

University of Mississippi

eGrove

---

Honors Theses

Honors College (Sally McDonnell Barksdale  
Honors College)

---

2018

## Unraveling the Veil: An Evaluation of American Immigration Policy in the 20th Century using John Rawls's Ethical Theory

Elizabeth J. Linginfelter

*University of Mississippi. Sally McDonnell Barksdale Honors College*

Follow this and additional works at: [https://egrove.olemiss.edu/hon\\_thesis](https://egrove.olemiss.edu/hon_thesis)



Part of the [Public Affairs, Public Policy and Public Administration Commons](#)

---

### Recommended Citation

Linginfelter, Elizabeth J., "Unraveling the Veil: An Evaluation of American Immigration Policy in the 20th Century using John Rawls's Ethical Theory" (2018). *Honors Theses*. 288.

[https://egrove.olemiss.edu/hon\\_thesis/288](https://egrove.olemiss.edu/hon_thesis/288)

This Undergraduate Thesis is brought to you for free and open access by the Honors College (Sally McDonnell Barksdale Honors College) at eGrove. It has been accepted for inclusion in Honors Theses by an authorized administrator of eGrove. For more information, please contact [egrove@olemiss.edu](mailto:egrove@olemiss.edu).

*Unraveling the Veil: An Evaluation of American Immigration Policy in the 20<sup>th</sup> Century using John Rawls's Ethical Theory*

By:  
Elizabeth Jean Linginfelter

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the requirements of the Sally McDonnell Barksdale Honors College

Oxford  
April 2018

Approved by

---

Advisor: Professor Jody Holland

---

Reader: Professor Robert Westmoreland

---

Reader: Professor Melissa Bass

## **Dedication**

I would like to dedicate my work on this thesis to my parents, Mitzi and Bill, for their continued support even when there was plenty of room for doubt.

## **Acknowledgements**

I would like to acknowledge my thesis advisor, Dr. Jody Holland, for his patience with me throughout this process, and for his encouragement, especially through the finish line. I would like to acknowledge all of my friends who are thankful to be done listening to me talk about this project. I would not have finished without you all.

I would like to thank the Token Reward System that Tousley Leake and I implemented on our long days working in Room 108 of the Sally McDonnell Barksdale Honors College.

I would like to thank the vending machines, which I like to think I single handedly funded in the basement of the Honors College. Thank you Coca-Cola products.  
Thanks Sally for the last four years.

## **Abstract**

Due to the current discussion surrounding immigration policy, I found it prudent to research the ethics behind the policies we have had in the past in order to make better policy decisions in the future. These policy decisions in the past have shaped America, and will continue to do so. Having this in mind, I decided to ethically evaluate the immigration policy of the 20<sup>th</sup> century using four acts implemented during this time: the Immigration Act of 1924, the Immigration and Nationality Act of 1952, the Immigration Act of 1965, and the Immigration Reform and Control Act of 1986. To evaluate these four acts I laid out the ethical framework that philosopher John Rawls provides and used that as a guiding factor. I divided the framework into four parts so that it would be clear and easy to understand: his principles of justice, justice as fairness, the original position and duty and obligation. I found that the policies over time started to reach a more and more ethical tone to them. The quota system in place, over the history of policy, has not been particularly ethical according to the Rawlsian framework. Overall, however, I came to the conclusion that due to the fact that the framework from John Rawls I used is only within the confines of a closed state it is not the most effective way to evaluate this sort of policy. I suggest further research and evaluation using a Jeremy Bentham Utilitarian framework or Kantian Deontological framework.

## Table of Contents

<b>Chapter 1: Introduction</b> .....	<b>1</b>
<b>Chapter 2: John Rawls Theory of Justice</b> .....	<b>5</b>
Theory of Justice.....	5
The Original Position.....	7
Duty and Obligation .....	11
<b>Chapter 3: An Immigration Narrative of the 20<sup>th</sup> Century</b> .....	<b>14</b>
The Great War and Depression .....	17
The Second War .....	18
Social Order.....	20
The Reagan Legacy .....	21
<b>Chapter 4: Analysis and Findings</b> .....	<b>25</b>
The Immigration Act of 1924 .....	25
The Immigration and Nationality Act of 1952 .....	29
The Immigration Act of 1965.....	34
The Immigration Reform and Control Act of 1986 .....	37
Further Analysis .....	43
<b>Chapter 5: Policy Recommendations and Conclusions</b> .....	<b>46</b>
<b>References</b> .....	<b>50</b>

## Tables

<b>Table 1</b> .....	<b>12</b>
<b>Table 2</b> .....	<b>16</b>
<b>Table 3</b> .....	<b>27</b>
<b>Table 4</b> .....	<b>32</b>
<b>Table 5</b> .....	<b>35</b>
<b>Table 6</b> .....	<b>39</b>
<b>Table 7</b> .....	<b>42</b>

## **Chapter 1**

### INTRODUCTION

Immigration policy has been a ‘hot’ buzzword in most political conversations over the last year. Throughout the course of America’s existence, it has been a consistent topic of presidential platforms, as well as a topic, almost always, on our legislature’s agenda. Immigration consistently has juxtaposing positions often resulting in gridlock. While there needs to be logistical and practical reasoning in the best interest of America behind the policy decisions, there should be more emphasis on the ethical choices guiding what the country’s policies are regarding immigration. In the past, ethics have been ignored and questionable decisions have been made surrounding immigration policy.

First, we must differentiate between three basic types of people coming into a country: an immigrant, a refugee, and someone seeking asylum. There are specific policies catered toward each of these types of foreign-born persons, and it is helpful to distinguish between the three in order to understand what ‘state of being’ the person in question is in when evaluating the ethics in policy. An immigrant is someone who is not from the country and has been granted access into the country to work without restrictions; they are also known as a “Lawful Permanent Resident” (Immigration Terms, 2018). A person who seeks refugee status is someone who is seeking refuge from their country because they have a fear of serious harm if they return to their home. Those seeking asylum status are those already in the United States who meet the standards of a refugee and are seeking a certain form of protection (Refugees & Asylum, 2018).

According to the Pew Research Center, in 2015, there were approximately 11 million undocumented immigrants living in the United States of America, and the preliminary estimate for 2016 predicted 11.3 million (Krogstad, 2017). Immigration is not only something that occurred in America's founding years, it is an ongoing process that will always be present as a discussion on the Congress floor. Immigration control and border policy debate often divides those who participate in the conversations surrounding the topic. Across all party lines, there are countless viewpoints that one can take causing tension that often leads to more division. Whether it is from the "far left," those with a hard stance on Democratic ideals, who may believe there should be amnesties for most unauthorized immigrants, a lack of deportation, and numerous refugees allowed in the country. Or whether the position is the "far right," the hard Republican stance, who may believe that all (or close to all) unauthorized immigrants must be deported and refugees should be allowed in the country at a minimum rate. With every position in between these two, and maybe even more extreme ones on either side of the political spectrum, brings countless opinions to the discussion, which makes this policy area difficult for our legislators.

Therefore, we stand at a crucial time in legislation; our Congress faces the task of a creating new law that will guide the course of immigration policy. President Donald Trump and some of his cohorts have a vision to push their desired policies through Congress. However, it is prudent that we should call upon an in-depth discussion of ethics surrounding this topic before we truly make policy decisions concerning the livelihood of other humans, regardless of their nationality. The contemplation of criteria such as economics, resources, population, etc., has taken precedence when making



immigration policies over ethical criteria. Thus, this is where needed resources and understanding must be focused to provide a structured ethical analysis of immigration policy.

John Rawls is one of the most renowned political philosophers in modern philosophy, providing theory that is still widely discussed, debated, and relevant. His main piece of political and ethical philosophy is his book, “The Theory of Justice,” which will be used as a foundation of my ethical analysis throughout this research. The intent of this research is to answer the question, how does John Rawls’s ethical framework, his theory of justice, provide structure for immigration policy? Applying Rawls’s theory can help legislators make informed and ethical decisions. Using this framework, I will provide policy recommendations for the current Administration based on the lessons learned from this ethical analysis of immigration policy.

In the following narrative, I will begin in Chapter 2 by providing a thorough background of John Rawls’ ethical framework, providing the criteria that will evaluate immigration policy. In Chapter 3, I will contextualize my research question by providing a description of issues surrounding immigration policy over the twentieth century, and providing a narration highlighting the evolution of the policy over the course of time. In Chapter 4, I provide the analysis and findings of John Rawls’s ethical framework as it applies to immigration policies. For this chapter, I have chosen four major immigration acts that have guided immigration policy through the 20<sup>th</sup> century. John Rawls’s ethical framework will be applied to the Immigration Act of 1924, the Immigration and Naturalization Act of 1956, the Immigration Act of 1965, and the Immigration Act of 1986. I chose these four acts, because these are the most prominent pieces of immigration

legislation in American history. Finally, in Chapter 5, I will highlight my policy recommendations based off of the ethical analysis and provide a conclusion.

## Chapter 2

### JOHN RAWLS'S THEORY OF JUSTICE

#### Theory of Justice

When John Rawls talks about social justice, he has a very distinct idea of what he exactly means by the term. He uses the term in the confines of a state, society, or institution. Within the confines of a state implies that his theory has only been applied to closed societies or specific countries, communities, and places. It does not address international/cross-societal interaction. In this light, he sees justice as “the first virtue of social institutions, as truth is of systems of thought” (Rawls, 2005); meaning, justice is like the water that institutions need in order to survive. The purpose of justice is not *just* about the survival either; it is the fundamental value of political morality. It should be the foundation for all decisions. Distrust in the institution and injustice creates an extremely harsh governmental environment to exist in, which is why Rawls advocates that justice is the most important virtue and way of life that sustains a society. The Rawlsian account of justice is essentially in contrast to utilitarianism, which he states in his book, “The Theory of Justice.” Rawls thinks justice involves two primary concepts: the right and the good. The theory of justice is derived from the definition and relation of these two concepts. Rawls gives absolute priority to right over the good, which is foundational in liberalism (Rawls, 2005). This theory of justice attempts to provide the “common sense” way of looking at the right and the good by applying the method laid out below (Rawls, 2005).

Rawls lays out his theory of justice in two principles; the first being the primary and necessary principle in order for the second one to be satisfied. The first principle is that every person is to have an equal right to a certain set of liberties, which I will list, that other people can also obtain in a similar way. These liberties include, and are seemingly limited to, political liberty, freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person (from psychological oppression and physical assault/dismemberment), the right to hold personal property, and freedom from arbitrary arrest and seizure. All of these liberties are equal under the first principle (Rawls, 2005). The second principle given by Rawls is that systematic inequalities, both social and economic, are to be arranged in two ways. They are advantageous to all persons within reasonable expectations and there are attainable offices and positions that accompany these inequalities and are accessible by all (Rawls, 2005).

His theory of justice does not venture far from the Lockean, Rousseauian, or Kantian theories of the social contract. However, he wants to take their concepts and raise them to a higher level to incorporate this idea of a contract into his theory. John Locke's concept of the social contract validates the political authority, which is something that Rawls's idea of the contract does not seek to do. He sees this contract as something that free and rational persons agree to under ideal conditions (Freeman, 2016).

Rawls does not see the social contract as something that the society creates through its basic structure, but he views it as something that the "free and rational" person agrees to when they are in the original position. The principles that this person accepts are what governs and creates stability in a society. This idea of stability is that every citizen's interests to be free and rational persons are promoted. Rawls calls this

justice as fairness (Rawls, 2005). Society is flawed in the sense that it is very hard to get its members to voluntarily agree to a method of cooperation, but justice as fairness gets us as close to it as possible (Rawls, 2005). The ‘contract’ that guides this justice as fairness comes in two parts. The first part being the interpretation of the situation and making a choice from the original position, which in Rawls’s main case helps choose the principles for distribution of primary goods equally. The second part of this is the actual creation of principles to guide that choice that would be agreed upon by the free and rational citizens (Rawls, 2005). This is the way the contract theory works under the guidelines of Rawls’s justice as fairness.

### The Original Position

Now that I have briefly outlined Rawls’s theory of justice, we can look at some of the details of what he believes. To be more specific to this section, I am going to be explaining what Rawls is most known for, his take on the original position. This is where all decisions, ideas and actions stem from, in the opinion of Rawls. I will first explain what the original position is; then I will explain how one reaches the original position; lastly, I will attempt to explain its purpose. The original position is not necessarily an ethical idea, but it is how ethical ideas are found. It is shaped by the ideals of justice. In order to understand Rawls’s theories as a whole, this idea is the most important one to grasp.

The original position is not a true state that one can attain, but it is a hypothetical idea that helps us see how the world works in the best way with a sense of justice (Rawls, 2005). The original position is just a mindset that does not speak for a “general assembly”

nor is it all encompassing. However, if you pulled one person at random in the original position, they would give the same general statement that applied to not only themselves, but also the vast majority of others. It would be a waste of time to think that this could be realistically attained, but it is a good guide (Rawls, 2005). The definition that Rawls gives is as follows:

“It is a status quo in which any agreements reached are fair. It is a state of affairs in which the parties are equally represented as moral persons and arbitrary contingencies or the relative balance of social forces does not condition the outcome. Thus justice as fairness is able to use the idea of pure procedural justice from the beginning” (Rawls, 2005, Pg. 104)

This definition given is the best way to explain what the original position provides when used. The original position helps us understand exactly what justice as fairness is. It allows societies to take circumstances when justice needs to be applied and create principles to deal with the issues (Rawls, 2005). These principles need to establish a fair system of governance between equal actors in the society (Rawls, Political Liberalism, 2005). These circumstances that need addressing are the ones that make people different: religion, political views, philosophical view, etc. and that are a product of the selfishness, scarcity and lack of knowledge from humanity (Rawls, 2005). There are advantages and disadvantages that people have in society, and they need to be taken out of the equation when making principles of right and good. These advantages and circumstances from the past must not affect how the future is to be determined by the principles that govern us (Rawls, Political Liberalism, 2005). This is what makes the liberal state: free and equal

citizens are able to decide what is the best life, and that only comes from the veil of ignorance described below.

Now, we must discuss how the original position is even obtained. To gain this sense of the initial stance on situations, the free and equal citizen must enter what is called the 'veil of ignorance.' The person under this veil of ignorance has no knowledge or idea of what his or her position and role is in society. They do not know what class of person they are, how smart they are, their demographic; they do not know any specific information about themselves. They do not even know the generation to which they belong. They only know the basic facts about how law, society, economics and other general ideas like these work (Rawls, 2005). After the person strips themselves of their role and has the clarity of no added attachments to skew a judgment, they must then make a choice.

These people under the veil of ignorance are then able to make a clear choice about what is a right and good course of action, in the name of justice, for a particular situation. They make this decision as to what is good and right by applying the best solution to further their just and best interests and fundamental needs under the veil of ignorance (Freeman, 2016). Rawls specifies how these principles determine what is right, which should always come before what is good, should be applied. He believes the principles should be general, universal and public, the conception of right should be able to override conflicting principles, and lastly the principles must be final (Rawls, 2005). Rawls thinks that most choices of what principles, in the case of the closed society distributive principles, to apply will be either one of his two principles of justice that I lay

out in the section above. These two principles provide the most effective way to ensure that no one's equality and liberty is taken or withheld from them (Freeman, 2016).

As stated above, the original position is just a hypothetical, not something that can be realistically attained. He sees the original position as more of a method of self-realization, clarification and the leveling of the playing field. So that each citizen is treated as free and equal when creating the principles with which one should live by. He understands that it is extremely difficult to get a unanimous decision on what is going to be right and good, but he thinks that this method is the surest that will get us closer to that goal (Rawls, 2005). He does not see this as too helpful for problems that are more obvious such as discrimination, but he sees this method as particularly helpful for issues such as the redistribution of wealth and other more difficult issues to solve (Rawls, 2005).

He does state throughout his writing that in order for the original position to best work that one must be a participant in a closed society, which will make things very difficult when applying this to immigration policy. He believes that he eliminates problems of extension if he assumes that it is a closed society and that all citizens are free and fully cooperating members. In his book, "The Theory of Justice," he does not address the global society when discussing redistributive justice, just the political society that the individual is in under the veil of ignorance (Freeman, 2016). However, in his book, "The Law of the Peoples," he does entertain a global original position. I will not be using his work from this, but rather attempting to use his work in the context he uses in his book "The Theory of Justice" to frame ideas for immigration policy. I am doing this, because in his work on international justice he wants to use only representatives of each nation-state instead of all people to enter the global position, and he only uses other liberal states



at that (Freeman, 2016). In the interest for my research I do not believe these limitations to be beneficial. So, I will examine if Rawls's ethical framework for justice will be useful in examining immigration policy.

### Duty and Obligation

It to be beneficial to examine what Rawls writes about the topic of duty and obligation, because it can also closely relate to the topic of American immigration policy and what to do about it. However, like most of his work that I have discussed thus far, he talks about duty and obligation within the spectrum of the state or a closed society. Rawls believe that duty and obligation are what tie us together as a society or group (Rawls, 2005). In this section I will discuss what Rawls writes about duty and how it relates to his theory of justice, as well as what he says about obligation and how it relates to his ethical framework.

In accordance to justice, the "most important natural duty is to support and further just institution" (Rawls, 2005), or in other words to put justice at the forefront of the society you are a part of and do your best to uphold principles that do not hinder that system of justice. Humanity rests easier and is more willing to accept the methods of keeping justice so long as they are under the impression that all other members of the society or institution are also abiding by the same principles. People will no longer fulfill their duty to the institution and to the people if they feel like others are not doing their share (Rawls, 2005).

Another duty that Rawls believes to be important to mention in his theory of justice is the duty of mutual respect and mutual aid. The duty of mutual respect is the

duty to hold others in a society to a standard that they are a morally good standing person promoting justice and that they offer the same respect to you. He believes that the esteem and dignity, which are essential parts to the human make up, contribute to the overall well-being of society. The duty of mutual aid is like the duty of mutual respect in that it helps the society's well-being, but it also helps the stability. Without the duty of mutual aid, we cannot rely on each other in times of need and keep the unpredictability of life from overturning a society (Rawls, 2005).

The notion of an obligation is complementary to the notion of a duty. When you have a duty to do something it is your obligation to uphold that duty in whatever manner it may be, more specific to the situation. So long as it coincides with the idea of justice and the theory behind it, obligations are almost secondary. They are just as important, but they are complements to the duties that are required of a member of a society or institution (Rawls, 2005).

All obligations stem from principle of fairness, which means that in the contract that a person enters in to from the original position that there comes a duty to live according to those principles and the obligations that come with the duty. The difference exactly between duty and obligation is that obligations are for the moral requirements that come from the principles of fairness, and all of the other requirements are considered natural duties (Rawls, 2005).

Something worth noting before concluding this section on duty and obligation is that we have a duty to abide by unjust laws within reasonableness. We must abide by these laws given that they do not cross the threshold of 'extreme injustice.' This is a very

broad stance, but Rawls took the time to include it, so we must keep this in mind when making policy evaluations (Rawls, 2005).

In this chapter, I have discussed several aspects to John Rawls's theory of justice. I have explained how a person has to enter the veil of ignorance, stripping all societal categories and statuses from themselves, to attain the original position. This is the position that all are equal. No one is a certain race, and no one is a certain class or nationality. The purpose for entering this position is to be able to make decisions on principles to follow at a level playing field. In doing this Rawls claims that what should be discovered are that most people will believe in what he calls his two principles of justice. These two principles state that all people are entitled to certain liberties and that the inequalities should be settled by making it so that they are to the greatest benefit of the least advantaged and that all positions and offices attached to these inequalities are accessible by all. Lastly, I talked about the duty and obligations that people have for mutual respect and mutual aid. We must live in societies where if we expect to be respected, we must show others the same respect, and the same goes for aiding others. I highlighted the fact that Rawls does briefly address the global original position and international justice, but in this research I am applying how his original theory of justice to American immigration policy. Therefore, Table 1 illustrates the components of Rawls's framework that will be utilized for following ethical analysis.

In the next chapter, I will provide a background history of immigration in America in the twentieth century. This is the time period for which I will use Rawls's theory to evaluate the policies.

**Table 1**  
**Rawls's Theory of Justice Framework**

**1. The Original Position**

- a) Enter the veil of ignorance by stripping all that makes people different (i.e. social status, religious views, political views, philosophical views etc.)
- b) The person in the original position only knows basic facts about how society is structured, basic facts about laws, economics, and other general ideas
- c) Makes a decision on what is a right and good course of action in this state using the following guidelines in this table

**2. Justice as Fairness**

This guides Rawls's concept of the social contract, which comes in two parts:

- a) The interpretation of a situation taken in the stance of the Original Position, and making a choice from that position
- b) Creating Principles that guide whatever choice made that most everyone would agree upon
- c) Believes that the most general principles that come from this method applicable to almost every situation are the two principles of justice

**3. Two Principles of Justice**

- a) Every person is to have an equal right to these specific liberties: political liberty, freedom of speech and assembly, liberty of consciousness and freedom of thought, freedom of the person, the right to hold personal property, and freedom from arbitrary arrest and seizure.
- b) These liberties are to be arranged in two ways: they are advantageous to all persons within reasonable expectations and there are attainable positions and offices that accompany these inequalities and are accessible by all

**4. Duty and Obligation**

The most important natural duty is to support and further just institutions, as well as put justice at the forefront of your society by upholding principles that do not hinder justice.

- a) Duty of mutual aid and mutual respect: mutual aid and respect help societies well-being and stability. If we can rely on each other to respect us and aid us in times of need then our society will be higher functioning
- b) We have the obligation to uphold the principles discovered in the original position
- c) We have duty to uphold unjust laws, within reasonableness, as a part of our contract with the society which we are members

## **Chapter 3**

### **AN IMMIGRATION NARRATIVE IN THE 20<sup>TH</sup> CENTURY**

America started as an immigrant nation. The concept of immigration has consistently evolved over the history of the country's existence. However, throughout the entirety of its evolution, heated debates concerning what is best for the nation have divided those participating in the discussion. The idea of immigration has always included hatred toward the foreign-born, non-American by some individuals. Looking back in early history to the exclusion of Irish immigrants, immigrants of color, and other foreign born peoples and examining the current history with the banning of immigrants and refugees from certain countries in the Middle East points us to the conclusion that exclusion or some sort of distrust of the outsider has always been present. For the purpose of this chapter, I will focus on the immigration environment in the 20<sup>th</sup> century. When examining immigration, multiple factors should be taken into account to reach a more comprehensive understanding of what exactly immigration may mean to a country at a certain time. Economics, war activity, the political party in power, and the political climate in general all can determine how immigration may affect a country. While providing the narrative as a whole regarding American immigration, I intend to offer it as a setting to use ethics to evaluate the policy.

The immigration flows are, according to the table from Douglas Massey's article, "New Immigration and Ethnicity in the United States," broken up into three time periods: The Classic Era (1901-1930), The Long Hiatus (1931-1970), and The New Regime

(1971-1993). The immigration patterns via ethnicity are seen in Table 2 below. I will use these three time periods to help organize my research, and help explain who was coming into the country under what conditions.

**Table 2**

<b>Patterns of immigration to the United States in three periods of the twentieth century</b>			
	<b>Classic era 1901-30</b>	<b>Long hiatus 1931-70</b>	<b>New regime 1971-93</b>
<b>Whole period</b>			
<b>Region of origin (percent)</b>			
Europe	79.6	46.2	13
Americas	16.2	43.6	49.6
Asia	3.7	8.6	34.5
Other	0.5	1.6	2.9
<b>Total</b>	100	100	100
<b>Total immigration (thousands)</b>	18,638	7,400	15,536
<b>Annual average (thousands)</b>	621	185	675
<b>Peak year</b>	1907	1968	1991
<b>Peak immigration (thousands)</b>	1,285	454	1,827
<b>First ten years</b>			
<b>Region of origin (percent)</b>			
Europe	91.6	65.9	17.8
Americas	4.1	30.3	44.1
Asia	3.7	3.2	35.3
Other	0.6	0.6	2.8
<b>Total</b>	100	100	100
<b>Total immigration (thousands)</b>	8,795	528	4,493
<b>Annual average (thousands)</b>	880	53	449
<b>Last ten years</b>			
<b>Region of origin (percent)</b>			
Europe	60	33.8	10.2
Americas	36.9	51.7	54
Asia	2.7	12.9	32.7
Other	0.4	1.6	3.1
<b>Total</b>	100	100	100
<b>Total immigration (thousands)</b>	4,107	3,322	9,293
<b>Annual average (thousands)</b>	411	332	929

Massey, Douglas S. "New Immigration and Ethnicity in the United States." *Population and Development Review*, vol. 21, no. 3, Sept. 1995, Table 1. *JSTOR [JSTOR]*.

## The Great War and Great Depression

During his 1923 State of the Union Address, President Calvin Coolidge, referencing immigration, stated, “America must be kept American” solidifying the ideal that restrictions on immigration must be kept up. His purposes were based on the reasoning that the American social and economic climate called for these restrictions (Coolidge, 1923). World War One had ended only five years earlier and a collective sense of nativism became very popular. There were several instances where people were condemned for not being patriotic enough. In one instance, a man purposefully did not rise for “The Star-Spangled Banner” and proceeded to get shot in the back three times. These extreme cases were not necessarily frequent, but the sentiments were all the same (Coben, 1964). This was the beginning of what is known as the Red Scare of 1919 and 1920, which was later mimicked following World War Two at a much larger scale. Fear of foreign-born people, distrust of radicals, and a sense of enthusiastic patriotism were sweeping across America. Due to a short, sharp crash in the stock market and the lack of work for returning soldiers from war among other reasons, there was a fear of economic instability (Coben, 1964). There was little room to trust those who were not native in the eyes of Americans. This short Red Scare did fade after the economy started to turn upward; however, the effects and ideals of the Red Scare lingered. Asian exclusion was still in full force from the Chinese Exclusion laws from the late 1800s, and the majority of immigration was from Europe. The beginning of the twenties called for large quantities of fear of many different people groups; certain religious groups, ethnic groups, and political groups were all looked down upon. This continued for long periods of time with little signs of America becoming more welcoming to the outsiders.

From these unsettling times following the First World War up through The Great Depression, America was somewhat stagnant in the arena of immigration from diverse populations. As seen in Table 2 total annual immigration in the first ten years of the Classical Era was more than triple the total immigration numbers in the last ten years of the era. Immigration flows were slow throughout these times, and truly didn't pick up until much later; however, for some groups who were just trying to live their life in America, times were tougher. Measures to secure and protect the borders were implemented in 1924 (U.S. Border Patrol History), which also brought on more restrictions and provisions for kicking people out of the country who were not supposed to be there. For example, in the 1930s the Philippines was granted independence and all Filipino people residing in America were sent back to the Philippines (Lee, 1999). Immigration was starting to be seen as Calvin Coolidge, in his State of the Union Address, wanted it to be seen. America, in some ways, had lost its "melting pot" feel to the more "American" identity where all things welcome were American and hardly anything else.

### The Second War

The beginning of the Second World War did not erase the 'all things American' rally cry that seemed to be setting in place. However, there started to be a tug and pull between Americans on the topic. The war brought more distrust and harsh realities for American enemies during this time, especially those who were residing in America whether they were citizens or not. As soon as the U.S. entered the war in 1941, after the Pearl Harbor attack, several declarations were made about immigrants from Germany,



Italy and Japan. These declarations stated that immigrants from these places would be treated as enemies, and they could be secured and removed. In total, 600,000 Italians, 300,000 Germans, and 90,000 Japanese were in America. The Department of Justice only arrested two percent of these people, around 16,000. About half of the two percent arrested were placed in internment camps. These numbers also do not include the 6,610 people who were deported from America back to Peru and other Latin American nations (Daniels, 2006). This also does not include the incarceration of the 110,000 Japanese people, citizen or not, that occurred at the same time under Executive Order 9066. This order made no distinction between ages either, so children were pulled out of school even if they were citizens. This order was deemed a “military necessity” during this wartime (Children, 1999).

A lot of racism stemmed from this uncertainty. There was racial tension across America due to this systematic distrust of people of certain races or political parties. The institutional exclusion of Asian people stayed in law until 1943 when it was repealed, which was a step that the United States took to enter a more inclusionary time period of American history (Daniels, 2006). It may not have solved the issue of racism toward Asian Americans, but it was a small institutional step to have less racism in immigration law.

President Harry Truman was one of the first Administrations to take a non-restrictive stance on immigration, speak on what he considered was ‘right,’ instead of talking about economics or social and political climates. He stated that, “We cannot be true to the democratic faith of our own Declaration of Independence in the equality of all men, and at the same time pass immigration laws, which discriminate among people

because of national origin, race, color or creed” (Tichenor, 1994). His tenure as President was a turning point in immigration policy history. During his Presidency the first provisions for refugees were made to allow displaced persons of WWII to come to America and resettle them (Marinari, 2016).

The case for refugees is a delicate one to deal with, and coming off the back of the two World Wars where trust was still hard to come by from many Americans did not make it easier. After Truman’s first order to help these groups of people, the U.S. struggled with the United Nations to fully get on board with their definition of refugee, or their approach to handling refugees. The United States refused to sign the Convention on the Status of Refugees, which laid out protocol for refugee management. The reasoning behind their refusal is because the United States definition of a refugee was much more narrow than the definition the United Nations used. The United States eventually caught up to the rest of the world and ratified the protocol in 1968, which happened to be the year of human rights, so that may have helped the progression (Hamlin, 2012).

### Social Order

Leading up to and throughout the entirety of the 1960s large proportions of the immigration flow were coming from Latin America and less from Europe (Hamlin, 2012). This flow pattern has mostly kept up since, and now when present day immigration talks ensue, aside from the topic of refugees, it is typically about Latin American immigration.

Shifts in immigration flow were not the only change occurring. The American public’s interests were shifting as well. The 1960s were the height of the civil rights era

where polarization was reaching a boiling point. There were people who were working extremely hard to include all others and create policy that helps oppressed people, as well as those who were trying to preserve the idea of a nationalized American. There were many pieces of legislation attempting to be passed in the arena of civil rights and many conversations on issues such as Vietnam, the sexual revolution and more, so immigration was not always the hottest topic to bring up. However, that did not stop American legislators from pressing the issue more as policy continually passed throughout the decade (Massey, 2012).

The conclusion of the Vietnam War and the falling of U.S. backed regimes in Vietnam triggered more Asian immigration flow in fear of communist authorities in Asia. Due to various political and altruistic reasons, the United States did not have many other options aside from letting these immigrants enter (Massey, 1995). However, there was not much policy change during this time period. The 1970s had a War that the people did not want, the Watergate Scandal, and more civil rights talk with little discussion of immigration other than a few amendments to existing policy. The three presidents in this decade, Nixon, Ford and Carter, all tried to make a difference in policy to help with the naturalization process to deal with increasing immigration, but all had little success at creating a desirable piece of bipartisan legislation that would pass through Congress.

### The Reagan Legacy

In the 1980s, the once European dominated immigration population slowly turned into a non-white, Latin American and Asian dominated immigration population (Tichenor, 1994). As you can see back from Table 2, the Asian immigration and

immigration from the Americas, during the “New Regime,” combined made up for 84.1 percent of the total immigration flow. These numbers had almost tripled since the first third of the century. Ronald Reagan’s Presidency came along in the 1980s and led to one of the most distinct changes in immigration rhetoric and introduced an entirely new idea, amnesty. Amnesty gave immigrants who entered America illegally *and* who met certain qualifications could apply to be legalized. Reagan’s campaign ran on a platform that an immigration task force would be implemented in order to figure out a solution to cope with the increasing wave of immigrants from Latin America and Asia. Not only was this piece of legislation helpful to those who were not citizens and entered the country illegally, it was also motivated out of the best interest of the economy (Maddux, 2005).

The piece of legislation was fairly controversial and changed conversations and focus toward dealing with these types of situations. Most of the more recent talk regarding immigration now is how to deal with those that are already in the country undocumented, and this step was the first step taken to do so. This new legislation passed granted almost three million illegal immigrants amnesty, creating uneasy feelings about this decision. There were those that disagreed deeply with these new changes to immigration policy, and they often fell into two camps on two extreme sides. One was that it was too “expansive” and “liberalizing,” meaning that they thought this amnesty would lead to more aggressive changes in other policies, and that this would be a slippery slope. The other camp is that it was too anti-immigrant and restrictive. They believed that this policy did not cover what exactly was going on, and that there was a lot of discrimination going on behind the scenes toward immigrant laborers. However, the idea and sentiment surrounding the illegal immigrant started to shift from an enemy of the

state who wrongfully entered the country and should be kicked out to the idea that the illegal immigrant population was the “shadow of American life.” Compassion for these people started to become a popular concept and idea (Tichenor, 1994).

The two sides of the political spectrum had two very distinct motives for why they wanted this new immigration reform. The Left wanted to stop the historic racial barriers on immigration and empower those who could not necessarily speak out in fear of retribution for their immigrant status. The Right wanted to help the economy and help keep the free market alive. The illegal immigrants in the labor force, who were working undocumented, were not helping contribute to the economy very well. So, the Conservative feelings toward helping these immigrants become legalized were fiscally motivated. This often caused those on opposing sides of the Reagan Administration to have negative feelings toward the motivations to enact policy. The opposition believed that the Administration was not being fair because the immigration policy was seen as only fiscally motivated, so certain countries immigrant populations (those who may not bring in as much revenue) were lower than others (Tichenor, 1994).

The legacy that Reagan’s immigration policy left has had lasting effects since its enactment. It is widely debated whether or not it has been a positive change in America’s immigration history or not. There may have been more economic challenges than anticipated and it did not necessarily put a halt on immigration flows, instead there were high numbers of immigration throughout the 1980s. However, this was the first comprehensive reform policy that addressed these particular issues of illegal immigration. Since its enactment, there have been fluctuations of popular opinion on how

to handle those who enter unlawfully, but this was the first to show less restriction in this area (Tichenor, 1994).

In the next chapter, I will be discussing four main pieces of legislation that were enacted during this time period: the Immigration Act of 1924, the Immigration and Naturalization Act of 1952, the Immigration Act of 1965, and the Immigration Reform and Control Act of 1986. I will be focusing on these because much of our immigration policy today has been built on these acts. I will analyze the ethical effects of these policies using John Rawls's ethical framework.

## **Chapter 4**

### **ANALYSIS AND FINDINGS**

In this chapter, I specifically chose four pieces of legislation to examine using Rawls's ethical framework. The four acts I choose are the Immigration Act of 1924, the Immigration and Naturalization Act of 1952, the Immigration Act of 1965, and the Immigration Reform and Control Act of 1986. I choose these acts because they have been pivotal in the shaping of immigration policy throughout our nation's development, and contain provisions that are still relevant and discussed today. I will examine whether or not the policies and provisions made fit within the framework that Rawls lays out. In Tables 3, 4, 5, and 6 I have presented brief outlines of each of the pieces of legislation so that there is something easy to understand and read when applying the ethical framework.

#### The Immigration Act of 1924

The Immigration Act of 1924, which was established under the Coolidge administration, sought to control the booming immigration numbers occurring throughout the first three decades of the twentieth century. This was one of the first pieces of semi-comprehensive legislation on the topic of immigration. Representative Albert Johnson, co-author of this act, declared that "it [had] become necessary that the United States cease to become an asylum" (The Immigration Act, 1924) meaning that there were large numbers of immigrants flowing into the U.S. at a high rate accompanied by the fact that during the time period it was enacted was when America wanted to be "more American."

So, this was a step in a direction that meant more exclusion and more restrictions regarding foreign people. This legislation called for an extensive quota system, more restrictions on naturalizations, but a step in a direction of less gender discrimination. In totality, the final number of immigrants this act would allow into the country, who fell within the parameters of the quotas, per one year was 150,000 immigrants (The Immigration Act, 1924)

This act reauthorized what was established in the 1921 Emergency Quota Act, which put a halt to “open” immigration into America, which had proceeded for a while up to this point. The Emergency Quota Act used statistics from countries that immigrants were coming from to determine a quota of how many immigrants would be allowed into America. This set parameters for immigration based on ethnicity, which was not particularly equal across all ethnicities. This piece of legislation used the census of 1910 to create the quotas based on people already in the country. The idea was to allow three percent of the number already in the United States to allow in the country per year. These numbers showed a heavy presence from Europe in immigration flow; however, it did not put any limits on immigration from Latin America. Also, these numbers excluded some southern European countries like the Slavic people and the Italian people. This piece of legislation lasted until the 1960s (Emergency, 2018).

The Immigration Act of 1924 also reauthorized the Cable Act of 1922, which called for the abolition of the law that caused American-born women to lose their citizenship if they married a foreign-born man. For example, if a woman who was an American citizen desired to marry a man who was not a citizen, and followed through, she would lose her status as a citizen of America. Laws did not call for the same



punishment for men if they desired to marry a non-American woman. This act separated women from their husbands when it came to citizenship, which had not been recognized up until this point in time. There were already limited rights for females at this time, so the abolition of this law helped with some of the gender discrimination that was occurring during this time period (Schneider, 2001).

The Immigration Act of 1924 also completely excluded any immigrants from Asia, particularly Japan, from becoming citizens; this was at a time of complete distrust of all people from Asia. They lowered the quotas through this act to create more restrictive laws. The majority of this act stayed enacted until 1952 (U.S. Department of State, 2018). It also did not remove or alter any previously acted immigration policy in the United States; it only added a more to the existing legislation (Fairchild, 1924).

<b>Table 3</b>	
<b>The Immigration Act of 1924</b>	
<ul style="list-style-type: none"> <li>• Created quotas for entry by country based on the 1910 census</li> <li>• Heavily favored western and northern European countries</li> <li>• Did not limit Latin American immigration</li> </ul>	
	<ul style="list-style-type: none"> <li>• Continued Asian Exclusion               <ul style="list-style-type: none"> <li>○ Quotas were lowered for Asia, and exclusion was kept up from the Chinese Exclusion Act of 1882</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Separated women from their husbands when it came to citizenship by allowing women to keep their citizenship if they married a non-American man</li> </ul>	

Now I am going to evaluate these policies with the Rawlsian ethical framework that I have laid out earlier. When conducting an ethical analysis I want to be sure that I take into consideration all aspects of the policy and how it may affect each party

involved. When considering Rawls's theory of justice and applying it to extensive quotas that the act calls for, we assume the fact that all of the immigrants wishing to come into America are willing to accept the 'contract' that comes with becoming a member of American society and accepting the laws and norms in the country.

To do this fairly, we should use the original position, as Rawls does when making principles to guide policies, to decide on how to select immigrants who are allowed to enter. This may be a little harder to do, because there would be no way of efficiently sifting through who can come in and who cannot come into the country, and John Rawls thinks it acceptable that people are not permitted. He believes it to be the duty of the state to protect the territory and manage population, as he expresses in his book "The Law of the Peoples." His reasoning's for limiting immigration fall under the reasoning of overpopulation and protecting "political culture and [the country's] constitutional purpose" (Rawls, 2003). However, due to his thoughts on redistribution and idea of equality and fairness that he discusses, it seems that there would need to be equal opportunity for immigrants from all nations, and there not be certain quotas unless gravely threatening the very nature of the state itself. These quotas can be discriminatory and unjust, which is why Rawls would want these policies to be changed.

The continued exclusion of Asian immigration built from the Chinese Exclusion Act is like the provisions about the quotas in the eyes of Rawls, but worse, because it is specifically limiting a group of people based on their nationality. The quota system in just the theory can be justified by the idea that there has to be a regulation system so that the number of immigrants from each nation is not lopsided, but to completely exclude a group of people is not just according to Rawls in this sense.

The abolition of the law that women would lose their citizenship of America if they married a non-American is a step in an ethical direction according to Rawls. He would not approve of these policies to strip women of their citizenship due to the unequal nature of this between men and women. The passing of this act separated women from their husbands when it came to citizenship, which means that after the repeal of this law women's citizenship is not dependent on who she is married to. The two principles of justice bringing liberty and equal rights to someone, under the veil of ignorance, would definitely mean that this was a just act. If a man could marry a non-citizen woman and keep his citizenship, under this veil of ignorance, a woman, being the free and rational citizen she is, should be able to do the same thing. This provision of this act is the simplest to test under the ethical framework of John Rawls since it is a far more specific law, and it is clearly discriminatory, irrational, and unequal. Rawls does receive some critique on his inclusion of gender in his theory of justice, for his lack thereof, from feminists such as Susan Olin and G. A. Cohen (Mas, 2012). However, he does include gender in his list of characteristics to ignore under the veil of ignorance, which is why he would deem this provision of the Immigration Act of 1924 appropriate.

In this piece of legislation I found that America was moving toward a more racially exclusive immigration ideology, which in the eyes of Rawlsian ethics is not acceptable due to the unequal opportunity amongst all immigrants. Applying the original position that Rawls introduces leads one to see that there should be the same outlook that he has on redistribution within society as allowing those to enter the society (to an extent of course). I also learned that this legislation rightfully abolished an unethical law regarding gender and immigration. While taking some steps to become ethical, as a

whole, John Rawls via his theory of justice and justice as fairness would need to see some adjustments in this policy, such as a less restrictive qualifications for immigrants, as well as less exclusions from entire ethnicities.

### The Immigration and Naturalization Act of 1952

The 1952 Immigration and Nationality Act, also known as the McCarran-Walter Act, pretty much kept up the Asian exclusion by implementing harsh immigration quotas for Asia even though the Chinese Exclusion Act had been repealed in 1943 (Lee, 1999), as well as containing restrictive, anti-communist rhetoric (Marinari, 2016). This act is divided into four sections. The first section addresses definitions and titles used in the act. The second section focuses on immigration and the actual policy surrounding immigration. This section kept most of the national origins quota principle from the Immigration Act of 1924; there were some additions, but not very significant. The third section covers naturalization and nationality that was brought up in the Nationality Act of 1940. This 1952 act reauthorizes what was stated in this Nationality Act of 1940. This was the first piece of legislation that brought together nationality and immigration in one piece of legislation. The selectivity of the immigration policy in section two is accompanied by more requirements for citizenship and naturalization. The fourth section is miscellaneous (The Immigration and Nationality Act, 1964).

The Nationality Act of 1940 took a small step in the direction to remove the arbitrary racial and ethnic categories of restrictions on immigration; however, the act narrowed ideological boundaries in order to preserved the ideals of American Democracy. This act also provided reasons why a person could or could not gain

citizenship (Daniels, 2006). This act addresses nationality at birth, nationality through naturalization, and loss of nationality. For the purposes of this thesis, I will address the nationality through naturalization specifically. This section of the act lays out the restrictions of what makes an immigrant eligible for naturalization. One of the provisions and qualifications is that a person has a right to be eligible for naturalization if the person is white, of African decent, or is an indigenous race of the Western Hemisphere. This is specifically excluding those who are Asian or other ethnicities who do not qualify under those conditions (Hyde, 1941).

The 1952 Immigration Act also granted the Attorney General the ability to “parole” people into the United States during times of need. This treated those who were in need as temporary refugees, and they could later become eligible for permanent residency, if desired. This was refugee law before refugee law really became something America defined, because America is interested in selectively helping out others. This particular provision helped specifically in two cases: the Hungarian Revolution in the late 50s, as well as during Fidel Castro’s power in the 1960s. (Hamlin, 2012).

<b>Table 4</b>
<b>The Immigration and Nationality Act of 1952</b>
<ul style="list-style-type: none"> <li>• Kept the quota provisions of the Immigration Act of 1924</li> </ul>
<ul style="list-style-type: none"> <li>• Removed some arbitrary racial and ethnic categories of restrictions on immigration <ul style="list-style-type: none"> <li>○ However, kept up exclusion of Asians by harsh quotas and restrictions</li> <li>○ Ideological restrictions with intent to preserve American Democracy</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Paroling <ul style="list-style-type: none"> <li>○ Granted the Attorney General the ability to “parole” people into the United States during times of need</li> </ul> </li> </ul>

Now, I will evaluate these policy changes within the ethical framework presented by Rawls. The removal of the arbitrary restrictions for gaining citizenship that had to do with race and nationality is a step closer to something that Rawls’s ethics would approve as policy. These restrictions based on ethnicity held no solid ground for not allowing someone to become a citizen. John Rawls would favor the repeal of these restrictions. As I have repeated throughout this analysis is that under the veil of ignorance the person’s racial position in society is arbitrary and should not be taken into consideration whenever making choices about justice and fairness. If you have to have fairness inside of the society, it is reasonable to think that John Rawls would want fairness and justice on the outside of society looking in, so that once inside of a society those principles are carried over. This being said, the idea that someone would be excluded the right to citizenship based on something like his or her race is unethical. While, this legislation sought to

remove these racial and ethnic barriers, there were still instances of exclusion, like Asian immigrants, that were not addressed, and therefore, are deemed unethical.

The ideological boundaries that are present in this act, particularly against those who may be Communist or a threat to democracy, is something that John Rawls opposes in this essay. He believes that his theories can only be applied internationally between two liberal and democratic societies (Rawls, 2003). However, I am addressing Rawls's ethical framework that he describes from within the state and attempting to apply that exact theory to immigration law. I am not utilizing his brief opinion on the international ethical framework. So, in my analysis using his 'closed state' framework Rawls would say that as long as the people that come in ideologically different have justice and fairness as the goal for a functioning society, their ideology should have no say in decisions. This contradictory language may be a point of contention against my idea of using this theory in the manner that I do.

The provision of paroling of non-citizen peoples in times of crisis in need for temporary help is something that John Rawls would say that he does not have any problems with as long as it does not hinder the justice and fairness of the citizens of America that are under the contract of membership. As long as the members of society are still granted their basic liberties and are not asked anything extravagant like giving up their houses, or something of that sort Rawls is okay with this provision of the act.

In this piece of legislation we find that little has really changed since the 1924 Act regarding the quota systems. So, in that case the exclusive policies are still unethical. However, the naturalization process made a little progress for eliminating some arbitrary racial and ethnic restrictions, even though there was still some exclusion regarding Asian

persons. The paroling provision of this act is deemed ethical to John Rawls so long as it does not interfere with the liberties and justice regarding the actual members of society. Later in this chapter, I will address a perspective of this theory that will deem this provision ethical regardless if it takes away some of the liberties of members of the society. Overall, at this point in history there has been little ethical progress.

### The Immigration Act of 1965

The Immigration Act of 1965 is known as a foundational piece of immigration legislation that started to pave the way to more modern legislation. This legislation was the first true attempt to make immigration policy less based on race, ethnicity and nationality. The legislation eliminated the Bracero Program, it implemented a different quota system for allowing immigrants into the country, and it reauthorized the Migration and Refugee Assistance Act of 1962.

This act eliminated the Bracero Program, which stated that Mexican laborers could come to the U.S. to work temporarily while America was at war and as long as there were labor shortages (Lee, 1999). Over 480,000 ‘Braceros’ came to work over the course of the programs existence, and could be considered one of the biggest and most prominent labor market developments besides American slavery in its day (Grove, 1996).

In the Immigration Act of 1965, instead of focusing on national origins, the quota system implemented was by hemisphere. Priority for admission was based largely on skills: doctors, scientist, professors etc. This change most affected immigration from Latin America. Prior to this legislation nearly half a million immigrants from Mexico were coming annually, but once there was a cap, the flow of immigrants coming from



Mexico was largely illegal (Massey, 2013). Even with this restriction on numbers by hemisphere, immigration flows were largely dominated by Latin American and Asian countries (Massey and Pren, 2012).

The Migration and Refugee Assistance Act of 1962 was enacted in response to the paroling provision from the Immigration and Nationality Act of 1952 being applied during the Cuba situation under Fidel Castro where many Cubans were filing into America. This was a more efficient and concrete way of handling the influx of people trying to enter the country escaping from a bad situation. The 1962 Act granted six percent of all refugees a permanent visa. This was the first refugee act that was *fiscally* motivated, so ethics were not necessarily taken into account when presenting this act although it made for a better case. The monetary gain was that instead of just housing all of these refugees, there was a system to get them to partake in the American economy by naturalizing a percentage. This act was reauthorized in the 1965 Immigration Act (Hamlin, 2012).

<b>Table 5</b>
<b>The Immigration Act of 1965</b>
<ul style="list-style-type: none"> <li>• Elimination of the Bracero Program               <ul style="list-style-type: none"> <li>○ Said that Mexican laborers could come to the U.S. to work temporarily while America was at war and as long as there were labor shortages</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Quota System by hemisphere               <ul style="list-style-type: none"> <li>○ Instead of by specific country the quotas were by hemisphere</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Granted six percent of all refugees a permanent visas               <ul style="list-style-type: none"> <li>○ An extension to the parole provision in the 1952 Immigration and Nationality Act</li> </ul> </li> </ul>

In lieu of being even more redundant, I will appeal to the previous two sections for applying Rawlsian ideals to the legislation attempting to be less based off of race and ethnicity. Clearly Rawls would favor less discrimination, because he is a proponent of being fair and letting the person be free and rational, like explained many times above. In doing so, this legislation implemented a system that created quotas by hemisphere, because this seemed like the less biased way of splitting it. However, this was strategically done, because the vast majority of immigrants were coming from Latin America, the Western Hemisphere, and they capped immigration at a far less number than the numbers were prior to 1964. This affected the number of immigrants coming from Latin America greatly, and it caused the shift to be mostly illegal. This being said, though, I believe that Rawls would think this provision by the state would be accepted, because it would be leveling the playing field for immigrants of both hemispheres, and he would also condemn those from trying to enter the country illegally. In a perfect world, there would be no division of the hemispheres necessary according to Rawls, but he realizes that the veil of ignorance is a hypothetical and could not be obtained, he would allow this to stay in law.

Another provision that was made law in this act was the repeal of the Bracero Program that temporarily brought in laborers from Mexico to work in America. He would think this Program was unjust, because these people were living in the society but completely being exploited for their labor. They would be considered one of the most disadvantaged people in the society because they were working, but were not receiving fair compensation or the benefits of American society. Rawls would not find this program to be fair by any means under the principles of justice. The workers were not gaining off

their contribution to society whatsoever; they were not a part of the contract, so their exploitation was extremely discriminatory. Rawls would approve of the ending of this program.

The last provision I will examine is the granting of six percent of all refugees permanent visas so that they could fiscally contribute to the American economy. Rawls would have no problem with this provision, so long as the visas were obtained fairly by the refugees. He would most likely applaud this provision. There is no outstanding reason to say this is unethical within the Rawlsian framework.

The provisions in this piece of legislation have turned toward a more ethical direction. The quota system by hemisphere proves to be far less discriminatory than the quota systems implemented in the past. No quota system is ideal, but this is a more ethical version. The elimination of the Bracero program took immigration policy another step closer ethically overall. This elimination, like the separation of women from their citizenship provision is far easier to evaluate due to the nature of the laws being addressing actions within the confines of a closed state. Finally we learned that the process to get a certain percentage of refugees eligible for citizenship is deemed ethical as long as it does not interfere with the liberties of the citizen. However, this does have similar effects as the paroling provision of the 1952 act, so we will address the fact that it may not depend on the liberties of the citizen at all later in this chapter, like stated above.

#### The Immigration Reform and Control Act of 1986

This piece of legislation, passed under the Reagan Administration, has caused great controversy since its passing through Congress in 1986. Due to the influx of

undocumented immigrants in America, the goal was to create a comprehensive piece of legislation that addressed all aspects of immigration. While Border Patrol had been in existence since 1924, these were the first steps into really addressing the issue of undocumented immigrants. The Reagan Administration and Congress had three goals when passing this piece of legislation: employer sanctions, measures to increase the enforcement of laws regarding immigration, and legalization (Reagan, 2011).

The employer sanctions submit that U.S. employers who knowingly hire undocumented aliens would be penalized. It repealed the Texas Proviso that allowed the hiring of illegal aliens. It also implemented a more secure verification system that allowed employers to ensure their workers are not unauthorized, as well as keep employers from discriminating against ‘foreign-looking or foreign-sounding’ persons out of fear of the sanctions. This helped both the employers and the immigrants. This new verification system helped the employers from hiring undocumented immigrants unknowingly. The punishments implemented helped immigrants not get exploited by employers who hire for cheap labor and then use that knowledge against the worker, due to the severity of these punishments. The law also provided greater border security and law enforcement for immigration (Simpson, 1984).

The last of the three main provisions that this piece of legislation offered is a legalization process never introduced before. This was the first bill that discusses the idea of amnesty. The amnesty is granted to illegal aliens who entered the country before a certain time period and were subject to the same exclusions for regular immigration processes such as no criminal record, likely becoming a public charge, moral turpitude as well as other exclusions. The three most prominent objectives of this legalization process

is to preserve the resources of the INS (Immigration and Naturalization Service) in preventing new illegal entries, to provide employers with a pool of labor to continue to hire from, and to prevent greater exploitation of a group of vulnerable peoples (Simpson, 1984). So, as you can see by some of the reasoning, the goal of the amnesty provision is not necessarily to help out the immigrants, but to help out the American economy by preserving jobs to residents of America.

<b>Table 6</b> <b>The Immigration Reform and Control Act of 1986</b>	
<ul style="list-style-type: none"> <li>• Employer Sanctions               <ul style="list-style-type: none"> <li>○ U.S. employers who knowingly hire undocumented aliens would be penalized</li> <li>○ Created a more secure verification process for employers to check documentation</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Increased border protection and immigration law enforcement</li> </ul>	
<ul style="list-style-type: none"> <li>• Created a legalization system, amnesty               <ul style="list-style-type: none"> <li>○ Amnesty is granted to illegal aliens who entered the country before a certain time period and were subject to the same exclusions for regular immigration processes such as no criminal record, likely becoming a public charge, moral turpitude as well as other exclusions</li> </ul> </li> </ul>	

Under the ethical framework of Rawls, these three main provisions of the IRCA (Immigration Reform and Control Act) would likely be accepted. The employer sanctions against those who knowingly hire undocumented aliens are rightly given, because as a citizen of the United States they are knowingly breaking the contract that they enter into as a part of this society where they must abide by the laws and rules given. Also, it is keeping employers from exploiting immigrants for cheap labor and holding their legal status against them, which would be unethical in the eyes of Rawls due to the exploitation of a disadvantaged group. This is similar to the Bracero Program analysis; however, the people working are illegally so it has its differences, but the concept is comparable. This is also helping combat discrimination in hiring workers by the secure verification process that may come when hiring people who ‘look or sound foreign.’

The increased border protection does not particularly warrant any sort of ethical evaluation. The state has a right to make the decision to create more protection of the border so long as it does not interfere with the liberties of a free and rational citizen. However, this point will be contested by another perspective on border policy using a similar analysis in the next section.

The legalization and amnesty provision of this act would fall within the guidelines of the ethical framework. The illegal immigrants who would qualify for legalization would be those who were living in America, abiding by the rules, yet not reaping any of the benefits that the state offers to the free and rational citizen. The part that Rawls would question would be to question how the state narrowed down the timeline of what immigrants would qualify for the amnesty, as well as the fact that they are legalizing immigrants in order to provide more labor for employers. This does not seem fair to the

citizens of America prior to amnesty that their job opportunities maybe taken by those who broke the law to enter. Some might question the motive behind the implementation of these policies, but Rawls never addresses the motive versus the action. He does not specify if the intention must be pure.

In the following table, Table 7, I have condensed the information that I have analyzed in this chapter so that my application of Rawls's ethical framework compared to the immigration policy is organized clearly and concisely.

**Table 7**  
**Ethical Framework Against Policy**

	<b>The Immigration Act of 1924</b>	<b>The Immigration and Nationality Act of 1952</b>	<b>The Immigration Act of 1965</b>	<b>The Immigration Reform and Control Act of 1986</b>
<b>1. The Original Position</b>	The quotas set forth, in the original position would be seen as not right or good, because they were discriminatory. The “Cable Act’s” provision for women to be able to marry non-citizens when men already could is right and good in this	Removing arbitrary conditions for racial and ethnic categories for quotas is a step forward to creating equal opportunity under the veil of ignorance. Paroling people is just as long as it does not interfere with other liberties.	The exploitation of laborers from Mexico was not just under the original position, so the abolition of the Bracero Program was positive. The broadening of the quota system is a good thing as well. There is no way to apply the refugee provision.	The employer sanctions under this law create equality of laborers in the labor force. The increased enforcement does not apply. The legalization process does not necessarily call for what is right and it does not really call for the application of the original position.
<b>2. Justice as Fairness</b>	The same analysis as the original position ensues for this point.	The same analysis as the original position ensues for this point.	The same analysis as the original position ensues for this point.	The same analysis as the original position ensues for this point.
<b>3. Two Principles of Justice</b>	The quota system does not foster the equal right to the liberties given from citizenship; there is no way that the distribution of goods and resources are treated fairly to every potential new citizen. The Cable Act satisfies these two principles	Removing the arbitrary conditions for quotas just gives each immigrant an equal opportunity to the right to citizenship. The paroling of people is just as long as it does not take away liberties of citizens who are free and rational.	The repeal of the Bracero Program was good, because it eliminated the inequality of people at work and the exploitation of vulnerable peoples. The refugee part is just as long as it does not take away liberties of citizens	The legalization process grants the illegal that are abiding by social contract, equal rights and liberties under the principles. The employer sanctions are just, because that is an unfair distribution of resources (cheap labor). Enforcement does not encroach liberties of citizens.
<b>4. Duty and Obligation</b>	The “Cable Act” points to a more just society, so that duty is fulfilled. Does not	Paroling fulfills a duty of mutual aid. Does not apply for quotas	The refugee assistance calls for the duty of mutual aid.	There is a duty for mutual respect for those that are abiding by the ‘social contract’ possibly.



## Further Analysis

In this section, I will introduce another philosopher's, Joseph Carens', ideas on open border policy using Rawlsian arguments via the theory of justice and justice as fairness in his essay, "Aliens and Citizens: the Case for Open Borders." In his essay, Carens looks at Robert Nozick's view, John Rawls's view and the utilitarian view. He briefly overviews Nozick's view of the individual property owner as the only one with the right to say who or who cannot enter their property. He thinks the state does not have that right so long as the person trying to enter is peaceful and law abiding. Ultimately to Nozick closed borders are not possible because the state is not granted that power.

Now, John Rawls does not have the same views as Nozick, for Rawls believes that his theory of justice is best described within the confines of a closed society. However, Carens, like myself, found his theory extremely compelling and wished to apply it across different societies. He addresses that one objection to this type of application is that the moral personalities deemed acceptable are those only in democratic societies, which he believes can be overlooked due to the vast differences of moral personalities within the state itself. So, with this in consideration Carens wants to take a global original position, and he believes that the two principles of justice will remain the same. He also concludes that those who have all of the restrictions against them, also known as the immigrants themselves, are those who are least advantaged, which are the group of people that Rawls's entire theory surrounds.

In this analysis of Rawls, Carens came up with three conclusions. The first conclusion is that people cannot be excluded solely based on the country that their parents were living in. This seems like one of the arbitrary characteristics that Rawls is

tying to get rid of in his framework. The second conclusion is that the economic conditions that people are afraid to hurt with allowing people to enter the country are non-issues, because Rawls's whose theory is based on helping out the disadvantaged group and under the global original position, these immigrants are the least advantaged group. The third conclusion is that preserving culture, such as liberal democracies, should not be taken into consideration since it would be odd to forgo an individual right in order to stand up to a cause that may even be irrelevant to that person.

Carens believes that the utilitarian argument is a hard argument to hold onto due to the fact that it would be too hard to gauge exactly if the maximum utility was being achieved. He believes this to be too large a task to apply the utilitarian approach, which is why he favors the Rawlsian approach.

He concludes with his opinion that John Rawls's approach to tackle the idea of open borders is the best one. He thinks that open borders make for more ethical societies as well as better societies overall. He believes that if people want to agree to the social contract of a certain state or society then they should have that right without restrictions holding them back.

This perspective of the Rawlsian ideas rivals what I was intending to do with my analysis of Rawls. Carens took Rawls's ideas from the confined state and applied them across societies. With this outlook on the theories I go back and address the few policies that I said I would come back to. The paroling provision in the 1952 act and the refugee provision in the 1965 act are the two main ones that would be affected by this perspective. They would both be seen as more ethical before; however, according to this analysis, these people leaving their country should be able to enter anyway.

After my analysis and after I have looked at someone else's analysis, I have concluded that the Rawlsian ethical framework as Rawls intends, in the confinement of the state, may not be the most productive framework to use in evaluating immigration policy. Rawls was correct in his decision not to truly apply it to foreign policy. In the next section, however, I intend to use what I have learned in this Rawlsian analysis to make some strong policy recommendations, because there are still lessons to gain from this analysis. I will also provide a brief outline of another philosopher's ethical framework that I believe may be a better fit for analyzing immigration policy along with my final conclusions.

## **Chapter 5**

### **POLICY RECOMMENDATIONS AND CONCLUSIONS**

In this Chapter, I intend to provide policy recommendations and my final thoughts regarding my research for this thesis. After concluding my research I have found that for the purposes of bringing ethics into immigration policy evaluation was not done efficiently or effectively with the framework of John Rawls's theory of justice as Rawls intended. Rawls does not think this theory of justice as fairness and the principles that guide them necessarily will work in every type of institution or society. It was made for politically liberal democracies, but it is hard to apply his theories internationally to societies that are not politically liberal democracies (Rawls, 2005). Rawls also explains some of the problems with applying these principles to institutions. While these liberties and rights associated with the first principle of justice are indeed liberties and rights, they are still governed by rules. So, whether or not the free and rational man came up with these rules is to be determined; it is still essentially determined by society (Rawls, 2005).

The second consequence is that it can sometimes give people a false sense of what their role in society will look like. Their expectations of a social status are not met, because when making these choices on what principles will guide our institutions to maintain equality discrepancy between what people believe are fair and what actually is fair will be present (Rawls, 2005). This can cause some problems in the cohesiveness of society. The main issue, however, is that he does not intend his framework to be used outside of the confines of a closed society or institution. I attempted to apply these ideas

to foreign policy, but Rawls was correct in not attempting to do this, because it does not 'fit' so to speak. He addresses the topic briefly in other works, but his ideas and his methods that I used did not fit.

In light of my realization that John Rawls's theories do not productively evaluate this type of policy and do not offer many guidelines for what do with foreign policy, I will offer an ethical framework that, with further research, would be better for this kind of evaluation. Jeremy Bentham's Classical Utilitarian ethics creates a framework that I believe would be an appropriate way to evaluate immigration. He held that the two sovereign masters that guide the human life are pleasure and pain. Actions that promote pleasure and happiness are deemed good and approved while actions that promote pain or suffering are deemed bad. When evaluating actions and policies as moral or immoral Bentham measures within these parameters: the intensity of the pleasure or pain, the duration of the pleasure or pain, the certainty of the pleasure or pain, proximity of the pleasure and pain, the fecundity of the pleasure and pain (how likely is it to further more pleasures), the purity of the pleasure or pain, and the number of people effected by the pleasure or pain. These guidelines would be much more suitable to evaluate immigration policy, because it something measureable, as well as more defined in its parameters of what is moral and immoral (Driver, 2014).

America was built off of immigration, and we are at a crossroads in immigration policy. Steps in legislation need to be taken in order to fulfill the need for renovation of our current policies. The Trump Administration has the opportunity to make policy, which seeks to first help the best interest of America without infringing on the need to help the best interests of the global citizen. It is a delicate balance between nation and

world, but America should use its global power to lead a more ethical framework to structure its' immigration policy. I will now explain a few policy recommendations that I believe will best portray a more ethical immigration system. From what I have learned over this research is that we are called to help our fellow humans in need and must treat them like humans and not enemies of the state, unless they have done something to threaten the well-being of the state.

I recommend that amnesty should be given to those who have immediate family members who are citizens and who have been in the country without creating pain, for a ten-year period, to other members of society. This legislation would be the continuation of Deferred Action for Childhood Arrivals (DACA), and the implementation of Deferred Action for Parents of Americans (DAPA). However, the Trump administration is effectively stopping DACA, and DAPA never made it into law.

I believe that the refugee ban from certain countries is completely unethical. I understand in times of crisis and when there is a concern for safety that the state must be cautious. However, there should be a task force in place for the people coming into America who are from one of the countries that we are in conflict with to do an extreme vetting process so we can be the humanitarians that we were once known for. We have completely halted our refugee protocol, which is one of the more immoral things our country has done as an institution in recent history. I also think that the Trump administration's desire to build a wall must be stopped. There is nothing to gain from this wall, but an exclusive image that causes more pain than pleasure. The last recommendation I am going to make is for sanctuary cities. I believe that the undermining of the federal law, or limited cooperation with what the government is

trying to impose is not a solution. Instead, there should be more legislation to help those who are undocumented to become documented.

## References

- “Border Patrol History.” *Border Patrol History* | U.S. Customs and Border Protection, [www.cbp.gov/border-security/along-us-borders/history](http://www.cbp.gov/border-security/along-us-borders/history).
- Calvin Coolidge: "First Annual Message," December 6, 1923. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=29564>.
- Carens, Joseph H. “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics*, vol. 49, no. 2, 1987, pp. 251–273. *JSTOR* [*JSTOR*].
- “Children of the Camps.” *PBS*, Public Broadcasting Service, 1999, [www.pbs.org/childofcamp/history/](http://www.pbs.org/childofcamp/history/).
- Coben, Stanley. “A Study in Nativism: The American Red Scare of 1919–1920.” *Political Science Quarterly*, vol. 75, no. 1, Mar. 1964, pp. 52–75. *JSTOR* [*JSTOR*]
- Daniels, Roger. “Immigration Policy in a Time of War: The United States, 1939–1945.” *Journal of American Ethnic History*, vol. 25, no. 2/3, 2006, pp. 107–116. *JSTOR* [*JSTOR*].
- Driver, Julia, "The History of Utilitarianism", *The Stanford Encyclopedia of Philosophy* (Winter 2014 Edition), Edward N. Zalta (ed.), URL = [<https://plato.stanford.edu/archives/win2014/entries/utilitarianism-history/>](https://plato.stanford.edu/archives/win2014/entries/utilitarianism-history/).
- “Emergency Quota Act - Immigration | Laws.com.” *Immigration*, [immigration.laws.com/emergency-quota-act](http://immigration.laws.com/emergency-quota-act). Accessed Spring 2018.
- Fairchild, Henry Pratt. “The Immigration Law of 1924.” *The Quarterly Journal of Economics*, vol. 38, no. 4, Aug. 1924, pp. 653–665. *JSTOR* [*JSTOR*].



Freeman, Samuel, "Original Position", *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.), URL = [<https://plato.stanford.edu/archives/win2016/entries/original-position/>](https://plato.stanford.edu/archives/win2016/entries/original-position/).

Grove, Wayne. "The Mexican Farm Labor Program: 1942-1964." *Agricultural History*, vol. 70, no. 2, 1996, pp. 302–320. *JSTOR [JSTOR]*.

Hamlin, Rebecca, and Philip E Wolgin. "Symbolic Politics and Policy Feedback: 'The United Nations Protocol Relating to the States of Refugees' and American Refugee Policy in the Cold War." *The International Migration Review*, vol. 46, no. 3, 2012, pp. 586–624. *JSTOR [JSTOR]*.

Hyde, Charles Cheney. "The Nationality Act of 1940." *The American Journal of International Law*, vol. 35, no. 2, Apr. 1941, pp. 314–319. *JSTOR [JSTOR]*.

"Immigration Terms and Definitions Involving Aliens." *Internal Revenue Service*, 18 Jan. 2018, [www.irs.gov/individuals/international-taxpayers/immigration-terms-and-definitions-involving-aliens](http://www.irs.gov/individuals/international-taxpayers/immigration-terms-and-definitions-involving-aliens).

"The Immigration Act of 1924." *US House of Representatives: History, Art & Archives*, 1924, [history.house.gov/Historical-Highlights/1901-1950/The-Immigration-Act-of-1924/](http://history.house.gov/Historical-Highlights/1901-1950/The-Immigration-Act-of-1924/).

"The Immigration and Nationality Act of 1952 as Amended through 1961." *The International Migration Digest*, vol. 1, no. 1, 1964, pp. 34–46. *JSTOR [JSTOR]*.

Krogstad, Jens Manuel, Jeffrey S. Passel, and D'Vera Cohn. "5 Facts about Illegal Immigration in the U.S." *Pew Research Center*. N.p., 27 Apr. 2017. Web. 14 Feb. 2018.

- Lee, Erika. "Immigrants and Immigration: A State of the Field Assessment." *Journal of American Ethnic History*, vol. 18, no. 4, 1999. *JSTOR [JSTOR]*.
- Maddux, Thomas R. "Ronald Reagan and the Task Force on Immigration, 11981." *Pacific Historical Review*, vol. 74, no. 2, May 2005, pp. 195–236. *JSTOR [JSTOR]*.
- Marinari, Magdalena. "Divided and Conquered: Immigration Policy Advocates and the Passage of the 1952 Immigration and Nationality Act." *Journal of American Ethnic History*, vol. 35, no. 3, 2016, pp. 9–40. *JSTOR [JSTOR]*.
- Mas, Elisabet. "Can Rawlsians Deliver Gender Equality." June 2012.
- Massey, Douglas S. "America's Immigration Policy Fiasco: Learning from Past Mistakes." *American Academy of Arts & Sciences*, 2013.
- Massey, Douglas S. "New Immigration and Ethnicity in the United States." *Population and Development Review*, vol. 21, no. 3, Sept. 1995, pp. 631–652. *JSTOR [JSTOR]*.
- Massey, Douglas S, and Karen A Pren. "Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America." *Population and Development Review*, vol. 38, no. 1, Mar. 2012, pp. 1–29. *JSTOR [JSTOR]*.
- Rawls, John. *A Theory of Justice*. The Belknap Press of Harvard University Press, 2005.
- Rawls, John. *Political Liberalism*. Columbia University Press, 2005.
- Rawls, John. *The Law of Peoples*. Harvard Univ. Press, 2003.
- "Refugees & Asylum." *USCIS*, [www.uscis.gov/humanitarian/refugees-asylum](http://www.uscis.gov/humanitarian/refugees-asylum). Accessed January 2018.

Reagan, Ronald. "Statement on Signing the Immigration Reform and Control Act of 1986." *The International Migration Review*, vol. 45, no. 1, 2011, pp. 204–209. *JSTOR [JSTOR]*.

Schneider, Dorothee. "Naturalization and United States Citizenship in Two Periods of Mass Migration: 1894-1930, 1965-2000." *Journal of American Ethnic History*, vol. 21, no. 1, 2001.

Simpson, Alan K. "The Politics of Immigration Reform." *The International Migration Review*, vol. 18, no. 3, pp. 486–504. *JSTOR [JSTOR]*.

Tichenor, Daniel J. "The Politics of Immigration Reform in the United States, 1981-1990." *The University of Chicago Press*, vol. 26, no. 3, 1994. *JSTOR [JSTOR]*.

U.S. Department of State, U.S. Department of State, [history.state.gov/milestones/1921-1936/immigration-act](https://history.state.gov/milestones/1921-1936/immigration-act). Accessed Spring 2018.