

Excerpt from [Principles of a Free Society](#), by Nathan Smith

Chapter 9 Freedom of Migration

“A specter is haunting Europe – the specter of communism,” wrote Karl Marx in the *Communist Manifesto*. For some people, the idea of open borders may be as scary as communism. Europeans were right to be afraid of communism, as events proved. But open borders are not communism. It is true that if the United States instantly and completely opened its borders—if, for example, it took the advice of a 1984 *Wall Street Journal* editorial and passed a five-word constitutional amendment, “There shall be open borders”—the resulting influx would probably strain public order to the breaking point and beyond. The results of a recent Gallup poll,<sup>1</sup> shown in **Table 2**, show just how large the demand for migration is:

**Table : Hundreds of millions worldwide desire to migrate permanently to another country**

Employment, Migration, and Age Around the World

Percentage who would like to move permanently to another country

	Employed	Underemployed	Not in workforce
<b>Sub-Saharan Africa</b>			
Aged 15 to 29	43%	44%	45%
Aged 30 to 65	31%	32%	22%
<b>Europe</b>			
Aged 15 to 29	27%	28%	26%
Aged 30 to 65	17%	23%	11%
<b>The Americas</b>			
Aged 15 to 29	27%	25%	26%
Aged 30 to 65	13%	20%	10%
<b>Asia</b>			
Aged 15 to 29	12%	14%	12%
Aged 30 to 65	8%	10%	5%
<b>Middle East and North Africa</b>			
Aged 15 to 20	25%	31%	14%
Aged 30 to 65	14%	23%	6%

Based on surveys in 105 countries in 2009 and 2010.

Results are projected to total population of each country aged 15 and older

GALLUP

If over 40% of the youth of sub-Saharan Africa and over 30% of their elders, over 25% of young people in the Americas and 10-15% of their elders, over 25% of young people in Europe and 15% or more of their elders, about 10% of Asians and 20% of Middle Easterners and North Africans want to migrate, global demand for migration is several hundreds of millions. Not all of these would come to the United States, but America has always been the biggest magnet for migrants, and another recent Gallup poll found that 165 million foreigners would like to settle

<sup>1</sup> Gallup, September 8, 2010. “Employed or Not, Many Young People Desire to Migrate.” <http://www.gallup.com/poll/142901/Employed-Not-Young-People-Desire-Migrate.aspx>

specifically in America.<sup>2</sup> This is at a time when America is unusually unpopular in the world and when U.S. unemployment is the highest it has been in three decades.

Probably, even if the borders were opened, not all of these would come. On the other hand, “chain migration”—one immigrant comes, then friends and family, who now have a contact in America, follow—might amplify the number. As English continues to spread as a global *lingua franca* and as the economy recovers, demand for migration to America will only increase. The reason the actual number of immigrants is so much smaller than the number desiring to immigrate is that America excludes them by force, or the threat thereof. They are denied visas, or they do not apply because, given the way US immigration officials discriminate on the basis of criteria like education, economic status, occupation, and national origin, rejection would be the near-certain result. The result is that most of mankind is excluded from America permanently, from birth.

Yet it is not too difficult to design an immigration policy that would protect public order, and even the living standards of the native-born, while abandoning discretionary migration control and recognizing, perhaps in a somewhat attenuated form, the right to migrate. Such a policy, called “don’t restrict immigration, tax it” (DRITI), is outlined later in this chapter.

But first I will show that the idea that there is a *right to migrate*, that is, that a migrant has the same right to enter and move about in the streets of a host country as do its native-born citizens, is both more and less radical than it sounds—more radical in its consequences, but less so because the idea of a right to migrate is already implicit in much of American patriotic mythology and political discourse.

First, the Statue of Liberty, a gift to the United States from France dedicated in 1886, which in the late 19<sup>th</sup> century was the first sight that immigrants arriving in New York by sea saw in the New World, still stands in New York harbor and bears a plaque with a poem, “The New Colossus,” that has come to represent the meaning of the statue. The poem runs:

Not like the brazen giant of Greek fame,  
With conquering limbs astride from land to land;  
Here at our sea-washed, sunset gates shall stand  
A mighty woman with a torch, whose flame  
Is the imprisoned lightning, and her name  
Mother of Exiles. From her beacon-hand  
Glows world-wide welcome; her mild eyes command  
The air-bridged harbor that twin cities frame.  
“Keep, ancient lands, your storied pomp!” cries she  
With silent lips. “Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore.  
Send these, the homeless, tempest-tossed to me,  
I lift my lamp beside the golden door!”

Based on its immigration policies today, America is unworthy to take pride in the Statue of Liberty and in what, thanks to this poem and the immigrant experience at Ellis Island, it has come to represent. Not only does America shut out most foreigners who want to come, but it

---

<sup>2</sup> <http://www.gallup.com/poll/139391/roughly-million-mexicans-express-desire-move.aspx>

deliberately discriminates in favor of the affluent and educated, and against just those whom, in the poem, the Statue of Liberty welcomed: the poor, the homeless, the wretched, the desperate.

Yet Americans have not commissioned a couple of tugboats to drag the Statue of Liberty into the sea. We have not even chiseled away “The New Colossus” from the Statue of Liberty’s walls. Americans still revere the Statue of Liberty as a national symbol, and even cite the Statue of Liberty poem with a patriotic pride, weirdly unmixed with shame, at how far we have departed from the ideal it so beautifully expresses.

The Statue of Liberty today holds a position in America’s national psyche similar to that which the Declaration of Independence held in the times when slavery and segregation mocked the brave manifesto that “all men are created equal and endowed with their Creator with ... inalienable rights.” We love it, we take pride in it, we would hardly know who we are supposed to be as a nation without it. Yet we do not live by it, paying a certain price in cognitive dissonance and self-deceit for our hypocrisy; and we may someday find it in ourselves to return to it; yet there is bitter resistance to any such plan.

Again, the idea of a right to migrate was expressed in Ronald Reagan’s Farewell Address in 1989:

I’ve spoken of the shining city all my political life, but I don’t know if I ever quite communicated what I saw when I said it. But in my mind it was a tall proud city built on rocks stronger than oceans, wind-swept, God-blessed, and teeming with people of all kinds living in harmony and peace, a city with free ports that hummed with commerce and creativity, and if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here.<sup>3</sup>

According to Reagan, the factor determining whether someone gets into America should be the “will and heart” of the migrant—*not* the arbitrary decision of a bureaucrat. In other words, there is, or ought to be, a right to migrate.

Again, the idea of the right to migrate is back-handedly expressed when politicians promise, or voters demand, that when illegal immigrants are given amnesty, they will have to “go to the back of the line.” The phrase appeals to a sense of fairness and a desire to avoid rewarding people who cheat the system. Yet it betrays a revealing misconception, namely, that there is a “line” to get into the United States, and that if you wait your turn, you will get in—in other words, a right to migrate.

One waits in line for something one has a right to. Concert tickets, for example: if there were no line, I could buy one, and might be able to sue the organizers of the concert if I were arbitrarily refused. Because there are many buyers and few cashiers to sell them, it takes time to process the transactions, and I have to wait; but eventually I will get to the front of the line and buy my ticket. The “back of the line” rhetoric implies that Reagan’s “city on a hill” with “doors... open to anyone with the will and heart to get here”—legally—is a reality.

The fact that America excludes most foreign-born persons from birth makes America’s claim to be a beacon of freedom and equality, a land where merit rather than birth determines a person’s station in life, hypocrisy; or if you prefer—to put it more charitably at the cost of entertaining a hope that the future may disappoint—aspirational. And it makes certain

---

3 Ronald Reagan’s Farewell Address, <http://old.nationalreview.com/document/reagan200406052132.asp>

arguments that are used to justify measures against illegal immigrants quite spurious. For example, journalist Mary Kate Cary argued in *US News and World Report* that:

Our [ancestors] all came to this country legally, [some of them after] considerable delay and difficulty. My grandparents already spoke English, [others] did not and they had to learn the language before they could become citizens—something that has become controversial these days. “They had to go to some trouble to become citizens, and that’s all we’re asking now,” said one guy. “Just put forth some effort, and come in legally, like our families did. That’s all we’re asking.” Maybe a mainstream consensus is emerging from the debate over this unreasonable law in Arizona: that securing our border has to come first—and then fair, reasonable but well-enforced immigration rules should follow. It’s like he said: “That’s all we’re asking.”<sup>4</sup>

In order legitimately to claim that “all we’re asking” is that immigrants “put forth some effort, and come in legally,” we would have to ensure that legal channels are available, not just to some, but to all aspiring immigrants, and in particular to any immigrants whom, when they come in illegally, we would be inclined to blame. The truth is that the U.S. makes hardly any visas available for unskilled workers, despite the high demand for them in the service, agriculture, and other sectors; and that the vast majority of illegal immigrants never had the option of coming in legally.

“All we’re asking,” in reality, is that immigrants permanently relinquish the rich opportunities that the American economy offers them (at least, relative to what they had at home) in order to obey laws to which they never consented and in which they had no say, which were not made with their interests in mind, and of the effects of which the people who *did* have a say in making them, namely, the American people, seem to be so ignorant that they think “all we’re asking” is for these immigrants to come into the country through non-existent legal channels.

Articles like Mary Kate Cary’s are regularly published in reputable and widely-read newspapers, magazines, and journals. Such falsehoods as the claim that “all we’re asking [is that] they come in legally” would not ordinarily get past the fact-checkers of a prominent publication. But the explanation of this weird ignorance and inaccuracy is not far to seek. Why should Americans know anything about our immigration laws, when they will never be subject to them?

“Rational ignorance” of voters is a general problem for democracy—why invest time and effort into choosing the right candidate, when no one’s vote ever changes the outcome of an election?—but one factor that mitigates rational ignorance is that people have an incentive to discover what the laws are when they personally are, or stand to be, affected by them. Since the people who have a say in making laws regulating migration is the exact mathematical inverse of the set of people who are subject to them, this partial antidote to voter ignorance is not operative in the case of migration restrictions.

The obliviousness of the “sovereign” American people as typified by Mary Kate Cary to the real nature and effects of their immigration laws is reminiscent of another sovereign person, Queen Marie Antoinette of France just before the revolution. According to legend, when told that the peasants had no bread, she said, “Then let them eat cake”—cake (*brioche*) being a luxury bread enriched with eggs and butter. Whether or not Marie Antoinette really said this (the phrase

---

4 <http://www.usnews.com/blogs/mary-kate-cary/2010/05/04/Arizona-Immigration-Law-May-Lead-to-Consensus.html>

may be apocryphal from the malevolent pen of Jean Jacques Rousseau), the anecdote usefully illustrates the Queen's ignorance of the condition of the people she (and her husband Louis XVI) ruled.

In defense of Marie Antoinette, though, her ignorance somewhat excuses her unconcern, for if she thought the peasants could all afford to eat cake when their bread ran out, she might well indulge in courtly luxuries without guilt. It was not so much Marie Antoinette who was to blame, as the system which gave people like her powers that they ought not to have had. Similarly, Americans who think that legal channels were available to illegal immigrants, and they simply disdained to use them, can be partly excused for getting angry at them for not "going to some trouble" and waiting in "line." The blame lies less on them than on a system that gives American voters, through their representatives and government bureaucracies, powers that they ought not to have of deciding who is and is not allowed to come into the country.

We have argued above that *civil disobedience* is the just and appropriate response to the migration control regimes of the U.S. and other countries. But what should the civil disobedient want the United States to do? What form should the concessions by enlightened Americans take, to make such civil disobedience unnecessary? What should U.S. immigration policy be?

The "comprehensive immigration reform" acts that came before Congress in 2006 and 2007 would have opened up new opportunities for, and given new dignity to, millions of people. They would have done much to restore the rule of law in America by giving undocumented residents legal status. But only temporarily. They would probably have triggered a surge in illegal immigration as foreigners sought to take advantage of the amnesty before the window of opportunity closed. And they would surely have attracted, over time, more illegal immigrants, hoping to take advantage of the (anticipated) *next* amnesty. Amnesty,<sup>5</sup> though a good thing, is not a sustainable answer to the immigration question, because it does not recognize the right to migrate.

Of course, politicians in 2006 and 2007 made vague promises to "secure the border" while creating a path to citizenship for those already here. That is, they promised to render thousands of miles of frontiers on land and sea physically impermeable to highly motivated individual migrants, and presumably at least somewhat humanely, without resorting to, say, the murder or torture of migrants. Such a feat has never been achieved and is probably impossible.

Experts like Douglas S. Massey<sup>6</sup> insist that all the increases in immigration enforcement since the 1980s have failed not only to stop, but even to *slow* illegal immigration, and even that they have *increased* permanent illegal migration by making the alternative of seasonal migration more difficult. I find it hard to believe that enforcement has been *that* ineffective; yet there is an easy way to make sense of the claim. Border enforcement increases the *cost*, in money and hardship, of migrating, but that cost is still small compared to the *value* of migrating.

If U.S. GDP per capita is \$46,400,<sup>7</sup> while Mexico's is \$13,500, and if we assume the economic growth rate in both countries is about the same and the discount rate is 1% more than economic growth, the benefit of living in the U.S. rather than Mexico for a typical migrant might be on the order of \$1.3 million. The rewards, then, may just be too large for the border

---

<sup>5</sup> Some advocates of comprehensive immigration reform will, perhaps, not thank me for calling it "amnesty." They argue that because it imposes fines and other penalties, comprehensive immigration reform is not amnesty, and that to call it "amnesty" is to play into the hands of its critics. I think it is amnesty and this word needs to be rehabilitated.

<sup>6</sup> <http://www.freetrade.org/pubs/pas/tpa-029.pdf>

<sup>7</sup> From the CIA World Factbook

enforcement measures applied so far to make much of a difference in the incentives for migration.

Would a border fence solve the problem? From a human rights/civil liberties point of view, this is the closest thing there is to an acceptable way of enforcing migration restrictions, since it involves no violence against persons. A border fence near San Diego seems to have had some success in reducing illegal immigration there. But it has probably only *diverted* illegal immigration to the Texas and Arizona borders, rather than stopping it.

Economically, the United States is rather homogeneous: GDP per capita differs from state to state by a factor of two or less. For a prospective illegal immigrant, one way into the country may be about as good as another; but there is a strong incentive to get in somehow. If there is a fence at one point on the border, a rational migrant will go to another part of it. If there were a fence along the whole border, it would be time to go over or under or around. A person can get over a fence with ladders, or tunnel under it, go around it by boat through the Gulf of Mexico or up the Pacific Coast, or fly over it in a small plane, or perhaps even as a human cannonball with a parachute.

The last whimsical suggestion might not work, but who can guess what methods human ingenuity would devise when the stakes are as high as a million dollars in lifetime earnings for each immigrant who gets through?

*Shipping containers* might be one means of transport for the next wave of illegal immigrants if a border fence turned out to be effective. There are already cases of people getting into the U.S. by shipping container.<sup>8</sup> Several million cargo containers arrive in the United States each year. A standard shipping container is 40 feet by 8 feet by 8 feet, and may spend 3-4 weeks at sea *en route* from China to the United States. It is typically not opened for inspection in either the port of departure or the port of arrival, but is lifted by a crane onto a truck and delivered to a final customer. To inspect every incoming shipping container would raise prices on all kinds of imports and be crippling for the US economy. The cost of shipping one container from China to the US is around \$5,000.

Not many people resort to immigration by shipping container now, of course. But for a person who is willing to live in a shipping container for a little over a month, this might be the next best way to get into the United States, if the Mexican border is effectively closed. The biggest problems are feces and the lack of fresh air, but technology might find solutions to those problems if there was enough demand for them. Anyway, would you spend four weeks in a stinking shipping container to raise your lifetime earnings by one or two million dollars? I would. But it would take a certain human infrastructure—front companies, internet forums—to help people come into the United States by shipping container on a large scale. A border fence and an amnesty for the illegal immigrants still here might be just the thing to trigger the emergence of this industry.

What is needed is a policy that decriminalizes immigration, along the lines of the “don’t restrict immigration, tax it” (DRITI) policy outlined below. DRITI is a serious policy proposal in the sense that I believe, both that enlightened self-interest should motivate, and that justice demands, the adoption by the United States and other countries of a policy along these lines. But since the policy is not politically feasible at present, in another sense the proposal is a mere thought-experiment.

---

<sup>8</sup> [http://seattletimes.nwsourc.com/html/localnews/2002914004\\_smuggling.html](http://seattletimes.nwsourc.com/html/localnews/2002914004_smuggling.html)

I offer it partly in order to evoke in the reader's mind a certain kind of moral, or pseudo-moral, objection, which I will then refute. For false moral ideas can do as much harm as deliberate evil. Nothing inflicts as much suffering in today's world as the false notion that when our fellow man is in need *nearby*, we must not only help him but coerce others to do so, yet we can justly avoid this obligation only by keeping our needy fellow men at a distance by force.

*Don't restrict immigration, tax it*

DRITI would establish a new visa, available to any foreign-born person whom it is implausible to accuse of any connection with or propensity for terrorism. Depending on how this criterion was applied, large populations in many parts of the Muslim world might be excluded; but virtually everyone in Western Europe, East Asia, Latin America and Australasia, and most Indians and Russians, would be eligible. The new visa—call it the DRITI visa—would entitle a person to live and work in the United States indefinitely, provided that several conditions were met:

1. *Deposit.* Prior to receiving a DRITI visa, each intending immigrant would have to register with a US consulate and make a deposit equal to the estimated cost of deporting him from the United States. This deposit would “pre-reimburse” the government for deporting him or her if he or she became destitute and requested repatriation. A DRITI immigrant who returned home using his own resources could reclaim his deposit.
2. *Surtax.* A special surtax would automatically be garnished from the wages of all DRITI immigrants.
3. *Mandatory savings.* For any prospective immigrant who applies for and receives the DRITI visa, a special savings account would be created, managed by the US government but owned by the immigrant. This savings account would have the following feature: *money could only be withdrawn from it when the immigrant is physically present in his home country.*

As long as the immigrant would work in the United States, mandatory savings (over and above the surtax) would be garnished from his wages at a certain rate and deposited in the account. Money can only go into the account by this mechanism, that is, by being deducted from wages earned in the United States. It cannot be deposited in the account from other financial resources the DRITI immigrant may possess. (Regulations would need to address the issue of how much self-employed DRITI immigrants would have to/would be allowed to deposit into the account.)

4. *The path to citizenship.* A certain threshold would be established beyond which mandatory savings would cease to be collected from the DRITI immigrant. For example, if the threshold were \$50,000, the government would garnish the immigrant's wages until such time as there was \$50,000 in his account, then cease to do so. Thereafter the immigrant would still be subject to the surtax, but not to mandatory savings. Also, he would presumptively have the right to become an American citizen, *but only at the cost of forfeiting the savings account to the government.* Other conditions—knowledge of English, character witnesses, an oath of allegiance—might also

be added as conditions for citizenship. Of course, having become a citizen, the immigrant would have all the rights of other citizens and would not be subject to the surtax.

5. *Compensation of natives.* Because some natives would lose out by competition with DRITI immigrants, revenues from the surtax and from savings forfeited by new citizens would be distributed among American natives and naturalized citizens to ensure that none (or very few) of them are made worse off by DRITI. Payments (money to keep it simple) might be distributed among all Americans, or—because competition from immigrants would most affect the relatively uneducated and unskilled, who have the lowest incomes—on a means-tested basis.

6. *Children.* The children of DRITI immigrants would enjoy birthright citizenship under the 14<sup>th</sup> Amendment. That would tempt many parents to come to America under the DRITI policy so as to give their children access to birthright citizenship. Would this be a problem? Up to a point, no. America *needs* more children to finance the retirement benefits of the older generations. If the education of children of DRITI immigrants were regarded as too much of a burden, state expenditures incurred for the education of U.S.-born children of DRITI immigrants could be deducted from the mandatory savings accounts of DRITI immigrants. If this were not sufficient, extra surtaxes might be imposed on *all* DRITI immigrants to offset the costs incurred by the government in educating U.S.-born children of the more fertile ones.

The purpose of the deposit—to provide a sort of social safety net for immigrants without costing the American taxpayer money—and the surtax and compensation of natives—to prevent any Americans from losing out by DRITI—are evident enough, but it may be useful to further elucidate the motives for the mandatory savings program, and its role in the path to citizenship.

One reason for the mandatory savings element in the policy is to make migration a more effective instrument for promoting international development. This aspect of the policy will give DRITI immigrants an incentive either (a) to return home regularly to withdraw money, and thus maintain ties to their homelands, or (b) eventually to return home permanently. Also, it will ensure that returning migrants will bring home not only new skills, ideas and connections, but also money with which to help the economies of their home countries develop. Many may start businesses. Others will be ideal agents and partners for global corporations or international NGOs. Still others may start civil society organizations, establish political parties, or run for office.

Meanwhile, DRITI immigrants who do choose to stay and become citizens will self-select so that they value America for more than just the superior earning power they enjoy there. It will be (disproportionately) those who value American culture, or American liberty, or American landscapes, or American friends, who will prefer to stay rather than to return home where they might be relatively wealthy, by the standards of their home countries. A nation is more than just an economic machine, and those who become Americans should probably regard that change as being worth some sacrifice.

DRITI in no way involves “buying citizenship.” It is not proposed that anyone should be able merely to deposit private money in their account. Rather, DRITI immigrants would *earn* citizenship through labor, that is, through becoming part of that great division of labor, that web of interdependence which is the U.S. economy, those bonds of mutual service which are the basis for the American community.

Although DRITI would involve the federal government surrendering its claim to be able to regulate, in discretionary fashion, all entry and exit into the United States, the government would



retain considerable powers to regulate immigration through its three new policy instruments: (a) the DRITI surtax, (b) the DRITI mandatory savings rate(s), and (c) the citizenship threshold.

For example, a high surtax, a low mandatory savings rate, and a moderate citizenship threshold would tend to attract many immigrants intending to become citizens while generating substantial revenue. A low surtax, a high mandatory savings rate, and a high citizenship threshold would attract large populations of sojourners and function as a powerful mechanism for development aid, while creating few new citizens. The government would regulate immigration in arm's-length fashion, rather as the Fed regulates the money supply, rather than through bureaucratic micromanagement and an invasive police state.

Would DRITI solve the problem of illegal immigration and restore the rule of law? It might seem not, for, after all, immigrants might still want to sneak across the border to avoid paying the deposit. Realistically, though, illegally crossing the border is generally harrowing, dangerous, and costly, and few would choose to do it if they had another way into the country. And crucially, *under DRITI, the logical punishment for illegal entry would be different*. An illegal immigrant's crime would be, not that he was present in America, for he would have a right to be in America, but that he had failed to pay the deposit.

The logical punishment would be, not deportation—coercion against his person—but a fine—coercion against his property—equal to the deposit (but that would remain his property) plus a little extra as a disincentive. If the police caught an illegal immigrant, they would exact a fine and then give him a DRITI visa. In effect, there would be an automatic and regular version of the amnesties that passed in 1986 and that were considered by the Senate in 2006 and 2007. It is because illegal immigrants would be punished by coercion against property (a lower-order right, which the state has some leeway to define) rather than by coercion against their persons (a violation of the higher-order rights of *habeas corpus*) that DRITI is **MORE JUST** as well as more efficient than discretionary migration control.

Of course, it is possible in principle that migrants would come without the DRITI visa and be unable to pay the fine when caught, but it is not plausible that this would remain a serious problem. To enter the country illegally is to forgo the benefits of modern transport, making a costly and dangerous trek through the Arizona desert. Very few would choose this course if there were a quick, reliable, and fairly cheap way to get a visa and then hop on a plane or, from Mexico, bus. Once here, it would be difficult for non-DRITI immigrants to find work, since employers could easily recruit DRITI immigrants for jobs native Americans do not want, avoiding the risks of doing business illegally. If traditional illegal immigrants were caught, in the case of Mexicans the DRITI deposit would only be a few hundred dollars, and it is unlikely that the assets even of poor immigrants would be worth less than this amount. It is a safe bet that DRITI visas would put the *coyote* out of business.

The effects of “don't restrict immigration, tax it” would be many and various, and cannot be predicted in detail, but the following three predictions, at least, can be made with some confidence:

1. *DRITI would alleviate a great deal of poverty and suffering in the world.*

There are still countries in the world where much or most of the population is subject to early death from malnutrition and preventable disease is rampant. There are other countries where a small upper class enjoys a Western standard of living and a larger middle class, though poor by

Western standards, is fairly safe from actual hunger, but a substantial part of the population lives by subsistence agriculture or in a precarious state of urban underemployment.

Probably an absolute majority of the world's population lives under conditions that would strike a typical Westerner, either at first glance or upon more intimate familiarity, as shockingly deprived and vulnerable. "Don't restrict immigration, tax it" would enable many of these people to come to America and earn enough money better to satisfy basic needs and simple aspirations. Others would lack the means or the initiative to come themselves, but would benefit indirectly as their more able or fortunate compatriots sent back remittances or returned with money and ideas that would help grow local economies. Probably DRITI would do more good for the world's poor than all the foreign aid in history has ever done or could ever do.

## *2. DRITI would greatly increase the amount of economic inequality and visible poverty and suffering within the United States.*

The DRITI visa would open America's doors to tens of millions, not of the world's poorest for the most part—they would not be able to afford the deposit or the plane ticket—but of people very poor by American standards, many of whom might willingly become poorer in the short run by coming.

It would be easy, at first, to hire unskilled or moderately-skilled workers at minimum wage—and there would be pressure to lower it—for even the most unpleasant jobs, and as firms and households adjusted to take advantage of the new abundance of labor, a new underclass would emerge, first crowded into any makeshift, dingy, dilapidated dwelling available, then creating a demand for builders to erect acres of new, spartan tenements to house the huddled masses.

A new gulf of inequality would open up between the entrepreneurs who would command this new labor supply, on the one hand, and their workers, on the other, but also between the unskilled American-born, who could work and keep his wages and even receive transfers from the government to compensate him for the diminution of his wages due to new competition, and the unskilled DRITI migrant, who, earning the same small wage, would see much of it taxed away as a surtax or into a mandatory savings account, in addition to ordinary taxes.

The presence of large masses of legal, resident non-citizens would challenge Americans' democratic norms. There would be complaints of "taxation without representation," although the truth is that whatever merit there was in that old slogan was due precisely to the lack of *consent* of American colonists to be taxed, and DRITI immigrants will have *explicitly consented* to pay certain taxes in return for receiving the DRITI visa. Americans would have to get used to having their consciences troubled by scenes of deprivation which, though milder than those which are very common elsewhere in the world, today's migration restrictions prevent us from seeing in person.

## *3. America would become a far more racially diverse country.*

Critics of immigration always insist that racism comprises no part of their motives. Perhaps most of them deserve the benefit of the doubt. Yet there is no doubt that racism was a major motive for the adoption of a strict regime of immigration control in the 1920s. And today's immigration control regime, though it has undergone some modifications, is mostly continuous with and still has the same effects as the immigration control regime as that of the 1920s—keeping America largely white.

How are we to interpret this situation? Is the requirement of a passport to enter the United States racist because the motive for establishing this rule was racist, and the law continues to achieve the aims of its racist authors, or is it not racist because those who support and enforce the rule now (and can hardly imagine doing otherwise) no longer feel animosity towards other races? In any case, to establish the DRITI visa would accelerate a change in the racial composition of the American population, with the immigration of tens of millions from non-Muslim Africa and Asia, and probably a sharp rise in marriages between Americans and foreigners with darker complexions.

Other consequences of the DRITI policy might include: acceleration of the global spread of English, while on the other hand, foreign languages would be much more widely spoken within the United States; more foreign tourists and students, for whom, since they do not intend to work, the DRITI taxes would be irrelevant and the DRITI visa would simply be the most convenient way to enter the country; greater cooperation of foreign governments in the fight against terror, lest U.S. inability to certify their citizens as non-terrorists lead to their exclusion from the DRITI program; the emergence of lobbies for the liberation of foreign countries from tyrannical regimes (like the Cuban-Americans in Florida); the appearance of new goods and services in the economy; and greater diversity in cuisine and the arts.

### *Immigration and Islam*

Unless it were deliberately modified to avert this result, DRITI would lead to large-scale immigration of Muslims in search of freedom and economic opportunity, and this is one of the more legitimate reasons to worry about it. Worldwide, Islam exhibits a large democracy deficit vis-à-vis the rest of the world (Rowley and Smith, 2009), partly because of the historical lack of a tradition of freedom, and especially of religious freedom, in Islamic societies. On the other hand, there are now quite a few Muslim-majority democratic countries, such as Indonesia.

In the past, Islamic jurisprudence held that apostasy from Islam is punishable by death. This is clearly an intolerable practice which every just state has a duty to prevent at all costs. And many Muslims still believe in the death penalty for apostasy today, as the cases of Salman Rushdie, whose murder the Iranian government commissioned as punishment for his alleged apostasy, and of Abdul Rahman, an Afghan convert to Christianity whom an Afghan court nearly sentenced to death before yielding to foreign pressure, show. Mass Islamic immigration could lead to Muslim majorities in host countries, able to replace freedom with Islamic *sharia*.

The most drastic response to this threat would be simply to exclude Muslims from eligibility for DRITI visas, or perhaps from the path to citizenship associated with it. It is tenable that the mere fact of adherence to Islam is evidence of a commitment to values inconsistent with respecting the rights of others that justifies excluding a person as a security threat. This would be unfair, however, to those Muslims, probably constituting a large majority, who have no inclination to accept and/or to act on this (arguable) tenet of their faith. It would also be hard to reconcile with America's (and other Western states') sometimes risky but absolutely indispensable traditions of religious freedom. (Yet it must be said that even nominal Muslims may be exposed to dangerous ideological influences through their religion to which others are not prone.)

A more moderate approach might be to screen carefully for known terror suspects and extremists, to keep a close watch on Muslim immigrant communities, and to inquire into the ideology of Muslim DRITI migrants applying for citizenship to make sure they convincingly

disavow the death penalty for apostasy and other traditional Islamic beliefs inconsistent with the principles of a free society, perhaps with the help of oaths or signed statements to that effect.

Mass immigration of Muslims offers two large potential advantages for a country like the United States: (a) emigrants from Islamic countries might absorb the values of freedom and transmit them, through return migration, or relatives, back to the Islamic world, and (b) emigrants from Islamic countries could provide a valuable resource for the intelligence services of the West in their fight against Islamic terrorism. The transformation of the Roman Catholic Church from one of religious freedom's greatest enemies to one of its leading proponents, partly as a result of America's example and the historical experience of Roman Catholics in America, suggests the possible upside to using migration as a way to give Islam a tutorial in freedom.

### *Immigration versus the social safety net*

Aside from special worries about Muslim immigration, I can anticipate two main lines of argument against the proposed DRITI policy. First, one might argue the economics and deny that the consequences would be as beneficial as was claimed in the description of the policy and its impact presented above. I will not devote much attention to this possible objection because I do not think the people with the relevant expertise, economists, are likely to make this argument. The DRITI policy is, in fact, a mere adaptation to *migration* of the uncontroversial argument that the best way for governments to regulate international *trade* is through tariffs and not through discretionary mechanisms such as quotas. Even if some economists do object to the DRITI policy, I think their objections will be political or ethical rather than narrowly economic.

The main moral (or pseudo-moral) objection to open borders has been stated by Paul Krugman: "open immigration can't coexist with a strong social safety net; if you're going to assure health care and a decent income to everyone, you can't make that offer global."<sup>9</sup> That is true, but is it an indictment of open immigration, or of social safety nets? We may unpack Krugman's argument as follows:

#### *Argument A*

1. Americans have a moral duty to assure health care and a decent income to everyone who is located in the US.
2. If open immigration is allowed, so many people will come in that it will be impossible to assure health care and a decent income to everyone.
3. Therefore it is necessary to restrict immigration.

As an alternative, we can reverse the order of the steps and negative the first and last:

#### *Argument B*

---

<sup>9</sup> <http://krugman.blogs.nytimes.com/2010/04/26/the-curious-politics-of-immigration/>

1. Americans have a moral duty not to curtail the right to migrate, but to accommodate those who want to immigrate to the United States for purposes of peaceful labor.
2. If open immigration is allowed, so many people will come in that it will be impossible to assure health care and a decent income to everyone who is located in the U.S.
3. Therefore we must abandon the goal of providing a strong social safety net to everyone who is located in the U.S.

If Argument A—Krugman’s argument—and Argument B—which is advocated here—are both compelling in their internal logic, which conclusion (if either) is right depends on which premise (if either) is right. If the US has a moral duty to provide a social safety net for everyone located within its borders, Argument A is true, and immigration must be restricted. If Americans have a moral duty to accommodate immigrants, Argument B is true, and a social safety net for all residents, though not necessarily for all citizens, must be abandoned.

And here I face a difficulty. I think that the premise of Argument A is, in fact, widely accepted; yet I am completely unable to understand why anyone would accept it. That is not to say that I find the moral case for a social safety net *per se* incomprehensible.

Two strong arguments for a social safety net are (call it “Premise C”) that the marginal utility of a dollar’s worth of income or in-kind assistance for the very poor is much greater than the marginal utility of a dollar for the middle and upper classes, so compulsory transfers to the very poor are justified because they raise overall social welfare; and (call it “Premise D”) that the satisfaction of certain basic needs like health care, food, and shelter is a good of a higher order than the property rights, so the state acts rightly in violating property rights to ensure that basic needs are always satisfied.

I do not agree with either of these arguments, but I understand them. Neither of them, however, is of the slightest use in making the case for a welfare state *whose scope is limited to those who are physically present in the United States* when the needs of people who live abroad are far more intense and urgent, and when restricting immigration does tremendous harm to the foreign-born by cutting them off from the opportunity to improve their lot through migration.

Let us suppose that we reject the premises of both Argument A and Argument B; that we accept an argument for the welfare state from Premise C or Premise D; but that no agency is capable of administering a global welfare state. That would lead us to something like Argument E:

#### *Argument E*

1. Because the marginal utility of a dollar is greater for the poor than for the rich; OR Because people have a right for their basic needs to be satisfied; the government should adopt policies that raise the welfare of the poorest people.
2. Because the government’s resources are limited, the following two policies are incompatible: (a) open borders, and (b) a domestic social safety net which provide health care and a “decent” income (defined as well above the world average) to everyone located on the territory the government controls.

3. A domestic social safety net without open borders will, at best, transfer money to the poorest native and naturalized citizens. Since even the poorest native and naturalized citizens are relatively well-off in global terms, this does not raise the welfare of the poorest people.
4. Open borders will allow a set of people generally much poorer than any American to enter the country and, even if no public assistance is provided, they can enjoy large gains in income through participation in private labor markets.
5. Therefore, an open borders policy should be adopted in preference to a comprehensive domestic social safety net.

In short, the strongest arguments that could be used in support of a social safety net, if we ignore the existence of the rest of the world, become arguments for open borders, or for some form of the DRITI policy, as soon as we take the rest of the world into account. So what an argument like Paul Krugman's really has to assume is that America's moral obligation to "assure health care and a decent income" for a person is completely non-existent when that person is located outside America's borders, then magically appears when a person crosses the Rio Grande.

The only guess I can offer as to why anyone would hold this belief is that people want to avoid, not actual guilt, but *feelings* of guilt that result when one has to see poverty close up. Migration controls serve as a *blindfold*, enabling Americans to ignore most of the poverty, deprivation and vulnerability that exist in the world by keeping it physically at a distance. In the past, people lived without this blindfold. The wealthy lived amidst poverty, sometimes engaging in generous charity to the poor, sometimes learning, perhaps callously, to ignore them.

Citizens of a modern welfare state, by contrast, feel that the state should coerce people to give to the poor so as to remove from the streets the kind of visible poverty that would make them feel obliged to give, allowing them to feel conscientious and affluent at once. The price of this moral complacency is paid by would-be immigrants who are not allowed to come to America to better their condition by honest labor, lest their poverty trouble the consciences of affluent Americans.

#### *The trilemma: apartheid, growing illegality, or open borders*

The apartheid regime in South Africa mimicked the global state system, and the resemblances between the two are real and instructive. South Africa recognized the "autonomy" or "sovereignty" of a number of "tribal homelands" within the internationally recognized borders of South Africa. The country's black people could stay in their "tribal homelands," but in the rest of the country they had to carry "pass books" as a means of regulating their movements, rather as international travelers have to carry passports.

Migration control limited opportunities for the black population and exacerbated economic inequality. Interestingly, one South African leader, Jan Christian Smuts, played a key role in designing both South Africa's apartheid regime and the United Nations structure that formalized on a worldwide scale the Westphalian sovereignty which the United States exercises when it restricts migration. It would be tendentious and an exaggeration to call the global state system,

with its migration controls, *world apartheid*, but the characterization would have more than a kernel of truth in it.

There are also, of course, some important differences between apartheid and migration control in a country like the U.S. First, the scale of *human rights abuses* in apartheid South Africa was worse. In the U.S., an estimated 1 million families were separated by deportations between 1997 and 2007;<sup>10</sup> but this is still less atrocious than the South African apartheid regime, which tortured people to death.<sup>11</sup>

Second, apartheid was explicitly *racist*, while U.S. immigration policy is not; but this is less of a difference than it seems. Racism is a terrible injustice, but the *reason* it is unjust is that it judges a person and determines their station in life on the basis of a factor outside their control: race. But since place of birth is equally outside a person's control, it is not clear why racial discrimination is worse than discrimination on the basis of place of birth.

The fact that race is *externally visible* makes racism especially oppressive. When a person is discriminated against on the basis of traits not externally visible, they may sometimes be treated as an equal by virtue of their anonymity. But the push for national IDs and requirements to show papers, pointing towards an internal passport regime, tend to make a person's identity more easily ascertainable and thus, if it succeeds, will narrow the gap between U.S. discrimination on the basis of national origin and the explicit racism of South African apartheid.

Third, birthright citizenship as required by the 14<sup>th</sup> Amendment of the U.S. constitution marks a clear difference between the U.S. immigration regime and that of apartheid South Africa, where blacks could never become citizens with equal rights.

But if the U.S. government continues to yield to pressure to "secure the borders," these differences will be eroded. Assuming that America does not physically prevent illegal immigration (probably impossible to do, as argued above), there will be a continuing influx of immigrants, accelerating as the economy recovers, and the question is how to deal with them.

Already there are millions of people in the United States who were brought by their parents as children. They are citizens of other countries but may not remember or speak the languages of those countries; the U.S. is the only home they have ever known; yet they lack the ordinary legal rights of Americans, even the right to work. Millions more are U.S. citizens thanks to the 14<sup>th</sup> Amendment, but their parents are illegal immigrants. This creates a difficult problem since the parents are subject to deportation but the children cannot be.

A decisive step towards the establishment of an apartheid regime in America would be the repeal of the 14<sup>th</sup> Amendment to the U.S. constitution, which grants birthright citizenship to everyone born in the U.S.. That would create a permanent underclass of American-born persons without legal rights. Such measures might curtail immigration by making it unappealing for foreigners, but at the price of deeply degrading the free and democratic character of the American republic.

So one course America can take is apartheid. A second is growing illegality. By this option, America would relax enforcement and/or pass some kind of amnesty. Amnesty would create expectations of future amnesties and accelerate immigration. A large share of the population at any given time would lack legal status, complicating social policy and law enforcement. "Crime"—not real crime but illegal immigration—would often "pay"—many

---

<sup>10</sup> <http://www.hrw.org/en/news/2009/04/15/us-deportation-splits-families>

<sup>11</sup> [http://findarticles.com/p/articles/mi\\_m1309/is\\_v21/ai\\_3073322/](http://findarticles.com/p/articles/mi_m1309/is_v21/ai_3073322/)

illegal immigrants would end up better off than if they had obeyed the law—making suckers of the law-abiding and undermining the *ethos* of the rule of law.

The only answer to the immigration question which is consistent with freedom and the rule of law is some kind of open borders policy, such as DRITI.