

Quality of Government and the Treatment of Immigrants

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Abstract

Normative questions concerning the treatment of immigrants can be approached from various perspectives: consequentialistic, deontological, fairness-based, rectificatory, or similar. In this paper, the implications of the idea of quality of government for the treatment of immigrants are examined. It is argued that an acceptable definition of quality of governance includes a principle of beneficence, which prescribes a beneficial treatment of immigrants whenever laws and policies allow. The principle, which is not novel in itself, is presented in a more specified form and is provided with a philosophical justification.

Keywords: quality of government; immigration ethics; principle of beneficence; community principle; immigration policy

In this paper, I will address the general question: what responses to immigration are morally required. I will do so in a rather indirect way, and through only a limited perspective: by exploring the normative implications of an idea of quality of government on public authorities' treatment of potential citizens. Given that one accepts a particular normative conception of quality of government, then one is *prima facie* also morally committed to certain normative requirements regarding the treatment of potential citizens.

The discussion will proceed as follows. First, after a short presentation of the idea of quality of government, I will defend the significance of such approach to normative questions concerning immigration. Many will perceive the drawing of implications from a particular conception of quality of government as irrelevant to normative issues concerning immigration. It should be the other way around, it is sometimes argued: that one must start with the normative requirements concerning immigration and from there draw out implications on what quality of government is. I will therefore expound what I believe to be the benefits of starting with a particular conception of quality of government. Second, I identify and describe a particular component of quality of government – *the principle of beneficence* – as particularly pertinent to our normative thinking concerning immigration. In the third part of the paper, I provide a justification for why the principle of beneficence should be included into the definition of quality of government. Following my general approach, my suggested justification avoids relying on normative views directly concerned with immigration. Finally, in the fourth section, I explain why the principle applies not only to matters directly relevant to citizens but also to dealings with potential citizens.

The novel contribution made by this paper is unlikely to be its normative views, nor any actual prescriptions. In fact, I take the normative principle here defended to be something of an obvious truth. But not everyone accepts the principle, and it is routinely rejected or ignored in public discourse, in politics, and sometimes in philosophy. Therefore it is not without merits to attempt to express and justify the principle of beneficence in a more philosophical manner. The rest of the paper is dedicated to that ambition.

Why Bother Thinking about Quality of Government?

There are many definitions of quality of government (QoG). Some focus on economic performance, some on institutional size, some on impartial implementation, and so on.¹ In what follows, I will use QoG to denote a *moral ideal pertaining to the use of public authority by state institutions and public officials*; that is, QoG is concerned with the moral quality of the nature and acts of the agents that are vested with public authority.

Defining such a broad concept with any precision is not easily done, and in my view no one has succeeded in such an undertaking. For my purposes below however, it suffices to single out a particular element of QoG for extra attention, while only outlining the other elements. As a moral notion, it formulates an ideal that guides whatever falls within its scope. It therefore sets a moral norm, be it *prima facie* or actual. Since a moral notion, it cannot be worked out a

¹ For historical perspective on the origins of and introductions to the concept, see Martin Doornbos, “«Good Governance»: The Rise and Decline of a Policy Metaphor?”, in: *Journal of Development Studies* 37 (6/2001); Cynthia Hewitt de Alcántara, “Uses and Abuses of the Concept of Governance”, in: *International Social Science Journal* 50 (155/1998); Thandike Mkandawire, “«Good Governance»: the itinerary of an idea”, in: *Development in Practice* 17 (4-5/2007); Thomas Weiss, “Governance, Good Governance and Global Governance: Conceptual and Actual Challenges”, in: *Third World Quarterly* 21 (5/2000). For a short list of recent definitions and their respective meanings, see Merilee Grindle, “Good Enough Governance Revisited”, in: *Development Policy Review* 25 (5/2007), pp. 556-557. For a discussion of recent definitions, see Bo Rothstein, *The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective*, Chicago 2011.

priori or through the natural sciences; at least this is the prevailing perception among many moral philosophers and ethicists. Rather, a morally loaded definition must rest on appeals to intuitions, principles and background theories. Such an approach is sometimes referred to as Wide Reflective Equilibrium, once introduced by John Rawls. In short, a moral judgment can be regarded as reasonable when considered convictions, moral principles and background theories support each other in an equilibrium.² Now, I will assume that a reliance on something at least similar to Wide Reflective Equilibrium is reasonable when discussing moral definitions as well, and the ideal QoG must thus constitute such equilibrium.

With such methodology underpinning any reasonable definition of QoG, my own preferred definition is a complex one, describing QoG as being made up by a set of principles, values and norms which by themselves are insufficient but necessary, instead being jointly sufficient. Below, some, but not all, of the components of QoG are mentioned (figure 1). Most of them are well-known, requiring little explanation. Most important for our present purposes, however, is to take note of the components labelled as *moral minimalism*, *rule of law*, *efficiency* and *stability* – they play a crucial role in constraining the principle of beneficence.

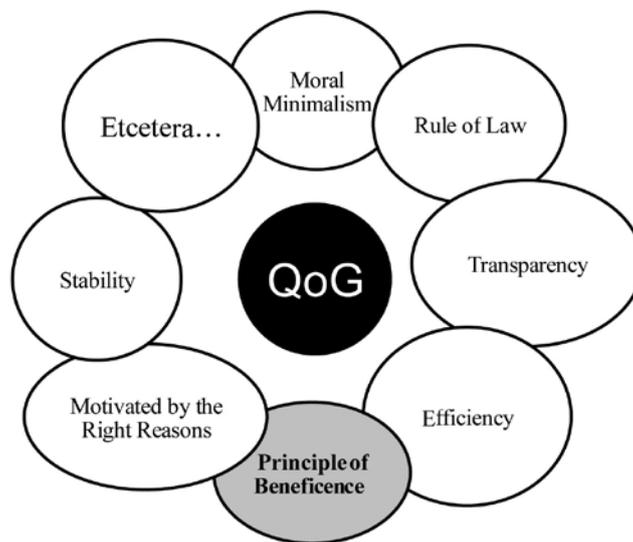


Figure 1

Having sketched the idea of QoG, why should we choose it as our starting point when discussing how public authorities ought to treat immigrants? To most people, the most direct way of approaching such a question is also the appropriate one. Intuitively, this seems perfectly reasonable. Surely, it can be argued, if a particular conception of quality of government turns out to be at odds with what we, after due reflection, perceive to be the morally required response to immigration, then that conception of QoG must go; not the normative view of immigration. I will not deny such intuition, since I think that it expresses an important moral insight.³ But that does not mean that the idea of quality of government is of no relevance to our view of what is required of an ethically sound institutional response to immigration. If what I have

² The idea of reflective equilibrium is presented in John Rawls, *A Theory of Justice*, Cambridge, Mass. 1971, and is elaborated by Norman Daniels in “Wide Reflective Equilibrium and Theory Acceptance in Ethics”, in: *The Journal of Philosophy* 76 (5/1979).

³ Call it the Closeness Principle: more precise and concrete moral judgment, after having been subjected to proper intellectual and emotional reflection, should be given precedence before equally stringent but more abstract moral principles and judgments, *ceteris paribus*.

assumed above is correct, then whatever normative principle(s) is expressed in a definition of QoG is relevant to how a moral immigration policy should be constructed, as they should – ideally – cohere in a Wide Reflective Equilibrium. This also means that trying to work out the ethical response to immigration in isolation from QoG would render the discussion incomplete.

It can be objected that one need not deny the relevance of a more holistic approach to the normative questions concerning immigration by *starting*, or even *focusing*, on immigration directly. The perspective provided by QoG can be sneaked in later in the process, so to speak, after having formulated some tentative moral requirements. Clearly, this is one possible way to approach the issue. A reasonable process leading up to a moral conclusion should take all considerations into account; it does not stipulate a particular work order. My contention is that there are reasons – empirically based reasons – for preferring a more indirect approach.

First, trying to settle normative questions regarding immigration in isolation is arguably undoable. Such discussion is, I think, bound to break down quarrelling over details and alleged facts and statistics: details, facts and statistics that are themselves disputed so never allowing any progress. A certain epistemic uncertainty, or a lack of a consensus on epistemic certainty, will cause the discussion to come to an early halt. This is, I think, an empirical observation of the debate that many would accept as correct.

Second, it must be observed that the debate over what should constitute an ethical – and a political – response to immigration is a debate soaked with intense emotions; emotions that are not always aligned with rational argumentation and analysis. To dive straight into such discussion is therefore a non-ideal strategy, bound to generate stalemate as soon as the emotions start running high.

Both these observed problems can, I believe, be mitigated – if not completely overcome – by taking the idea of QoG as our starting point. Starting with a moral discussion from an essentially institutional perspective helps reduce emotional biases and makes some of the contested statistics and facts irrelevant. Unburdened by emotional baggage, some of the discussions can be advanced in a direction that the participants can calmly accept.

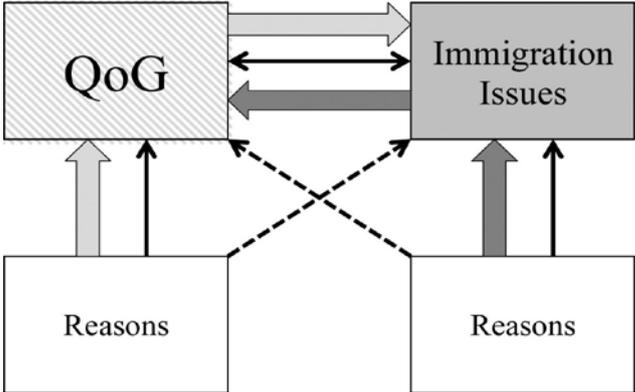


Figure 2

As shown in figure 2, the reasons that directly inform an ethical discussion on immigration might not necessarily be a part of a justification of QoG, or *vice versa*. The different directions of various reasons lend some plausibility to my two arguments above.

Third, using QoG as a starting point also mirrors the often forgotten fact that the agent primarily being responsible for responding to immigration is the state. As a moral agent, the state is situated in a rich web of responsibilities and duties, and the actions of the state in a

particular case are not always determined by ethical considerations stemming directly from the dilemma at hand. Hence, starting with the QoG helps to remind us of this fact.

Now, no conception of QoG will provide us with a blueprint of a moral response to immigration. What it will assist us in, however, is establishing a basic attitude, with which we can approach and analyse institutional responses to immigration in particular settings. What we can expect to find, by starting the discussion with the concept of QoG, is a *prima facie* duty to be generous in our response to immigration when laws and policies allow us to. Other reasons and circumstances might, in the end, adjust that duty in some ways, but a clearly worked-out conception of QoG will be a consideration not easily dismissed. Some headway will therefore be done if we start with QoG.

The Principle of Beneficence

While outlining the bare bones of what I take to be a viable concept of QoG, I suggested that such concept should include what I call the *Principle of Beneficence* (hereafter PB). Succinctly put, PB can be expressed as follows:

(PB) Under conditions of uncertainty, public agents ought, *ceteris paribus*, when exercising public authority, to treat the subjects under their authority in accordance with the most beneficial alternative materially and ethically available.

Such definition obviously needs some explaining. First, by “conditions of uncertainty” is meant conditions where *laws and explicit policies* are ambiguous, vague, in conflict, or simply silent. Conditions of uncertainty also include conditions where there is a shortcoming on the agent side (for instance, the public agent lacking some capacity), or when lack of factual input or external circumstances make a law or policy impossible to apply. Without reliable facts and probabilities, which laws and policies are meant to rely on when applied, further room for manoeuvre for the public official is created. Epistemic uncertainty therefore adds to an overall condition of uncertainty, allowing PB to come into play. As any government body and official must, under the rule of law, operate on the basis of and in accordance with positive laws and explicit policies, beneficial treatment cannot, and should not, be at odds with existing laws and policies, short of an extreme emergency.⁴

This limitation is premised on the assumption that the existing laws and policies are not strikingly unjust or undemocratic. It would be an odd thing to claim that immoral positive laws should somehow circumscribe an obviously moral, but not promulgated, response to immigration. Such moral minimalism is arguably also a part of QoG: a Nazi government engaged in genocide would not be regarded as having QoG no matter what other qualities it exhibits when implementing the genocide. Such moral ethos would be expressible in the idiom of basic human rights, although not necessarily so.⁵ Now, it is important to note that such moral ethos only establishes a bare minimum: while ruling out deliberate killings and flagrant violations of individual liberty and integrity, as well as, *ceteris paribus*, denying asylum to those that would otherwise risk life and liberty, it does not rule out putting a stop to almost all immigration. The moral minimalism required by QoG does not, for instance, prevent a state from closing its borders for immigrants looking for work or immigrants having relatives within the country’s borders.⁶ (Someone disposed to defend open borders is bound to disagree with me

⁴ This crucial feature is also a reason why I have avoided any talk about policy implications; PB is, ultimately, a kind of normative meta-principle, which may or may not be enshrined in explicit policy.

⁵ For the most well-known example of a minimal morality, see Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, Notre Dame, Indiana 1994.

⁶ The reason underpinning this view is a commitment to a political community’s right to self- government; a

here, but I think such a position – if based on some kind of standard deontology – will inevitably fail to take seriously its own premises.) So, moral minimalism functions as a baseline that is further added to by PB; which in turn is allowed some space when laws and policies fail to provide adequate guidance.

At this point it should also be noted that PB is dependent upon the existence of laws and policies. The subject of a government is in no position to claim any services from the government, above what is required by minimal morality and what is stipulated in laws and policies, and whatever he or she receives from the government exceeding such minimal and positive standards is given not because of legally recognised claims, but because of the benevolence of the government. The priority of existing laws and policy is firmly entrenched in the idea of the rule of law, which is an inescapable component of QoG. This fact makes PB describable as a principle operating in the “gaps” of existing institutional frameworks.

Second, by “subjects under their authority”, is not only meant citizens but also potential citizens. This is crucial to note, as an obvious rejoinder to my overall argument is that PB only applies to citizens, not to dealings with potential citizens. Now, I disagree with such rejoinder and I will defend the inclusion of potential citizens in the next section; for now I rest, content to have pointed this out.

Third, “beneficial” is not a subjective notion, but inter-subjective. According to what I have in mind here, a person or a group is treated beneficially when that person or group is treated in accordance with what can reasonably be regarded as favouring his/her/its interests. Hence “beneficial” is in my view weakly paternalistic; it makes no direct allusion to the individual’s first- or second-order preferences, although it can indirectly take them into account (since it is generally perceived as better to have one’s preferences satisfied than not having them satisfied). Moreover, the term “reasonably” above refers to the epistemic uncertainty that is inescapable in such judgments and the intersubjective effort to overcome it. Hence the interest of the subject is what is deemed to be, after due reflection and deliberation among competent citizens, overall favourable to oneself. This might appear to be a cumbersome description, but I think that it is the best we can do, if we are to avoid the rather absurd position that a person’s interest is what one currently perceives to be beneficial to oneself, or the equally disturbing position that there are some expert groups that are to be trusted with such judgments.

Fourth, by “most beneficial alternative materially or ethically available” is not only meant an alternative not ruled out by the minimal morality, by the positive laws and policies existing within the community, or by material circumstances; crucially, a viable alternative must also be consistent with thicker, local conceptions of justice. This should not be regarded as a costly concession to relativism; instead it is a consequence of using QoG as our chosen starting point. Considerations of functionality and self-preservation are pivotal to QoG, and implementing beneficial alternatives above the requirements of minimal morality, but at odds with other local moral norms, are bound to be detrimental to such functionality and self-preservation, as it will generate envy and spite. Hence PB does not commend or allow unrestricted favouring.

Fifth, and last, the *ceteris paribus*-clause warrants a comment. Clearly PB does not exhaust the realm of morally relevant principles and values that are not codified into positive law and policy, and such other values can interact with PB. For instance, in a case where some communal values seem to be at risk, PB can be overridden, although not dispensed with. Of course, this reflects the *prima facie* character of PB: my overall aim in this paper is not to establish PB as requiring particular actions, but rather to show that PB is a relevant consideration that must be taken into account and, when taken into account, must be given some weight.

right entailing control over borders, although always tempered by the other contents in minimal morality. For a classic statement of this view, see M. Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, New York 1983.

Consider what I take to be a paradigmatic instance of PB: the deeply entrenched judicial principle that everyone is innocent until proven otherwise. Rather than treating citizens like criminals, the judicial system will not consider you an offender unless that has been established by due court proceedings. This principle holds even for individuals and groups where we have some rather strong – but not conclusive – reasons for believing that they are in fact criminals. For instance, it seems quite plausible to assume that a member of a criminal gang has committed criminal acts, even if we have no way – logically or empirically – to infer that his or her membership is also proof of criminal acts. Still, most democratic and liberal institutions will treat him or her as innocent.

PB is thus to be described as a principle running alongside ordinary laws, policies and principles of justice, or as a meta-principle. This is important to note. For instance, PB could be seen as a complement to Rawls' principles of domestic justice – PB is *not* to be seen as belonging to local justice or the law of peoples.⁷ PB fills the gaps and handles the conflicts within domestic justice, and indicates a normative baseline for whom to admit into the political community. It is a principle that purports to guide both the behaviour of individual government officials and the behaviour and structure of government agents. This is not to say that PB is a part of non-ideal theory, which is concerned with circumstances of non-compliance; rather PB is the forgotten twin that comes, or should come, hand in hand with positive law and policy, or concrete principles of domestic justice.

Justifying the Principle of Beneficence

What would then justify making PB into a relevant moral consideration? As my overall approach is indirect, I will avoid giving reasons that stem from the debate over immigration. Instead I will suggest three reasons that directly support the inclusion of PB into QoG.

First, there is the argument from intuition. The essence of the argument can be phrased as a rhetorical question: who would not prefer a state that would give them the benefit of the doubt? Surely, we would prefer a just state and a relatively rich state, just as we would prefer to have nice parents-in-law and an expensive car in the garage. Beneficence is an additional good-making quality in general, lending quality to both states and in-laws. It therefore seems natural that we intuitively would prefer a state acting in accordance with PB, than one that does not.

That said, it is not a self-evident intuition; we can deny it without inconsistency, and in some cases perhaps even for good reasons. We might prefer government institutions to act less benevolently toward their citizens for various reasons: it could foster independency; it could produce better overall outcomes, and so on. However, what I wish to establish here is PB as a *general* or *prima facie* principle, not as a law of nature. Short of special cases and in the absence of special circumstances the intuition seems to have, in so far it is indeed widespread, certain force.

Second, it can be argued that PB is required if we assume a particular view of human beings in general, or of citizens in particular. Human beings *deserve* to be treated in accordance with PB, not because of some action or accidental characteristic, but because of some value intrinsic to human beings. This establishes PB as a normative principle.⁸ In familiar terminology, humans are ends in themselves, have dignity, or are made in the image of God – all characteristics that

⁷ For the distinctions, see John Rawls, *Justice as Fairness: A Restatement*, edited by Erin Kelly, Cambridge, Mass. 2001, pp. 11-12.

⁸ If relying on such justificatory approach, one will end up with what Matthew Gibney has labelled the “principle of humanitarianism” (see “Liberal Democratic States and Responsibilities to Refugees”, in: *The American Political Science Review* 93 (1/1999)). It should be noted that Gibney's principle is arguably much narrower than PB, as it refers to what is someone's due through *need* or *vulnerability*. This, I believe, is a crucial difference. Another difference that should be noted is the broader justification supplied for PB.

are commonly said to confer some special status or value upon us. Such argument may or may not be ultimately based on intuitions; hence I have described it as a distinct argument.

The previous two arguments, or families of arguments, are likely to be considered by some philosophers either as wishful thinking or, at best, as unsubstantiated claims. In so far as PB is not trivial – as I have argued above – it is not intuitive, and whatever dignity humans might have, it has yet to be properly expounded. Although I think such criticism may not turn out to be convincing in the end, it is prudent not to base PB solely on the first two arguments. I therefore propose a third argument, which tends to be less intuitive: an argument using what I label *the community principle* (CP).

My community principle bears affinities with G. A. Cohen's original version, but deviates slightly from it; the original is concerned solely with relations between citizens.⁹ In my version, the community principle amounts to this:

(CP) Any democratically legitimate government ought, *ceteris paribus*, to strive to create and sustain good relations to its citizens; relations that enable its role as a well-functioning mediating institution between citizens.

Succinctly put, every government intending to serve its people, in its every capacity and *qua* government, should facilitate its own performing of facilitating requires creating a sense of community not only between citizens, but also between public authorities and citizens. Further, CP seems to be readily implied by the other components in QoG; by the stability requirement, as well as by the commitment to a minimal morality.¹⁰

Obviously some explaining is needed here. I take it as generally and intuitively sound, *albeit* we might quarrel over some details, that a government – or state, more generally – that is founded on democratic legitimacy has as its purpose to enable or further the ends of its citizens, in their collective as well as individual capacity, as far as possible. (There are, of course, a number of problems associated with such conception of public authority, but they are problems internal to the conception: I doubt that many people would opt for a wholly different understanding.) This furthering of individual and collective ends has as its ultimate rationale a kind of collective self-interest: the government, as an agent of the people, acts so to benefit the people in general.

Now, if intended to serve its citizens in the way described above, the government, broadly understood, will enable this end by cooperating with its citizens, as far as possible. This is the core of CP: community does not only, and should not only, hold between citizens *qua* citizens; it should also, optimally, hold between public authorities and the citizens. Interpreted as an ideal, such community has a further consequence: cooperation with citizens should be facilitated, *ceteris paribus*. This implies not only that acts contrary to facilitating such cooperation should be avoided; it also implies that when an opportunity to further the spirit of cooperation arises – such as in case of gaps and conflicts in laws and policies – it should be seized.

Let me provide a hypothetical but simple example to illustrate the general idea. In a small town, the authorities decide to do something about the Wild West parking mentality often displayed by its many tourists. They therefore prohibit all parking in a particularly crowded area, with the exception of clearly marked parking spaces. Adhering to national regulations, the

⁹ Cohen's community principle is presented and explained in his *Why Not Socialism?*, Princeton 2009. Cohen claims that "the requirement of community [...] is that people care about, and, when necessary and possible, care for one another, and, too, care that they care about one another", and, most crucially, that such requirement has egalitarian consequences (pp. 34-35).

¹⁰ It might be objected that some groups and organisations are created only for some purpose limited in time, and therefore adding any kind of stability or general continuity requirement could even be harmful. To that I reply that it certainly might be the case with various organisations, but such temporal limitations are unlikely in the case of states. QoG also, it can be argued, implies CP since CP is an important condition enabling the state to fulfil any duties imposed by the commitment to a minimal morality.

local authorities put up the required signs. However, since the area contains numerous streets in a fairly complex pattern, and since parking has been free in the area for as long as anyone can remember, many drivers simply fail to notice the prohibition, and – as a result – get parking tickets. When they complain about the lack of information – there are not enough signs, they say – the authorities reply that they have done what is required of them, full stop. While not *prohibited* from adding more traffic signs, the authorities simply have no *obligation* to do so. The immediate outcome is disappointed citizens, who feel mistreated by the local authorities. Feeling this way, next time the citizens encounter the authorities, they will remember how their complaints about the traffic signs were met, and they will try to maximise their gains, and to minimise the authorities’ gains, rather than to seek mutual advantage and fair cooperation.

Now, the local authorities acted according to existing laws and policies, and no flagrant injustice was committed. Still, the result was angry citizens with less respect for, and a decreased willingness to cooperate with the authorities. In the long run, the effect of behaviour similar to the local authorities’ is likely to prove detrimental to society. The remedy suggested is PB. While CP does not straightforwardly entail PB, it is, I believe, a reasonable consequence of it. In that way CP, if accepted, works as an argument in favour of PB.

The argument relying on CP can also be given a negative form. Any administrative entity, of the size of a state and which cannot freely choose whom to deal with, that does *not* rely on PB will face considerable costs, measured in material terms or in terms of trust. A straightforward denial of PB would mean that the public officials could, under conditions of un- certainty, choose an alternative *not* beneficial to the subject in question, be it a neutral or a straightforwardly detrimental alternative; a strategy that is bound to generate substantial distrust and anger among the citizens, the ultimate consequence being that citizens will avoid dealing with state officials. One prominent example stems from fiscal policy and its implementation: when the citizens feel that they are given unfair treatment by the authorities, they will tend to become more active in the black market.¹¹ Such costs are not merely a moral concern – when costs become high, well-needed resources must be more tightly prioritized – or a matter of functionality, but also a matter of distributive efficiency; another component in QoG.

Now, it should be kept in mind that the argument relying on CP can be given a further moral underpinning, ultimately to be grounded in moral principles and values. While I will not expound such basis here, it is crucial to recognise this possibility, as I have framed PB as a *moral* principle.

Beneficence and Immigration Policy

Having a reasonably clear picture of PB, we must then ask what relevance it has when it comes to immigration. In what follows, I shall confine myself to the question why immigrants, with citizenship still pending or residency only temporarily granted, should be included into the sphere covered by PB. Traditionally, and intuitively, the state’s legitimate concern is its citizens, and citizens of other states are other states’ concern. However, such view is an oversimplification that ought to be corrected, since it is at odds with minimal ethical requirements and since it relies on an erroneous description of contemporary immigration. As a case in point, consider the case of Baby Manji.¹² Baby Manji, a result of transnational

¹¹ It should be noted that the option of staying, somehow, neutral is unlikely to satisfy citizens. And indeed, it seems somewhat odd if the public officials would, *ceteris paribus*, choose not to favour the citizen when no good reason militates against such treatment.

¹² The case is described in Kari Points, “Commercial Surrogacy and Fertility Tourism in India. The Case of Baby Manji”, The Kenan Institute for Ethics, Duke University. Available at <https://web.duke.edu/kenanethics/CaseStudies/BabyManji.pdf> (accessed February 18, 2013). A more paradigmatic way to lose one’s citizenship is by a state dissolving; through internal problems or by invasion.

commercial surrogacy arrangements, was the genetic offspring of the male in the commissioning couple, Mr. and Mrs. Yamada, and an anonymous egg donor. The Japanese couple had contracted an Indian surrogate to bear their child. However, even before Baby Manji was born, the arrangement proved fragile. The Yamadas divorced and the former Mrs. Yamada no longer wanted the baby. As the contract was not legally binding, she had no legal obligations to care for the child. The surrogate's obligations had ended by the birth of Baby Manji, and neither the egg donor had any legal obligations to care for the child. Mr. Yamada still wanted the baby, but things quickly got complicated. Japanese authorities recognise a child as a Japanese citizen only if the birth mother is Japanese – but Baby Manji's birth mother was Indian. Adoption was ruled out, since Indian authorities did not allow adoption of baby girls by single males. Even leaving India seemed impossible for Baby Manji, as an Indian birth certificate, and any subsequent travel documents, needed the identity of the mother to be established: but in the case of Baby Manji, there appeared to be three possible mothers! As a result, Baby Manji had no legal parents, no birth certificate, and no citizenship.¹³

The case of Baby Manji seems to raise (at least) one question and to underscore (at least) one fact: does a state – and therefore its government – have a *moral duty* to care for individuals that lack protection, given that the state is in a reasonably good position to provide such protection?¹⁴ I find it hard to deny such moral responsibility, and few would. Moreover, as a matter of *fact*, people do not fall neatly into the legal categories they are supposed to, therefore denying the government the opportunity to treat individuals in accordance with the citizen/non-citizen distinction. As reality does not conform to legal (and neither to intuitive) distinctions, we must have some way to handle such indeterminate cases.

While few would deny that the involved states had a *prima facie* responsibility toward Baby Manji, it could be argued that stateless individuals only make up an insignificant part of the totality of immigrants. Expanding a state's legitimate concern to such individuals would certainly be an improvement, but it would imply that PB is very limited in scope. Let me therefore present three reasons why the broader category of potential immigrants (whether they seek citizenship or merely a temporary visa) is the legitimate concern of PB.

First, it appears to be practically unfeasible to determine the country of origin for most immigrants lacking official documents. The relevant documents may have been deliberately destroyed, or never issued; in either case a government will generally be unable to determine age, status or home country of most immigrants that for some reason lack official documentation. This fact supports PB as a pragmatic principle: applying PB may not always be objectively just but, given reasonably available information, it seems that PB can be accepted as not *unreasonably unjust*.

Second, if we accept that every state has a *prima facie* responsibility for a stateless person, we should then acknowledge that such principle has a normative dimension at its core, not only in its very prescription. Even if X is, legally, a citizen of state S, it does not follow that X is protected by S in the way that makes X's position relevantly different from a stateless person Y's position. That is, a person might be stateless in a *morally relevant sense* despite having a legal citizenship.¹⁵ Hence even immigrants with official documents, or whose country of origin can be established, can fall into the category that is a legitimate concern for public authorities.

The two reasons provided above might still be said to be, even if valid, rather limited in scope. Even if we would grant that PB applies to stateless individuals, their very statelessness

¹³ The predicament of Baby Manji eventually got resolved, as Mr. Yamada was finally given permission by Indian authorities to bring Baby Manji with him to Japan.

¹⁴ That is, a state burdened by unusually unfavourable circumstances might be exempted from such duty; as will, say, the German state if a stateless refugee is found along the borders of, say, Canada.

¹⁵ For a discussion of different types of citizenships, and of moral citizenship in particular, see M. Walzer, *Obligations: Essays on Disobedience, War, and Citizenship*, Cambridge 1970.

can, on most moral accounts, be said to be a sufficient reason to welcome them as citizens, unless some other country clearly is in a better position to take them in. Of what use is PB then? In order to fend off the accusation of redundancy, I suggest that we consider a third reason for expanding the state's concern – and thus PB – to potential immigrants. The third reason that I have in mind is *internal* and *pragmatic* to its character; that is, it does not appeal to any grounds other than the wellbeing of the community itself, which I take to be, per definition, the chief concern of any political community. The first premise is the one just stated: the first duty of any political community, *qua* community, is its own survival and functionality, which in turn is instrumental for the citizens' wellbeing.¹⁶ The second premise is liable to empirical falsification or verification, as it claims that the way *current* members benefit or burden society is in part determined by what treatment they received earlier; as *potential* members, if they were ever in such position. Underpinning the second premise is simply the assumption that the government has very little to lose, but much to gain, in extending PB to potential citizens. If treating potential members and inhabitants badly, or in a way that creates bitterness or spite, it will hurt community in the future; if treating potential members and inhabitants generously, giving them the benefit of the doubt, it will foster a sense of community vital to the functioning of the community. This argument thus relies on CP, which was expounded above.

As mentioned, the second premise is empirical to its nature. I do not claim that it is obviously true. Some commenting is therefore needed. First, I believe that the premise holds true in normal circumstances, but not necessarily beyond them; “normal circumstances” meaning that there are no extraordinary circumstances, internal or external, present that severely limit the political community's capacity to harbour immigrants. In unusual circumstances, ignoring PB might be required in order to adhere to the first premise stated above. Second, the extension of PB must also be reasonably restrained in order to ensure the community's future prosperity. In short, extending PB is conditioned upon the government and its officials exercising good judgment in respect to the first premise. For instance, this implies that a certain group of people that for good reasons are deemed to have, say, malign intentions might be excluded from the scope of PB, and not merely having PB outweighed by other reasons in their particular case. This is the result of what I take to be a sound priority given to the first premise. If the normality condition and the good judgment condition are fulfilled, then the second premise holds good and, in conjunction with premise one, suggests an extension of PB to potential citizens and temporary subjects.

A second worry with my third argument for extending PB to people seeking citizenship or temporary shelter, and for the extension of PB in general, is that it has the notion of potentiality at its centre. A common complaint is that potentiality seems to suffer from a regression problem. For instance, a person living on the other side of the planet, with no intention of leaving her country and with no foreseeable circumstances that will cause her to do so, may still be called a “potential” citizen, as she is not *currently* a citizen of S, but it is nevertheless within the realm of what is logically and materially *possible* that she will, one day, be given citizenship in S. While one could certainly, in a cosmopolitan spirit, argue that this means that PB should be universally extended, as almost everyone is then a potential citizen, I think such stance is unattractive for a number of reasons. I will therefore try to delimit the idea of potentiality relied upon here.

Potentiality can, I think, be interpreted as a *descriptive* or a *prescriptive* notion. On the descriptive interpretation, a person P is a potential citizen if and only if P is situated on a certain

¹⁶ This is not to say that a political community has a duty, in conditions of extreme scarcity, to invade their neighbours. The duty to ensure the wellbeing of its citizens stems from the rights of the individuals – human rights, one might say – to a decent life; rights that every human being share. Hence the duty of a state cannot exceed the basis provided by the citizens' rights, which are constrained by the same rights held by everyone else.

causal path to citizenship, the broadness or narrowness of the path being defined by a set of necessary or enabling conditions that will ensure P's movement toward citizenship. In moral matters, I do not think a purely descriptive interpretation of potentiality is acceptable, as the set of conditions preferred always have consequences that will require moral assessment. A descriptive interpretation is therefore likely to spill over into a prescriptive one. On the prescriptive interpretation potentiality is in part defined by normative considerations. For instance, P can be a potential citizen because of having certain rights, or because needing citizenship, or for concerns stemming from distributive justice. Prescriptive potentiality thus helps delimit a subset of the set of (logically and materially) possible citizens.

If relying on a prescriptive notion of potentiality then, we must supply a normative criterion in order to delimit the group of non-citizens to which PB will apply. I therefore propose the following criterion:

Potentiality Criterion: Every P is a potential citizen of S, so that PB should be applied to P, *if and only if* (i) P has expressed (explicitly or implicitly) a rational desire to become a citizen of S, and (ii) P is not the object of another state's duty to care for, all things considered.

While (i) expresses a necessary intention on behalf of P, (ii) is less straightforward. Briefly put, (ii) states that *unless* some other state has an *actual* duty to care for P, then S has a *prima facie* duty to care for P. Other states can have an actual duty, legal or moral, for many reasons. For instance, some other state might be in a substantially better position to welcome P, or some other state might have a duty to care for P for reasons of compensatory justice. When no such reasons determine the duty of another state, then, provided (i) is fulfilled, S has a *prima facie* duty to care for P. Now, note that "care for" is left intentionally vague: it does not amount to a duty to give P citizenship, nor any other specific action for that matter. What the duty to care for amounts to, is simply to take P's wellbeing, *as a non-citizen*, into consideration. This may imply, for various reasons, that P ought to be given citizenship, or it may not; the point here is that (ii) in conjunction with (i) is sufficient reason for S to apply PB to matters concerning P.

Concluding Remarks

In a way, the real challenge remains. PB as a theoretical principle might be successfully expounded and defended, but bearing both its *prima facie* and "gappy" character in mind, its actual effects on the use of public authority remain to be seen in each case. Several worries on the practical level have not been discussed. What effect will it have on real life political action? What relevant gaps are there, which will allow PB to come into play? Will PB not be crowded out by other, arguably more urgent concerns and principles? Having portrayed PB as a *prima facie* principle, I will not deny – and have not denied – that such outweighing can occur; nor will I deny – and have not denied – that such weighing is a challenging task, as almost always is the case in ethics. Nevertheless, I believe that PB will have, if taken seriously, a considerable impact on the use of public authority. When laws allow, PB constitutes an important normative consideration, a general attitude of generosity that ought to be prominent in any institutional response to immigration purporting to be compatible with QoG. Expounding PB in a philosophical coherent way and providing a justification – there might be others – for PB is a first and necessary step.