

Recounting: An Optimistic Account of Migration

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INTRODUCTION

To be forced to move from a beloved home is a tragedy, no matter the cause. But such moves need not end tragically. Though the wounds of losing a homeland may never fully heal, people with the strength and resilience necessary to withstand these kinds of moves are also often well-equipped to build something positive out of pain. They can be tremendous assets to others in their newfound homes.

Nevertheless, most of the literature around the question of refugees and asylum-seekers begins with a series of embedded assumptions about the costs of refugee resettlement. While some of these costs are real and quantifiable, some of them flow out of implicit and largely unsubstantiated assumptions, or incomplete accounting. Perhaps this is not surprising, because it is a problem that affects discussions not just of refugees, but of almost all migrants.

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In analyses of the economic impacts of migration, economists generally view migration as economically beneficial for those who move *and* for the places to which they move.¹ Though the economic literature is fairly consistent in this regard, most discussions around immigration policy still frame the admission of migrants as a cost to the receiving countries.² This is even more true in the specific case of the subset of migrants labeled “refugees.” Scholars and policy makers consistently position refugees not as potential assets to communities, but as a “burden” or “responsibility” to be shared.

The pervasive characterization of migrants in general, and refugees in particular, as a costly “responsibility” that must be borne by host states has significant policy implications. It generates pressures to exclude refugees, make refugee protections temporary, and resist long-term investments in refugee resettlement. But there is good reason to question both the assumption that the long-term resettlement of refugees is extremely costly for receiving states, and the resulting push for expensive border closures and problematic temporary resettlement solutions.

1. Philipp Engler, Margaux MacDonald, Roberto Piazza & Galen Sher, *Chapter 4: The Macroeconomic Effects of Global Migration*, in INTERNATIONAL MONETARY FUND WORLD ECONOMIC OUTLOOK, APRIL 2020: THE GREAT LOCKDOWN MIGRATION TO ADVANCED ECONOMIES CAN RAISE GROWTH 77, 79 (2020), <https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020#Chapter%204>: [<https://perma.cc/B8R6-YNEA>] (finding that migration generally improves economic growth and productivity in host countries); Howard F. Chang, *Liberalized Immigration As Free Trade: Economic Welfare and the Optimal Immigration Policy*, 145 U. PA. L. REV. 1147, 1157 (1997) (concluding that maximizing both domestic and global welfare “imply immigration levels far higher than our laws currently permit”); Bob Hamilton & John Whalley, *Efficiency and Distributional Implications of Global Restrictions on Labour Mobility*, 14 J. DEV. ECON. 61, 70 (1984) (arguing that worldwide efficiency gains from free migration of labor exceed worldwide gross national product when controlling for migration); Gaurav Khanna, Dean Yang & Caroline Theoharides, *Beyond Remittances: How Migrant Wages Help Communities Back Home*, CENTER FOR GLOBAL DEVELOPMENT (Nov. 24, 2020), <https://www.cgdev.org/blog/beyond-remittances-how-migrant-wages-help-communities-back-home> [<https://perma.cc/UHU7-B2WQ>] (noting that “[e]ach year, millions of people depart poor countries to work in rich ones, where their wages rise by multiples, as study after study has found,” and discussing causal mechanisms). There is a more vigorous debate about the wage effects of immigration and the potential for immigration to undercut wages of certain sectors of workers in the receiving state. The economist George Borjas has consistently argued that this is the case, while economists like David Card and Giovanni Peri have just as consistently rejected such conclusions. See, e.g., George Borjas, *The Labor Demand Curve is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market*, 118 QUARTERLY J. ECON. 1335 (2003); David Card & Giovanni Peri, *Immigration Economics by George J. Borjas: A Review Essay*, 54 J. ECON. LIT. 1333 (Dec. 2016); David Card, *Comment: The Elusive Search for Negative Wage Impacts of Immigration*, 10 J. EUR. ECON. ASS’N 211 (Feb. 2012).

2. Perhaps this is because very little about the immigration debate is actually informed or driven by data. See, e.g., Alberto Alesina, Armando Miano & Stefanie Stantcheva, *Immigration and Redistribution* 1, 1 (Nat’l Bureau of Econ. Rsch., Working Paper No. 24733, 2018), https://scholar.harvard.edu/files/stantcheva/files/alesina_miano_stantcheva_immigration.pdf [<https://perma.cc/H4UN-M38C>] (concluding that “salience and narratives shape people’s views on immigration more deeply than hard facts”). This research ought to spur academics, in particular, to be careful about the language used to frame the issue of refugee resettlement.

This Essay challenges the prevailing presumption against refugee admissions, and the broader presumption against immigrant admission, that dominate the discourse around refugees. Flawed framing makes bad policy. In its place, this Essay proposes the injection of greater optimism into policy conversations around refugees. We can acknowledge the very real tragedy at the roots of every human displacement, demand accountability from the actors who set the stage for that displacement, recognize the logistical and economic challenges associated with displacement and relocation, and *still* recognize the generative and productive power of an open stance toward those who move. Most discussions of responsibility sharing do only the first three.

What would a more optimistic outlook do to our discussion around refugees? It would require us to use new kinds of care in our labels and to relentlessly examine our discussion for evidence of racism and other forms of bias. We should not be seeing costs that are not there, and we also should be realistic about the high costs of our migration control regime. We should be attuned to the often ignored ways that long-term benefits of migration might compensate for short-term costs. Also, we should be very wary of accounts that privilege societal homogeneity or the extraordinary relative comfort of the world's most privileged residents. Contemporary scholarly discourse around refugees accepts and promotes the deficit framing of individuals who migrate.³ In so doing, scholars do not simply describe reality; they help to shape it. This Essay urges scholarly accountability for these choices, and points to alternative possibilities.

The stakes at the moment are incredibly high. The United Nations High Commissioner for Refugees (UNHCR) reported that in the year 2020, 82.4 million people were forcibly displaced.⁴ 20.7 million qualified as refugees under UNHCR's mandate, with the rest comprised of internally displaced persons (48 million) asylum-seekers living outside of their country of origin (4.1 million), Venezuelans displaced abroad (3.9 million), and Palestinian refugees (5.7 million).⁵ The vast majority of refugees (and Venezuelans displaced abroad) are living in neighboring countries in the developing world, with only 14 percent living in the world's wealthiest nations.⁶

3. Trabian Shorters has explored how the act of defining individuals and communities primarily in terms of their needs and challenges—even in contexts intended to address those needs and challenges—harms those who are intended beneficiaries of the framing. *See generally* On Being with Krista Tippett, *Trabian Shorters: A Cognitive Skill to Magnify Humanity*, ON BEING PROJECT (Feb. 3, 2022), <https://onbeing.org/programs/trabian-shorters-a-cognitive-skill-to-magnify-humanity/> (discussing the benefits of defining people and communities by their assets, rather than their deficits). Refugees, who are socially and legally defined precisely in terms of their challenges, are a quintessential example of a group of individuals who are framed in terms of their deficits rather than assets. This essay explicates this framing and urges deeper interrogation of the consequences of such framing.

4. *Figures at a Glance*, UNHCR: UN REFUGEE AGENCY (June 18, 2021), <https://www.unhcr.org/en-us/figures-at-a-glance.html> [<https://perma.cc/6PTX-EH9E>].

5. *Id.*

6. *Id.*

In this time of massive global displacement, the United States has taken in record low numbers of refugees. At the close of fiscal year 2021, the United States had resettled only 11,411 refugees—the “lowest number in the history of refugee resettlement.”⁷ In October 2021, the United States resettled only 401 refugees.⁸ And although the U.S. government announced that its scaling back of resettlement was designed to allow prioritization of evacuees from Afghanistan,⁹ early reports suggest that the process faced by individuals and families from Afghanistan seeking humanitarian parole has been arduous, slow, and sometimes antagonistic.¹⁰

This resistance to refugees—including those fleeing from oppressive conditions that the United States has had a firm hand in creating—is not new. The United States has long proclaimed its openness to oppressed migrants, while at the same time, keeping the door firmly barricaded to most of them. Recent decades have seen the repeated repudiation of Haitian migrants by land and by sea;¹¹ the staunch refusal to acknowledge asylum seekers from Guatemala, El Salvador, and Honduras;¹² a general hostility to asylum claims raised by Mexican nationals;¹³ and many other consistent and predictable barriers to entry. In spite of domestic laws that track international obligations to protect refugees and to accord asylum seekers basic protections,¹⁴ the United States generally falls short in protecting asylum-seekers that arrive at the border,¹⁵ and resettles

7. Danilo Zak, *Explainer: The Refugee Resettlement Backlog and How to Rebuild the Pipeline*, NAT'L IMMIGR. F. (Nov. 15, 2021), <https://immigrationforum.org/article/explainer-the-refugee-resettlement-backlog-and-how-to-rebuild-the-pipeline/> [<https://perma.cc/B5WF-5LTQ>]. The report digs into the causes for this low resettlement rate, including the decimation of the refugee resettlement system by the Trump Administration, slow and ineffectual agency screening, and lack of political will. *Id.*

8. *Id.*

9. *Id.*

10. See, e.g., Jasmine Aguilera, *Tens of Thousands of Afghans Who Fled the Taliban Are Now Marooned in America's Broken Immigration Bureaucracy*, TIME (Jan. 26, 2022), <https://time.com/6141516/afghans-humanitarian-parole/> [<https://perma.cc/VN4U-AJY7>]; Marco Poggio, *83,000 Afghans Made It to the US. Now They Need Lawyers*, LAW360 (Feb. 6, 2022), <https://www.law360.com/immigration/articles/1462197/83-000-afghans-made-it-to-the-us-now-they-need-lawyers> [<https://perma.cc/VN4U-AJY7>].

11. See, e.g., Ibrahim Hirsi, *America's Long History of Mistreating Haitian Migrants*, NATION (Oct. 12, 2021), <https://www.thenation.com/article/world/haiti-immigration-mistreatment/> [<https://perma.cc/BWA4-3N7E>] (discussing the past sixty years of U.S. immigration policy toward Haitians and noting its harsh and discriminatory bent).

12. TRAC IMMIGR., *THE IMPACT OF NATIONALITY, LANGUAGE, GENDER AND AGE ON ASYLUM SUCCESS*, <https://trac.syr.edu/immigration/reports/668/> [<https://perma.cc/JUR8-4V3F>] (reporting that asylum-seekers in the United States from El Salvador, Guatemala, Haiti, Honduras, and Mexico have the lowest success rates).

13. *Id.*

14. 8 U.S.C. §§ 1101(a)(42), 1157, 1158.

15. See, e.g., Shana Tabak, *Refugee Detention as a Violation of International Law*, 110 PROC. AM. SOC. INT'L L. 215, 216–17 (2016) (presenting U.S. detention of asylum seekers as a violation of international law).

far fewer refugees than many, much poorer, countries.¹⁶ This is often treated as a rational choice, against which refugee admissions is posited as a humanitarian sacrifice. But this framing is wrong, not only because it fails to acknowledge the role that wealthy nations play in generating the global forces behind forced migration (something taken up in other contributions here),¹⁷ but also because it downplays the actual and potential gains of migrant resettlement. It is a good time for a recount.

The Essay proceeds in four Parts. Part I defines “refugee” and “voluntary migrant”—two terms at the heart of the conversation often positioned in opposition to refugees. Categorical classifications of migrants do a fair amount of the work in shaping analyses of the costs and benefits of migration. Yet this part of the Essay confirms that the boundaries around various categories of migration are, in fact, quite blurry. The instability of the categories in question necessitates revisions of the cost assumptions attached to the categories themselves.

Part II sketches out the existing framework for discussing refugee-related issues in order to reveal the pessimistic orientation of that framework, and links the refugee discourse to broader conversations around migration. I argue that the discourse around refugees draws upon and strengthens a pervasively negative discourse around migration more broadly. In all the ways that matter, these conversations are the *same* conversation. And like much of the discourse around migration more generally, the framework adopted in the refugee responsibility-sharing context implicitly draws upon exclusionary tropes that have deep historic roots in racism.

Part III sheds light on how the prevailing presumption against migrants results in miscalculations of particular “costs” and “benefits” in our assessment of refugee policy.¹⁸ Specifically, this Part focuses on the preference for temporary solutions to “refugee crises.” Using the example of Temporary Protected Status (TPS), used in the United States to accommodate certain displaced migrants not recognized as refugees, this Part raises questions about

16. This failure of refugee responsibility sharing extends beyond the United States. While I focus primarily on the United States, many of the points made here are generalizable to a much broader swath of the world’s wealthiest countries.

17. While an analysis of the distributive effects of migration control is beyond the scope of this Essay, it still seems important to acknowledge the possibility that the actual “burdens” that lead to refugee crises are quite often generated by wealthy states themselves, through their tolerance of and participation in underregulated capitalist accumulation, resource hoarding, extractive and wasteful practices at the root of climate change, racism mobilized in service of these accumulative moves, and wars fought to preserve unjust resource allocation. E. Tendayi Achiume, *Empire, Borders, and Refugee Responsibility Sharing*, 110 CALIF. L. REV. 1011, 1020, 1035–36 (2022).

18. This misallocation is captured in Achiume’s “imperial account” of asylum and refugee law, and in earlier critiques of burden sharing such as those offered by B.S. Chimni. *Id.* at 1011; B.S. Chimni, *The Geopolitics of Refugee Studies: A View from the South*, 11 J. REFUGEE STUD. 350, 361 (1998) (critiquing the “refusal to take an externalist view of the causes of refugee flows”).

why refugee resettlement generally prioritizes temporary solutions over permanent resettlement.

Part IV sketches out an optimistic account of migration—one that eschews a presumption against migrants. This Part argues that there is lots of room to rethink some of the ways that we have described the costs and benefits of refugee resettlement in responsibility-sharing discussions.

To be clear, this Essay does not purport to offer an economic assessment of refugee resettlement. It may well be that in some contexts (perhaps many) the economic costs of resettlement exceed its economic benefits, depending on how those things are counted. But by highlighting the ways that refugee resettlement discourse systematically disregards some costs (most significantly, the costs of border control), while simultaneously overstating others, this Essay suggests the debate about refugee resettlement was never really a debate about costs at all. Instead, a cost discussion has been offered, and structured, to both reflect and justify problematic biases in migration policy. There are better, more optimistic ways to talk about migration.

We cannot hope to reframe the responsibility-sharing discourse thoughtfully until our scholarship better engages with people whose voices are not part of this Symposium conversation—people on the move, and people who are living in the countries that see the most of that movement. Nor can we adequately complete the accounting without understanding the ongoing costs of imperialism. But we can at least begin to think about where optimism might be found, and where it might take us.

I.

SOME DEFINITIONS

It would be impossible to embark on a useful discussion of refugee responsibility sharing without first understanding what the term “refugee” means. This is harder than it sounds. The constantly morphing nature of the label, and the proliferation of labels assigned to migrants seeking various humanitarian forms of protection, are not merely semantic problems. Rather, the labels reflect and enable policy choices that structure and limit the rights of migrants.¹⁹

International law defines the “refugee” category with a precision that does not track realities on the ground, and the term is given legal effect in similarly imperfect fashion. The Convention Relating to the Status of Refugees defines a refugee as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political

19. See, e.g., Roger Zetter, *More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization*, 2 J. REFUGEE STUD. 172 (2007).

opinion.”²⁰ U.S. domestic immigration law tracks this definition.²¹ Notably, this definition excludes a large swath of the people that the UNHCR counts among the forcibly displaced. In the UNHCR data discussed previously, less than a quarter of the world’s so-called “forced migrants” are actually designated as “refugees” by the Agency.²²

The highly legalistic and exclusionary interpretation of the term “refugee” that is used by asylum adjudicators in the United States is not the only possible way to interpret who qualifies as a “refugee.” In fact, because individuals displaced *en masse* are driven at the individual and collective level by complex and mixed motivations, agencies assisting refugees actually apply somewhat flexible and functional understandings of the term.²³ In other words, agencies assisting refugees provide refugee protection for many forcibly displaced people who may not actually meet the technical definition of the term. Ultimately, realpolitik considerations—particularly those of wealthy countries most likely to exclude migrants—shape how agencies and adjudicators apply the refugee definition.²⁴ The label, designed initially to resolve a specific and narrow set of problems in Europe, has never worked well to prioritize those most in need of international protection.

This may be why agencies charged with the protection of refugees extend their umbrella over a broader swath of migrants who are “forced migrants,” or forcibly displaced. In the United States, asylum is unavailable to many of these individuals, but other forms of protection, including temporary protected status²⁵

20. Convention Relating to the Status of Refugees, art. 1A, ¶ 2, July 28, 1951, 189 U.N.T.S. 137.

21. 8 U.S.C. § 1101(a)(42). The U.S. definition of refugee also allows the President to designate as refugees individuals still within their country of origin if they otherwise fit the categories in this definition. Additionally, it includes some additional protections for individuals subjected to coercive population control measures (e.g. China’s one-child policy).

22. See Zak, *supra* note 7.

23. For example, a more functional approach now guides implementation of refugee protection on the ground. Achiume, *supra* note 17, at 1011.

24. Peter Schuck recognized the realpolitik of the refugee designation years ago, writing: “The refugee protection system, however, has less to do with the legal niceties of the Refugee Convention than with the political prerogatives of sovereign states. Each state judges for itself whether a particular migrant or group of migrants who reaches its territory or seeks resettlement there will receive that, or any, relief.” Peter H. Schuck, *Refugee Burden-Sharing: A Modest Proposal*, YALE J. INT’L L., 243, 252. See generally REBECCA HAMLIN, CROSSINGS: HOW WE LABEL AND REACT TO PEOPLE ON THE MOVE (2021) (criticizing the label as lacking meaningful substantive grounding, and arguing that the label primarily serves to justify exclusions of migrants who need to resettle); KAREN AKOKA, L’ASILE ET L’EXIL: UNE HISTOIRE DE LA DISTINCTION RÉFUGIÉS-MIGRANTS (2020) (raising similar critiques and concerns); Zetter, *supra* note 19.

25. *What is TPS*, USCIS (Nov. 29, 2021), <https://www.uscis.gov/humanitarian/temporary-protected-status> [<https://perma.cc/Y4FM-BEFG>] (“The Secretary [of the Department of Homeland Security] may designate a country for TPS due to the following temporary conditions in the country: Ongoing armed conflict (such as civil war)[;] An environmental disaster (such as earthquake or hurricane), or an epidemic[;] Other extraordinary and temporary conditions[.] During a designated period, individuals who are TPS beneficiaries or who are found preliminarily eligible for TPS upon

and humanitarian parole²⁶ are sometimes used to allow these individuals to enter and remain in the country on a “temporary”—or indefinite—basis.²⁷ In turn, forced migrants are defined in opposition to “voluntary migrants,” who purportedly choose to move. Voluntary migrants, including those who move for economic opportunities and are often labeled “economic migrants,” are not eligible either for refugee status or for the broader range of protections available to other forced migrants.

The forced/voluntary distinction and the refugee/economic migrant distinction hold up better in theory than in practice. As Roger Zettner notes:

Prolonged socio-economic exclusion of ethnic minorities creates a powerful sense of injustice. Failing states and warlord economies are predatory and threatening environments, particularly for the economically excluded who may also be ethnic minorities. It is easy to see how these conditions of injustice and fear produce deep-seated perceptions of persecution and create sufficiently compelling reasons for people to flee to seek a better life Are they economic migrants or refugees?²⁸

The end result is that wealthy nations confronting incoming migrants have the power to define those migrants as they see fit: refugees, other forced migrants, economic migrants, or voluntary migrants.

The narrow and legally complex definition of the term “refugee” also presents a dodge for refugee responsibility-sharing proposals. For example, Professors Joseph Blocher and Mitu Gulati cited to the internationally recognized definition for “refugees” at the outset of their 2016 proposal for market-based refugee responsibility sharing. Accordingly, they disclaimed the intent to apply their proposal to economic migrants, and to other forced migrants, including internally displaced persons, and those fleeing civil war and natural

initial review of their cases (*prima facie* eligible): Are not removable from the United States[;] Can obtain an employment authorization document (EAD)[;] May be granted travel authorization.”)

26. For a discussion of various forms of humanitarian parole and deferred action strategies that have been used by the U.S. government to avoid deporting or removing immigrants, see SHOBA SIVAPRASAD WADHIA, *BEYOND DEPORTATION: THE ROLE OF PROSECUTORIAL DISCRETION IN IMMIGRATION CASES* 10–13 (2015). For a discussion of the recent use of humanitarian parole (and its pitfalls) in cases involving Afghans seeking to resettle in the United States, see Aguilera, *supra* note 10.

27. The United States is not alone in devising a series of protections for individuals who fall outside of the formal refugee designation but still warrant protection. See, e.g., Jane McAdam, *The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime*, 17 INT’L J. REFUGEE L. 461 (2005) (describing the European Union’s development of “subsidiary protection,” and critiquing it as an inadequate regional form of complementary protection for individuals warranting protection outside of the formal refugee system).

28. Roger Zettner, *More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization*, 20 J. REFUGEE STUD. 172, 178 (2007); see also HAMLIN, *supra* note 24, at 4–5 (critiquing the “migrant/refugee binary,” in which the former are positioned as voluntary and the latter as forced, as “a dangerous legal fiction”); Jaya Ramji-Nogales, *Moving Beyond the Refugee Law Paradigm*, 111 AM. J. INT’L L. UNBOUND 8, 11 (2017) (labeling the distinction a “gross oversimplification”); Hiroshi Motomura, *The New Migration Law: Migrants, Refugees, and Citizens in an Anxious Age*, 105 CORNELL L. REV. 457, 483 (2020) (noting the difficulty of “line-drawing”).

disasters.”²⁹ But in appraising their proposal (generally favorably), Professor Peter Schuck noted that it would therefore not cover the most easily identified categories of displaced people. By focusing their attention only on the subset of displaced migrants around whom difficult legal line-drawing questions would be raised, the authors may have doomed the workability of their proposal.³⁰ To be practical, “refugee responsibility sharing” must encompass people who are not technically “refugees.”

Even the broader forced/voluntary distinction that structures many conversations around burden sharing fails to encompass many of the people on the move around the world for whom “voluntary” migration is actually coerced or otherwise choiceless. As critical scholars working in the Third World Approaches to International Law (TWAAIL) tradition have long maintained, protective regimes that operate by drawing distinctions based on the motivations of migrants distract attention from underlying failures of political economy—often set in motion by the world’s wealthiest nations—that are forcing many migrants to move.³¹

All of this raises questions about distinctions made between “refugees” and other migrants in the literature assessing the economic impact of incoming migrants. There is a tendency to suggest that refugees are quite differently situated from “other migrants.” A Migration Policy Institute report from 2019, for example, asserted that:

Asylum seekers and refugees typically face greater barriers to finding work than other migrants. First, refugees often suffer from interruptions in their work and education trajectories due to the social and economic

29. Joseph Blocher & Mitu Gulati, *Competing for Refugees: A Market-Based Solution to a Humanitarian Crisis*, 48 COLUM. HUM. RTS. L. REV. 53, 54 n.4 (2016).

30. Peter H. Schuck, *Comments on Blocher and Gulati, Competing for Refugees: A Market-Based Solution to a Humanitarian Crisis*, 1 COLUM. HUM. RTS. L. REV. ONLINE 15, 17–18 (2016), <http://hrlr.law.columbia.edu/hrlr-online/comment-on-blocher-and-gulati-competing-for-refugees-a-market-based-solution-to-a-humanitarian-crisis/> [https://perma.cc/HV82-H4T8]. Schuck noted the mismatch between a functional, commonsense understanding of the term refugee, and the more restrictive meaning often adopted in its legal application:

We commonly speak of refugees as a group because we imagine that those who feel compelled to leave their homes and cross their nation’s borders in search of safety and a better life deserve our solicitude and we seldom inquire into their precise circumstances and motivations. For us, it is enough that they are suffering among the greatest human losses imaginable. For better or worse, however, the legal regime governing refugee flows rejects this simple moral calculus in favor of an exceedingly complex body of refugee and asylum law

Id. at 15.

31. See Chimni, *supra* note 18, at 361 (raising this critique); PATRICIA TUITT, FALSE IMAGES: LAW’S CONSTRUCTION OF THE REFUGEE (1996); NEVATZ SOGUK, STATES AND STRANGERS, REFUGEES AND THE DISPLACEMENTS OF STATECRAFT (1999); see also HAMLIN, *supra* note 24, at 5–6 (crediting TWAAIL scholars for illuminating how “the logic of the migrant/refugee binary helps to obscure these power imbalances by guiding us to focus on internal explanations for why people are leaving countries in the Global South (corruption, war, poverty) rather than externalist forces such as globalization, postcolonialism, and the failures of neoliberalism”).

situation in their home and transit countries. Second, the migration of refugees is typically driven by factors outside of their control (e.g., war, genocide, and persecution), so it tends to be less voluntary and more unpredictable. As a result, they may have been unable to prepare for their move in ways that would improve their integration prospects, for instance by learning the language of their destination country or gathering relevant information about job opportunities.³²

Of course, there are many “economic” migrants who are fleeing emergent conditions, including those brought on by severe weather disasters linked to climate change, and those confronted with deteriorating political situations that make it difficult to continue to live and work in their countries. This reality again points to the difficulties of discussing asylum seekers and refugees as a category hermetically distinct from other migrants, and suggests that caution should be used in characterizing refugees as fundamentally distinct from other migrants. It actually seems safer to assume that many migrants are similarly situated in this regard.³³

II.

EXISTING FRAMES: REFUGEES AND BEYOND

“[T]he burden of providing for refugees is a burden on the entire human community, of which each Nation has to take its reasonable share.”³⁴

So wrote Atle Grahl-Madsen. This formulation, now softened into language of “responsibility,” undergirds much of the legal academic thinking around refugees, and structures our scholarly inquiries into policy solutions. It is worth pausing for a moment to be explicit about what is happening here. First, the statement implicitly, and certainly unintentionally, but with predictable effect, places “refugees” outside of the “human community.” There are refugees and there is the human community who must provide for them. Refugees are the “burden” that the human community must bear. The question is how. And the “how” question is answered by asking nations to take up their “reasonable share” of the “burden” of providing for the refugee.

To be clear, asserting that nations have an obligation of care for refugees is better than the alternative. There are certainly plenty of national leaders

32. HERBERT BRÜCKER, PHILIPP JASCHKE & YULIYA KOSYAKOVA, MIGRATION POLICY INSTITUTE REPORT: INTEGRATING REFUGEES AND ASYLUM SEEKERS INTO THE GERMAN ECONOMY AND SOCIETY 10–11 (Dec. 2019).

33. Some people *do* move from situations of relative comfort and security simply for the purpose of upward economic mobility. Those individuals are the true “economic migrants,” and it probably makes sense to think of them as categorically distinct from involuntary migrants. Ironically, the label “economic migrants” generally is not used to refer to this relatively small and privileged group of migrants. Instead, the label is used to refer to individuals who opt to move under much more constrained circumstances.

34. Atle Grahl-Madsen, *Emergent International Law Relating to Refugees: Past, Present, Future*, in THE LAND BEYOND: COLLECTED ESSAYS ON REFUGEE LAW AND POLICY 206 (Peter Macalister-Smith & Gudmundur Alfredsson eds., 2001).

throughout history, including in the current moment, who have urged their followers to take no responsibility for displaced persons outside of the borders of their own countries; who have declined to take reasonable actions to avert humanitarian crises associated with displacement; and who have advocated responses of indifference or even violence toward individuals seeking refuge at their borders.³⁵ But Grahl-Madsen's more charitable framing is also doing a lot of damaging work by obscuring the responsibility of many "nations" in creating "refugees," while simultaneously divesting "refugees" not merely of agency, but also of a measure of humanity. Grahl-Madsen conceptualized the care of refugees as an unfortunate and costly obligation that nations must assume through no fault of their own. Implicit in this notion is that the care of refugees is, on average, a losing proposition. It is a "burden" that imposes costs on nations that take up their share of the global obligation toward the displaced.

Market-based "burden sharing" proposals—those that offer financial incentives for the care of refugees—are even more explicit about framing this obligation in cost terms. To take one example, in Blocher and Gulati's *Competing for Refugees: A Market-Based Solution to a Humanitarian Crisis*, the authors wrote:

From the perspective of host nations, accepting refugees typically means feeding, clothing, and sheltering them, and giving them access to social services like education. The costs of providing these services can be high, are heavily concentrated among the countries that can least afford them (not to mention the refugees themselves), are compounded when the refugees come from different ethnic or religious groups than those in the host country, and are especially unpalatable when they are the result of some other nation's malfeasance.³⁶

Nor are the concerns about costs limited to discussions that frame refugee burden sharing in market terms. Most of the literature about refugees places not only their care and feeding, but also their political absorption, firmly in the "cost" column. Eiko Thielemann stated:

[R]ecipient states are above all concerned about the absolute and relative numbers of refugees that they have to deal with and they appear to be as aware about direct costs of subsistence, schooling, healthcare or the determination process as they are about the more indirect costs of

35. See, e.g., Eric Lach, *Trump's Dangerous Scapegoating of Immigrants at the State of the Union*, NEW YORKER (Feb. 5, 2019), <https://www.newyorker.com/news/current/trumps-dangerous-scapegoating-of-immigrants-at-the-state-of-the-union> [<https://perma.cc/ZS58-84ZV>]; Justin Spike, *Migrants at Hungary border become part of election campaign*, L.A. TIMES (Jan. 23, 2022), <https://www.latimes.com/world-nation/story/2022-01-23/migrants-at-hungary-border-become-part-of-election-campaign> [<https://perma.cc/3A3S-5HSR>]; Francesca Paris, *Brazilian President Bolsonaro Withdraws From U.N. Compact On Migration*, NPR (Jan. 9, 2019), <https://www.npr.org/2019/01/09/683634412/brazilian-president-bolsonaro-withdraws-from-u-n-compact-on-migration> [<https://perma.cc/W4SW-B5SG>].

36. Blocher & Gulati, *supra* note 29, at 56–57.

social integration.³⁷

Gregor Noll assured us that “[i]t is comparatively easy to determine the costs of food and housing in money terms,”³⁸ but at the same time, he cautioned that, “putting figures on the costs of integration is much more difficult, if not impossible.”³⁹ This begs the question: as a practical matter, what *are* the cost of integration?

The oft-repeated notion that refugees impose a heavy burden on host states tends to be offered as an intuitive and obvious proposition, but a cursory review of the literature reveals little consensus as to what comprises the bucket of goods and services to which the price tag is affixed.⁴⁰ There are certain obvious, material costs: food, housing, education, and medical care must be provided until refugees are sufficiently integrated into society and can contribute economically in excess of what they receive. Perhaps those are the “costs of integration,” yet those costs, at least in Noll’s framing, already appear to be accounted for outside of the nebulous “integration” category. It can also be hard to pin down exactly what costs are at issue when commentators talk about integration. Empirical evidence about the *long-term* costs and benefits of refugee integration is also hard to find. Short-term material costs (food, health care, education) are often added to indeterminate “integration” costs without any discussion of potential long-term offsets. The dollar (and humanitarian) costs of immigration enforcement, the costs of hypertechnical adjudication of refugee status, and the human and financial costs of returning or refusing entry to migrants seeking admission often are nowhere on the balance sheet. The deck is stacked from the start.

The stacking of the deck against refugee protection and admission is unsurprising given that the same sort of rhetoric is generally used in reference to migration *outside* of the refugee context. Migrants—including individuals who are viewed as voluntary migrants, such as “economic” or “labor migrants”—are frequently discussed as a population costly to the host state.⁴¹ This is true even

37. Eiko Thielemann, *Editorial Introduction*, 16 J. REFUGEE STUD. 225, 227 (2003).

38. Gregor Noll, *Risky Games? A Theoretical Approach to Burden-Sharing in the Asylum Field*, 16 J. REFUGEE STUD. 236, 244 (2003).

39. *Id.*

40. See, e.g., Alastair Ager & Alison Strang, *Understanding Integration: A Conceptual Framework*, 21 J. REFUGEE STUD. 166 (2008) (noting the lack of a concrete and uniform understanding of what “integration” signifies in the literature, and attempting to give the concept more precision).

41. These claims may persist in part because they are deliberately fueled by misstatements from the political elite. See, e.g., Philip Athey, *Does illegal immigration cost the United States more than \$100 billion a year?*, ARIZ. REPUBLIC (June 26, 2018), <https://www.azcentral.com/story/news/politics/fact-check/2018/06/26/paul-gosar-how-much-do-undocumented-immigrants-cost-economy/691997002/> [<https://perma.cc/7C9V-EFKJ>] (finding Representative Paul Gosar’s claim that “the cost of illegal immigration to the U.S. was more than \$100 billion a year” to be “[m]ostly false”); Michelle Ye Hee Lee, *Fact Checker: Trump’s claim that immigrants cost taxpayers ‘many billions of dollars a year,’* WASH. POST. (Mar. 7, 2017), <https://www.washingtonpost.com/news/fact-checker/wp/2017/03/07/trumps-claim-that-immigrants-cost-taxpayers-many-billions-of-dollars-a-year/> [<https://perma.cc/355Y-UK3G>] (concluding that the

though the weight of the economic evidence demonstrates that over time, immigrants generate economic benefits to the receiving state,⁴² and often are able to benefit the sending state as well.⁴³

Unsubstantiated assumptions of the costs that migrants impose on society have worked their way firmly into U.S. legal doctrine assessing the appropriate powers to be accorded to the government in policing migration. Thus, without batting an eye, Justice Sandra Day O'Connor, writing for the majority of the U.S. Supreme Court in the 1984 case *INS v. Lopez-Mendoza*, was able to equate the continued presence of an unauthorized worker in the United States with the harms of a "leaking hazardous waste dump,"⁴⁴ and to craft a legal rule that weighed the costs of unauthorized migration accordingly. Similarly, Justice Powell, writing for the majority of the Court in *United States v. Martinez-Fuerte*, assumed that unauthorized migration imposed substantial costs that justify extraordinary policing interventions. The Court faced the question of whether a person who has been detained on the highway while passing through an interior border checkpoint had been "stopped" within the meaning of the Fourth Amendment, thus requiring some degree of individualized suspicion as a justification. To avoid the obvious answer that a law enforcement agent's stop of a moving vehicle is a "seizure" that requires an individualized justification,⁴⁵ Justice Powell explained that unauthorized migration is such a huge problem that

report cited by Trump in advancing his claim that immigrants harm the economy actually concluded that "immigration has an overall positive impact on the U.S. economy in the long run").

42. See *supra* note 1.

43. See, e.g., SUSAN BIBLER COUTIN, NATIONS OF EMIGRANTS: SHIFTING BOUNDARIES OF CITIZENSHIP IN EL SALVADOR AND THE UNITED STATES 122–48 (noting that remittances, defined as money sent by migrants to family members in their country of origin, have been credited with saving the Salvadoran economy "from economic collapse . . ."); *id.* at 7 ("In the year 2002 alone, Salvadorans living in the exterior sent \$1,935,200,000 to family members in El Salvador, an amount equivalent to 13.6 percent of El Salvador's Gross National Product."); Beth J. Asch, *Report: Emigration and Its Effects on the Sending Country*, RAND CTR. RSCH. IMM. POL'Y. (1994) (concluding based on a five-country case study that "on net, emigration has a positive effect on the sending country"). Susan Coutin's analysis of remittances also reveals something that cost-benefit talk often obscures: even when something generates an economic benefit, it may have significant costs. See COUTIN, *supra* (noting some negative effects of a remittance-based economy including "dependency, crime, consumerism and loss of productivity"). This is an important reminder that assessing what constitutes an economic benefit is really quite complicated.

44. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984). See also Raquel Aldana, *Of Katz and "Aliens": Privacy Expectations and the Immigration Raids*, 41 U.C. DAVIS L. REV. 1081, 1089 (2008) ("[I]mmigrants are treated like drugs or hazardous waste, which is precisely the imagery Justice Sandra Day O'Connor evoked in 1984 in *INS v. Lopez-Mendoza* to deny immigrants the exclusionary rule as a remedy.").

45. As a general rule, a Fourth Amendment stop—one form of "seizure"—occurs whenever a person would not feel free to leave or otherwise terminate an encounter with law enforcement. See *United States v. Mendenhall*, 446 U.S. 544 (1980); *Florida v. Bostick*, 501 U.S. 429 (1991). People who are funneled through highway checkpoints are impeded in their progress by, and not free to terminate, their encounters with agents operating those checkpoints. See *Indianapolis v. Edmond*, 531 U.S. 32 (2000) (Thomas, J., dissenting) ("I rather doubt that the Framers of the Fourth Amendment would have considered 'reasonable' a program of indiscriminate stops of individuals not suspected of wrongdoing.").

the government's intrusion is justified in these cases without individualized suspicion. Why? Because "large numbers of aliens seek illegally to enter or to remain in the United States . . . [and i]t is estimated that 85% of the illegal immigrants are from Mexico, drawn by the fact that economic opportunities are significantly greater in the United States than they are in Mexico."⁴⁶ And "[o]nce within the country, the aliens seek to travel inland to areas where employment is believed to be available."⁴⁷ The "cost" is that workers long recruited to the United States to fill jobs in agriculture and the service industry continued to come to fill those jobs at a time when employers faced no federal legal prohibition on or penalties for hiring them. To try to avoid this "cost," the Fourth Amendment prohibition on unreasonable seizures is interpreted in ways that justify even those border checkpoint stops near the U.S.-Mexico border that rely on "apparent Mexican ancestry" as justification for extended detentions.⁴⁸

More recently, the state of Texas deployed assumptions about the cost of noncitizen residents in its litigation challenge to the Deferred Action for Childhood Arrival (DACA) program. Texas argued (and a federal district court judge agreed) that it had standing to challenge the federal immigration program because it incurs the cost of providing driver's licenses to DACA-eligible residents.⁴⁹ Studies of the economic effects of DACA have concluded that it is an economic boon to the state that substantially offsets any minor expenses it incurs in issuing driver's licenses.⁵⁰ But when it comes to immigration, actual data concerning cost continues to play very little role in legal discussions of cost.

Given these deeply entrenched assumptions about the costs of migration, perhaps it is unsurprising that many analyses of refugee resettlement do not engage with actual economic data concerning the long-term effects of this resettlement. When speaking of migrants, refugees or otherwise, a presumption of cost does much of the work that data should do. Many costs are never really explored or broken down at all: they are assumed. And those assumptions, wittingly or not, often echo age-old, racist tropes about who is assimilable, who

46. *United States v. Martinez-Fuerte*, 428 U.S. 543, 551 (1976).

47. *Id.* at 552.

48. *Id.* at 564 n.17.

49. *Texas v. United States*, No. 1:18-CV-00068, 2021 WL 3025857, at *16 (S.D. Tex. July 16, 2021) (finding that Texas had standing to sue the Biden Administration over the DACA program because of the "social service costs" that the state incurred as a result of the program, and concluding the program is unlawful in violation of the Administrative Procedures Act). This is Judge Hanen's second time finding that Texas had standing to sue the federal government over its immigration enforcement choices because of the costs incurred. *See also* *Texas v. United States*, 86 F. Supp. 3d 591, 617 (S.D. Tex.), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *as revised* (Nov. 25, 2015) (holding that Texas had standing to challenge the DACA expansion and the Deferred Action for Parents of Citizens and Lawful Permanent Residents program (DAPA) because of the costs of driver's licenses incurred by the state).

50. Tom K. Wong, Adrian Reyna, Patrick O'Shea, Philip E. Wolgin, Greisa Martinez Rosas, Ignacia Rodriguez & Tom Jawetz, *New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes*, CTR. FOR AM. PROGRESS (Oct. 18, 2016) <https://www.americanprogress.org/article/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/> [<https://perma.cc/4K6Z-QAHB>].

is desirable, who fits, and who belongs. Likewise, and with similar and troubling historical echoes, the potential *benefits* of migration to the host state, while well-documented in other contexts, disappear entirely from the burden sharing equation.

A related assumption is that short-term displacements to neighboring countries involve manageable costs, but permanent third country resettlement involves more extraordinary costs. Presumably, some of this is to do with the aforementioned costs of “integration.” Professor Schuck, for example, suggested that:

Resettlement in a third country is costly to the refugee, who must be uprooted once again and then reestablished in a society that is likely to be alien in culture, language, and other respects. It is also costly to the receiving country, which must either assist the refugees to assimilate successfully or run the social risks of their failure to do so. These costs are likely to be much higher than temporary protection, which can lead to repatriation in the not too distant future.⁵¹

But, as the next Section illustrates, temporariness is both elusive and distinctly costly.⁵² And long-term resettlement, achieved with attention to the integration of new arrivals into social and economic life, has many documented upsides.

III.

THE COSTS OF CURRENT CHOICES

One consequence of the current cost framing is a search for policy responses to forced migration that avoid pathways to permanent resettlement.⁵³ These “temporary” solutions are premised on the notion of possibility of eventual return. As the UNHCR has noted, however, “[m]any displaced populations failed to find long-lasting solutions for rebuilding their lives. Only 317,200 refugees were able to return to their country of origin, and only 107,800 were resettled to third countries.”⁵⁴ These facts have not stopped scholars and policy makers from advocating for and implementing temporary solutions to long-term problems.

51. The Principles for Action in Developing Countries adopted by the 1984 Executive Committee of the UNHCR, probably helped to promote this notion. While calling for durable solutions for refugees, it also labeled permanent third country resettlement as “the least desirable and most costly solution” to refugee crises. Barry N. Stein, *Durable Solutions for Developing Country Refugees*, 20 INT’L MIGRATION REV. 264, 264 (1986) (criticizing this formulation). In 1999, the proliferation of temporary resettlement responses to displaced migrants prompted a convening of some leading experts on refugee policy. Nadia Yakoob, *Report on the Workshop on Temporary Protection: Comparative Policies and Practices*, 13 GEO. IMMIGR L.J. 617, 617 (1999); see also Schuck, *supra* note 24, at 268–69 (advocating for temporary solutions and calling permanent resettlement “the protective strategy of last resort”).

52. See discussion *infra*, Part III.

53. Schuck, *supra* note 24, at 268–69.

54. GLOBAL TRENDS: FORCED DISPLACEMENT IN 2019, UNHCR: UN REFUGEE AGENCY 8, <https://www.unhcr.org/5ee200e37.pdf> [<https://perma.cc/8D3P-GPN2>].

Why do we keep designing solutions that do not align with the lived reality of those seeking protection?

As the discussion in Part II demonstrates, an important part of the answer is that permanent resettlement is thought to be particularly costly. Temporary protections are often offered as a foil to the purportedly high costs of permanent resettlement. It is therefore worth reflecting on the benefits and costs of temporary solutions. One purported benefit of temporary resettlement is that it allows individuals to minimize disruptions in their own life trajectories.⁵⁵ But people would presumably return home if they believed their life possibilities would be enhanced by doing so. The fact that they are not returning home should tell us something about their assessment of their personal situations.

Far from acknowledging the problems of temporary resettlement in adjacent countries, wealthy nations have sought to replicated temporariness when confronting displaced migrants who reach their own borders. These temporary protections have significant costs, as we can see by looking at the example of Temporary Protected Status (TPS) in the United States. TPS is a form of humanitarian relief created by Congress to protect certain noncitizens within the borders of the United States who do not fit the narrow definition of a refugee, but who nevertheless merit protection from forced return to their home countries. These individuals, who might otherwise be subject to deportation or exclusion, are shielded temporarily from return to countries stricken by natural disaster, armed conflict, or other “extraordinary and temporary conditions”⁵⁶ TPS was designed to allow the executive branch to provide designated foreign nationals with a reprieve from removal and with work authorization when natural disasters and other catastrophes make it impossible to return to their homes.

Building on Dr. Susan Bibler Coutin’s notion of the “spaces of nonexistence” inhabited by legally marginalized members of immigrant communities protected from removal only by TPS,⁵⁷ Professor Cecilia Menjivar has catalogued the myriad ways that TPS functioned to limit, structure, and transform the social interactions and self-perceptions of immigrants so designated.⁵⁸ This work has been taken up and expanded upon by a host of scholars studying migrants with temporary protective designations, including not only TPS, but also deferred action under the Obama Administration’s 2012

55. See Schuck, *supra* note 24, at 297 (recommending temporary protection to refugees who need it); James C. Hathaway & R. Alexander Neve, *Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection*, 10 HARV. HUM. RTS. J. 115, 156 (1997) (proposing solution-oriented temporary protection).

56. 8 U.S.C. § 1254a(b).

57. Susan Bibler Coutin, *Illegality, Borderlands, and the Space of Nonexistence*, in GLOBALIZATION UNDER CONSTRUCTION: GOVERNMENTALITY, LAW, AND IDENTITY 171, 193 (Richard Warren Perry & Bill Maurer eds., 2003).

58. Cecilia Menjivar, *Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States*, 111 AM. J. SOCIO. 999, 999–1003 (2006).

DACA program, and other status (or non-status) designations that offer temporary protection from removal.⁵⁹

What all of these accounts make clear is that the designation of protection as temporary carries its own costs, raising questions for people about how much to invest in education, housing, and other life choices, even as it imposes significant costs upon them in terms of the time and money needed to renew status. Other scholars have documented the fact that the temporariness of the protective designation leaves these individuals vulnerable to employment discrimination and adverse working conditions, even as it renders their employers legally vulnerable for failing to comply with the complex regulatory schemes governing these temporary status designations.⁶⁰

Finally, TPS designees face the possibility of arbitrary and racist revocations of status, depending on the changing political winds. This was readily apparent during the Trump Administration. As a general rule, TPS revocations are supposed to occur after country conditions experts in the administration evaluate evidence of changed country conditions and decide that it is safe for TPS recipients to return to their home country. But when President Trump and his close immigration advisors announced the Trump Administration's decision to revoke TPS designations for immigrants from Sudan, Nicaragua, Haiti, and El Salvador, there were clear signs that the revocations of TPS were based not upon evidence, but upon the racist attitudes of high-ranking administration officials and the President himself.

There is a lengthy record of hostile comments made by President Trump, his influential immigration advisor Stephen Miller, and other high-ranking administration officials about immigrants from Haiti, Africa, Central America, and Mexico.⁶¹ At the time of the Trump Administration's attempted revocation

59. Leisy Abrego & Sarah M. Lakhani, *Incomplete Inclusion: Legal Violence and Immigrants in Liminal Legal Statuses*, 37 LAW & POL'Y 265, 266 (2015); Leisy J. Abrego & Cecilia Menjivar, *Immigrant Latina Mothers as Targets of Legal Violence*, 37 INT'L J. SOCIO. & FAM. 9, 12–14 (2011); Leisy Abrego, *Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California*, 33 LAW & SOCIO. INQUIRY 709, 714–15 (2008); Susan Bibler Coutin, Justin Richland & Veronique Fortin, *Routine Exceptionality: The Plenary Power Doctrine, Immigrants, and the Indigenous Under U.S. Law*, 4 U.C. IRVINE L. REV. 97, 100, 115–16 (2014); Miranda Cady Hallett, *Temporary Protection, Enduring Contradiction: The Contested and Contradictory Meanings of Temporary Immigration Status*, 39 LAW & SOCIO. INQUIRY 621, 621–26, 629, 635 (2014); Cecilia Menjivar & Susan Bibler Coutin, *Challenges of Recognition, Participation, and Representation for the Legally Liminal: A Comment*, in MIGRATION, GENDER AND SOCIAL JUSTICE: PERSPECTIVES ON HUMAN INSECURITY 325, 325–29 (Thanh-Dam Truong et al. eds., 2014).

60. See generally Shannon Gleeson & Kati L. Griffiths, *Employers As Subjects of the Immigration State: How the State Foments Employment Insecurity for Temporary Immigrant Workers*, 46 LAW & SOCIO. INQUIRY 92, 101 (2021) (stating that bureaucratic processes around TPS work “ensnare” employers, and workers by extension). Even at the inception of the TPS program, critics noted its many shortcomings. See, e.g., Dolly Z. Hassan, *An Ephemeral Victory for Refugees: Temporary Protected Status under the Immigration Act of 1990*, 15 ILSA J. INT'L L. 33 (1992) (arguing that the problems with TPS prevent them from having a long-term positive effect).

61. In litigation related to the TPS revocation, a federal district court noted these examples of racism:

of TPS, there was also overwhelming country conditions evidence pointing in favor of keeping TPS in place. In fact, this vivid record evidence, presented in the lawsuit brought by affected TPS recipients, prompted a federal court to enjoin the administration's decision to terminate TPS.⁶² For example, the record revealed that one State Department official, reading the recommendation to end TPS for Sudan, commented, "[t]his memo reads like one person who strongly supports extending TPS for Sudan wrote everything up to the recommendation section, and then someone who opposes extension snuck up behind the first guy, clubbed him over the head, pushed his senseless body out of the way, and finished the memo."

Given the growth of liminal legal statuses in the United States over the past few decades, we actually have a fair amount of data about the lived experience of individuals who have received temporary protections. While programs offering temporary protections are significantly more beneficial for the recipients than being out of status, they also contain significant costs when compared to more permanent statuses. They cut against integration—the very integration identified as an important precursor to reaping the benefits of refugee resettlement. Temporary programs are also more vulnerable than permanent forms of relief to wild shifts of domestic policy, with a resulting instability that is particularly damaging to the lives of individuals already devastated by conditions and experiences that forced them to leave home in the first place. Temporary policies that foreclose access to eventual citizenship or full political

In June 2015, Mr. Trump announced that he was running for President and delivered remarks characterizing Mexican immigrants as drug dealers or users, criminals, and rapists.

"In December 2015, [Mr.] Trump called for 'a total and complete shutdown of Muslims entering the United States.'"

In June 2017, President Trump stated that "15,000 recent immigrants from Haiti 'all have AIDS' and that 40,000 Nigerians, once seeing the United States, would never 'go back to their huts' in Africa."

On Jan. 11, 2018, during a meeting with lawmakers where immigrants from Haiti, El Salvador, and African countries were discussed, including with respect to TPS designations that had been terminated, President Trump asked: "'Why are we having all these people from shithole countries come here?' [He] then suggested that the United States should instead bring more people from countries such as Norway," which has a predominantly white population. He also told lawmakers that immigrants from Haiti "must be left out of any deal."

In February 2018, President Trump gave a speech at the annual Conservative Political Action Conference where he used MS-13—a gang with many members having ties to Mexico and Central America—to disparage immigrants, indicating that they are criminals and comparing them to snakes.

In July 2018, President Trump told European leaders that "they 'better watch themselves' because a wave of immigration of 'changing the culture' of their countries," which he characterized as being "'a very negative thing for Europe.'"

Ramos v. Nielsen, 336 F. Supp. 3d 1075, 1100–01 (N.D. Cal. 2018) (citations omitted), *vacated and remanded sub nom* Ramos v. Wolf, 975 F.3d 872, 922 (9th Cir. 2020). The Ninth Circuit opinion did not disagree with these findings, but concluded, contrary to the federal district court judge, that there was insufficient evidence to indicate that Trump's views had influenced the TPS revocation process. Ramos v. Wolf, 975 F.3d at 899.

62. Ramos v. Wolf, 975 F.3d at 911.

participation also ensure a democracy gap, with substantial numbers of long-time residents excluded from the political process.⁶³ In short, any short-term political benefits that may be obtained by designating the protections for incoming migrants as “temporary” must be weighed against long-term costs to both the individual migrants and the society in which they come to reside. These costs, too, need to be a part of the equation when we assess the costs and benefits associated with refugee resettlement.

The foregoing discussion suggests that a reflexive turn to temporary resettlement solutions for displaced populations is not a good solution for dealing with forcibly displaced populations, whether refugees or otherwise. It is unrealistic insofar as it presumes possibilities of return that rarely seem to pan out. It is also problematic in the ways that it masks the many costs that temporariness imposes on migrants and host societies. The liminality that accompanies temporary resettlement is extraordinarily costly in ways that the literature on refugee responsibility sharing sometimes fails to acknowledge. So, what happens if we instead consider the possibility that migration policies that generously include the possibility of long-term resettlement of broadly defined displaced migrants may be valuable?

IV. TOWARD OPTIMISM

A comprehensive attempt to reframe the cost conversation around refugee resettlement would require a better assessment of who is generating the “costs” associated with human displacement. As Professor Tendayi Achiume reminded us, most existing responsibility-sharing proposals account insufficiently for the effects of imperial history and policy.⁶⁴ A proper account on that score is beyond the scope of this Essay, but would provide a much-needed corrective to current assessments of responsibility.⁶⁵ If a global system of responsibility sharing prioritized the reparative redistributive possibilities of migration policy, current

63. Ruben Garcia has written about the resulting democracy deficit in the context of temporary guestworkers, but the same principles apply here. Ruben J. Garcia, *Labor As Property: Guestworkers, International Trade, and the Democracy Deficit*, 10 J. GENDER RACE & JUST. 27, 36 (2006) (immigrants’ “lack of voice in the political sphere widens the democracy deficit”). Temporary protected status also thwarts integration effort essential to full participation. See, e.g., Janet E. Reilly, *Temporary Refugees: The Impact of US Policy on Civic Participation and Political Belonging among Liberians in the United States*, 35 REFUGEE SURV. Q. 94 (Sept. 2016) (comparing integration of Liberians with temporary status protection to refugees and noting that temporary protections impeded integration through higher education). There is also a growing international body of scholarship making similar findings concerning temporary protections in other countries.

64. Achiume, *supra* note 17.

65. In some ways, Peter Schuck’s early “burden sharing” proposal moved the discussion toward global equity in a rough, but still meaningful, sort of way by taking into account a nation’s ability to pay by calculating its expected contribution. Schuck, *supra* note 24. Of course, some of the other proposed criteria—including the understandable exemption of major human rights violators—make his proposal less likely to track a historically sensitive accounting of imperialism.

U.S. efforts to dodge and dump responsibility⁶⁶ would seem even more egregious than they already do.

Leaving to the care of other contributors the difficult and controversial task of generating a burden-sharing accounting system that accounts for the costs of imperialism, this Essay turns to the heart of the optimistic account of refugee resettlement: taking seriously the benefits of migration. As previously noted, migration is generally understood to generate economic benefits for the sending state, the receiving state, and the migrant.⁶⁷ Refugees are sometimes cast as exceptional in this regard, but that exceptionality seems to rest on a dichotomous understanding of the characteristic of economic migrants and refugees: a dichotomy that does not withstand scrutiny.⁶⁸ Unsurprisingly, there is data to suggest that when refugees are allowed to integrate into a receiving state, the host state and the refugee can both benefit economically. This is true of refugees in the United States⁶⁹ and in other countries.⁷⁰ While there is local variation, and while it is clear that the benefits do not incur in the short term, the overall picture of the economic effects of refugee resettlement is positive. This hardly seems surprising, insofar as it mirrors the economic effects of immigration more

66. See Katerina Linos & Elena Chachko, *Refugee Responsibility Sharing or Responsibility Dumping?*, 110 CALIF. L. REV. 897, 909 (2022); Ayelet Shachar, *Instruments of Evasion: The Global Dispersion of Rights-Restricting Migration Policies*, 110 CALIF. L. REV. 967, 999.

67. See *supra* note 1.

68. See *supra* notes 28, 30–31, and accompanying text.

69. See, e.g., Julie Hirschfeld Davis & Somini Sengupta, *Trump Administration Rejects Study Showing Positive Impact of Refugees*, N.Y. TIMES (Sept. 18, 2017) (discussing a draft report from July 2017 by the Department of Health and Human Services, which the Trump Administration did not release, finding that refugees contributed \$63 billion more to government revenues than they received, during the previous decade) [<https://perma.cc/8BK6-MLL4>]; John Gaber, Sharon Gaber, Jeff Vincent & Darcy Boellstorff, *An Analysis of Refugee Resettlement Patterns in the Great Plains*, 14 GREAT PLAINS RSCH. 165, 165–83 (Oct. 2004) (finding positive impacts of refugee resettlement in a case study of refugee resettlement in Lincoln, Nebraska); Anna Marie Mayda, Chris Parsons, Giovanni Peri & Mathis Wagner, *The Labor Market Impact of Refugees: Evidence from the U.S. Resettlement Program 3* (U.S. Dep't State Off. Chief Economist, Working Paper No. 2017-04, 2017) (documenting robust causal evidence that there is no adverse long-run impact of refugees on the U.S. labor market).

70. EUR. COMM'N, AN ECONOMIC TAKE ON THE REFUGEE CRISIS: A MACROECONOMIC ASSESSMENT FOR THE EU 4 (2016) (concluding that “[i]f well integrated, refugees can contribute to greater flexibility in the labour market, help address demographic challenges, and improve fiscal sustainability”); Rieti Gengo, Rahul C. Oka, Varalakshmi Vemuru, Mark Golitko & Lee T. Gettler, *Positive Effects of Refugee Presence on Host Community Nutritional Status in Turkana County, Kenya*, 30 AM. J. HUM. BIOLOGY (Jan. 2018) (hypothesizing that access to refugees’ trading networks, including in cereals, might account for the higher nutritional status of a community near a refugee camp in Kenya); Jean-François Maystadt & Philip Verwimp, *Winners and Losers among a Refugee-Hosting Population*, 62 ECON DEV. & CULTURAL CHANGE 769, 773 (2014) (finding an aggregate positive effect (with some occupation-based variations) of a substantial influx of refugees in the Kagera region of Tanzania); J. Edward Taylor, Mateusz J. Filipiński, Mohamad Alloush & Ernesto Gonzalez-Estrada, *Economic Impact of Refugees*, 113 PNAS 7449, 7449 (July 5, 2018) (using a Monte Carlo simulation to examine the economic impacts of refugee camps in Rwanda and finding that the presence of an additional adult refugee within a ten-kilometer radius of the camp increased total real income).

generally.⁷¹ While it is not the case that refugees always improve the economies in host states, the point is that the impact is variable and often positive.

Importantly, integration appears to be a critical prerequisite for reaping these economic benefits.⁷² This fact poses further challenges for those who prefer temporary solutions that are purportedly based on cost concerns. Creating a path to permanent resettlement and designing integration efforts that presume permanent inclusion may be the better economic bet, and one that is also more humane and more politically inclusive.

If we view migration—whether that be movement of “economic migrants” or “refugees”—as potentially highly beneficial to the host state and the global economy, then we must, at minimum, rethink how we calculate the costs of refugee resettlement. Rather than resisting the political, social, and economic integration of immigrants, including refugees, this spending should be seen for what it is: an investment with significant potential to yield long-term benefits. These sorts of investments make more sense than using the umbrella of politically exclusionary temporary protections to shelter people who have been displaced in ways that require long-term solutions.

Up to this point, I have suggested only that a cost-benefit analysis would seem to favor investment in incoming immigrants—including, but not limited to, those who are labeled “refugees”—because such investment would benefit receiving states. I have argued for rethinking the knee-jerk assumption that welcoming refugees is costly.

But it is also important to zoom out a bit further, to see the full context in which the discussion over refugee responsibility sharing is unfolding. That context is one in which wealthy nations expend significant resources on keeping people out (and kicking people out). These efforts extend well beyond those countries’ own borders. Ayalet Shachar reminded us that:

The globalization of mobility and the arrival of refugees to countries that are “non-contiguous” states (i.e., countries that are not in proximity to the conflict zone) have sharpened the political desire to limit the arrival of uninvited and unwanted migrants. Governments, in turn, have sought policy responses which regulate mobility beyond nations’ geographic boundaries, including within the spheres of influence of other states. The resulting reconceptualization of sovereignty as “shapeshifting” has played a major role in the extraterritorial reach of

71. Cf. Dany Bahar, *Why Accepting Refugees is a Win-Win-Win Formula*, BROOKINGS INST. (June 19, 2018), <https://www.brookings.edu/blog/up-front/2018/06/19/refugees-are-a-win-win-win-formula-for-economic-development/> [<https://perma.cc/V8VQ-KXJP>] (canvassing the scholarly research on the beneficial economic effects of migration and arguing that refugee resettlement can also benefit the economies of receiving countries).

72. See, e.g., EUR. COMM’N, *supra* note 70; see also ALEXANDER BETTS, *THE WEALTH OF REFUGEES: HOW DISPLACED PEOPLE CAN BUILD ECONOMIES*, at viii (2021) (concluding, based on aggregated global data, that developing sustainable solutions to the challenges of global migration will require “fully includ[ing] refugees in host country economies, build[ing] economic opportunities in refugee-hosting regions, and navigat[ing] the ambiguous politics of refugee protection”).

restrictive migration policies.⁷³

Her analysis shows not only the legal duplicity, but also the tremendous *cost* of these tactics. States are engaged in a “near obsessive” effort to control migration through the use of state proxies. They expend massive amounts of intellectual energy on the project, but they also spend substantial amounts of money on offshored border control technology.⁷⁴

The costs of the current migration control model are often treated as incidental to the conversation around refugees. But these border control regimes are an essential ingredient in fueling the development of costly and dehumanizing encampments of displaced migrants around the world. But for the immigration control measures aimed at stopping them, displaced people would have meaningful options concerning where best to go.

Border control (immediate or externalized), and its rising evil twin, criminalized, interior immigration enforcement, are extraordinarily expensive.⁷⁵ The costs of border guards, gates, and detention centers are compounded by the costs of a bureaucratic system designed to hand out entry visas to a precious few economic migrants, and then to sort “bona fide asylum seekers” from “economic migrants.”⁷⁶ Then there are the indirect costs of enforcement, including the fiscal and emotional devastation that surrounds the deportation of hundreds of thousands of residents every year. If we are honest about these costs, we begin to see the case for far more open and flexible systems of hospitality toward forcibly displaced migrants, and the case against the ever-increasing spending on the national and international border control apparatus.⁷⁷

Ultimately, it is important to accurately name what many commentators consider the “costs” of migration and refugee integration. Immigration makes some people uncomfortable. It represents change. It puts pressures on existing institutions and orthodoxies because it introduces new institutions and new orthodoxies. It requires a certain degree of flexibility on the part of both the

73. See Shachar, *supra* note 66, at 969.

74. *Id.* For a discussion of the racialized distribution of costs and benefits of the increasingly privatized border control apparatus, see Jennifer M. Chacón, *Same As It Ever Was?: Race, Capital, and Privatized Immigration Enforcement*, in *PRIVATISING BORDER CONTROL* (Mary Bosworth & Lucia Zedner eds., forthcoming 2022).

75. AM. IMMIGR. COUNCIL, *THE COST OF IMMIGRATION ENFORCEMENT AND BORDER SECURITY* (Jan. 20, 2021), <https://www.americanimmigrationcouncil.org/research/the-cost-of-immigration-enforcement-and-border-security> [<https://perma.cc/7G76-22EE>] (reporting that the United States has spent \$333 billion on immigration enforcement in the last 20 years).

76. The American Immigration Council concluded that since 2003, the U.S. government has spent \$333 billion on agencies that carry out immigration enforcement. This is likely an undercount. It does not include state and local spending on policing efforts intended to supplement federal efforts. The \$333 billion figure also does not appear to include spending by the Department of Justice or the Federal Bureau of Prisons for expenditures on the criminal prosecution and incarceration of crimes of migration, such as unauthorized entry and felony reentry. *Id.*

77. See generally KEVIN R. JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* (2007) (making the case for much more open borders).

incoming migrant and the host political community. Many political communities do not want to be flexible. Some of this reluctance is normal human resistance to change. Some of this is racism and xenophobia rearing their ugly heads.

This is why it is so important that scholars avoid intentionally or carelessly repackaging resistance to change, let alone racism and intolerance, in the bland economic rhetoric of cost. Resistance to change, racism, and xenophobia need to be acknowledged in assessing what makes refugee resettlement difficult as a social and political matter, but they need to be assessed in those terms. The people of wealthy nations engage in a great deal of unjustified handwringing about the costs refugees impose upon them. Rather than simply echoing and legitimating this discourse, we have the opportunity to engage with it factually and critically, and in so doing, to help change it.

CONCLUSION

Michael Sandel once objected to market-based responsibility sharing proposals on the grounds that they cause us to “think of refugees as burdens to be unloaded or as revenue sources, rather than as human beings in peril.”⁷⁸ I am less certain than he seems to be that his alternative framework, which seeks to activate some sort of moral *noblesse oblige* toward people in peril, gets us to a materially better place. The history of nations doing the wrong thing when confronted with the suffering of refugees is long and depressing.

Perhaps if scholars dedicate themselves to a more accurate accounting of the actual costs and benefits of refugee resettlement—with a genuine effort to acknowledge the costs of migration control and the psychological and material impact of non-integrative measures—we might achieve better refugee policies.⁷⁹

Ultimately, a sustainable and just migration policy requires a world where people can move freely, and where immigration laws and policies facilitate, rather than impede, the movement of the vast majority of the world’s population. We are a long way from that world today. But a more honest scholarly accounting of the costs and benefits of refugee resettlement strategies might be a first step toward illuminating the interests that are shortchanged when we invest our social resources into gates and walls instead of people.

78. MICHAEL J. SANDEL, WHAT MONEY CAN’T BUY: THE MORAL LIMITS OF MARKETS 63–64 (2012).

79. If nothing else, such approaches may promote more open reception of migrants as a self-interested proposition, leading to better policies through interest convergence. Cf. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (discussing the turn toward desegregation in the United States as the result of a convergence of interests between Black and White citizens). Of course, as Bell cautions, reliance on the self-interest of the dominant group is insufficient to generate truly just policies.

POSTSCRIPT

As this article goes to press, a new wave of migrants is exiting Ukraine on the heels of Russia's invasion of that country. The events of the current moment remind us that societies have a tremendous and inspiring capacity to welcome political outsiders. But many commentators also have noted the relatively favorable treatment of Ukrainian migrants in Europe when compared to that of previous waves of displaced people from North Africa and the Middle East. This differential treatment reveals how racialized assumptions play a key role in structuring the conversations around migrant admissions and exclusions, including whether and how "costs" should be understood to matter.