upheld at all times.

[167] Furthermore, the language of national interest can serve to call for the recognition of prior migration flows, as "Established patterns of migration, not only for family members but also for communities and nationalities, deserve the law's recognition and respect." Heimburger, *God and the Illegal Alien*, 189.

cracks of immigration programs. For example, in the United States' context, the Church may be in a better position to advocate for the regularization of the so-called 'DREAMers' (on account of their lack of culpability, length of stay, and effective residence in the United States) if it conceded the problematic nature of irregular entry.

There is a role for Church advocacy to prophetically remind the nation-state of its responsibilities towards the universal common good. The Church, as a moral voice in the civic life of many nations, can play a key role in cultivating virtue and acting as a leaven in society.[168] In this way, it can encourage societies to reach onwards to their higher potential and perfection in fraternal charity and solidarity, extending these sentiments even across borders.

The Church also has a role to play in highlighting injustices that may not always be apparent to policymakers, such as responsibilities of restitution towards states that have been exploited by wealthier states. While I have been advocating for the Church to advance more constructive engagement with nation-states from a realist perspective, there is still space for the Church to draw attention to false narratives guiding immigration policy and calling out unjust structures and sinful exclusionary tendencies:

> Amid this shifting milieu marked by new fears among with more timeless temptations to power and security, the immigration debate has been framed in hyperbolic and often misleading terms that distracts from actual motives and consequences for migrants and communities. Talking points that highlight scarce resources, scheming lawbreakers, or demographic threats often fail to register the pervasive realities of ruptured family lives and gender-based violence examined herein. One of the contributions Christian theology can offer is to unmask these frames for what they are, and reveal what reigning motives sanctify. In other words, scrutinizing dominant rhetoric sheds light on the interests and values that principally drive immigration practices.[169]

[168] As Kenneth Himes suggests "the right of the Church to engage the political order is a consequence of its religious mission to be a sacrament of God's reign." Kenneth R. Himes, "Vatican II and Contemporary Politics," in *The Catholic Church and the Nation-State*, eds. Paul Christopher Manuel, Lawrence C. Reardon, and Clyde Wilcox, Comparative Perspectives (Washington, D.C.: Georgetown University Press, 2006), 23-4.

[169] Heyer, *Kinship across Borders*, 135.

It remains for the Church to highlight structural injustice and draw people to the practice of solidarity, which may "transform relationships of exploitation and domination into just relationships."[170] The Church has a role in promoting a moral cosmopolitanism that expands the moral horizon of nation-states beyond egoistic interests and fosters their interests of national character. It can challenge and transform the prevailing narratives of migrants and promote citizens' awareness of their duties beyond their national borders: "Viewing potential migrants as others to whom we may have responsibilities based on historical relationships rather than as helpless or opportunistic strangers require citizens to change the central narratives about themselves and about potential migrants."[171]

It would be remiss not to mention here at least the extraordinary circumstances in which this thesis has been written. The Coronavirus pandemic has highlighted the need for solidarity at the local and international levels in order to better protect human lives and advance the universal common good. This virus knows no borders and its spread has been facilitated by the forces of globalization; governments and peoples in turn have been united in cooperative efforts. One of the more radical instruments to combat this virus has been the closure of national borders and increasingly stricter immigration regulations. These measures illustrate another way in which we can see that border controls are not wholly exclusionary, but can serve a cooperative purpose at the service of the universal common good. Conversely, this pandemic has also demonstrated how these measures can be used to amplify and exploit fears in a way that frustrates global cooperation and hampers effective responses. One hopes that the communal solidarity that has

[170] Tisha M. Rajendra, *Migrants and Citizens: Justice and Responsibility in the Ethics of Immigration* (Grand Rapids, MI: William B. Eerdmans, 2017), 141.

[171] Ibid.

been lately fostered, even within situations of quarantine and isolation, may continue to cultivate a generous international outlook transforming 'fear' into 'encounter.'

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