

## **Hostility, Care, and Immigration: A Caring Approach to U.S.-Mexico Border Policy**

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### **Abstract**

As the result of the U.S. Border Patrol's deterrence strategy, over 5,000 migrants have died trying to cross the southern border of the U.S. since 1994. Although the U.S. has the right to exclude, this strategy is morally wrong and not only because of its consequences. Proceeding from a care ethical position, I identify the *manner in which* the U.S. exercises the right to exclude along its southern border as morally wrong because it is uncaring. A minimal care constraint should guide the manner in which institutions act. A minimal care constraint, as I formulate it, draws on the virtues of care—attentiveness, responsiveness, and respect—as the basis for guiding institutional behavior. The constraint guides an institution to express these virtues towards its stakeholders through its actions. The Border Patrol, by this metric, is uncaring and should refrain from its current deterrence strategy. Adopting the minimal care constraint is advantageous because it informs us of when it is permissible and impermissible to exercise a non-absolute right, enjoys support from multiple normative theories, and promotes actions more likely to achieve both the aims of care and the aims of an institution.

**Keywords:** care ethics, U.S.-Mexico border, migrants

### **1. Introduction**

Since its implementation in 1994, Operation Gatekeeper has led to the foreseeable and preventable death of over 5,000 irregular migrants. Prior to its implementation, irregular migrants contributed to high rates of vehicle theft, break-ins, and car accidents in San Diego. Spurred by these concerns, the San Diego Border Patrol formulated Operation Gatekeeper, which increased the San Diego Border Patrol's presence along the border and had agents arranged in a strict military formation. Additionally, the Border Patrol acquired new equipment, including four-wheel drive vehicles, infrared night scopes, and seismic sensors. The operation marked a watershed in the history of the U.S.-Mexico border relationship. For the first time, the U.S.-Mexico border resembled a military operation and replaced the traditional apprehension strategy with a new "deter and prevent" strategy. The Border Patrol expected its increased presence and the extreme environments of the areas east of San Diego, characterized by mountains and desert, to deter migrants from crossing. The Otay Mountain area, in particular, is described in a Department of Justice report as having "steep mountains, deep canyons, thick brush ... an absence of urban infrastructure and transportation facilities... [and] extreme temperatures, ranging from freezing cold in the winter to searing heat in the summer."<sup>1</sup> Instead of facing a choice between staying home and crossing safe areas of the border, migrants would now decide between staying home and risking their lives trekking across deserts and mountains. The Border Patrol figured migrants would opt not to risk their lives. Initially, their forecasts seemed accurate. Both the rate of migration through San Diego and rates of crime

attributed to migrants dropped following Gatekeeper's implementation.<sup>2</sup> After observing the apparent success of Operation Gatekeeper in the San Diego sector, other border patrol stations adopted the same deterrence approach.

Now, twenty-one years later, Operation Gatekeeper's legacy is not one of successfully stemming irregular migration. The legacy, instead, is one of pushing migrants into the extreme and inhospitable environments to the east of the San Diego sector, where thousands have perished. The operation succeeded in deterring migrants from crossing easy entry points to the U.S., but not from crossing altogether. Migrants continue to enter the country: the irregular migrant population grew from 3.2 million in 1993 to 11.4 million in 2012, with the majority coming from Mexico, El Salvador, Guatemala, and Honduras.<sup>3,4</sup> The ACLU reports that irregular migrants crossing the deadliest section of the border in 2009 were at a risk of death 17 times greater than migrants crossing the same area in 1998.<sup>5</sup> Since 1994, at least 5,000 migrants have perished from hypothermia, dehydration, and drowning while attempting to traverse the border. Despite this result, the Border Patrol continues to employ the key elements of Operation Gatekeeper's approach.

## 2. The current approach and why it fails

There are myriad ethical theories from which one can evaluate this situation, though the prominent approaches are rights-based accounts. Before looking at a prominent one, I will explicate my own starting point, which begins with a brief story.

A few years ago, I met Diego, an affable and charismatic classmate. A mutual friend had invited a group of us to go swimming. When I arrived at my friend's house, I began to have an anxiety attack. Aware of the danger of driving while anxious, I decided to remain there, though refrain from swimming. Diego took a seat next to me and began a conversation. I am unsure if my noticeable discomfort motivated him to join me instead of swimming, but it did not matter. Speaking with him helped me calm down quickly from what otherwise could have been an awful experience.

Two years later, Diego and I met again while I volunteered at a community art project. The project, an InsideOut Group Action, aimed to humanize supporters of immigration reform. Proponents of reform showed up to have their portraits taken in an onsite photo booth, which printed the portraits at five-by-seven feet. They then walked their portraits to the volunteers for us to paste them on popular buildings around town. Diego and I recognized each other when he brought his portrait to me. At first, it seemed like a coincidence that Diego had shown up to this particular community project. After the obligatory small talk, he divulged his motivation for supporting immigration reform: Diego is an undocumented immigrant. His mother brought him over from Mexico as a child. Diego told me his mother could have entered the country legally, but, to do so, she would have had to leave him behind, which she was unwilling to do. In high school, when Diego realized he was undocumented, his mother instructed him to keep it a secret. "Silence is part of the mindset of parents of the undocumented," he told me. However, community activists—themselves undocumented immigrants—encouraged him to speak openly about his situation. He embraced their advice and joined the San Antonio Immigrant Youth Movement, began serving as a panelist in local discussions on immigration, and participating in demonstrations. Diego also served as the Director of Public Relations and acting President of the Youth Movement's chapter on-campus.

The feminist ethicist Nel Noddings describes a relationship like mine and Diego's as between one-caring and cared-for.<sup>6</sup> When one takes the position of one-caring, she begins moral deliberation by visualizing the cared-for, a "real person about whom she cares." Doing so helps keep her "in contact with the particular, the concrete, the personal." Thus, I begin with my memories of Diego and make sure to consider how my moral conclusions may impact him. I also keep in mind my memory of Diego calming me down from an anxiety attack—a memory of myself as cared-for. These are important not because they serve some role in weighing claims, but because they prevent my moral deliberation from becoming a cold, abstract calculus. Such an approach to ethics ensures that it remains personal and intuitive.

Christopher Heath Wellman provides a version of a popular rights-based account. Wellman argues that legitimate states—those that respect human rights—have a right to exclude people from entering the state.<sup>7</sup> According to Wellman, the right to exclude constitutes part of a state's freedom to association. He instructs his readers to imagine an unwanted suitor wants to marry them: must they, as people with the freedom of association, marry the suitor? Of course not. Having the freedom of association entails having the freedom to decide whether to marry someone. Wellman gets this correct. Yet Wellman makes a jump when he extends his neat analogy to conclude that states with the freedom of association have the right to exclude.

Wellman's proceeds from a sanitized analogy to a major conclusion. His analogies are simple; constructed to highlight one morally-relevant consideration. Generally, simplicity strengthens analogies and thought experiments. However, in this case, the lack of information conceals the relevant considerations of real-world situations—the very considerations that make migrant deaths the subject of debate. For instance, denying someone your hand in marriage

will not directly cause their foreseeable and preventable death. The marriage-sovereignty analogy overlooks this. Denying someone marriage may not lift them from penury or insecurity, either. While both immigration to the U.S. and marriage typically increase quality of life in terms of health and finances, the manner in which they do so differs immensely. Even if marriage granted wealth and health, those benefits would not justify compulsory marriage. Ultimately, Wellman's lack of attention to salient factors allows his argument to be extended, contrary to his intention, to morally egregious conclusions.

Phillip Cole lodges another criticism at Wellman's argument. In a rebuttal to Wellman, Cole points out that the human rights that legitimate states must respect include the right to freedom of movement.<sup>8</sup> His rationale: If a state is only legitimate if it respects human rights, which includes the freedom of movement, then restricting free movement undermines state legitimacy. Per Wellman, illegitimate states do not have the right to exclude. Thus, legitimate or illegitimate, states do not have a right to infringe on freedom of movement.

The flaws in the idea of a right to exclude call Operation Gatekeeper into consideration, though the operation's moral wrongness stems from more than a violation of the freedom of movement. Ignore the theoretical problems a right to exclude poses and the foreseeable, preventable death of thousands still violates morality. What remains as the source of moral wrongness? Hostility.<sup>9</sup> U.S. border policy expresses hostility towards Diego and migrants, former and current.

Taking the view of one-caring by keeping Diego in mind leads me to conclude that institutional expressions of hostility are morally wrong. Hostility cuts against one's ability to have standing in her community and tests her esteem. As a moral equal, Diego deserves the same care expressed to the residents of San Diego, who motivated the formulation of Operation Gatekeeper. Of course, it is still important to take seriously the security threat posed by some irregular migrants. Although the grand threats irregular migrants supposedly present are generally unsubstantiated, there are certainly some who threaten the security of others. As mentioned earlier, prior to Operation Gatekeeper, irregular migrants contributed to relatively high rates of break-ins, vehicle-theft, and fatal car accidents in San Diego. How can I argue with someone who lost her cared-for in a car accident because someone tried to cross a highway? What is needed is an approach to border policy that preserves border security without expressing hostility, one that expresses a caring attitude to all parties involved.

### **3. The minimally-caring institution: how the virtues of care fit in**

What care ethicists refer to as the virtues of care—attentiveness, responsiveness, and respect—represent a rich source of moral guidance for border ethics. Feminist ethicist Daniel Engster understands the virtues as asking the following questions: Do you need help? How can I help you? How can I help you meet your needs or position you to meet your needs on your own?<sup>10</sup> The virtues of care provide the foundation for what I call a *minimal care constraint*: a prescription for institutions to express care by exercising attentiveness, responsiveness, and respect to stakeholders throughout the policymaking process. The constraint is *minimal* in the sense that it only prescribes care in procedure and not necessarily in outcome. For example, an institution that delivers canned food is not necessarily a caring institution because the manner in which it provides care may disrespect the cared-for. However, adhering to the care constraint would generally lead to caring outcomes in a way that expresses care. It is termed a *constraint* because it proscribes institutional expressions of neglect, contempt, or hostility, which are morally unacceptable and conflict with care.

How does an attentive, responsive, and respectful institution behave? An attentive institution asks, "Do you need help?" by requesting public input, facilitating feedback sessions, or conducting surveys, to name a few possible methods. Any mechanism giving stakeholders a reasonable chance to voice their concerns expresses institutional attentiveness. In contrast, the city-wide input session held at dawn on a weekday places unreasonable burdens on stakeholders to participate. Thus, it fails to express attentiveness.

A responsive institution asks, "What do you need?" This does not mean it necessarily responds however a stakeholder wants. A responsive government does not need to dissolve itself to express responsiveness to an anarchist's demands. A responsive institution need only commit itself to responding. It may do this by responding how the stakeholder desires, providing a reasonable explanation for why the desired response is not delivered, or seeking a compromise between the stakeholder's desires and the institution's capabilities. When the anarchist voices her desire to dissolve the government, the person whom she addresses acknowledges and considers the merits of such action. She then may either act to dissolve the government, compromise with the anarchist, or point to a conflicting consideration of higher priority. Requiring anything more would undermine the goal of responsiveness, which is to express a caring attitude towards all, because people would express contrary demands.

The respectful institution recognizes persons as worthy of moral consideration. As such, respect gives rise to the obligations to attend and respond to others. In addition to being attentive and responsive, a respectful institution asks, “How can I help you meet your needs or position you to meet your needs on your own?” This question guides the formulation of policy, though it does not entail a specific conclusion. Instead, it merely prohibits expressing hostile, contemptuous, or neglectful attitudes since they disrespect persons. An incomplete list of actions that express these attitude includes: ridicule, shaming, shunning, segregation, discrimination, persecution, violence, internment, and enslavement.

To illustrate the minimal care constraint in action, first imagine a scenario in which a food bank provides a meal for Joseph, a person who is food insecure. The food bank respects Joseph, so it sends an employee to speak to him. The employee practices the virtues of care. She asks Joseph what kind of food he likes, if he has food allergies, and speaks to him as she would any other member of society. She then reports his answers to the cooks, who try to make a desirable meal. The employee respectfully delivers the meal to Joseph.

Now imagine a second scenario in which the food bank employee does not ask Joseph what kind of food he likes or if he has any food allergies. She instructs the cooks to prepare a generic dish. When she delivers the dish to Joseph, he comments that he does not like the food, though eats it anyway. Frustrated by the comment, the employee makes a disparaging comment Joseph’s perceived ingratitude and inability to provide for himself. The remarks make Joseph see himself as a less worthy member of society.

In both cases, the food bank provides care to Joseph. Yet, whether the employees exercise the virtues determines whether the institution is a minimally-caring or uncaring institution.

#### **4. Applying the minimal care constraint: incorporating potential migrants into the policymaking process**

How can the minimal care constraint to guide the formulation of U.S. border policy? First, we identify the stakeholders involved in U.S.-Mexico border policy. Given the physical proximity and their historical relationship, the populations of both the U.S. and of Mexico are stakeholders. North of the border, citizens of border states are high-priority stakeholders. South of the border, communities experiencing high rates of emigration, including Jalisco, Michoacan, Zacatecas, Durango, and Oaxaca, and border communities are also high-priority stakeholders. These high-priority stakeholders are directly impacted by border policy the most.

Second, we look for expressions of attentiveness, responsiveness, and respect. The U.S. Border Patrol expresses attentiveness and responsiveness to U.S. stakeholders, as the formulation of Operation Gatekeeper demonstrates. Specifically, the operation responded to San Diego residents’ security concerns. To stakeholders residing south of the border, the Border Patrol expresses hostility through the official mandate that directly leads to foreseeable, preventable migrant deaths.

Some believe that irregular migrants deserve their death as rational agents. The U.S. Border Patrol, according to this argument, respects migrants’ decisions by taking their actions seriously. Yet this argumentation downplays migrants’ role as relational agents. The role relations they find themselves in with their families morally obligates them to seek security and opportunity. For some, living amid violence and a struggling economy, emigrating to America represents one of the only means of attaining security and opportunity. Unfortunately, the outcome of Operation Gatekeeper—migrant death—exemplifies a prioritization of security and opportunity for U.S. citizens at the cost of those goods for irregular migrants. The lack of serious attempts to remedy the persistence of migrant deaths demonstrates disrespect, which precludes attentiveness and responsiveness to irregular migrants. The nature of irregular migration further impedes the possibility of expressing attentive and responsiveness.

Additionally, border policy neglects the concerns of activists and NGOs on both sides of the border. For example, the ACLU of San Diego and Imperial Counties and Mexico’s National Commission of Human Rights co-sponsored a 2009 report listing ten recommendations that would preserve border security while decreasing migrant mortality.<sup>11</sup> The report’s top recommendation: a public acknowledgment of the migrant deaths as a humanitarian crisis—essentially a recommendation for the Border Patrol to express attentiveness. The minimal care constraint proscribes the U.S. Border Patrol’s hostile attitude and guides it to correct the asymmetry in care.

Third, we search for possible ways to incorporate the virtues of care into the policymaking process. Sociologist Emily Ryo’s work provides a foundation for a promising approach to border policy that preserves security and opportunity. In an article in the *American Sociological Review*, Ryo reports that people who are more likely to migrate without authorization tend to believe statements such as “It is okay to disobey the law when one disagrees with it,” “Disobeying the law is sometimes justified,” “The U.S. government has no right to limit immigration,” and “Mexicans

have a right to be in the U.S.”<sup>12</sup> Ryo’s attention to the beliefs of potential migrants highlights an unaddressed facet of the border security debate: the perceived illegitimacy of U.S. immigration policies. It makes intuitive sense that irregular immigrants do not respect the U.S. immigration policies they violate. Yet, the U.S. Border Patrol ignores its perceived illegitimacy.

Focusing on the legitimacy of U.S. border policy allows us to hone in on one of the roots of irregular immigration in a caring manner. The U.S. could cultivate a perception of legitimacy by inviting people into the policymaking process, whether by holding community meetings or responding to feedback from communities experiencing high rates of emigration. Both of these courses of action express a caring attitude. Perceived legitimacy and potential migrants’ involvement in the policymaking process would discourage them from attempting to cross without authorization, potentially obviating the need for policies such as Operation Gatekeeper.

Additionally, working with potential migrants would humanize those bearing the greatest costs of unilaterally-formulated border policy. Moving potential migrants from the category of inferior *other* to that of moral equal is a powerful move. By exercising attentiveness, we can do just that, which would have revealed that the decision between staying put and risking death is not as straightforward as the Border Patrol thought. When we keep a clear image of migrants as persons in mind, the relational commitments that drive them become more salient. Further, the humanization of migrants would encourage policymakers to adopt an attitude closer to that of the one-caring. From the view of one-caring, it is difficult, if not impossible, to justify policy that leads to the foreseeable, preventable deaths of people. Exercising responsiveness would further encourage a one-caring attitude because it would force policymakers to critically consider their rationale before delivering it to those affected by it.

Adopting the minimal care constraint is advantageous for a number of reasons. For one, there are a number of other ethical positions that may endorse this strategy. From the view of a rule utilitarian, adhering to the minimal care constraint, as a rule, would generate greater utility than not adhering. From the view of a Kantian, the minimal care constraint’s prescriptions flow from a respect for humanity. Secondly, exercising the virtues of care allows the cared-for to identify their needs in the policy process, thus illuminating potentially overlooked solutions. Concealed possibilities are illuminated by asking the questions, “Do you need something? What do you need? How can I help you meet your needs or position you to meet your needs on your own?” Finally, the minimal care constraint’s prescriptions are generalizable. Any institution may exercise the virtues of care in its actions because of their vagueness.

Care is a promising approach to border policy and ethics in general. Incorporating potential migrants in the policymaking process addresses perceived illegitimacy and the dehumanization of migrants. This course of action can balance security for everyone while minimizing border mortality. Importantly, it also expresses an attitude of care to potential migrants and those who have already crossed. Thus, it affirms their equal moral standing instead of contributing to the death of people who each uniquely enrich our lives: acquaintances and friends, fathers and mothers, brothers and sisters, sons and daughters.

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