This paper will discuss the need for developed and mature democracies, such as the United States, to take in substantially more refugees and economic migrants in view of the demand surge for international migration and the obvious humanitarian imperative. It will then argue that this will not happen under the current paradigm, whereby rich-world democracies that allow refugees and economic migrants to settle fail to take adequate measures to ensure safe repatriation and resettlement to migrants’ countries of origin. This failure leads to unconsented permanent residency and subsequent...

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naturalization that fuels a backlash by nativists and social conservatives, as evidenced by the Trump, Le Pen, and Brexit phenomena. The fact that migration to rich-world countries almost invariably leads to permanent residency has the perverse consequence of placing undue pressure on rich-world governments, including the U.S., to do their utmost to exclude both refugees and economic migrants. The current commitment by developed nations to exclude third-world migrants, as evidenced by the maltreatment of Syrian and Rohingya refugees and economic migrants from Latin America, Eritrea, Afghanistan, and sub-Saharan Africa, has everything to do with the failure to repatriate these migrants when feasible. This failure also untethers migrants from their countries of origin, which undermines long-term economic growth and democratization in the developing world. The Trump Administration could take the lead in global migration issues by changing the U.S.’s current immigration and refugee resettlement program by substantially expanding access to temporary residency in lieu of immigration and permanent residency. By doing so, the U.S., and other rich countries that might follow, will be able to address the migration demand to improve global well-being while being responsive to the legitimate needs and concerns of their own citizens.

INTRODUCTION

At the turn of the last century, my grandfather, Dr. Mohamed Casim Mohamed Kaleel, traveled from his native Colombo, Ceylon, to the United Kingdom to study medicine at the venerable Edinburgh University. Upon graduation, he started practicing medicine in Dublin, Ireland, a city he truly loved. Notwithstanding the fact that the United Kingdom was the center of a clearly racist Empire where white Britons had superior rights to their colonial subordinates, the Empire afforded Dr. Kaleel freedom of movement and residency. It was the fear of a Japanese invasion of Ceylon and a concomitant need...
for doctors that prompted British authorities to ask him to return to Ceylon. Dr. Kaleel did so, met the woman who became his wife, subsequently advocated for Ceylon’s independence from the U.K., and then served in Ceylon’s first post-independence government as Health Minister. He eventually had ten children, many of whom, including my mother, migrated to first-world English-speaking democracies.

Paradoxically, nearly a full century later, while racial discrimination is illegal in all first-world nations, the citizens of these nations are increasingly unaccepting of global migrants. This is evidenced by President Trump’s advocacy of a 2,000 mile border wall with Mexico and the rise of anti-immigration populist parties throughout the developed world. The tragic plight of Syrian, Eritrean, and other refugees and the rich-world’s reluctance to accept them demonstrates how migration from the developing world to mature democracies is unwelcome. Myanmar’s genocide of its Rohingya Muslim minority and the refusal of other South and Southeast Asian nations to welcome them demonstrates that persecution of migrants is not relegated to the global north. The dynamics behind the migratory surge, including war, collapsing state


5. Joshua Partlow, For Mexicans, Trump’s Bid Isn’t so Funny Anymore, WASH. POST, Aug. 19, 2015, at A06.


structures, economic dislocation, climate change, and an anticipated population explosion in the Middle East and sub-Saharan Africa, will not abate. Nor will the causes of rich-world recalcitrance, including Islamophobia, xenophobic authoritarianism, socio-economic and intergenerational immobility, income and wealth inequality and, most importantly, unconsented-to migration-based political and cultural changes.10

I. AN ARGUMENT FOR CHANGING THE CURRENT RECALCITRANT IMMIGRATION POLICY TO PROVIDE TEMPORARY RESIDENCY FOR INTERNATIONAL MIGRANTS

In view of global demand, rich countries, including the U.S., have a humanitarian obligation to substantially increase the admission of international economic migrants and refugees (collectively “migrants”). This must be done in a manner that avoids a political backlash or causes an uptick in social dislocation and nativism. This will be exceedingly difficult and will require rethinking how rich-world nations approach the issue of global migration. As long as rich countries continue to treat asylum and migration as a form of immigration, popular pressure will deprive policymakers of the ability to accommodate migrants at the needed level. My proposal is to recognize the humanitarian imperative of welcoming migrants and to foster support for such a disposition by untethering migration from permanent residency and eventual naturalization by means of a substantially expanded temporary residency program. Rich-world governments will have political support to welcome far more migrants than is currently the case because the policy addresses the concerns of conservatives and nationalists who bemoan the cultural and political consequences of permanent international migration and strengthens the position of liberals and moderates who argue for humanitarian admission. The policy will improve overall global well-being because it will lead to the admission of far more temporary residents and will protect the sending states of the developing world by protecting them against an irrevocable loss of their most capable citizens.

Although admitting far greater numbers of temporary residents risks undermining social cohesion and creating a problematic tiered-

10. By this I mean the demographic consequences brought about by generations of unauthorized migration and asylum. When this migration is outside a receiving state’s immigration laws, the argument can be made that migration-based demographic changes are not consented to by the receiving state.
system of residency by depriving migrants’ U.S. born children of citizenship, it is a necessary requirement for a bipartisan immigration compromise. Much of the nativist opposition to immigration is caused by economic insecurity, income inequality, and socio-economic immobility within rich-world countries.\textsuperscript{11} Therefore, advocates for migrant rights will also have to push for domestic political reforms in rich-world countries to encourage socio-economic and intergenerational mobility. These include labor market reforms, greater progressivity in the tax code, and ensuring access to high-quality public schooling, health care, and higher education as a citizenship right. The need for these reforms is beyond the scope of this paper and is addressed in my previous piece published in the Pennsylvania State Law Review.\textsuperscript{12}

President Trump’s election was facilitated by the U.S. electorate’s backlash over the fact that the nation’s demographics have changed dramatically due to the country’s failure to address the permanent residency of illegal migrants, many of whose children have become citizens based on the country’s provision of birthright citizenship.\textsuperscript{13} President Trump could address his supporters’ concerns and provide for a far better alternative to the status quo by adopting policies designed to encourage greater acceptance of migrants in conjunction with stricter border and immigration enforcement. This is a needed change in view of the rise of right-wing populism as manifest by Trump’s election, the United Kingdom’s Brexit vote to leave the European Union, Marine Le Pen’s reaching the second round of the French Presidential election, the success of the far right AFD Party in Germany, and the growth of far-right political parties in other mature democracies.\textsuperscript{14} It is, moreover, a necessary policy change should rich countries seek to fulfill their humanitarian obligation to accommodate the current international migratory surge and avoid becoming


\textsuperscript{13} Inglehart & Norris, \textit{supra} note 1, at 15; Zong & Batalova, \textit{supra} note 8 (stating that in 2016 “immigrants and their U.S.-born children now number approximately number 84.3 million, or 27 percent of the U.S. population”).

\textsuperscript{14} See Inglehart & Norris, \textit{supra} note 1, at 6.
unwelcoming hostages to a fortress-like mentality that demeans the Enlightenment and the idea of global human rights.15

II. THE MIGRATION CRISIS AND ITS CAUSES

The scale of global migration is massive. According to the Pew Research Center, if all of the world’s international migrants, defined loosely as individuals living in a country different from their birthplace, were added together, they would constitute the world’s fifth most populous country with 244 million residents.16 This number has grown by 200% since 1960, which is larger than the 150% growth in world population during the same period.17 The number becomes substantially larger if it were to include the children and grandchildren of international migrants.18 Indeed, the Middle East has the fastest growing international migrant population, having grown from 25 million in 2005 to more than 54 million in 2015.19

Of the nearly 250 million international migrants, only 16 million, or 8 percent, are international refugees.20 This, however, understates the scale of worldwide displacement because more than two-thirds of the 60 million persons displaced from their homes due to war and other forms of conflict still reside in their birth countries.21 To illustrate, the civil war in Syria has led to the displacement of more than 13.5 million people in a country that had a population of slightly more than 21 million before the current civil war.22 Of these, nearly 6.4 million are internally displaced.23 Columbia, with more than 7 million internally displaced citizens due to the just-ended civil war

17. Id.
18. Id.
19. Id.
20. Id.
21. Id.
23. Id.
between the government and FARC rebels, has one of the world’s highest rates of internally displaced people.

Although international displacement is a growing phenomenon, the evidence demonstrates that the vast majority, or 97% of the world’s population, have not crossed an international border. The fact that there is such concern about global, as opposed to internal, migration, stems from the political and economic power of the major migration corridors’ destination countries, such as the United States, which is the end route of the one-way migration corridor from Central America and Mexico to the United States. The scale of this migration will substantially increase with population growth, climate change, and the geopolitical and economic consequences of American geopolitical retrenchment. For example, in 2050, Africa’s population will have increased to 2.4 billion persons, which is double today’s population of 1.2 billion. Similarly, the Arab world is experiencing a manifest youth bulge with more than two-thirds of the population less than thirty years of age. Moreover, in view of the relatively small populations of most developed countries, international migrants and their families can greatly affect the demographic balance of receiving states. Several European countries, including Norway, Sweden, and Austria, have seen migrants as a proportion of their total populations increase by more than one
percent in 2015 alone, largely due to a surge in migrants from Syria, Afghanistan, and Somalia.32

Migration to the developed world will only increase in time for reasons of geopolitics, state failure, civil war, climate change, and the fact that more and more migrants, 80% of whom reside in the developing world, will find ways of reaching mature democracies such as the U.S.33

III. RICH WORLD RECALCITRANCE AND ITS CAUSES

A brief analysis of the international migration numbers affecting four rich countries—the United States, the United Kingdom, France and Canada—shall follow. This is hardly a representative grouping as Australia, New Zealand, and many countries in Southeast Asia, the Middle East, and Western Europe are sought-after destinations for many migrants. They are used as examples because they represent paradigmatic examples of, in the case of the U.S., U.K., and France, a backlash against migrants, and, in the case of Canada, an apparently more tolerant and accepting approach. Although greater acceptance of migrants can be partially achieved by enacting progressive legislation to address domestic socio-economic inequality and inter-generational immobility, much of the current backlash is explained by the fact that countries such as the U.S., the U.K, and France are situated on major world migratory routes34 and these countries’ failure to undertake effective repatriation has led to a populist backlash against the very idea of international migration.


A. U.S. Migration

The U.S. is a country of some 324 million persons with a net migration rate of 3.9 per 1,000 persons, which places it on the lower end of developed countries with respect to in-migration rates. A right to immigration is not guaranteed under the U.S. Constitution, as no provision therein requires the admission of non-U.S. persons into U.S. territory. That said, the U.S. Supreme Court has used the doctrine of field preemption to preclude state and local governments from attempting to either register or assist with the deportation of unauthorized migrants because the federal government has historically occupied the field of immigration and naturalization. This means the federal government and not the states is supreme in the areas of immigration, asylum and deportation. The Fourteenth Amendment’s Equal Protection Clause has also been of limited historical use to non-resident alien foreigners. Indeed, the federal courts have historically been reluctant to effectively use this provision to protect racial minorities from what looks like invidious discrimination. Although recent decisions by the Fourth and Ninth

36. U.S. CONST. art. IV, § 2; id. amend. XIV, § 1. The Privileges and Immunities Clause of Article IV, Section 2 and the Privileges or Immunities Clause of Fourteenth Amendment, Section 1, protect U.S. Citizens from denial of fundamental rights. Moreover, Congress has plenary authority under Article I, Section 8, Clause 4 to establish uniform laws of naturalization. U.S. CONST. art. I, § 8, cl. 4. See also, United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950) (stating that "an alien who seeks admission to this country may not do so under any claim of right.")
37. Arizona v. United States, 567 U.S. 387, 403 (2012) (preempting Arizona’s attempt to enforce federal immigration laws without the federal government’s consent); Hines v. Davidowitz, 312 U.S. 52, 74 (1941) (invalidating Pennsylvania’s attempt to issue alien registration cards in addition to federal Green Cards under the doctrine of field preemption).
38. Although the Supreme Court, in Graham v. Richardson, 403 U.S. 365, 376 (1971) concluded that resident aliens have a right to welfare benefits on the same terms as U.S. Citizens, the federal courts have not concluded that the equal protection clause applies to preclude discrimination against unauthorized migrants.
39. See Korematsu v. United States, 323 U.S. 214, 218–19 (1944) (concluding the Fourteenth Amendment’s Equal Protection Clause does not protect Japanese nationals or Americans of Japanese descent from being forcibly segregated in internment camps). But see Graham, 403 U.S. at 371–72 (stating that "classifications based on alienage, like those based on nationality or race, are inherently suspect and
Circuit Courts of Appeal adjudicating President Trump’s Executive Orders banning travel from seven majority-Muslim countries appear to demonstrate that green card holders are protected from arbitrary exclusion under the Equal Protection Clause, the Supreme Court, which was set to review the second Executive Order until it was mooted by yet another version, has consistently held that the President has broad inherent executive power to exclude foreigners under Article II of the U.S. Constitution, while Congress has enacted laws allowing for immigration and temporary residency as well as refugee resettlement. The U.S. historically grants approximately one million legal immigrants green cards and 600,000 temporary worker visas on an annual basis. This, in conjunction with the 100,000 or so refugee admissions annually, is completely inadequate in view of the migration demand. This inadequacy, which could have forthrightly been addressed by a proactive temporary residency program, has resulted in an apparently insurmountable illegal

subject to close judicial scrutiny.

40. Hawaii v. Trump, 859 F.3d 74 (9th Cir. 2017); Int’l Refugee Assistance Project v. Trump, 857 F.3d 554, 605 (4th Cir. 2017).
immigration problem, as the U.S. is now home to nearly 11 million undocumented or unauthorized residents.\textsuperscript{45}

The U.S. has benefited from immigration in that its population is 72 million higher than it would be but for the enactment of the 1965 Immigration and Nationality Act.\textsuperscript{46} The increased population has corresponded with increased racial and ethnic diversity. To illustrate, the proportion of non-Hispanic whites dropped from 84% in 1965 to 62% and, as of 2015, continues to fall, largely because the Hispanic and Asian populations have grown during this time frame from 4% and 1% to 15% and 6%, respectively.\textsuperscript{47} Because of lower fertility in the native-born population, a full 88% of future U.S. population growth will be attributable to immigration and the descendants of these immigrants.\textsuperscript{48} This, however, places pressure on a country’s absorptive capacity to integrate newcomers, especially when the majority of the population is relatively stagnant with respect to both population and economic productivity and fears cultural and economic displacement.\textsuperscript{49} For example, enactment of the 1986 Simpson-Mazzoli Immigration Reform and Control Act,\textsuperscript{50} which regularized the status of previously illegal migrants, was facilitated by U.S. economic and population growth, which was 3.5% and 1.7% respectively, under the Reagan Presidency when Islamic fundamentalism and geopolitical


\textsuperscript{47} Id.

\textsuperscript{48} Id.


instability were unheard-of problems to most western citizens.\textsuperscript{51} The success of President Trump’s populist xenophobia is, in turn, attributable to the fact that economic and population growth in post-financial-crisis America are 1.5% and .75%, respectively, in a period of geopolitical instability and fear of political Islam.\textsuperscript{52} Furthermore, compared to other developed nations, the U.S. has very high levels of income inequality as measured by a GINI index of 45.0,\textsuperscript{53} and socio-economic intergenerational immobility as evidenced by the fact that between 50% and 60% of Americans’ relative income is explained by that of their parents.\textsuperscript{54} These are far higher measures of inequality than in the U.S.’s northern neighbor, Canada, which has been lauded for an altogether more welcoming approach to migrants.\textsuperscript{55} That said, unlike Canada, which is surrounded by the U.S. and three major oceans, the U.S. is the destination point of a major migratory route from Central America and Mexico, which explains the unauthorized immigration problem.\textsuperscript{56} The 11 million unauthorized immigrants, in conjunction with the fear of Islamic extremism and domestic economic insecurity, are the obvious explanations for domestic disquiet over the issue. Less discussed is how the substantial in-migration of developing-world residents has changed the nation’s political culture in a manner that arguably explains much of the backlash that resulted in President Trump’s election. This is due to both the


\textsuperscript{52} Id.

\textsuperscript{53} The World Factbook: Country Comparison: Distribution of Family Income – Gini Index, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/rankorder/2172rank.html (last visited Nov. 14, 2017) (explaining that the “Gini index measures the degree of inequality in the distribution of family income in a country. The more nearly equal a country’s income distribution, the lower its Gini index . . . . The more unequal a country’s income distribution, the higher its Gini index . . . . If income were distributed with perfect equality the index would be zero; if income were distributed with perfect inequality, the index would be 100.”); see also Erik Sherman, America is the Richest, and Most Unequal, Country FORTUNE (Sept. 30, 2015), http://fortune.com/2015/09/30/america-wealth-inequality/.


\textsuperscript{56} Connor, supra note 16; Krogstad, Passel & Cohn, supra note 45.
Immigration and Naturalization Act of 1965\textsuperscript{57} and the insufficiently-acknowledged migration incentives that have resulted in development of the above-referenced migration route. The former effectively ended preference for European immigrants and led to a marked uptick in racial minority immigration.\textsuperscript{58} The latter is attributable to relatively strong economic performance in the U.S. compared to the economic and political crises that developed in Mexico and Central America in the 1980s.\textsuperscript{59} To illustrate the political consequences, if the same proportion of white voters as compared to racial minority voters that voted for Jimmy Carter in his landslide loss to Ronald Reagan in 1980, voted for Barack Obama in 2012, the popular vote tally in the 2012 election would have been in Mitt Romney’s favor.\textsuperscript{60} Obama won reelection because the white vote fell from nearly 90% of the electorate in 1980 to approximately 73% in 2012 and continues to fall.\textsuperscript{61} A full 73% of Asian Americans and 71% of Hispanics, who comprise 4.5% and 10% of the U.S. voting populations respectively, voted for President Obama in the 2012 presidential election.\textsuperscript{62} This, in conjunction with the fact that African Americans overwhelmingly vote for the Democratic Party candidate, meant that President Obama was able to win a decisive electoral college victory and earn more than 51%
of the popular vote while winning only 39% of the white vote.\textsuperscript{63} This is a disquieting phenomenon for nativists and conservatives.\textsuperscript{64} Indeed, although much of President Trump’s support is explained by his demotic characterization of unauthorized immigrants, it would be wrong to conclude that this fully explains his decisive electoral college win.\textsuperscript{65} His base expressed understandable disquiet over the previous failure of both major political parties to either enhance border security to prevent continued unauthorized immigration or repatriate the undocumented migrants living in the country.\textsuperscript{66} Mass migration has had serious political repercussions. A Pew Research Center study finds that half of Americans want immigration to be reduced and incorrectly blame immigrants for a disproportionate share of the nation’s crime and economic problems.\textsuperscript{67} This is in spite of the fact non-immigrants have nearly two and three times the incarceration rate of unauthorized and legal immigrants, respectively.\textsuperscript{68} These perceptions vary by immigrants’ region of origin, with Americans most likely to hold negative views about immigrants from Latin America and the Middle East.\textsuperscript{69} Amid the uproar regarding President


\textsuperscript{64} Jens M. Krosgtad, \textit{10 Facts for National Hispanic Heritage Month}, PEW RESEARCH CTR. (Sept. 15, 2016), http://www.pewresearch.org/fact-tank/2016/09/15/facts-for-national-hispanic-heritage-month/ (demonstrating that the projected number of Hispanic voters is expected to grow).

\textsuperscript{65} The President lost the popular vote to Hillary Clinton by over two percentage points and nearly three million votes, but won the Electoral College by a margin of 306 to 232. \textit{2016 Presidential Election Results}, POLITICO (Dec. 13, 2016), http://www.politico.com/2016-election/results/map/president.


\textsuperscript{69} \textit{Id.}
Trump’s recent Executive Orders suspending the U.S.’s refugee resettlement program and temporarily banning the entry of individuals from six majority Muslim countries, the political culture has conveniently forgotten how ungenerous the Obama Administration and all rich countries are on this issue. For example, the Obama Administration admitted only 85,000 refugees for the fiscal year ending in September 2016 and planned on admitting only 110,000 for fiscal year 2017, both of which are negligible numbers in view of the scale of the international refugee problem — e.g. there are an estimated 16 million refugees worldwide and the United States alone is home to approximately 11 million undocumented or illegal economic migrants. The Obama Administration’s response to these problems, namely, a refusal to abide by its own “red line” and intervene to stop the Syrian Genocide and a belatedly issued Presidential Executive Order to designate a large subset of undocumented residents as non-deportable, has proven to be both unworkable and counterproductive.

The refugee surge that is affecting Jordan, Lebanon, Turkey, and the European Union is most likely caused by the effects of global climate change in conjunction with the political consequences brought about by the American-led invasion of Iraq in 2003 and the Obama Administration’s decision to subsequently disengage from the Middle

71. Krogstad & Radford, supra note 45.
72. Id. (stating that the number of refugees admitted in 2017 “will likely decline from 110,000 to 50,000”); Jie Zong & Jeanne Batalova, Refugees and Asylees in the United States, MIGRATION POL’Y INST. (June 7, 2017), https://www.migrationpolicy.org/article/refugees-and-asylees-united-states.
73. Connor, supra at note 16.
74. Krogstad, Passel, & Cohn, supra note 45.
East. With respect to unauthorized migration to the U.S., the Obama Administration’s failure to obtain a bipartisan immigration compromise was largely attributable to the Democratic Party’s failure to disentangle the demand for economic migration from the current immigration and naturalization paradigm as well as the Republican Party’s reflexive nativism. This resulted in the issuance of an ineffective Executive Order on the issue, which was enjoined by the federal courts and still had the parlous consequence of inciting a backlash on the right that facilitated Trump’s election as President.

How might the federal government have better anticipated and addressed the demand for unauthorized migrants? My argument is that it could have forthrightly been addressed by a proactive temporary residency and worker program, used in conjunction with development assistance provision to the sending states of Mexico and Central America. This would have minimized the incentives for unauthorized migration, protected guest workers from the perils of undocumented status and ensured the public that migration-based demographic changes are legitimate. The fact that neither political party pushed for such a program, all the while refusing to provide for either greater border enforcement or stepped-up deportation, facilitated the current populist backlash.

Although the U.S. resettles more refugees than any other developed country and has resettled more than 3 million persons since 1975, its expected refugee resettlement number of 50,000 this year is relatively minuscule and inadequate in view of the total number of refugees and displaced persons worldwide. The fact that a non-existent threat from Syrian refugees was seized upon by the President to temporarily suspend the U.S. Refugee Assistance Program evidences that the disquiet felt about Islam and unauthorized migration has superimposed itself onto the refugee

81. Id.
82. Krogstad & Radford, supra note 45.
crisis and demands a response. The response, however, should recognize that concerns about migration’s consequences are legitimate while allowing for expanded migration so that the U.S. can maintain its moral authority as the world’s leading nation and fulfill its obligation to help with the problems confronting international migrants.

B. U.K. Migration

In the U.K, the foreign-born population increased from 3.8 million in 1993 to over 8.7 million in 2015. Anxiety about international migration is especially pronounced because London, which remains the world’s financial and cultural center, is the destination of choice for much of the world and is now only 45% white British. European Union (E.U.) expansion has led to marked uptick in migration from poorer E.U. member states such as Poland, Portugal, and Romania. For example, in 2016, on the eve of the Brexit vote, the U.K. received a record 250,000 citizens from other E.U. countries, while U.K.’s outmigration to the rest of the E.U. numbered only 117,000, a net migration of 133,000 that is consistent with the previous two years. In 2016, approximately 3.6 million E.U. citizens resided in the U.K., which is substantially higher than the 1.2 million Britons who reside in the rest of the E.U., and annual total immigration reached a record 650,000 in the run-up to the Brexit vote. Anxiety surrounding

87. Rienzo & Vargas-Silva, supra note 87.
91. Alan Travis, Immigration to UK Hit Record Levels Prior to Brexit Vote, Data Shows, THE GUARDIAN (Dec. 1, 2016), https://www.theguardian.com/uk-
this migration paradigm explains the impetus behind the pro-Brexit vote to withdraw from the E.U. The migration numbers include an increase in the number of asylum seekers seeking refugee status to 41,280, a number that is disproportionately comprised of Iraqi and Iranian asylees.\footnote{Id.} Although net migration to the U.K remains relatively modest, the saliency of the issue, in conjunction with lower economic growth and lower living standards since the 2008–2009 financial crisis, explains not only the Brexit vote but hamstrings negotiations over the terms of Britain’s eventual withdrawal from the E.U.\footnote{Janan Ganesh, Theresa May’s Untenable Premiership Might Last, FIN. TIMES (Oct. 9, 2017), https://www.ft.com/content/2baa2102-accb-11e7-aab9-aba4b1e130} Although departure from the E.U. will likely not affect the status of non-Britons already residing legally in the U.K., it will enable the British government to regain some control of its borders because the U.K. will no longer be required to prospectively observe E.U. citizenship rules. However, the reinstatement of national controls must be done in a manner that both respects Britain’s national sovereignty and protects the rights of vulnerable international migrants. This will only be forthcoming if the British public is assured that migration will not irrevocably alter the nation’s demographic composition, which, in turn, will only be feasible if migrants are admitted on a temporary basis, with a goal toward eventual repatriation.

\textit{C. French Migration}

Perhaps no other developed nation has been so systematically traumatized by international migration as France, which has just seen both its major political parties roundly rejected in the first round of the country’s presidential election in April 2017 and the extreme right-wing Presidential candidate, Marine Le Pen, succeed to a run-off election against the eventual winner, President Emmanuel Macron, whose surprising success also represents a rejection of the political mainstream.\footnote{Zack Beauchamp, Macron vs. Le Pen: The French Presidential Election, Explained, VOX (May 6, 2017, 2:28 PM), https://www.vox.com/world/2017/5/5/15543294/french-election-macron-le-pen.} France, whose economy and population is of similar size to that of the U.K., suffers from higher unemployment

\begin{footnotesize}
\footnote{Id.}
\footnote{Janan Ganesh, Theresa May’s Untenable Premiership Might Last, FIN. TIMES (Oct. 9, 2017), https://www.ft.com/content/2baa2102-accb-11e7-aab9-aba4b1e130}
\end{footnotesize}
and lower economic growth than its cross-Channel neighbor. This is a potent mix for xenophobic authoritarianism. The National Front’s slogan of “Two Million Unemployed is Two Million Immigrants Too Many” is paradigmatic. Although France’s net migration rate is a moderate 1.1 per 1,000 inhabitants per year, which is substantially below that of the U.S., much of the French disquiet surrounding immigration is not about present immigration trends as much as the demographic consequences of previous decades of immigration, in conjunction with a fear of political Islam and a relatively stagnant domestic economy. President Emmanuel Macron’s success requires not only a resuscitation of France’s economy and the introduction of labor market reforms to allow for greater social mobility, but also a demonstration that E.U. membership does not inevitably mean loss of border control. This will most likely require France to revisit the E.U. migration rules and adopt a temporary visa program that assures the broader French public that migration does not irrevocably lead to permanent residency and social dislocation.

D. Canadian Migration

Canada, unlike the U.S., U.K., and France, has been far more generous to international migrants. To illustrate, Canada’s foreign-born population of 20% and its net migration rate of 5.7 per 1,000 residents per year, places it at the top of the developed world regarding these metrics. Moreover, unlike in the U.S. or Western Europe, the dynamics of Canadian democracy protect migrants from political scapegoating and populist xenophobia. All four major


political national parties—the Liberal Party, the Conservative Party, the New Democratic Party, and the Bloc Quebecois—take liberal positions on international migration. 99 The reasons for this are many. First, unlike the U.S. or Western Europe, Canada does not border a developing nation and is therefore not a destination on a major international migration route. 100 This enables it to have greater control than either the U.S. or Western Europe over who crosses its borders and avoid the same level of anti-migrant backlash. Second, Canada’s immigrants and asylees, the vast majority of whom are legally admitted, 101 may be eligible for naturalization within only three years 102 and tend to reside in key marginal parliamentary constituencies in urban areas such as Greater Toronto, Montreal, and Vancouver. 103 As a result, immigrants in Canada are more likely to naturalize than those in America 104 and their votes tend to be more sought-after than those of the median voter. 105 That said, native-born Canadians do not have atypically positive attitudes to international migrants. 106 Canada’s use of a points system to select immigrants based on their skills and education level belies a claim of


100. Conant, supra note 34.


102. Sofya Aptekar, Making Sense of Naturalization: What Citizenship Means to Naturalizing Immigrants in Canada and the USA, 17 J. INT’L MIGRATION & INTEGRATION 1143, 1145 (2015); Find Out if You’re Eligible: Citizenship, GOV. OF CANADA (Nov. 10, 2017), http://www.cic.gc.ca/english/citizenship/become-eligibility.asp (noting that a permanent resident who has been present in Canada for at least three of the five years preceding an application for citizenship may be eligible for Canadian citizenship).


104. Divergent Trends in Citizenship Rates Among Immigrants in Canada and the United States, STATISTICS CANADA (Nov. 27, 2015), http://www.statcan.gc.ca/pul/11f0019m/2011338/part-partie1-eng.htm (noting that by 2006, 79% of immigrants in Canada were naturalized citizens while only 46% of immigrants in the United States were naturalized citizens).

105. Adnan R. Khan, Canada’s Immigration System is no Kinder than America’s, MACLEAN’S (August 11, 2017), http://www.macleans.ca/opinion/canadas-immigration-system-is-no-kinder-than-americas.

106. Weinman, supra note 98.
humanitarianism\textsuperscript{107} as it exacerbates the brain-drain problem suffered by much of the developing world.\textsuperscript{108} Indeed, unlike the U.S, where immigrant children are typically raised in low-education households, one-third of Canada’s high-education households have at least one immigrant parent.\textsuperscript{109} What also distinguishes Canada from the U.S., the U.K, and France is that social mobility in Canada is substantially higher.\textsuperscript{110} For countries such as the U.K, France, and the U.S., between 40 and 50 percent of income inequality is passed on across the generations.\textsuperscript{111} For Canada, this number is less than 20 percent.\textsuperscript{112} There are many reasons for this discrepancy, including the relative higher status of women, lower levels of social exclusion suffered by the poor and racial minorities, and the affordability and accessibility of quality education.\textsuperscript{113} That said, notwithstanding Canada’s more generous approach to international migrants, it is altogether too small of a country in view of the size of its labor force to successfully integrate more than a token number of migrants. Although it is a moral beacon to many, its policies, which favor attracting the high-skilled and educated, excludes the most vulnerable displaced persons. Indeed, based on survey evidence, it is unlikely that native-born Canadians would support a substantial uptick in the number of international migrants.\textsuperscript{114}

IV. DISTINGUISHING ECONOMIC MIGRANTS AND REFUGEES

International migrants include economic migrants and refugees. Economic migrants lack protection under the Refugee Convention\textsuperscript{115}

\begin{itemize}
  \item \textsuperscript{107} Id.
  \item \textsuperscript{108} See Carrington, supra note 3 (noting that Canada has been “aggressive in [its] effort to recruit and their policies have led them to admit disproportionate numbers of highly skilled immigrants”).
  \item \textsuperscript{110} Id. at 52.
  \item \textsuperscript{111} Id. at 51–52; Isaacs, supra note 54.
  \item \textsuperscript{112} Isaacs, supra note 54.
  \item \textsuperscript{113} Corak, supra note 109, at 57.
\end{itemize}
and are largely absorbed into rich countries as both legal and unauthorized immigrants. Although many economic migrants work on temporary visas, these visas are largely unavailable to unskilled workers because the number of such visas available for unskilled workers is altogether negligible in view of the overall demand,\footnote{Wilson, supra note 43.} which, in turn, incentivizes unauthorized migration. Refugees, who are protected under the Refugee Convention, are entitled to file asylum claims in developed nations.\footnote{Refugee Convention, supra note 115.} The rich-world’s concern for refugees, however, is altogether inadequate in view of refugee needs and the fact that most refugees are either internally displaced\footnote{GLOBAL REPORT ON INTERNAL DISPLACEMENT., supra note 23.} or forced, for practical reasons, to migrate to unwelcoming developing nations as is the case with most Syrian, Eritrean, Somali and Rohingya refugees.\footnote{Louis Højen, Columbia’s “Invisible Crisis”: Internally Displaced Persons, COUNCIL ON HEMISPHERIC AFFAIRS (Feb. 2, 2015), http://www.coha.org/colombiasinvisible-crisis-internally-displaced-persons/#_ednref1.}

\textit{A. Economic Migrants}

The international community does not recognize a moral imperative to provide sanctuary for economic migrants. Refugees are entitled to claim protection under the Refugee Convention while economic migrants are excludable and deportable under international law, because there is no entitlement for migrants to seek asylum based on economic need. That said, the vast majority of global migration is attributable to people seeking to improve their quality of life.\footnote{Martin Wolf, The Benefits of Migration Are Questionable, FIN. TIMES (Sept. 29, 2015), https://www.ft.com/content/509c8f5a-65c3-11e5-a28b-50226830d644.} Although economic migration is understandable in that it provides obvious material benefits to migrants, it imposes costs on the receiving countries and can, if not properly regulated, undermine social cohesion and increase racial and ethnic polarization.\footnote{See id.} As such, developed countries must evaluate economic migration not only based on concern for the migrants themselves, but also for their own citizens who struggle with the consequences of globalization and deserve a hearing as to migration-based cultural and economic changes. Accordingly, my proposal is to recognize the economic benefits of migration to both the receiving states and the migrants themselves and to allow for broader acceptance of economic migration by means
of an expanded guest worker and temporary residency program. This would allow migrants to legally reside and work productively, while assuring the native-born population that these migrants will neither access government services in perpetuity, nor naturalize and change the political culture.

Most importantly, it protects these migrants from the stigma of illegality that facilitates a backlash against their presence, which both isolates them and facilitates their exploitation by unscrupulous employers and human traffickers. Although economic migrants lack the treaty and customary international law protections offered to refugees, the lack of international protection offered economic migrants is clearly an outdated relic. Although most economic migrants are currently absorbed into first-world societies by means of immigration and naturalization policies, that are altogether inadequate in light of the migration demand and the economic need for migrants in much of the developed world. Furthermore, in view of the population explosion that is expected in Africa, the Middle East and other regions of the global south, migration demand will only increase over time. Rich countries such as the U.S. have a choice. They can continue with the status quo, which means that the unauthorized migration problem will grow and remain unaddressed. This, in turn, will make President Trump’s campaign proposal to build a wall on the Mexican border, over time, a relatively benign border security measure in a country that will have adopted a fortress-like mentality to exclude the outside world. To paraphrase the great French diplomat Talleyrand, this would be “worse than a crime. It [would be] a blunder.”


123. World Population, supra note 28 (stating that “[b]etween 2017 and 2050, the populations of 26 African countries are projected to expand to at least double their current size”).


125. This statement is attributed to Talleyrand after he learned of Napoleon’s decision to execute the Duke of Enghien in 1804. William D. Rogers, “Power” to “Law”: It’s Not as Bad as All That, 23 Wis. INT’L J. 39 (2005).
residency program that allows migrants the opportunity to legally improve their living standards in developed-world countries on a temporary basis so that their skills and purchasing power are not forever lost to their countries of origin. I would advocate expanding the current number of 600,000 annual temporary work visas to 2–3 million per year and account for this by reducing the number of permanent residency green cards from the current one million per year to a negligible number. Those 2–3 million temporary visas are to be issued to both skilled and unskilled workers for a period of up to five years and the visa holders are to be given access to private sector jobs in the U.S. economy on terms that are equal with U.S. citizens. The visas, which are to be first offered to economic migrants currently working and living illegally in the U.S., are to be issued with strict conditions that visa holders are expected to repatriate at the end of the visa term unless good cause can be shown for one-year extensions.

B. Refugees

The 1951 Refugee Convention defines a refugee as a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.\textsuperscript{126}

Internally Displaced Persons are those who have been forced to flee their homes for the same reasons as refugees, but remain in their own country and have not crossed an international border.\textsuperscript{127} To illustrate the difference, there are currently 22.5 million refugees and 65.6 million displaced persons worldwide.\textsuperscript{128} Of the 22.5 million refugees that do cross international frontiers, the vast majority move to developing nations of the global south\textsuperscript{129} with only 3.2 million

\textsuperscript{126} Refugee Convention, supra note 115.


\textsuperscript{129} Id.
awaiting asylum claims in developed first-world nations. This means that 86 percent of refugees under the UNHCR’s mandate currently reside in low to moderate income countries close to conflict areas. The Refugee Convention requires signatory countries to, among other things, provide refugees with identification and travel papers, offer them the possibility of assimilation and naturalization, and most importantly, not refoule or forcibly return refugees to the country where they “would be threatened on account of . . . race, religion, nationality, membership of a particular social group[,] or political opinion”. Although developing-world nations typically fall short of the obligation to allow refugees the opportunity to assimilate and naturalize, all signatories to the Refugee Convention are bound by the obligation of non-refoulement while the circumstances giving rise to refugee status continue. The U.S. and other developed countries abide by this requirement largely because the refugees granted asylum into their jurisdictions are typically granted permanent residency with a means of subsequent naturalization.


131. See AN INTRODUCTION TO INTERNATIONAL PROTECTION: PROTECTING PERSONS OF CONCERN TO UNHCR, UNHCR 7 (2005) (noting that “UNHCR’s mandate is to provide . . . international protection to refugees and to seek permanent solutions for them”). Under this mandate, UNHCR defines a refugee as “any person who . . . is outside of his/her country of origin or habitual residence and is unable to return there because of serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.” Id. at 61.


133. Refugee Convention, supra note 115.


135. CATHERINE DAUVERGNE, THE NEW POLITICS OF IMMIGRATION AND THE END OF SETTLER SOCIETIES 21–22 (2016); Refugee Convention, supra note 119, at art. 1C (5) & (6) (providing that where the circumstances giving rise to refugee status cease to exist, the Convention no longer applies to that person and she can be returned to the country of origin).

136. For example, in the U.S., asylees are typically given permission to apply for permanent residency green cards after one year and can apply for naturalization three years thereafter. Ilona Bray, When an Asylee or Refugee Can Apply for U.S. Citizenship, NOLO, https://www.nolo.com/legal-encyclopedia/when-asylee-refugee-can-apply-us-citizenship.html (last visited Nov. 8, 2017); Green Card for Asylees, U.S.
This whole scheme is problematic. First, although developed countries like the U.S. do abide by the Refugee Convention’s requirements of assimilation, naturalization, and non-refoulement, this is, by implication, premised upon doing the utmost to exclude refugees from their jurisdictions. As Hathaway and Neve have written:

Even though international law presently requires no more than the provision of rights—regarding temporary protection, Northern states, in law or in practice, have historically afforded refugees permanent status. As the interest-convergence between refugees and developed countries has disappeared, Northern states have sought to avoid the arrival of refugees by adopting policies of external deterrence. Because developed states have the logistical capacity to prevent the arrival of many, and sometimes most, refugees, they have been able to implement non-entrée practices that prevent refugees from even reaching their frontiers. Since legal duties arise only once refugees successfully access a state’s jurisdiction, non-entrée practices are a relatively invisible, and hence politically expedient, means to ensure that refugees are never in a position to assert their legal right to protection.138

Developed countries effectively prevent refugees from being able to file refugee claims. Hathaway and Neve write as follows:

Specifically, most Northern states impose a visa requirement on the nationals of refugee-producing states, and penalize airlines and other transportation companies for bringing unauthorized refugees into their territories. By refusing to grant visas for the purpose of making a claim to asylum, Northern countries have been able to insulate themselves from many potential claimants of refugee status. The United Nations High Commissioner for Refugees (UNHCR) has expressed concern that visas are a serious obstacle to the admission to protection of refugees, and may in some instances


138. Id. at 119–20.
put refugees at serious risk of *refoulement*, that is, of return to the country in which they assert they will be at risk of grave harm.\footnote{Id. at 120.}

Resistance to honoring duties owed to refugees follows from a growing concern about migration-based demographic changes.\footnote{Id. at 138.} Hathaway and Neve explain that “the legal right of refugees to [evade typical] immigration control rules means that persons not of a state’s choosing [can] effectively be entitled to [permanently] join its community” and effectuate permanent demographic changes.\footnote{Id.} This, in societies like the U.S. that have “a tradition of equating refugee status with the right to remain permanently . . . ,” leads to fear of widespread and undesired social change.\footnote{Id.} Moreover, “even in those Northern states that have a long tradition of receiving immigrants, there is concern about the non-selective nature of the duty to admit refugees.”\footnote{Id.} This is a problem not limited to the rich countries of the global north.\footnote{Id.} Many East Asian states, “including Brunei, China, Japan, and Malaysia, are preoccupied with avoiding the arrival of refugees of distinct cultural or ethnic backgrounds.”\footnote{Id.} This presents refugee advocates with the reality that refugee admission consistent with the Refugee Convention’s purposes and global refugee needs, requires eventual repatriation to address the legitimate concerns about unconsented to cultural change in receiving states.\footnote{Id. at 138–39.} Hathaway and Neve write:

[i]t is presently politically unwise to insist that states permanently enfranchise all refugees. Such a stance holds refugees hostage to a major project of social transformation. We need instead to accommodate the need of refugees to flee with the prevalence of often narrow understandings of community inspired by the rise of ethnic nationalism and the demise of the Cold War interest-convergence. This accommodation will clearly not amount to a complete recognition of the right of the present inhabitants of states to exclude all outsiders. Yet the terms upon which refugees enter
a foreign state could be qualified to prevent refugees from becoming pawns in the internal struggles of asylum states over the meaning of community. In particular, a solid and dependable system of refugee protection need not have any enduring impact on the receiving state's communal self-definition. It could instead be oriented to ensuring that, at least in most cases, refugees ultimately repatriate to their own country when conditions permit.147

This is not to heartlessly violate the international law against refoulement. Rather:

temporary protection can be structured in a way that recognizes and protects core human rights, encourages self-reliance, and preserves the social, political, and cultural identity of the refugee community. If return is made practicable by an empowering system of repatriation aid and development assistance, the solution-oriented protection system we propose has the potential to renew asylum capacity regularly. As a reasonable and principled compromise between the needs of refugees and the migration control objectives of host governments, temporary protection will encourage states to live up to their international protection responsibilities, rather than avoid them.

This is because the repatriation of most, if not all, refugees sends a clear signal that the system is not just a “back door” route to permanent immigration. As it becomes understood that refugees are received on an extraordinary basis and that their presence does not require any fundamental adjustment to the host community’s self-definition, the implied threat presently associated with the arrival of refugees can be defused. The failure to promote repatriation, on the other hand, is inconsistent with the logic of refugee status as a situation-specific trump on immigration control rules. Because refugees are admitted on the basis of necessity, it cannot legitimately be asserted that they should routinely be entitled to stay in the host state once the harm in their own country has been brought to an end.148

147. Id. at 139.
148. Id. at 140.
V. PROPOSAL FOR GREATER PROVISION OF TEMPORARY RESIDENCE PERMITS TO ADDRESS MIGRANT NEEDS

The best approach to dealing with the immigration and refugee crisis would be for developed countries to take a more proactive approach to dealing with issues related to the Global Commons such as climate change, state failure, and international crises. It will also require them to relieve the burden on developing nations and resettle a far greater number of refugees and displaced persons within their nations. These are not likely to be forthcoming responses from developed nations such as the U.S. if refugee and displaced person resettlement requires permanent residency provision. This is because active involvement to address global problems will be deterred should rich nations feel obliged to permanently resettle conflict victims. Similarly, with respect to resettlement in rich countries, the current provision of asylum status followed by permanent residency leads those countries to not only avoid the issue, but, as is their response to Haitian refugees, who sought asylum to the U.S. after the 1991 coup against former President Jean Bertrand Aristide and the January 12, 2010 magnitude seven earthquake that decimated the country, actually devote hard and soft resources to effectively prevent asylum claims from being effectuated. Although requiring the eventual repatriation will be difficult to administer, it will, if effectively and humbly done, provide political support to political moderates seeking international engagement and humanitarian resettlement. It will ideally stem the backlash against migrants that is evidenced by President Trump’s suspension of the U.S. Refugee Assistance


Program and his Administration’s repeated and ill-advised attempts to ban travelers from seven majority-Muslim countries.152

A. Temporary Residence Permits

The current paradigm of granting permanent residency to migrants has the effect of encouraging developed democracies to prevent the entry of those most in need. This is because nativist opposition to migrants, which is legitimized by the political and cultural consequences of unauthorized migration and naturalization, is forcefully being effectuated to create a fortress-like approach to national sovereignty. By stepping-up assistance to all migrants, the U.S. can once again lead the community of nations on an issue of compelling importance to global well-being. This will only be forthcoming if its citizens can be assured that allowing for greater migration will not distort the political culture based on migrant permanent residency. Migrants are to be issued five-year temporary residency permits that will allow them to live, work, and travel as is the case with refugees resettled in the U.S. under the Refugee Admissions Program.153 The temporary residency permits are to be renewed for one-year periods only if the migrant can show good cause or a significant hardship if repatriated.

An obvious objection to this proposal is that it treats these individuals unequally compared to citizens and permanent residents. It also will require receiving states to devote more resources to deport unwilling migrants than is currently the case. However, all new policies meant to address a particular set of problems create new ones. Here, the problems engendered by the policy, though real, are altogether more defensible than the status quo. As we have seen, assuring migrants de jure equality has had the perverse consequence of preventing them from accessing developed countries and improving their living standards. Although repatriation is harsh, it does not violate the Refugee Convention’s prohibition against refoulement because the Convention specifically authorizes repatriation to

152. See Zeke J. Miller, President Trump Is Suspending a Refugee Program and Banning Visas from 7 Countries, N.Y. TIMES (Jan. 27, 2017) (explaining Trump’s stance on suspending the refugee program, and counter arguments from democrats and republicans alike), http://time.com/4652552/president-trump-is-suspending-a-refugee-program-and-banning-visas-from-7-countries/.

countries of origin when conditions are safe to do so.\textsuperscript{154} The current paradigm of asylum-granting followed by permanent residency encourages states to disregard the Refugee Convention’s purpose and spend great resources to prevent the entry of would-be refugee claimants. Examples of this include not only President Trump’s temporary suspension of the U.S. Refugee Assistance Program, but Australia’s decision to process and house refugees in the Micronesian state of Nauru to prevent refugees from effectuating asylum claims on Australian territory\textsuperscript{155} and France’s creating of an artificial international zone within Paris’s De Gaulle Airport to prevent asylum seekers from making claims on French soil.\textsuperscript{156}

A similar pattern is at play with respect to economic migrants. The U.S.’s abject failure to address the issues of economic inequality and insecurity has led to the rise of populist, anti-immigration sentiment.\textsuperscript{157} Britain’s failure to address the issue since the 1990s led to the Brexit vote to withdraw from the E.U.\textsuperscript{158} and France’s political polarization on the issue led to the evisceration of both major political parties and led Marine Le Pen succeeding to a run-off in the 2017 French Presidential election.\textsuperscript{159} The rich-world is disregarding the obvious demand for migration and is harming global well-being by resorting to a fortress approach to avoid migration’s demographic consequences. The current cumbersome and outdated immigration laws have the effect of incentivizing the uncertainty, exploitation, resentment, and backlash against immigrants because it forces most of the world’s unskilled migrants and refugees into an unauthorized immigration paradigm. This leaves them vulnerable to criminal and economic exploitation by unscrupulous employers and traffickers.\textsuperscript{160}

\textsuperscript{154}. Refugee Convention, supra note 115, at art. 1C (5) & (6) (regarding the cessation of refugee status, provides that where the circumstances giving rise to refugee status cease to exist, the Convention no longer applies to that person and she can be returned to the country of origin).


\textsuperscript{157}. Inglehart & Norris, supra note 1, at 10.

\textsuperscript{158}. Id. at 6.

\textsuperscript{159}. Nossiter, supra note 96; see also Inglehart & Norris, supra note 1, at 6.

\textsuperscript{160}. Immigration Relief for Vulnerable Populations: Human Trafficking, Crime Victims, Domestic Violence and Child Abuse, U.S. CITIZENSHIP & IMMIGRATION SERVS.
Offering an expanded temporary residency program would provide substantial benefits for migrants, the receiving states, the sending states and overall global well-being.

B. Changing Birthright Citizenship Laws

Birthright citizenship in the U.S. stems from the U.S. Constitution’s Fourteenth Amendment, which provides, in relevant part, that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.”161 This provision was ratified in 1868 and effectively reversed *Dred Scott v. Sandford*,162 which concluded that African Americans born in the U.S., unless naturalized, cannot be U.S. citizens and therefore lack the right to sue for their freedom in federal court on diversity of citizenship grounds.163 Although some argue that the “under the jurisdiction thereof” language might exempt the children of illegal migrants from birthright citizenship,164 this is a minority position and is not the position adopted by the U.S. government, which currently grants U.S. citizenship to all those born in the U.S. except the children of foreign diplomats.165 In Canada, birthright citizenship stems from the Citizenship Act,166 which provides that all persons, with the exception of the children of diplomatic personnel or foreign government employees, are entitled to Canadian citizenship by law.167 Other developed nations such as Australia, New Zealand, France, the

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163. Id. at 403, 405.
166. Citizenship Act, R.S.C. 1985, c C-29 (Can.).
167. Id.
United Kingdom and Ireland abandoned birthright citizenship.\textsuperscript{168} With respect to the U.S. and Canada, though, birthright citizenship will have to be revisited with respect to migrants, be they illegal, temporary or refugees. For Canada, this will require nothing more than for the Parliament of Canada to enact an amendment to the Citizenship Act.\textsuperscript{169} For the U.S., although purists may argue that this would require a constitutional amendment, the actual contours of the limitations on natural born citizenship and the “under the jurisdiction thereof” language have never been spelled out.\textsuperscript{170} My proposal would be to have international migrants, prior to entry, permanently renounce the citizenship rights of any of their children born in the territorial U.S., on the ground that such births would not be under the U.S.’s jurisdiction for Fourteenth Amendment purposes. It would be, in effect, akin to the birth of a diplomat’s child on U.S. territory, i.e. the child is not entitled to U.S. citizenship on the grounds his parents are not “subject to the jurisdiction” of the U.S. government. Although this would be a reinterpretation of the Fourteenth Amendment, I see nothing problematic with this approach because it would not be an improper denial of citizenship rights as was the case in \textit{Dred Scott}, but a means of facilitating humanitarian migration.

\textit{C. Preventing and Addressing State Failure and International Crises}

A more generous approach to migrants, in conjunction with a plan for repatriation, will encourage developed nations to spend greater resources addressing problems related to the Global Commons such as climate change, state failure and political instability in the developing world. This is because rich nations seeking to safely repatriate migrants will be encouraged to devote necessary resources to address these problems. Although superficially problematic, the repatriation requirement is a key component here because the current paradigm of limited asylum and permanent residency deters rich countries from the required international engagement level. For example, the U.S. and its European allies might have spent additional


\textsuperscript{170} See United States v. Wong Kim Ark, 169 U.S. 649 (1898).
resources to address state failure in Libya and Syria if it did not fear the moral requirement to provide asylum with further involvement. The same applies with respect to economic migrants because the U.S. and other developed states would be forced to encourage economic development in sending-regions such as Central America and Mexico. Should rich countries collectively agree to adopt a dramatically increased temporary residency program, they will, in effect, be forced to devote additional resources to democratization and economic development in the developing world. For receiving states in Europe, Canada, and Australia, it will mean devotion of resources that are currently not spent.171 For the U.S., it will most likely mean reallocation of resources from Israel and Turkey172 to more vulnerable states with an emphasis on human development and job creation as opposed to military spending. It will also require states to take a more proactive approach to climate change and its concomitants, including political instability and state failure.

Rich nations, including the U.S., however, have a moral obligation to take in a greater number of global migrants in view of the migratory surge and coming population bulge in the developing world.173 This will only be forthcoming with a repatriation requirement that will force rich countries to strategically prevent and address international crises.

D. Mitigating a Brain Drain from the Developing World

Another benefit of granting migrants temporary status as opposed to permanent residency is that it would mitigate the baneful consequences of “brain drain” from the developing world.174 An ever-
increasing number of persons with post-secondary education from developing nations now live permanently in rich-world countries.\textsuperscript{175} To illustrate, African countries lose 20,000 skilled personnel to the developed world each year.\textsuperscript{176} That means that Africa is continuously losing people who might improve public health and foster economic development, democratization, and government accountability. Although the solution to the brain-drain phenomenon is not simple and does not lie in closing off access to rich-world labor markets, it requires taking steps to ensure migrants remain invested in their countries of origin by providing them only temporary residency in developed nations as much as feasible. To conjecture, Mexico’s economy and democracy would be better placed today if the Mexicans who migrated to the U.S. in previous generations had remained invested in Mexico’s development. The same could be said of North and West Africans in France and South Asians in the U.K. By limiting migrants to temporary visas, rich world governments can help foster democratization and economic development in the Global South that, in view of the population disparities between the Global North and South, would be an obvious improvement in global well-being.

CONCLUSION

If immigration and asylum laws were amended to allow for a large increase in temporary residence permits to facilitate ingress and egress across international frontiers, migrants would not become illegal immigrants, but would instead be legal temporary residents with the ability to live, work, and pay taxes in destination countries. Because the policy will require eventual repatriation and would deny migrant children birthright citizenship, bipartisan support for accepting more migrants will likely be forthcoming.

Continuing to incentivize repatriation to countries of origin by means of providing only temporary residence and work authorization without opportunity for permanent residency will definitely be problematic in that it will create an unequal residency paradigm that is anathema to liberal internationalists. That said, the current focus on equal permanent residency for all is causing more harm than good by effectively depriving the vast majority of migrants the physical security and economic opportunity that only rich-world nations can

\textsuperscript{175} http://www.migrationpolicy.org/article/reassessing-impacts-brain-drain-developing-countries.
\textsuperscript{176} \textit{Id.}
\textsuperscript{176} \textit{Id.}
currently provide. It also disincentivizes rich countries from working within an international community to prevent and address international crises and undermines third-world democratization and economic growth by permanently depriving developing nations of crucial human capital.

My proposal will strike some as both naïve and harsh. Naïve because it perhaps understates rich world countries’ opposition to migrants, and harsh in that it contemplates and indeed advocates repatriating these migrants to their countries of origin and denies them the opportunity for either permanent residency or citizenship. Recognizing there are problems related to migrant repatriation, my proposal at least considers all relevant interests in seeking to advance global well-being. These interests are those of receiving states, which fear the demographic and backlash consequences of permanent migration, the sending states, who consistently lose human capital to the developed world, and most importantly, the migrants themselves, who are effectively disallowed access to developed countries under the current paradigm. Obviously, my proposal does not directly address the issues of economic insecurity and socio-economic immobility, which are the other obvious causes for nativism and hostility to migrants in much of the developed world. These problems should be addressed as a moral imperative regardless of how they affect attitudes to migrants. However, taking steps toward remediating inequality and providing for socio-economic and intergenerational mobility is a necessary but altogether insufficient basis for changing attitudes to migrants.

Recognizing my proposal is a mere starting point, my hope is that it will stimulate a needed conversation about changing the current approach, which inadvertently and unfortunately treats migrants as toxins pervading an interconnected world and denies the reality of global migration and how this phenomenon will grow with time, based on state failure, climate change, and uneven population and economic growth further. By expanding access to migration on the condition that it be for no more than for a definite duration, developed countries can engender sufficient political support to greatly expand the number of migrant visas issued each year, address their citizens’ legitimate concerns about migration’s consequences and proactively deal with the problems that engender problematic levels of global migration.

At the start of the previous century, my grandfather traveled from what was then Ceylon to the U.K. as an Imperial subject. Recognizing the benighted views of many Imperial administrators, including incorrect suppositions as to racial hierarchy, they saw individual
British subjects as assets entitled to freedom of movement and residency. Although today’s world has laudably rejected the legitimacy of both empire and ethnic superiority, my grandfather’s descendants who hold Sri Lankan passports lack the same freedom of movement he took for granted. This is because first-world destination countries largely refuse to admit Sri Lankans because they fear that admission will irrevocably lead to illegal and unwelcome permanent residency. My hope is that changing our approach to global migration will encourage rich world citizens to welcome global migrants, facilitate migrants’ ability to improve their lives and, in the end, improve global well-being. President Trump, who has unequivocally opposed his country’s current approach to both immigrants and refugees, might consider this proposal as a means to address his supporters’ concerns and facilitate U.S. leadership on the issue.