

## CHAPTER 2

### **Arguments about Immigrants**

One sort of political negotiation best explains the direction of change in American immigration policy. Political negotiation can take several different forms. One involves the question of who gets what. Two or more sides can bargain over policy as a vendor and a buyer might haggle over a price until they reach a settlement somewhere between their starting points or, if each wants something different, they might agree to trade votes. This happens when the issue is how to distribute a measurable good: money, votes, personnel, the number of military bases. Power decides these issues. Many political problems correspond to this model of individuals with competing interests bargaining under scarcity, at least at one stage in a lengthier process. At other times, political negotiation involves the question of which values ought to guide policy. Disagreement can focus on whether a problem exists at all, or on which principle should be applied to solve it. A policy package—a goal plus a principle plus a solution—has a logical glue that makes compromise difficult and, when it occurs, forces it to follow a different path than that which describes straight bargaining. At the heart of such policy packages are arguments, which connect problems and solutions with reasons. Success depends on persuasion rather than on material resources. Argumentation can produce policies that are fundamentally different from, and unpredictable from the standpoint of, simple material interests.

In two circumstances, ignoring arguments is justified. Sometimes a choice does not exist, and to believe that one does is, in fact, to be deluded. For arguments to matter, choice has to be possible. If, for example, a country were to be annihilated unless it acted in a certain way, its “choice” to comply is forced and, because it was necessary, not a real choice. In circumstances of necessity, arguments are, paradoxically, irrelevant if actors are rational. This justification underlies structural theories of international relations as well as endgame analyses. In the long run, structural theorists contend, the broad forces that drive historical processes—movements of languages, religions and ideologies, technology, wealth, populations, knowledge—effectively eliminate choice. Structural transformations reconfigure the incentives that actors face, making the rational choice

obvious, obvious at any rate over time to most people. Moreover, the momentum of broad changes is such that no one decision, or even series of decisions, will have much of an impact.

Ignoring arguments makes sense as well when consensus, rather than necessity, has made discussion superfluous. This can be the case in studies of implementation or of instrumental rationality.<sup>1</sup> If a group (or person) agrees on goals and on how to achieve them, the issue left is whether experience proved those expectations right. The systematic gaps between what a person or organization ought to do and what is actually done can then be described in terms of bureaucratic routine, or incomplete information, or misperception, or stupidity. In both types of case, arguments are irrelevant because goals—preferences—are clear, and what counts as a good reason for doing something is also clear. Much, however, lies between the extremes of necessity and instrumentality.<sup>2</sup> Politics often, maybe usually, involves competition to define social goals, and necessity is more often a rhetorical device than a reality.

How argumentation works in democratic politics has not been systematically investigated. One reason is that many policies do result from horse-trading, and powerful analytical techniques such as game theory can explain quite a variety of political outcomes. It has therefore been easy to neglect classes of problems that lie outside this set. Additionally, a long tradition of thought, from Machiavellians to Marxists, insists that material interest (presumably known and measurable) drives political struggle; by corollary, reasons contestants express are nothing more than a smoke screen (though whom they could fool, if everyone operated this way, is never made clear). Arguments are, in this view, post hoc rationalizations for an outcome effected by power, for power. Often this view is attacked on normative grounds as cynical, a charge that has not been particularly productive. Here, the view is criticized on empirical grounds. Many political problems do not correspond to the material interest model. The dynamics of argumentation provide a better explanation for the process and its result. American immigration politics have consistently been of this type.

In an argument, a position is backed by a reason. Importantly, the reason refers to something other than simply the person offering it. For example, a missile is considered better when it is more accurate. Accuracy is a value the arguer holds, but it is also a value that the arguer thinks is independent of his own preferences. It is a shared value, social as well as personal, and hence more than a preference. In a completely material bargaining situation, what persuades are not reasons but resources: I want this missile. Whether you acquiesce depends on whether you want it independently, whether I can force you to agree to it, or whether I have enough wealth to buy your consent. In any case, the position is backed by power.

This cannot reside in anyone other than the person holding it. “If we term those considerations on which a person acts motives and those which may be used in interpersonal communication reasons,” says Giandomenico Majone, “then we may say that not all motives need be reasons and that not all reasons function as motives.”<sup>3</sup> This simple distinction—arguments are backed by common or shared values while bargaining positions are backed by individual resources—has huge implications for the results of policy disputes, as well as their dynamics.

Reasons, unlike resources, can be seized by an opponent and used for his or her purposes. Reasons are powerful because they refer to common values, but this also makes them vulnerable to capture. If I base my argument for one missile on its accuracy, I make myself vulnerable to an opponent’s ability to demonstrate the superior accuracy of his or her missile. If I had simply held that I wanted the missile because I wanted it, and I was powerful, the opponent could not have used my position to benefit his or her side. It would make no sense for the opponent to claim that I was wrong about my own preferences. Reasons that one side provides become a common resource. Fights over reasons can make reasons more important than the result to which they are initially attached. In this way, reasons can lead toward a result that was not anticipated and that lies beyond the terrain over which the sides were initially fighting. This explains how the result of an argument between A and C can result not in B, nor in anything else between A and C, but instead in Q (or  $\pi$  or something equally odd). The person who introduces justification into debate gambles not only that his or her reasons will prevail, but that those reasons will lead to the preferred policy and not be seen to support something else entirely. This is a risk that legislative contestants often must take, but that they often lose. Debates are often about social values, and so they often involve argumentation like this.

The deliberative ideal is normatively and institutionally central to democratic political systems. Theorists of democracy, most prominently John Dewey, have argued that extensive debate educates citizens about their own values, even as it informs representatives of their constituents’ wishes.<sup>4</sup> Dictatorial as well as democratic systems can value argumentation as a means to an end. By helping to integrate new information and opposing viewpoints into a picture of what is at stake and what can be done, broad discussion promotes prudence; for this reason, institutions from government bureaucracies to private firms periodically attempt to encourage dissent. Yet, as Talcott Parsons argues, “Rational action, in the sense of action guided by valid knowledge, is at the same time action which is normatively oriented.”<sup>5</sup> Arguments help to determine what is best to do, unless reason has little to do with decisions.

There are two ways to resolve such disagreements over principle, one more like straight bargaining than like argumentation. Both show up in the politics surrounding American immigration control. One is procedural. If a majority of people take one side, it wins. If there is a tie, two philosophically incommensurate principles can coexist in practice. For example, a fight between one group devoted to barring all immigration on the grounds that immigration destroyed community, and another group bent on eliminating national boundaries because they are arbitrary and hence unethical could compromise: an annual ceiling of, say, 150,000. Democracy provides a handy way to quantify, and thus speedily resolve, disputes about irreconcilable values.

The other way to resolve disagreements is substantive and involves reframing the issue. Different principles attract, or require, different levels and types of support. If a dispute becomes “really about” one principle, participants will face pressure to support it. If settling land is in the national interest, those opposed to allowing immigrant settlers will have to provide an alternative way to serve the same national interest—keeping out rivals for land—or capitulate. Legislative and public struggles over immigration policy have taken both forms, but have been dominated by arguments about how to frame the national and public interests. In each era, immigration policy became “really about” a value seen to be newly primary. Through argument, one value emerged as central to the public interest, and immigration policy was redesigned to support it, in a way not predictable at the start of the debates.

Before an argument can be determined to be in the public interest or not, or even to qualify as a “public interest type of argument,” it minimally has to be an argument, to contain a statement of cause and effect. This simple point is made (and then simple extensions detailed) because interest-based arguments imply that appeals to others are irrelevant, since the calculus of power alone decides who will prevail. The fact that an actor wants an outcome is sufficient argument, or rather, the force at that actor’s disposal alone decides how “persuasive” the argument is. But this only characterizes situations where reasons no longer matter, as when people finally cast their ballots or troops head to the front. Before that point, when the action that the group will take is uncertain because the choices that people will make are still uncertain, arguments intervene to tilt the outcome in one direction. They do not replace calculations of interests; rather, they qualitatively affect the way that actors define or interpret their interests.

One can do this by redefining the nature of a situation, reorienting people by changing the way they locate themselves.<sup>6</sup> For example, voters choose differently when the same referendum is “really about” taxes than

when it is “really about” recycling; the American public supported the Vietnam War when it was about containing communism and opposed it when it was about defeating nationalism. Reinterpreting a situation redefines the sides in a conflict and can affect choice by placing people on a side they do not want to be on. One can also change the way that actors define their interests by demonstrating the unintended consequences of a policy they advocate.<sup>7</sup> For example, an advocate of sending food to famine victims might reverse his or her position if it were demonstrated that this would flood local markets with free products, discourage local farming, and result in even less food in the future. The value—helping victims—is upheld, but is more strongly attached to a new policy.

In order to have a chance at persuading, an argument has to cite an effect that could realistically result from an action. For those arguments about the effects of an invasion to be plausible, the specific consequences listed have to be reasonable expectations. What people see as reasonable depends at any point in time on their ideas about causation. Conceptual maps not only place an individual in a particular context, but also explain how that environment works.<sup>8</sup> “Except in its crudest form,” argues Kathryn Sikkink, “the comprehension and formulation of facts and interests implies the existence of a conceptual apparatus [that helps] people grasp, formulate, and communicate social realities.”<sup>9</sup> Plausible mechanisms of cause and effect that prevail at one time, or within one group, can be considered bizarre at another time. The convictions that witchcraft causes misfortune, that bloodletting cures disease, and that night air causes sickness are all arguments about cause and effect that have since been rejected, although for a long time each was plausible to a great number of people. Giandomenico Majone contends that “since policies exist for some time, their political support must be constantly renewed and new arguments are constantly needed to give the different policy components the greatest possible internal coherence and the closest fit to an ever-changing environment.”<sup>10</sup> Positions that succeed are held by those able to control the direction that an argument takes as it develops in a public arena, as well as to connect the argument convincingly to notions of the public interest.

### **Public Interest**

The dynamics of justification can propel debate along a path. But not all paths are available; the requirement that policy be justified as in the public interest also limits debate. To be heard seriously, policies have to plausibly further the public interest, that which all members of a society share by

definition: “those interests which people have in common *qua* members of the public.”<sup>11</sup> C. W. Casinelli elaborates the definition:

The public interest applies to every member of the political community; it is a value to be distinguished from something advantageous to one person and disadvantageous to another. . . . To say that an action is in the public interest is to judge it consistent with a political situation that is beneficial to everyone, if not immediately at least in the long run, and whether or not everyone realizes it.<sup>12</sup>

The distinction between the private and public interests of individuals is illustrated by the possibility that a regulatory or licensing policy is against one’s interest as an aspiring architect but is in one’s interest as a member of the public, or that conservation is in one’s interest as a member of the public although it might be to no living person’s material benefit. As members of the public, people have an interest in common taxation or traffic policies, though as wage earners or speeders they might not want them. The public interest can be conceived of as an end or as a means, as an interest in a specific outcome or an interest in following certain decision-making procedures, whatever end is reached.

When social goals are agreed on, the question of what is in the public interest is settled, so debate can focus on how to achieve it.<sup>13</sup> Some means are more efficient, less expensive, more fair. In the United States, supporters and opponents of affirmative action both argue in terms of equality, supporters and opponents of nuclear weapons both argue in terms of prudence and morality, and supporters and opponents of foreign aid both argue in terms of duty to the foreign poor. When social goals are in dispute or appear to be in conflict with each other as often happens, discussion revolves around the content of the public interest. Is freedom of speech more or less important than freedom from hate speech? Is safety more important than efficiency? Framing an issue in terms of the public interest is not sufficient to win, but it is necessary if one is to have a chance at winning.

To win, one must persuade others that a policy is in their interest as members of the public. The policy can be in everyone’s private interest or no one’s; whether private interests are *also* served is irrelevant, though whether private interests are *instead* served is crucial. As Friedrich Kratochwil argues, public interest claims have to be universalizable, consider consequences, and serve community values.<sup>14</sup> Claimants phrase their arguments in these terms, while detractors either argue for competing public values or contend that the public interest is a thin disguise for private interests. For example, one might argue that building a highway through a

wilderness area is in the public interest because it would help communications and commerce and give more people access to the wild. This is a formally proper public interest argument; to succeed, it would have to convince others that the value of increased mobility was more important than that of, say, preserving this wilderness. It would also have to persuade others that society would benefit, that its values would be furthered, rather than that private interests would win at the public's expense. That some companies or individuals would benefit is to be expected; that the benefits would be unequally realized is also to be expected. Neither example of private gain undermines the public interest claim. That interested parties are motivated to argue for a policy in public interest terms has no effect on whether the policy is in the public interest. In fact, as much as possible public and private interests should coincide. What would undermine a public interest claim is the demonstration that private interests achieve their ends at the public's expense. For example, the highway might increase only one firm's profits but result in higher taxes for all and thereby reduce trade and employment. To be heard, a public interest argument must plausibly further community values. To be thwarted, it must be shown either to fail—to be particular rather than universal, to have harmful consequences, and so on—that is, to serve private interest at public expense—or to succeed while harming a competing public value.

Each public or legislative debate about social goals is choreographed using a different combination of these same dance steps. A policy is shown to be universalizable and to further public values. One set of detractors seeks to demonstrate that it harms a competing and more important public value. A second set claims that the policy serves a private interest, hinting or showing that private values would succeed at a greater expense to public values. John Kingdon argues that “the proposals that survive to the status of serious consideration meet several criteria, including their technical feasibility, their fit with dominant values and the current national mood, their budgetary workability, and the political support or opposition they might experience.”<sup>15</sup> This dynamic restricts and propels debate whether or not every (or indeed any) participant truly believes what he or she argues.

Everyone in a public debate has to argue in terms of the public interest; even materialists have to be this type of hypocrite, have to argue this way whether they believe it or not. The resulting policy will be the same whether its proponents were sincere in the reasons they gave or not. Hypocrisy matters, moreover, only when it makes a difference whether an individual's motives match his or her public justifications. Choosing hypocrisy is only rational when one lies about values (reasons, not

motives) that others share. Whether a given legislator is motivated by the values the public holds is immaterial; the arguments made speak to what the public believes or is thought to believe to be the social good (if not necessarily revealing what any single member of that public believes). The idea of the public interest shapes social policy. It structures how positions are defined, places limits on the range of possible results, and affects how alternative outcomes are judged. Indeed it influences the way that claims are originally made and even conceived, as well as how competing claims are weighed or integrated. By allowing only some types of justification, public interest requirements weed out some possibilities and thereby help to determine which final decision will be taken. Within these limits, whether a specific policy will be chosen depends on whether its advocates can control the dynamics of argumentation.

### **Arguments about Exclusion**

“Whose interests ought to be taken into account?” is an ethical as well as political question. It should therefore be no surprise that the answers people give when questioned about immigrants will be, in a sense, ethical answers.<sup>16</sup> Different ethical outlooks can lead to and justify different types of foreign policies. Legislators and citizens reach many of the same end-points as those that international relations theories predict—exclusion, openness, selection by domestic similarities or geostrategic criteria—by debating ethically distinct positions. Such positions constrain arguments in much the same way that institutions constrain the political process. Argument types have a logic and dynamic that can in this way act as institutions. How people describe conflicts of value and interest regarding immigration depends on who is thought to have a legitimate interest and why it is thought legitimate.

Ethical egoism is the perspective that one’s primary and sole obligation is to oneself. This is a moral position about obligations, but is not, strictly speaking, an ethical theory since it can provide no way to decide conflicts of interest.<sup>17</sup> When claims compete, no principle intervenes to decide. What an egoist means to be persuasive about “I want something” is the “I.” “The Egoist is the man who holds that a tendency to promote his own interest is the sole possible, and sufficient, justification of all his actions”; alternately, “egoism holds that each individual’s reasons for acting and possible motivations for acting, must arise from his own interests and desires, however those interests may be defined.”<sup>18</sup> Attempts to defend egoism have relied on the notions that one has obligations to oneself, that

these are one's highest obligations, and that in fact even if one tried to help others one would not do well because another's true interests are unknowable. These can be extended to the duties of groups.

National self-interest is understood to mean a state of affairs valued solely for its benefits to the nation. The motive of national egoism, which leads men to seek this end, is marked by the disposition to concern oneself solely with the welfare of one's own nation; it is self-love transferred to the national group.<sup>19</sup>

Realist arguments share the idea that the state should be given primacy of place in any conflict of interest. Principled talk in world politics is, in this view, frivolous, and frivolity invites deception and attack. Henry Kissinger argues this.

But the emphasis on principle has also produced a characteristic American ambivalence. Relations with a world of nations falling short of our ideal has always presented us with dilemmas. As a people, we have oscillated between insistence on our uniqueness and the quest for broad acceptance of our values, between trying to influence international developments and seeking to isolate ourselves from them, between expecting too much of our power and being ashamed of it, between optimistic exuberance and frustration with the constraints practicality imposes.<sup>20</sup>

If realism/egoism is accepted more widely in world politics than in civil society, this might be due to people's perception of greater danger and higher stakes. Impending threats make arguments about the nature of the society one is defending superfluous. If immigrants are invaders, then little more need be said to those bent on protecting the state's integrity. David Hendrickson argues, "There are instances in human history when the migration of peoples seems indistinguishable in its effects from conquest by an invading army."<sup>21</sup> Immigration can be even more dangerous than military invasion because it is less obvious and thus more insidious. A corollary to this view suggests sending emigrants to undermine enemies' societies.

Communitarian ideas also infuse justifications by realists and are probably the most powerful and widespread of the reasons people give for believing that the government should always protect, preserve, or defend the country from foreigners.<sup>22</sup> Not all realists are communitarians, or vice versa, but their arguments become fused especially in immigration debates because the issue is defending a particular, bounded, valued community.

The community and its unique way of life, goes the basic argument, have an intrinsic value that the state must at all costs preserve. David Hendrickson, for example, contends, “The preservation of the state’s security, well-being and institutional integrity is the condition for the realization of other values, without which no civilized existence is possible at all.”<sup>23</sup> A we-feeling of some sort is necessary both as a component of individual identities and as a justification for state institutions’ legitimacy. When this culture coincides with state boundaries, it cements them by providing “a common identity that grounds citizenship.”<sup>24</sup> E. H. Carr speculates about the connection.

The good of the state comes more easily to be regarded as a moral end in itself. If we are asked to die for our country, we must at least be allowed to believe that our country’s good is the most important thing in the world. The state thus comes to be regarded as having a right of self-preservation which overrides moral obligation.<sup>25</sup>

A way of life has an intrinsic value, so cultural pluralism at the global level, if not at the domestic, also ought to be valued for its own sake.

Michael Walzer applies the communitarian position to the issue of immigration, or (as he puts it) membership. “Men and women do indeed have rights beyond life and liberty, but these do not follow from our common humanity; they are local and particular in character”; therefore, “the restraint of entry serves to defend the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life.” This enables people to choose “in accordance with our understanding of what membership means in our community and of what sort of community we want to have,” whatever that meaning is, for “the distribution of membership is not pervasively subject to the constraints of justice.”<sup>26</sup> Walzer draws on a long tradition. For Rousseau and Montesquieu, “consent must be mutual, and members of an existing community could properly refuse consent to membership of those who would disrupt their necessary homogeneity.”<sup>27</sup> The state’s highest duty is to protect and preserve this community in (homogeneous) character as well as in minimal material fact. In 1787, Thomas Jefferson worried that emigrants from absolutist Europe would act with “unbounded licentiousness, passing, as is usual, from one extreme to another” and “infuse into” legislation “their spirit, warp and bias its direction, and render it a heterogeneous, incoherent, distracted mass.”<sup>28</sup> Consequences for the political community decide how many, and which, immigrants are admissible.

A third ethical position that can lead to a “realist” outcome draws on utilitarian arguments. The world threatens all, but it has a greater chance

of succeeding against liberal states because their democratic nature means that they can be “undermined from within.” Frederick Whelan characterizes one standard American argument as follows:

In these circumstances, the citizens of liberal regimes must be on their guard; the preservation of liberal institutions where they exist must be the first priority, even if this means restricting some of the operations that liberal principles could have in a more ideal world. Liberal regimes must not only withstand aggression or deliberate subversion, on the part of competing types of regimes (such as monarchical ones) abroad; they must also avoid being “swamped” by immigrants in such numbers or at such a rate that the new residents cannot be assimilated into the liberal system, with the consequence that it is undermined from within.<sup>29</sup>

In this view, liberal institutions’ accessibility means that they are easily used by enemies.

There is a final reason to advocate realist utilitarian understanding of the social good. Leaders’ duties are to work toward something like Pareto optimality, maximizing the good by promoting average happiness—within the borders. This imposes an unshirkable duty on a leader: “The individual may say to himself: ‘Fiat justitia, pereat mundus (Let justice be done, even if the world perish),’ but the state has no right to say so in the name of those who are in its care.”<sup>30</sup> What distinguishes this use of utilitarian thought as realist in foreign policy is its insistence that the collective’s (state’s) interests should be defined solely with reference to citizens’ interests—without reference to interests or (putative) rights of outsiders—however individual citizens define those interests; exclusion never need be justified with reference to the excluded. Notions of the social good get attached because how the (technical) exclusion question is answered in a particular instance depends on this calculus.

If one believes that a state’s primary obligation, its justification for existing at all, is to preserve and promote a given community in the face of external encroachment, what one values about the borders it protects is what those divisions make possible: existence, or some civilized existence, or a uniquely civilized existence. Citizens live inside those borders; resources live outside, and that is how it should be. Immigration is judged in terms of its consequences for the state as sovereign. Almost every argument favoring or opposing immigration draws on this view or on its major competitors, a universalist egalitarianism or an internationalist particularism.

Because liberal theories draw on ideas of individual liberty, equality, or rights, they can lead just as easily to an argument against state bound-

aries as to one in favor of them: these principles do not require boundaries, so boundaries should not be respected, though they should be acknowledged as facts. "If the 'veil of ignorance' approach to questions of social justice was an attempt to eliminate morally arbitrary factors from judgments about the justice of particular social arrangements, there could be nothing more arbitrary than the wealth of the society in which one happened to have been born."<sup>31</sup> The other six billion people in the world ought to be considered unless reasons are given otherwise.

In the Kantian view, people have rights conferred on them by nature, God, or reason, so national borders are irrelevant to our respect for those rights. Rights-based ideas of obligation do not necessarily require people or governments to allow as just all claims of right. Even Kant makes this distinction:

It is not a question of hospitality but of right. Hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another. One may refuse to receive him when this can be done without causing his destruction; but, so long as he peacefully occupies his place, one may not treat him with hostility. It is not the right to be a permanent visitor that one may demand.<sup>32</sup>

Kant argues that the right to sojourn derives from one's inhabitancy of Earth and should be recognized generously because of its consequences: wanderers help to establish peaceful relations among people through which "the human race can gradually be brought closer and closer to a constitution establishing world citizenship." Kant demands that we consider travel a most basic right and thus acknowledge it in practice, but he does not demand that we recognize as a right someone's desire to enter a territory and stay.

In addition, the Doctrine of Double Effect, that one may knowingly act in a way that will produce an impermissible outcome if that evil is minimized and is not one's real, disguised aim, underlies the view that a state must admit those who will die if excluded, regardless of the consequences for itself, but may (and should) consider consequences for its own interests when doing so will not result in evil. Because of who they are, boat people must be admitted, in this view, but foreign medical graduates need not be.

To act otherwise, in this view, is wrongly to defend privilege. Roger Nett argues that

rights aim at some kind of initial equality in human transactions so that people may not be categorically disadvantaged; so that, for example, the subjugation of others may not be too easy for the situa-

tionally fortunate. . . . If we can justify any basic human right, freedom of movement is probably in that category.<sup>33</sup>

To discriminate among individuals one needs good reasons, and birthplace is just not a good reason. Borders turn rich states into laager states defending arbitrary privilege. Boundaries serve only discriminatory purposes; to pretend otherwise is to be a hypocrite. If boundaries are unjustifiable, so are immigration restriction and selection.

Utilitarians, on the other hand, universalize or self-minimize for very different reasons. Individuals have interests (not rights), and to maximize the good is to promote the average interest. Strategies are judged in terms of their consequences for the (equal) interests of all affected. In John Stuart Mill's formulation, "the happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator."<sup>34</sup> Utilitarians focus on consequences for themselves and others, to honor human equality.

Whether a utilitarian will suggest admitting or excluding foreigners depends on how the interest-maximizing calculus comes out. Locke, for example, contended that admitting people would be generally good: the more people, the more productive labor. Locke "says that 'I have sometimes heard it objected that they eat the bread out of our own people's mouths,' but then turns this into an indictment of those who wish to be protected from competition."<sup>35</sup> One can, though, imagine an economy (of declining returns) in which admissions (more labor) would reduce the good of the already present and of the admitted; exclusion would then be correct. What distinguishes this use of utilitarian thought as idealist is its presumption in favor of including in its calculus the interests of all concerned regardless of national boundaries. Idealists do not always go this far. How extensive our obligations to others are depends on the limits we place on their interests or rights, or the way we define those interests or rights to indicate the circumstances under which they need not be consulted. The most extreme universalist views depend on people accepting that distance does not matter.<sup>36</sup>

A liberal understanding can also lead to a view of obligations lying between the full negative and positive of the realist and universalist views. If obligation follows action, in this view, international practices that multiply connections also establish patterns of obligation. If one creates disaster, one is obliged to right it. The French, in this view, have one type of obligation to Algerians because of what France did to Algeria; another to Ivoriens because of what France did to the Côte d'Ivoire. Since obligations

are determined by patterns of interaction, as interactions become more extensive and similar, so do obligations:

If evidence of global economic and political interdependence shows the existence of a global scheme of social cooperation, we should not view national boundaries as having fundamental moral significance. Since boundaries are not coextensive with the scope of social cooperation, they do not mark the limits of social obligations.<sup>37</sup>

Interdependence is not, however, even and spontaneous, nor does it arise from a harmony of interests.

In this view, people and countries owe and are owed by those they have harmed or helped in the past or those to whom they have extended promises. In this view, acts and promises have their own weight. A realist, for example, might think that acts such as breaking an alliance, unilaterally disengaging from an exchange rate mechanism, or failing to provide air cover to those whose invasion one has encouraged are bad because they reduce one's power by damaging one's credibility. A particularist would be more inclined to consider them bad in themselves, that is, would do so even if it could be known that the power benefits outweighed the costs. As states and people have become more enmeshed, the particular has come to be more general; each country's particular set of relationships, and hence of obligations, grows more to resemble that of other states.

The broadest consensus on obligation arises in response to direct harm, for example, "if we caused a people to emigrate by actively eliminating their alternatives, then we are bound to admit them." Less consensus surrounds obligations in response to the indirect effects of one's actions, whether one has obligations to those emigrating as the eventual result of a process that one set in motion, either because the indirectness reduces responsibility or because even a real responsibility can be fulfilled more effectively in other ways than accepting immigrants. Finally, if no special national obligations have been incurred, then the language of public debate can shift from national interest at the national level to social- or individual-level arguments about the public interest. Britain might not have obligations toward Peru, but many British might listen sympathetically to a few of their compatriots argue that they have attachments to some Peruvians that obligate Britain to act on their behalf. Others might be separately obliged because of their particular connections to you to aid your realization of your particular affiliations.

If one believes that people and communities create obligations whose principled fulfillment can be validated by practice, one's evaluation of state boundaries will be situation-specific. They are good when they create

valued connections, bad when they deny them. Immigration is judged in terms of its consequences for fulfilling or damaging those values that one has acquired.

### **Arguments about Immigrants**

As a topic of public debate, immigration policy belongs to a unique, limited class. Defense policy, immigration policy, and policy regarding territorial boundaries or property ownership all concern not just what the state does, but what constitutes it. Defense policy and rules about who may own land and infrastructure assure a country's territorial integrity. Defense policy has traditionally been concerned with maintaining territorial boundaries, while policy toward foreign ownership decides whether those boundaries will distinguish the state from others in material terms. Immigration policy also determines boundaries, in this case those separating citizens from noncitizens. Because it does this, immigration policy is a foreign policy and hence raises questions about the national interest. Both defense and immigration policies also affect all citizens equally in theory, but their implementation can hurt or benefit some groups more than others, as, for example, when defense spending or "investor immigrants" head to one region and silos or emergency refugees to another.

Because some citizens gain and some lose, immigration and defense policies can be debated in terms of the public as well as the national interest; the justice of their domestic consequences can be reason to accept or reject them. Each also changes as the world beyond the borders changes. They differ in that immigration policy creates borders while defense policy protects them. In non- or postimperial states, territorial limits exist separately from a given defense policy, but the line separating citizens from noncitizens does not exist separately from the prevailing immigration policy. For this reason, regardless of how narrow the topic ostensibly under debate, the issue of how to justify national divisions always lurks in arguments about immigrants, and even small alterations in immigration policy change the group whose interests are to be served by such policies.

In its most stylized form, policy justification proceeds by connecting an argument about a problem's causes and an argument about its solutions to an argument about the public interest. Figure 1 illustrates the logic of their connections. John Kingdon notes that crises, political processes, or periodic reviews of accumulated knowledge can place a problem on the national agenda.<sup>38</sup> In the case of foreign policies, whose justification requires an argument about the relation between one country and others, agenda-setting should be more crisis-driven, more responsive to the events

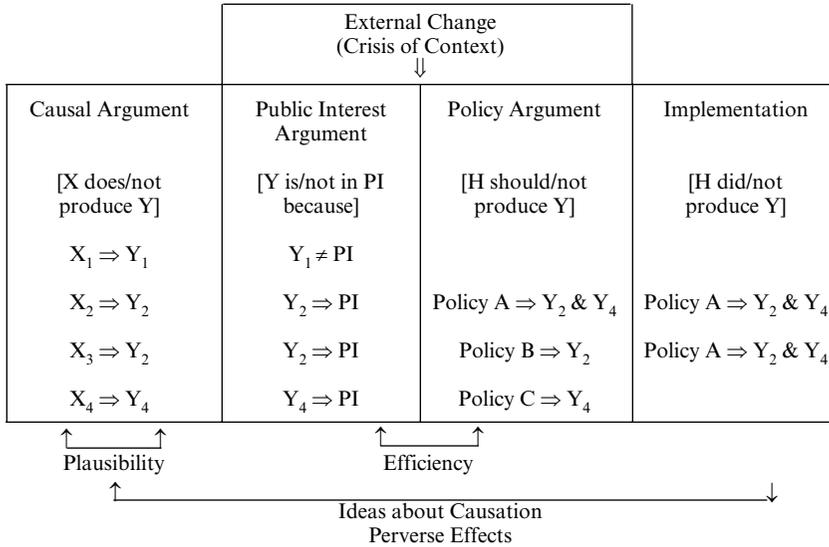


Fig. 1. Justifying policy change

and processes beyond its borders that concern a country but over which it has little control. For this reason, figure 1 includes crises of context as the dominant impetus to public debate on immigration policy.

The rows in figure 1 correspond to arguments. They show the way that causal arguments become linked to further arguments about whether the effect is, or is not, in the public interest, and whether policy should, or should not, seek to produce (or prevent) that effect. The first row displays the causal argument that “X causes Y,” which is then connected to a secondary argument that “Y is not in the public interest.” Depending on the nature of Y (the effect), one might argue further that public policy should ignore Y, or should seek to prevent Y. An example of the first would be “the shopping mall (X) causes smaller stores to shut down (Y)”;

this is not in the public interest, either because the public should have no interest in which businesses survive in the marketplace (policy should ignore Y) or because the public has an affirmative interest in keeping small businesses open (policy should seek to prevent Y). The following rows illustrate similar arguments, this time linking the causes they cite positively to the public interest. These are in turn connected to arguments that specific policies will create these desired effects or (at a later stage) that the policies have been implemented properly (or improperly). The second and third rows each represent arguments about how to achieve the same effect ( $Y_2$ ), while the

fourth row shows an argument about how to achieve a different effect ( $Y_4$ ). Each of these, it is argued, is in the public interest. After that process has selected the types of arguments that can be debated seriously, discussion turns to questions of efficiency. Given that an effect is plausibly produced by a given cause and is in the public interest, how might it be produced most efficiently? At this stage, discussion shifts toward consideration of a policy's mechanics rather than its justification. Figure 1 outlines the skeleton of the policy process in a way that is applicable to debates that are quantitative and result in a middling compromise as well as to those that are qualitative and transformative.

This schematic rendering implies an orderliness not present in public argumentation, but it clarifies the connections that must be made in any public interest argument. It also highlights the points at which different standards come into play. Actual debates do not, of course, proceed from one box to the next; rather, they seem to be constructed piecemeal until they contain all that is required in some form, then to be refined.<sup>39</sup> An example will illustrate how the demands that this format makes on arguments influence those arguments and thus help to shape outcomes.

Figure 2 presents a very simplified version of three arguments presented for and against immigration policy reform in the 1920s. In order to persuade legislators that a policy would solve a problem, individuals and representatives had to argue that (1) there was a problem, (2) it was a public interest problem rather than a private problem, and (3) its causes were both knowable and manipulable.<sup>40</sup> They did this by linking an argument about a problem's cause and an argument about its solution to values that were clearly in the public interest. In the early 1920s, for example, several arguments about the cause of social problems were considered true, proven by science or history or right reason.

Each became linked to specific public interest values. The claim that each civilization was a product of its founding race, and to endure could only be used by that race, seemed to many not only plausible but scientifically demonstrable.<sup>41</sup> The joint congressional immigration subcommittees retained a eugenicist; almost the entire biological faculties of the major American universities wrote joint letters urging Congress to attend to his and other scientists' findings, and President Coolidge spoke in favor of this research pursuit. In this setting, opponents such as social reformer Jane Addams appeared to Congress to be stubbornly closing their eyes to scientific evidence they did not wish to believe. What, asked Congress, should it believe: eminent American scientists who could demonstrate their findings, or nonscientists like Addams who were "morally certain" the scientists were wrong? Preserving and nurturing civil society made citizenship possible. Without it, the country would slide

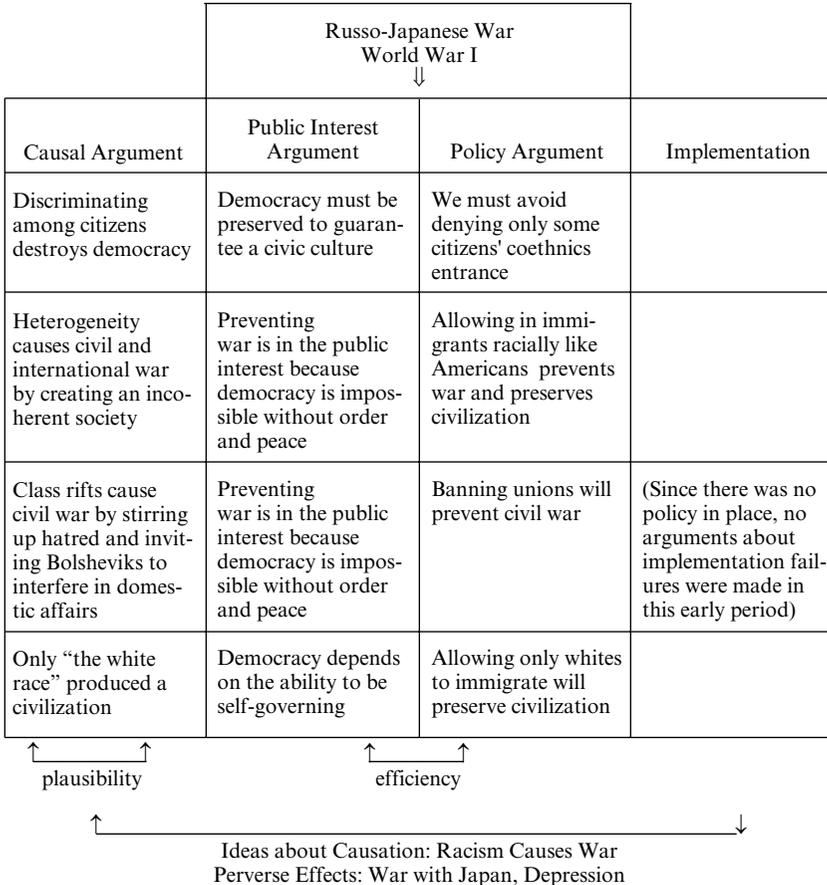


Fig. 2. Arguments of the 1920s

into a miserable Hobbesian lawlessness. Because citizens were created by both order and Anglo-American laws, maintaining them was in the public interest.

As well-established as the belief in eugenics was the conviction that cultural and racial diversity caused war. Many Americans at the turn of the century viewed the Civil War as the regrettable result of having allowed African and European descendants to mix in one country. The Civil War, in this view, sundered the natural bonds that whites shared, giving them different interests that led them into war. Europe provided a more powerful example. Every time Europeans bumped into each other,

they started wars. Half the time they tried to drag Americans into the conflict; all the time the wars produced refugees who streamed from rural areas to Ellis Island. Americans wanted both to avoid helping Europe and to avoid becoming like Europe. Since the wars sparked on ethnic fault lines, to many Americans the logical preventive was ethnic homogeneity. As the most fundamental components of the public interest, preserving peace and life clearly ought to motivate the government.

Leading in an opposite direction were the teachings of liberal philosophers and economists, whose ideas had become the foundation for American institutions and founding myths. The free flow of goods and labor benefited all; only the most irrational would interfere with the market, because in doing so they harmed themselves. Liberals were supposed to value tolerance; if this were not sufficient, liberal institutions were designed to balance competing interests so that only good would come of their competition. Above all, democracy was premised upon equality among citizens. Discriminating among them by allowing some citizens' co-ethnics preferred entrance would create second-class citizens and ultimately gut the liberal values that had been deduced from natural law and that it was government's duty to uphold.

The arguments that civilizations blossomed from particular races, that diversity sparked war, and that inequality would destroy civil society did not lead anywhere until they were linked successfully with arguments about how these consequences hurt or aided interests that all American citizens shared. War is always, of course, a concern, but in the early 1920s it was a particularly salient one, whose power was linked to the fear that natural selection could destroy the United States and that the country's recent wars were evidence of this. Democracy and liberalism were good, but goodness did not guarantee survival, only toughness did. Halting immigration did violate maxims entrenched in American institutions and liberal ethics: it was ungenerous and economically irrational, it distinguished among people by birthplace rather than by merit, and it represented a mean-spirited turning-away of those who, like the Pilgrims, sought refuge from persecution. It also ran contrary to the interests of firms, families, scientific institutes, missions, and other organizations, such as universities, whose clientele and work regularly crossed borders. All of these the restrictionists admitted to be true. They argued, and argued successfully, that democracies were especially vulnerable to open borders and that continuing to indulge in a *laissez-faire* approach was suicidal.

Groups presented a variety of reasons for and against immigration restriction. In some cases, the proposals were consistent with each other, but in many cases they were not. Rather than contradicting each other outright, each spoke to a different type of concern and so gave stress to a

different aspect of restriction than did others. The requirement of a majority (and in the case of immigration policy, usually a majority large enough to override a veto) means that unless one argument clearly dominates, consensus-builders will have to co-opt the arguments of others. In order to get a majority to stand with a policy, that majority will have to be armed with justifications that ring true, that are simultaneously in the private and public interests of constituents. Arguments cannot be added the way that votes can. Consensus-building by its nature transforms the general understanding of why some action is being undertaken. In the case of the early 1920s, the three inconsistent and competing arguments presented above merged into one persuasive enough to carry in the House by five to one. What was required was a policy that let only whites immigrate, but that did not “disparage the ancestors of millions of our fellow citizens.” A quota system that allocated places based on the proportion of recent immigrants coming from various regions only managed to irritate everyone. It angered the liberals, who argued that capping Slavic immigration, which had been on the increase, sent an anti-Slav message to Americans from Eastern Europe.

It annoyed the restrictionists, who believed that freezing quotas at their 1890 levels, when the “new” (dark-skinned, southern) Europeans constituted the majority of immigrants, simply slowed the rate of social collapse. Almost magically, the restrictionists hit on a solution that was not a compromise. (It had been proposed before in hearings but had no legislative takers.) If quotas were assigned to countries according to the proportion of American citizens—not recent immigrants—who could trace their ancestry there, they could not be said to be discriminatory. In fact, the restrictionists argued, to do otherwise was to discriminate against the ancestors of Anglo-Americans. Immigrants, selected in a way consistent with democratic principles, would be from the whitest countries. National origins quotas passed in 1924 and were implemented fully a few years later after the Bureau of the Census finished going through census records from the time of the founding to determine Americans’ national origins. Standards of public argumentation and the requirement of a majority might be expected to sift what could be argued in the first place and thereby limit the range of arguments within which a compromise would have to be reached. In this case, although the arguments did pass through filters on their way to the floor, their fusion produced a policy far more restrictive than any restrictionist had hoped!

In this case, a crisis (World War I) made an idea (eugenicists’ claims that ethnic heterogeneity would tear apart the country and eventually cost lives) seem plausible. In the ensuing debate, a proposal that was originally obscure because it was far more reactionary than that of even the most

conservative critics of immigration policy could be shown neatly to turn liberals' arguments against them and give restrictionists the victory. The resolution to this debate was anything but a compromise. A perceived crisis in the country's international position provoked a surge of protectionism that centered on "the nation." Arguments about the nature of the threat, and hence the nature of the threatened, became enmeshed in immigration policy, codifying in quite practical terms the difference between citizens and noncitizens. This pattern was repeated in each of the subsequent revisions of American immigration policy.