



1-10-2020

Servant Leadership and Presidential Immigration Politics: Inspiration from the Foot-Washing Ritual

Victor C. Romero
Penn State Law, vcr1@psu.edu

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/crsj>



Part of the [Christianity Commons](#), [Civil Rights and Discrimination Commons](#), [Human Rights Law Commons](#), [Immigration Law Commons](#), [Law and Politics Commons](#), and the [President/Executive Department Commons](#)

Recommended Citation

Victor C. Romero, *Servant Leadership and Presidential Immigration Politics: Inspiration from the Foot-Washing Ritual*, 26 Wash. & Lee J. Civ. Rts. & Soc. Just. 147 (2019).
Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol26/iss1/5>

This Article is brought to you for free and open access by the Washington and Lee Journal of Civil Rights and Social Justice at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Journal of Civil Rights and Social Justice by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Servant Leadership and Presidential Immigration Politics: Inspiration from the Foot-Washing Ritual

Victor C. Romero*

Abstract

President Donald Trump's immigration agenda has been criticized by pundits and scholars alike and has been thwarted by courts concerned about executive overreach. This Article contributes to this chorus of critics by viewing the current immigration regime from a Christian perspective on servant leadership, contrary to the stereotype that Christianity necessarily aligns with any one particular political brand. Jesus Christ's entreaty that his disciples wash each other's feet provides a useful lens through which to evaluate whether this Administration's work effectively advances communitarianism, a value consistent with Christian immigration ethics. An examination of a range of immigration policies—from the

* Maureen B. Cavanaugh Distinguished Faculty Scholar and Professor of Law, Penn State Law—University Park. An earlier version of this paper was presented at the 2019 Fourth National People of Color Conference in Washington, D.C. I am grateful to Vice Dean Rose Cuison Villazor, and Professors Jennifer Koh and Robert Tsai for their thoughtful insights during our panel presentation. I am also grateful to my Penn State Law colleagues for their many thoughtful questions and suggestions during our Fall 2019 faculty workshop series. Finally, I would like to thank Dean Hari Osofsky for her support of my work, and Corie, Ryan, Julia, and Matthew for their steadfast love.

This is my fourth essay exploring the intersection of Christianity and law, my third on Christianity and immigration policy. *See also* Victor C. Romero, *An "Other" Christian Perspective on Lawrence v. Texas*, 45 J. CATH. LEG. STUD. 115 (2006); Victor C. Romero, *Christian Realism and Immigration Reform*, 7 U. OF ST. THOMAS L.J. 310 (2010); Victor C. Romero, *The Prodigal Illegal: Christian Love and Immigration Reform*, 92 DENV. L. REV. 917 (2015). As with my other essays, this one is offered in the spirit of humble inquiry, knowing that I see "but through a glass darkly" on this side of Eden. *1 Corinthians* 13:12 (King James). I also hope that this paper might appeal to those of other faiths, as the idea of agapic, neighborly love embodied in servant leadership is not uniquely Christian, but is shared by other religions including Judaism (in *tikkun olam* or loving-kindness) and Islam (in *itahr* or selflessness). All errors that remain are mine.

Muslim Ban, to the separation of children and parents, to the prosecution of Good Samaritans as unlawful harborers—suggests it is difficult to defend the current regime on communitarian grounds as these policies seem gratuitously cruel. Indeed, this manufactured migrant suffering calls for the embrace of an alternative Christian value—cosmopolitanism—in recognition of the intrinsic worth of all human beings.

Table of Contents

I. Introduction	149
II. Foot Washing and Servant Leadership	154
III. Christian Communitarianism and Immigration Policy.....	156
A. Christian Communitarianism.....	156
B. Trump’s Restrictionism Is Not Communitarianism	158
1. The Muslim Ban.....	160
2. Separating Children from Parents	165
3. Prosecuting Good Samaritans as Harborers	170
C. Alternative Approaches that Evince Compassionate Communitarianism.....	175
IV. Christian Cosmopolitanism and Immigration Policy	177
V. Foot Washing in Action: Examples from California	181
VI. Conclusion	186

I. Introduction

One night in February 2019, Teresa Todd, the city attorney of Marfa, Texas, stopped to help three migrants while driving along a dark road.¹ Todd recalls a young man waving her to stop and help his eighteen-year-old sister, Esmeralda, who appeared dazed and had trouble walking.² Todd offered her car as temporary shelter while she called a friend who happened to serve as legal counsel for the U.S. Border Patrol.³ Before her friend responded, border patrol officers arrived at the behest of a passing sheriff's deputy.⁴ Ms. Todd, a four-time-elected municipal lawyer, was then placed under investigation for "harboring" the three migrants she briefly let rest in her car in violation of federal law.⁵ Since former Attorney General Jeff Sessions announced his zero-tolerance initiative against undocumented migrants in April 2017,⁶ Good Samaritans⁷

1. See Lorne Matalon, *Extending "Zero Tolerance" to People Who Help Migrants Along the Border*, NPR (May 28, 2019, 4:22 PM), <https://www.npr.org/2019/05/28/725716169/extending-zero-tolerance-to-people-who-help-migrants-along-the-border> (last visited Nov. 20, 2019) (discussing the Todd case, among others) [<https://perma.cc/PJN2-2N4W>]; see also Manny Fernandez, *She Stopped to Help Migrants on a Texas Highway. Moments Later, She was Arrested*, N.Y. TIMES, May 12, 2019, at A17 (discussing the Todd case).

2. Matalon, *supra* note 1.

3. Matalon, *supra* note 1.

4. Matalon, *supra* note 1.

5. Matalon, *supra* note 1.

6. See Memorandum from Attorney Gen. Jeff Sessions to All Federal Prosecutors re: Renewed Commitment to Criminal Immigration Enforcement (Apr. 11, 2017), <https://www.justice.gov/opa/press-release/file/956841/download> (last visited Nov. 20, 2019) ("Each District shall consider for prosecution any case involving the unlawful transportation or harboring of aliens, or any other conduct proscribed pursuant to 8 U.S.C. § 1324.") [<https://perma.cc/PBH6-4TWC>]; see also *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry*, U.S. DEPT OF JUST. (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry> (last visited Nov. 20, 2019) (detailing the Justice Department's commitment to a zero-tolerance policy for illegally crossing the border) [<https://perma.cc/N3KF-ZLBG>].

7. The term "Good Samaritan" comes from Jesus' parable of the same name. See *Luke* 10:25–37 (New International Version) (telling the story of Jesus describing a Good Samaritan as a man who showed mercy and compassion to his neighbor). Apart from the biblical reference in the first (*) footnote, all citations to the Bible are from the New International Version unless indicated otherwise. See also Michael A. Scaperlanda, *Who Is My Neighbor?: An Essay on Immigrants, Welfare Reform, and the Constitution*, 29 CONN. L. REV. 1587, 1612–13 (1997) ("The Parable of the Good Samaritan provides an excellent backdrop to illustrate

like city attorney Todd have been swept up in a dragnet for providing compassionate aid to people in need.⁸ While in recovery, Esmeralda told reporters she was “really grateful” for Todd’s help and that she had been close to death when she first reached the hospital.⁹

Since his election in 2016, President Donald Trump has been nothing if not active in his quest to shape American immigration policy, from the so-called Muslim Ban¹⁰ to the separation of children from their parents at the border.¹¹ Unsurprisingly, both

my Catholic-Christian vision of America’s constitutional duty toward permanent resident aliens.”).

8. See Matalon, *supra* note 1 (showing that Todd was detained for trying to provide aid to immigrants).

9. Matalon, *supra* note 1.

10. See, e.g., No Muslim Ban Ever, *Looking Back and Fighting Forward on the One-Year Anniversary of Muslim Ban 3.0*, NAT’L IMMIGR. L. CTR. (Oct. 2018), <https://www.nilc.org/issues/immigration-enforcement/muslim-ban3-1-year-anniversary-facts/> (last visited Nov. 20, 2019) (setting forth facts about the travel ban and detailing its timeline and impact) [<https://perma.cc/YB6K-T7KR>]; see also Shoba Sivaprasad Wadhia, *Trump’s Travel Ban Two Years Later*, ACS BLOG (Jan. 30, 2019), <https://www.acslaw.org/expertforum/trumps-travel-ban-two-years-later/> (last visited Nov. 20, 2019) (analyzing the effects of the third version of the travel ban in the two years since the Supreme Court allowed it to take effect in December 2017) [<https://perma.cc/7JE2-JEMJ>]; see also *Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (upholding the travel ban); SHOBA SIVAPRASAD WADHIA, BANNED: IMMIGRATION ENFORCEMENT IN THE TIME OF TRUMP (2019) (detailing immigration policy under Trump via interviews and policy analysis).

11. See, e.g., *Family Separation by the Numbers*, ACLU, <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention/family-separation> (last visited Nov. 20, 2019) (setting forth different modes of statistical analysis regarding the children separated from their families by ICE) [<https://perma.cc/G48L-VQG6>]; see also Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX (Aug. 14, 2018, 1:29 PM), <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents> (last visited Nov. 20, 2019) (explaining how the government separates families, the policy behind the separation, and whether or not the families are reunited) [<https://perma.cc/HFG2-38T6>]; see also Efrén Olivares, *I’ve Met Hundreds of Victims of Family Separations—And That’s after Trump Said He Ended Them*, NEWSWEEK (June 6, 2019, 10:58 AM), <https://www.newsweek.com/ive-met-hundreds-victims-family-separations-thats-after-trump-said-he-ended-them-opinion-1442464> (last visited Nov. 20, 2019) (“Despite the government’s claim to have ended family separations, we continue to meet and interview hundreds of distressed parents at the courthouse who are desperately seeking those who can help reunite them with their children. Zero tolerance makes ending these separations impossible because it criminalizes asylum seekers.”) [<https://perma.cc/8F49-5A2R>].

the mainstream media¹² and the legal academy¹³ have weighed in on the gratuitous cruelty and prejudice that appear to underlie the President's policies.¹⁴ Indeed, over the past two years, many

12. See, e.g., Steven Chapman, *Trump's Latest Dishonest Failure on Immigration Reform*, CHI. TRIB. (May 17, 2019, 2:35 PM), <https://www.chicagotribune.com/columns/steve-chapman/ct-perspec-chapman-trump-immigration-reform-merit-legal-20190517-story.html> (last visited Nov. 20, 2019) (commenting on President Trump's speech detailing his reasoning behind the proposed immigration policy his Administration put forth) [<https://perma.cc/LD84-2AU5>]; see also, e.g., Ledyard King et al., *Why the White House's Immigration Plan Is Doomed to Fail, Just like the Others that Came Before*, USA TODAY (May 16, 2019, 9:23 AM), <https://www.usatoday.com/story/news/politics/2019/05/16/immigration-reform-why-donald-trumps-latest-plan-doomed-fail/3677842002/> (last visited Nov. 20, 2019) (detailing historical and political reasons why the proposed immigration plan will fail) [<https://perma.cc/5GGY-RKRE>]; Raul A. Reyes, *Heartbreaking Photos Show Trump's Failures on Immigration*, CNN (May 15, 2019, 9:44 PM), <https://www.cnn.com/2019/05/15/opinions/border-patrol-station-photos-trump-immigration-failure-reyes/index.html> (last visited Nov. 20, 2019) (discussing the efficacy of the immigration practices the Trump Administration has endorsed) [<https://perma.cc/5FRS-RX9Y>].

13. See Huyen Pham & Pham Hoang Van, *Subfederal Immigration Regulation and the Trump Effect*, 94 N.Y.U. L. REV. 125 (2019) (analyzing climate data suggesting that subfederal responses to Trump's aggressive immigration policies have been uniformly pro-immigrant); see also Emily Ryo, *Fostering Legal Cynicism Through Immigration Detention*, 90 S. CAL. L. REV. 999 (2017) (arguing that Trump's aggressive enforcement policies will likely engender legal cynicism among long-term immigrant detainees); Jayashri Srikantiah & Shirin Sinnar, *White Nationalism as Immigration Policy*, STAN. L. REV. ONLINE (2019), <https://www.stanfordlawreview.org/online/white-nationalism-as-immigration-policy/> (last visited Nov. 20, 2019) ("Two years into the Trump presidency, white nationalism may be driving the Administration's immigration policy.") [<https://perma.cc/J5Y8-PMUA>].

14. See Reyes, *supra* note 12 (expressing the opinion that the Trump Administration's treatment and speech surrounding migrants is cruel and prejudicial). In an apparent nod toward his political base ahead of the 2020 elections, the President has doubled-down on his racist rhetoric, urging that four Congresswomen of color return to their home countries (in fact, three of them are U.S.-born citizens; the fourth is a naturalized citizen) and that another African-American Congressman clean up his rat-infested district. See Brian Bennett, *Trump's Racist Tweets Came After He Faced Setbacks on Immigration Policy*, TIME (July 15, 2019, 5:56 PM), https://time.com/5626478/trump-racist-tweets-setbacks-immigration/?utm_source=time.com&utm_medium=email&utm_campaign=the-brief&utm_content=2019071611am&xid=newsletter-brief (last visited Nov. 20, 2019) (noting the timing of the tweets following Trump immigration losses) [<https://perma.cc/JV9U-5MH5>]; see also Jelani Cobb, *Donald Trump, Elijah Cummings, and the Definition of a Rodent*, NEW YORKER (July 29, 2019), <https://www.newyorker.com/news/daily-comment/donald-trump-elijah-cummings-and-the-definition-of-a-rodent> (last visited Nov. 20, 2019) ("[Trump's]

federal courts have ruled against the Trump Administration, especially in its exercise of administrative power; past presidents typically won Administrative Procedure Act cases seventy percent of the time, Trump's win rate sits at six percent.¹⁵

This Article takes a critical view of the current Administration's immigration restrictionism through the lens of Christian love, challenging the President—and ourselves—to embrace reforms that reflect the better angels of our nature,¹⁶ more faithful to the United States' promise and reality as an immigrant nation.¹⁷ Part II opens with a biblical vision of servant leadership, stemming from Jesus Christ's admonition to his apostles to wash each other's feet, exemplifying the principle that leadership comes from sacrificial service to others, especially those who are less privileged.¹⁸

Part III examines whether current immigration policy might reasonably be justified from the perspective of Christian communitarianism, the idea that U.S. citizens and residents must be given priority over outsiders.¹⁹ In some instances, a communitarian approach might be consistent with servant

vision of the disparate worlds that the recent targets of his ire come from is uniformly dystopian—a free association of skin color with filth and crime.”) [<https://perma.cc/T3DR-9ZL7>].

15. See *Opening Statements*, A.B.A. J., June 2019, at 15 (citing Fred Barbash & Deanna Paul, *The Real Reason the Trump Administration Is Constantly Losing in Court*, WASH. POST, Mar. 19, 2019).

16. See Abraham Lincoln, President, First Inaugural Address (Mar. 4, 1861) at http://avalon.law.yale.edu/19th_century/lincoln1.asp (last visited Nov. 20, 2019) (emphasizing how we should act with love) [<https://perma.cc/K52X-QKEX>].

We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

Id.

17. See Reyes, *supra* note 12 (“The images of women and children sleeping on concrete at the border are a stain on the American tradition of welcoming immigrants and refugees. Trump’s immigration policies have been a failure, and these vulnerable people are paying the cruel price.”).

18. See discussion *infra* Part II (setting forth the biblical version of servant leadership).

19. See discussion *infra* Part III (examining whether or not the current immigration policy can be justified under different Christian perspectives).

leadership.²⁰ However, taking a closer look at three prominent initiatives—the Muslim Ban, the family separation policy, and the prosecution of Good Samaritans as “harborers”—it is difficult to conclude that any of these advance communitarianism in a Christian, servant-leadership sense.²¹ Because none of these initiatives appears necessary to achieve their professed goals of maintaining national security and deterring undocumented migration, all seem gratuitously cruel.²²

Part IV provides an alternative vision also rooted in Christian thought: cosmopolitanism, the commitment to recognize the dignity inherent in all human beings.²³ Because the current immigration climate has failed to effectively promote communitarianism, but instead has engendered alienation and abuse, Christian leadership in the tradition of the foot-washing story signals a shift toward properly seeing and valuing noncitizens adversely affected by the regime and then promoting their flourishing.²⁴ Aside from assuring the protection of the most vulnerable immigrants among us, cosmopolitan policies will also heal the citizen-noncitizen divide by requiring government leaders to properly see not only the migrants among us, but to understand the concerns citizens have, assuring them that promoting immigrant equality does not inevitably lead to their diminution in a zero-sum game.²⁵ Rather, a cosmopolitan-focused immigration regime will ensure that all persons—whether citizen or immigrant—are treated fairly, consistent with the core principles enshrined in the due process and equal protection clauses of the U.S. Constitution.²⁶

20. See discussion *infra* Part III (comparing servant leadership and Christian communitarianism).

21. See discussion *infra* Part III (examining the “Muslim Ban,” the family separation policy, and the prosecution of “harborers”).

22. See Reyes, *supra* note 12 (detailing the situation at the border and the inadequate counter-measures that are being suggested to fix it).

23. See discussion *infra* Part IV (discussing Christian cosmopolitanism).

24. See Robert K. Greenleaf, Ctr. for Servant Leadership, *The Leader as Servant*, GREENLEAF.ORG, <https://www.greenleaf.org/what-is-servant-leadership/> (last visited Nov. 20, 2019) (setting forth the idea that a servant leader puts others’ needs before his or her own needs) [<https://perma.cc/93BY-D5PL>].

25. See discussion *infra* Part IV (discussing theoretical policies that would be in line with Christian cosmopolitanism).

26. See discussion *infra* Part IV (putting forth a policy rooted in Christian

Part V provides specific examples from California municipal and state policy that evince cosmopolitanism.²⁷ These initiatives provide a window into an alternative reality, one no longer based on fear, but in love; one not rooted in selfishness, but in service.²⁸

II. Foot Washing and Servant Leadership

Growing up in a Catholic church in my native Philippines, I occasionally heard the story of how, on the night before he was crucified, Jesus washed his followers' feet as part of what has been commonly referred to as the Last Supper.²⁹ This lowly act, traditionally performed by servants for guests as they enter a home, was initiated by the disciples' rabbi, their teacher, the person they believed helped them to see God more clearly.³⁰

Perhaps unsurprisingly, the apostles reacted with horror at the thought of their leader stooping so low, literally and figuratively.³¹ Peter adamantly refused saying, "No . . . you shall never wash my feet," to which Jesus replied, "Unless I wash you, you have no part with me."³² Peter quickly backtracked: "'Then, Lord,' Simon Peter replied, 'not just my feet but my hands and my head as well!'"³³ The apostles may have been men of modest means and backgrounds, but they knew how to take a hint!³⁴ The apostle John tells what happened next:

When [Jesus] had finished washing their feet, he put on his clothes and returned to his place. "Do you understand what I

cosmopolitanism that ensures equal treatment of people).

27. See discussion *infra* Part V (pointing to examples of Christian cosmopolitanism occurring in California).

28. See discussion *infra* Part V (stating that the examples of Christian cosmopolitanism occurring in California could provide a model for the rest of the country).

29. See *John* 13:1–17 (describing the story of the Last Supper).

30. See *id.* (recording Jesus' position as teacher among the disciples and the way in which he began washing the disciples' feet).

31. See *id.* (showing the emotional reaction the disciples had to Jesus' offer to wash their feet).

32. *Id.*

33. *Id.*

34. See *id.* (relaying that the apostles asked Jesus to wash their hands and their head).

have done for you?” he asked them. “You call me ‘Teacher’ and ‘Lord,’ and rightly so, for that is what I am. Now that I, your Lord and Teacher, have washed your feet, you also should wash one another’s feet. I have set you an example that you should do as I have done for you. Very truly I tell you, no servant is greater than his master, nor is a messenger greater than the one who sent him. Now that you know these things, you will be blessed if you do them.”³⁵

How does this ancient story have any relationship to the contemporary debate around our immigration politics and priorities?³⁶ As economics scholar Ken Elzinga describes it, the foot-washing story “illustrates the upside-down and paradoxical principle of leadership—the one who leads should be willing to serve. If you want to be first, you line up last.”³⁷

In this piece, I would like to examine our current leader’s immigration priorities through the lens of what Robert Greenleaf originally termed “servant leadership,”³⁸ linking it to two Christian theories on immigration, and then offering a note of hope for the

35. *John* 13:12–17.

36. See Wadhia, *supra* note 10 (detailing immigration policy under Trump and discussing the analysis surrounding the policy).

37. Kenneth Elzinga, *Personal Statement of Teaching Philosophy*, <http://www.people.virginia.edu/~kge8z/teach.html> (last visited Nov. 20, 2019) [<https://perma.cc/4Z54-55WC>]. Similarly, the Gospel of Luke tells the story of how Jesus urged his disciples to be humble like children if they wanted to be great, stating,

An argument started among the disciples as to which of them would be the greatest. Jesus, knowing their thoughts, took a little child and had him stand beside him. Then he said to them, “Whoever welcomes this little child in my name welcomes me; and whoever welcomes me welcomes the one who sent me. For it is the one who is least among you all who is the greatest.”

Luke 9:46–48.

38. See Greenleaf, Ctr. for Servant Leadership, *supra* note 24

Becoming a servant-leader begins with the natural feeling that one wants to serve, to serve first. Then conscious choice brings one to aspire to lead. That person is sharply different from one who is leader first, perhaps because of the need to assuage an unusual power drive or to acquire material possessions. For such people, it will be a later choice to serve—after leadership is established.

See also Robert K. Greenleaf, *Servant-Leadership*, in *INSIGHTS ON LEADERSHIP* 18–19 (Larry C. Spears ed., 1998) (setting forth the idea that the servant leader puts the needs of others before themselves and shares power). By this definition, it appears the current occupant of the White House fits the latter mold.

future based on recent acts of servant leadership out of the state of California.³⁹

III. *Christian Communitarianism and Immigration Policy*

A. *Christian Communitarianism*

Political scientist Mark Amstutz⁴⁰ offers two perspectives on immigration policy, which he argues are consistent with a Christian worldview: a communitarian perspective, on the one hand, and a cosmopolitan one, on the other.⁴¹

The communitarian perspective asserts that the primary responsibility of [nations] is “to protect and enhance the rights and well-being of its own people while caring for others.”⁴² In contrast, cosmopolitanism “views the world as a unitary global society in which the individual rights of people take precedence over the sovereign rights of nation-states.”⁴³ For those familiar with the constitutional immigration literature, one might associate the communitarian view with the membership perspective on individual rights claims, and the cosmopolitan with the personhood perspective, as outlined by Alex Aleinikoff⁴⁴ and Linda Bosniak,⁴⁵ among others.⁴⁶ Political scientists like Stephen

39. See discussion *infra* Parts I–VI (looking at immigration policies through a Christian perspective of servant leadership and exploring competing Christian theories on immigration).

40. MARK R. AMSTUTZ, *JUST IMMIGRATION: AMERICAN POLICY IN CHRISTIAN PERSPECTIVE* (2017).

41. See *generally id.* (discussing the different perspectives).

42. *Id.* at 13.

43. *Id.*

44. See T. Alexander Aleinikoff, *Citizens, Aliens, Membership and the Constitution*, 7 CONST. COMMENT. 9, 10 (1990) (“Immigration policy, conceived of as membership rules, is thought to lie at the core of national self-determination and self-definition.”).

45. See LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 28 (2006) (“[T]he question arises as to why the people with whom we happen to share formal membership status and territory should be the objects of our identification and solidarity to a greater extent than others with whom we are joined by other kinds of status or affiliative ties.”).

46. See AMSTUTZ, *supra* note 40, at 100–02 (writing that the communitarian perspective on migration can offer valuable principles and perspectives and then setting forth those contributions).

Macedo⁴⁷ and Michael Walzer⁴⁸ also explore these issues of community and the responsibility nations have for newcomers and others.⁴⁹

Amstutz identifies several aspects of communitarianism he believes further a Christian approach to immigration policy.⁵⁰ First, Amstutz argues that a communitarian approach contributes to communal solidarity.⁵¹ He writes:

Unlike cosmopolitanism, which emphasizes universal bonds among all persons, communitarianism focuses on the special bonds that people have with their local communities and nations. Since a person's humanity is expressed through communal life, and since proximity contributes to stronger social ties, membership in limited communities is especially important to human well-being. Nation-states are arbitrary political creations that include many different ethnic, religious, and social groups. Still, the solidarity of the nation-state, sometimes expressed overtly through nationalism, can foster legitimate social and political ties that enhance human dignity.⁵²

Amstutz also highlights communitarianism's "recognition of the inevitability of human competition and conflict," "its acceptance of the existing decentralized global order," "its acknowledgment of the important role of the state in advancing human rights," and its understanding of "the dual responsibilities of citizens and foreigners."⁵³

47. See Stephen Macedo, *The Moral Dilemma of U.S. Immigration Policy: Open Borders Versus Social Justice?*, in *DEBATING IMMIGRATION* 63–81 (Carol Swain ed., 2007) (noting moral tension between providing for global poor balanced against needs of domestic citizens).

48. See MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 39 (1984) ("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.").

49. See Macedo, *supra* note 47 (exploring the issues that communities face in providing for themselves and caring for others); see also WALZER, *supra* note 48, at 40–41 (exploring the rights that communities have in deciding who to allow into the community).

50. See AMSTUTZ, *supra* note 40, at 100 (putting forth the argument that communitarianism creates incredible solidarity).

51. See AMSTUTZ, *supra* note 40, at 100 (putting forth the argument that communitarianism creates incredible solidarity).

52. AMSTUTZ, *supra* note 40, at 100.

53. See AMSTUTZ, *supra* note 40, at 100–02 (describing how the

B. Trump's Restrictionism Is Not Communitarianism

Sadly, some read too much into this quasi-Niebuhrian⁵⁴ approach toward migration policy by overemphasizing the well-intentioned desire to care for citizens.⁵⁵ This desire to care for citizens morphs into an excuse for abusing noncitizens that is justified by a divine grant of authority.⁵⁶ As Robert Tsai reminds us, instead of a simple “law-and-order interpretation” of the oft-cited biblical passage Romans 13—“Let every person be subordinate to the higher authorities,”⁵⁷ period—there is a competing interpretation that places this passage in the context of the rest of Paul’s letter to the Church in Rome, in which Paul conditioned obedience to the government on whether the law promotes justice and love.⁵⁸ The proclivity of some Trump administrators (including former Attorney General Sessions⁵⁹) to insist that the Bible requires blind obedience to the government conveniently omits the concomitant obligation of leaders to promote human flourishing and not just law and order.⁶⁰

communitarian paradigm offers perspectives that “strengthen a Christian approach to migration”).

54. See AMSTUTZ, *supra* note 40, at 103 (expressing the important contributions “communitarian and cosmopolitan perspectives” can make toward “a peaceful and humane international community”). Amstutz’s approach to communitarianism might be considered Niebuhrian in its quest to serve others within the realities of a world divided into nation-states. See *generally* REINHOLD NIEBUHR, CHRISTIAN REALISM AND POLITICAL PROBLEMS 6–7 (1953) (noting that Christian realism subscribes to the notion that while we live in a fallen world, we strive toward God’s perfection imperfectly).

55. See AMSTUTZ, *supra* note 40, at 101 (explaining how biblical faith can provide insights into the human situation).

56. See AMSTUTZ, *supra* note 40, at 101 (explaining how biblical faith can provide insights into the human situation).

57. See *Romans* 13:1 (illustrating that “there is no authority except from God” other than those established by God).

58. See Robert Tsai, *The Anti-Immigration Bible*, BOS. REV. (June 18, 2018), <http://bostonreview.net/philosophy-religion/robert-l-tsai-anti-immigration-bible> (last visited Nov. 20, 2019) (analyzing arguments invoking the Bible to justify Trump’s anti-immigration policy) [<https://perma.cc/744L-9ZJ5>].

59. See *id.* (indicating that a number of people, including Attorney General Jeff Sessions “invoked the Bible to justify” Trump’s immigration policy).

60. See *id.* (providing certain passages in the Bible that make it appealing for individuals to draw allegiance to an anti-immigration policy).

Similarly, law professor Jeffrie Murphy's conception of agapic neighborly love supports the view that human flourishing is not to be sacrificed at the altar of purported communal protection.⁶¹ Murphy posits that in designing criminal laws, a Christian perspective favors precepts that seek human flourishing and eschew gratuitous punishment.⁶² While criminal laws are specifically focused on protecting the community and promoting justice, they must not do so at the expense of human dignity.⁶³

If agapic love can be found within punitive criminal law, surely there is space for the same consideration within immigration policy, which, at its best, seeks to promote adherence to the rule of law in order to facilitate the seamless movement of noncitizens into and around our nation as well as the transition of some into permanent U.S. citizenship.⁶⁴ The key is to ensure that, in promoting communal values such as national security, the government does not overreach by advancing policies that gratuitously demonize noncitizens, run contrary to core commitments such as family unity, or unnecessarily criminalize conduct that is intended to save lives.⁶⁵

With these ideas in mind, let's examine each of three Trumpian innovations—the Muslim Ban, the separation of immigrant children from their parents at the border, and the

61. See Jeffrie G. Murphy, *Christian Love and Criminal Punishment*, in CHRISTIANITY AND LAW—AN INTRODUCTION 219 (John Witte, Jr. & Frank S. Alexander eds., 2008) <https://law.pepperdine.edu/nootbaar-institute/annual-conference/loveandlaw/presentations/murphy-paper.pdf> (last visited Nov. 20, 2019) (focusing on forgiveness and its relation to criminal law and criminal justice) [<https://perma.cc/KG34-NLB3>].

62. See *id.* at 219 (asking, “What would law be like if we organized it around the value of Christian love, and if we thought about and criticized law in terms of that value?”); see generally AGAPE, JUSTICE, AND LAW: HOW MIGHT CHRISTIAN LOVE SHAPE LAW? (Robert F. Cochran, Jr. & Zachary R. Calo eds., 2017) (considering the relationship between Christian love and our understanding of law).

63. See Murphy, *supra* note 61, at 227 (emphasizing the idea that “there is no inconsistency in fully forgiving a person for wrongdoing but still advocating that the person suffer the legal consequence of criminal punishment”).

64. See Murphy, *supra* note 61, at 225–31 (describing how forgiveness and criminal punishment are compatible and distinguishing four responses “in which forgiveness is often confused: justification, excuse, mercy, and reconciliation”).

65. See Murphy, *supra* note 61, at 223 (suggesting that a key component of agapic love is promoting “moral and spiritual good” and allowing for the rebirth of criminals).

prosecution of Good Samaritans—through the lens of Christian communitarianism.⁶⁶

1. *The Muslim Ban*

Most casual observers might believe that the so-called Muslim Ban was what was upheld by the U.S. Supreme Court last year, but that was, in fact, the third iteration of the President’s executive order calling for the exclusion of those from predominantly Muslim nations, revised after Trump faced stiff opposition in the lower federal courts with respect to the two prior versions of the ban.⁶⁷ Whereas opponents of the measure point to its value as a terrorist-screening device, the President’s fiery rhetoric in support of the policy suggests otherwise.⁶⁸

On December 7, 2015, then-candidate Trump called for a “complete shutdown of Muslims entering the United States.”⁶⁹ In response to those criticizing him of religious and ethnic prejudice, Trump crowed he would not be bullied into political correctness.⁷⁰ He continued that, as a practical matter, it is difficult to discern law-abiding Muslims from criminal ones, chastising the Muslim community for not reporting terrorists among them: “If a community isn’t going to report when they know something’s going

66. See discussion *infra* Parts III.B.1—III.B.3 (analyzing and describing the different Trumpian innovations).

67. See *Trump v. Hawaii*, 138 S. Ct. 2392, 2399–402 (2018) (describing the genesis of Proclamation No. 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats, 82 Fed. Reg. 45161, which was before the Court following two prior executive orders (EO-1 and EO-2)).

68. See William Saletan, *Of Course It’s a Muslim Ban*, SLATE (Jan. 30, 2017, 1:13 PM), <https://slate.com/news-and-politics/2017/01/trumps-executive-order-on-immigration-is-a-muslim-ban.html> (last visited Nov. 20, 2019) (arguing that Trump’s comments about the policy suggest a consistent desire to ban all Muslims from migrating to the United States) [<https://perma.cc/82S4-ZY9G>].

69. See *id.* (following the attack in San Bernardino, California against Americans).

70. See *id.* (quoting Trump at a March 10 debate).

You can be politically correct if you want. I don’t want to be so politically correct. I like to solve problems. We have a serious, serious problem of hate . . . where large portions of a group of people, Islam, large portions want to use very, very harsh means.

Id.

to happen, those people have to suffer the consequences.”⁷¹ Over time, Trump softened his rhetoric somewhat to characterize his proposal as an “extreme vetting” and/or a way of leveling the playing field for Syrian Christians.⁷²

During less guarded moments, however, Trump noted that he was seeking his legal counsel’s guidance on how to make his proposal pass constitutional muster, while also tweeting the need for a travel ban, “not some politically correct term that won’t protect our people.”⁷³ As a result, “Muslim Ban 3.0” masked Trump’s original anti-Muslim bias by purporting to establish benchmarks for specific nations viewed as unreliable in their vetting of possible national security threats.⁷⁴ For instance, while the Administration regarded Chad, Libya, and Yemen as valuable counter-terrorism partners, these countries were also deemed deficient in their information-sharing, leading the President to deny their nationals both immigrant and nonimmigrant business or tourist visas.⁷⁵

In June 2018, a bare majority of the U.S. Supreme Court sided with Trump, noting that this third version did not specifically single out Muslims, but rather named countries that had trouble screening out threatening travelers prior to emigration; as such, this Proclamation did not violate the Constitution’s mandate against religious discrimination.⁷⁶ Joined by Justice Ginsburg in dissent, Justice Sotomayor expressed that she was troubled by this apparent shell-game, concluding that the current version did little to cleanse the law of its anti-religious taint; she noted that “a

71. *See id.* (describing numerous debates and interviews where Trump brushed off these objections and refused to retract his statements).

72. *See id.* (describing when ABC’s Martha Raddatz asked Trump about the Muslim ban at the debate on Oct. 9, 2016).

73. *See* Trump v. Hawaii, 138 S. Ct. 2392, 2437–38 (2018) (Sotomayor, J., dissenting) (showcasing that this evidence was part of Sotomayor’s case as to why Trump’s policy was unconstitutionally discriminatory against Islam).

74. *See id.* at 2399–400 (majority opinion) (describing how Proclamation No. 9645 sought to “improve vetting procedures for foreign nationals traveling to the United States . . . [and] placed entry restrictions on the . . . foreign states . . . the President deemed inadequate”).

75. *See id.* at 2399–402, 2415 (describing how the proclamation is “squarely within the scope of Presidential authority under the INA”).

76. *See id.* at 2399–423 (concluding that the proclamation was not outside of the President’s scope of authority and reversing the judgment of the Court of Appeals).

reasonable observer would conclude that the Proclamation was driven primarily by anti-Muslim animus.”⁷⁷

Notwithstanding the Supreme Court’s ruling as to the legality of the proposal, does this Proclamation serve communitarian interests consistent with the foot-washing narrative of servant leadership? Proponents of the policy might claim that such vetting is necessary to protect U.S. citizens and residents from terrorist threats, surely a communitarian value.⁷⁸ And the majority justices may have felt compelled to defer to the executive regarding immigration and national security, given that existing jurisprudence⁷⁹ suggests judicial deference to the political branches via the plenary power doctrine.⁸⁰

However, in the years since 9/11, there have not been any large-scale terrorist attacks perpetrated by foreign nationals—let alone Muslim immigrants—thereby suggesting that Muslim Ban 3.0 was not necessary to national security.⁸¹ Neither George W.

77. See *id.* at 2438 (describing how a reasonable observer would find President Trump’s lack of disavowing his prior statements about Islam to be an unrelenting attack).

78. See generally Saletan, *supra* note 68 (providing Trump’s justification and policy towards Muslims in order to protect U.S. interests).

79. See, e.g., *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (noting that immigration policy “is a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control”); see also *Kleindienst v. Mandel*, 408 U.S. 753, 769 (1972) (holding that the Court’s review is limited to whether the President provides a “facially legitimate and bona fide” reason for the challenged policy); *Trump v. Hawaii*, 138 S. Ct. 2392, 2402, 2418 (2018) (citing both cases in discussing policy regarding foreign nationals).

80. See, e.g., David A. Martin, *Why Immigration’s Plenary Power Doctrine Endures*, 68 OKLA. L. REV. 29, 29 (2015) (explaining that the deference rests primarily “on the close linkage between foreign affairs and immigration control decisions”).

81. In a 2012 report by the Heritage Foundation, the think tank highlighted the ways the U.S. successfully thwarted fifty terrorist attacks since 9/11 and warned against the growing salience of homegrown terrorism. See Steven Bucci, James Carafano & Jessica Zuckerman, *9/11: The Homegrown Threat and the Long War on Terrorism*, HERITAGE FOUND. (Apr. 25, 2012), <https://www.heritage.org/terrorism/report/fifty-terror-plots-foiled-911-the-homegrown-threat-and-the-long-war-terrorism> (last visited Nov. 20, 2019) [<https://perma.cc/9Q6S-QG39>]. See also Alex Nowrasteh, *Terrorists by Immigration Status and Nationality: A Risk Analysis, 1975–2017*, CATO INST. (May 7, 2019), <https://www.cato.org/publications/policy-analysis/terrorists-immigration-status-nationality-risk-analysis-1975-2017> (last visited Nov. 20, 2019) (studying terrorist attacks, including Sept. 11, 2001, and finding that the probability of an individual perishing on U.S. soil by a foreigner, over the

Bush nor Barack Obama installed such a divisive, far-reaching screening initiative.⁸²

Furthermore, the harm to individuals has been significant.⁸³ At the macro-level, sociologists have found that Trump's prejudicial rhetoric—including his calls for a Muslim ban—have significantly damaged⁸⁴ the national discourse by encouraging more prejudicial speech and behavior.⁸⁵ The growth of the

forty-three-year period studied, “is one in 3.8 million per year”) [<https://perma.cc/CM4C-K6LP>].

82. See, e.g., Rights Working Group/Penn State Law, *The NSEERS Effect: A Decade of Racial Profiling, Fear, and Secrecy* 4 (May 2012), https://pennstatelaw.psu.edu/_file/clinics/NSEERS_report.pdf (last visited Nov. 20, 2019) (noting the impact of September 11, 2001 on creating antiterrorism programs to respond to potential national security threats) [<https://perma.cc/XU4G-H43R>]. This is not to say that either of the two previous administrations were particularly immigrant-friendly in all respects. See *id.* (describing the “discriminatory profiling of individuals from countries with predominantly Muslim populations and based on the false assumption that people of a particular religion or nationality have a greater propensity for committing terrorism-related crimes”). Indeed, immediately following 9/11, Bush initiated the National Security Entry-Exit Registration System (NSEERS) program, requiring certain foreign nationals to register their whereabouts with the federal government. See *id.* (presenting further information on the NSEERS after its initiation by the Department of Justice in 2002 and inherited in 2003 by the Department of Homeland Security). That program was disbanded after it proved both expensive and ineffective, although its long-term effects are still being felt. See *id.* (“More than 80,000 men underwent call-in registration and thousands were subjected to interrogations and detention, wasting taxpayer dollars through this counterproductive response to September 11th, which has not resulted in a single known terrorism-related conviction.”). For his part, Obama deported over eight million noncitizens as compared with around two million for Bush and 900,000 for Clinton. See Bill Ong Hing, *Deporter-in-Chief: Obama v. Trump* (forthcoming) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3254680 (last visited Nov. 20, 2019) (expressing how the title of “Deporter-in-Chief” was bestowed on Obama because of his departure from the enforcement priorities and policies of the Bush and Clinton Administrations) [<https://perma.cc/SJT7-3RB2>].

83. See Chris Crandall, Mark White & Jason M. Miller, *Changing Norms Following the 2016 U.S. Presidential Election: The Trump Effect on Prejudice*, SOC. PSYCH. & PERSONALITY SCI. (Jan. 2018), <https://journals.sagepub.com/doi/full/10.1177/1948550617750735> (last visited Nov. 20, 2019) (describing and analyzing the impact of the Trump campaign on individuals over time) [<https://perma.cc/S5C5-JQ4F>].

84. See *id.* (highlighting how a wave of racial incidents followed the election and perceptions of social norms of prejudice changed as well).

85. See *id.* (discussing the implications to the selected sample size of Donald Trump and Hillary Clinton supporters before and after the election).

Alt-Right⁸⁶ is but one apparent manifestation of this extreme appeal to nationalism that extends beyond any legitimate claim to communitarianism.⁸⁷

Aside from these national effects, numerous individuals have been caught in the crosshairs as well.⁸⁸ In one particularly poignant story from 2017, naturalized U.S. citizen and Yemeni-American Mohamed Mohsin was in the process of petitioning for his wife and children to join him in Michigan, where he had settled close to ten years earlier.⁸⁹ While the U.S. consular office interview seemed to go well and Mohamed's two children received their visas, Mohamed's wife, Ahlam Alsoufi, was denied one and her passport returned without a visa.⁹⁰ Torn, Mohamed decided to pay a relative to transport the children to Michigan to be raised by other kin, hoping for a better life for his offspring while he stayed with his wife.⁹¹ "This crazy thing made my heart broken," he said.⁹² "Nothing is in my hands . . . the kids want mom and dad. My wife cries for the kids."⁹³ Apparently, Mohamed and Ahlam's plight is not unique: A nonprofit based at Georgetown University estimates that one in four children are separated from their parents because of the travel ban.⁹⁴ Indeed, the Center for Constitutional Rights recently filed suit against the Trump Administration on behalf of

86. See, e.g., THOMAS J. MAIN, *THE RISE OF THE ALT-RIGHT* 3–10 (2018) (tracing how the Alt-Right movement came into prominence).

87. See *id.* at 8 (illustrating how the Alt-Right "represents the first new philosophical competitor in the West to democratic liberalism . . . since the fall of communism").

88. See Leila Fadel, "*They Took My Heart with Them*": *Yemeni Parents Stranded by Trump's Travel Ban*, NPR (June 26, 2019, 5:03 AM), <https://www.npr.org/2019/06/26/736140184/trump-s-travel-ban-has-kept-scores-of-families-separated> (last visited Nov. 20, 2019) (telling the story of Yemeni-American Mohamed Mohsin and how the travel ban separated his family) [<https://perma.cc/35FQ-PKCU>].

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. See *id.* (explaining the results of the Bridge Initiative at Georgetown University analysis over the impact of this ban over 549 cases); see also Mahsa Khanbabai, *Travel Ban Impact on Visa Issuances*, 1 AM. IMMIGR. LAW. ASS'N L.J. 79 (2019) (analyzing State Department data on pre- and post-travel ban visa issuances to specific countries).

thirteen Yemeni-Americans who had previously received visas but then had them stripped away once Muslim Ban 3.0 was retroactively and therefore illegally applied to them.⁹⁵

As a former immigrant from the Philippines myself, I know and appreciate that the government individually screens all prospective entrants.⁹⁶ As such, creating a presumptive ban based on religious affiliation (even if watered-down to mask its constitutional infirmities) betrays our core commitments to individual liberty and equal protection under the law.⁹⁷

2. Separating Children from Parents⁹⁸

From considering the travel ban's ill effects on family unity, we turn to a Trump Administration policy that was specifically

95. See *Dobashi v. Trump*, CTR. FOR CONST. RTS., <https://ccrjustice.org/Dobashi> (last visited Nov. 20, 2019) (providing a breakdown of the lawsuit of thirteen Yemeni-Americans against President Trump, the State Department, and Homeland Security for the unlawful revocation of approved visas) [<https://perma.cc/RP68-XVPF>].

96. Indeed, the Immigration and Nationality Act presumes all noncitizens inadmissible unless they can prove their eligibility. See 8 U.S.C. § 1181 (2018) (stating that “no immigrant shall be admitted into the United States unless” they provide proper documentation demonstrating admissibility).

97. See *Trump v. Hawaii*, 138 S. Ct. 2392, 2447 (2018) (Sotomayor, J., dissenting) (discussing why state actors should give neutral and respectful consideration to religious views as a duty to the Constitution).

98. See *infra* discussion accompanying notes 100–120 (analyzing Trump's detention policy). President Trump has previously claimed that former President Obama had a similar family separation policy; that claim is false. See, e.g., Linda Qiu, *Fact-Checking Trump's Family Separation Claim about Obama's Policy*, N.Y. TIMES (Apr. 9, 2019), <https://www.nytimes.com/2019/04/09/us/politics/fact-check-family-separation-obama.html> (last visited Nov. 20, 2019) (explaining that President Bush's program made an exception for parents with children and that Obama's program detained families together) [<https://perma.cc/5AD7-W56F>]. There were, nonetheless, occasions when mothers and children were separated from the fathers who accompanied them, during the Obama Administration. See Kit Johnson, *Biden's Disingenuous Remarks on Immigration*, IMPROFBLOG (Sept. 13, 2019), <https://lawprofessors.typepad.com/immigration/2019/09/bidens-disingenuous-remarks-on-immigration.html> (last visited Nov. 20, 2019) (describing author's personal experience in New Mexico in 2014, attempting to “help women and children—locked in cages and separated from any adult males traveling with them—try to secure the right to leave detention on bond”) [<https://perma.cc/6WVP-BGQ9>].

designed to separate families in an effort to deter undocumented migration.⁹⁹

In May 2018, former Attorney General Sessions declared a shift in detention policy, whereby families arrested on the border would be torn apart: “If you are smuggling a child, then we will prosecute you, and that child will be separated from you as required by law. . . . If you don’t like that, then don’t smuggle children over our border.”¹⁰⁰ While ostensibly for the communitarian purpose of deterring unlawful migration and thereby protecting U.S. interests, this policy seemed unnecessary, then and now, given the viable alternative of detaining families in dedicated facilities, as had been the prior practice.¹⁰¹

Perhaps unsurprisingly, both a federal court and the court of public opinion have looked askance at this development. In June 2018, U.S. District Judge Dana Sabraw granted a class-action preliminary injunction ordering the government to take immediate steps toward reuniting children with their families within five days for children under five and within thirty days for all others.¹⁰²

99. See *infra* discussion accompanying notes 100–120 (explaining the ramifications of Trump administration’s family separation policy).

100. See Maya Rhodan, *Here Are the Facts About President Trump’s Family Separation Policy*, TIME (June 20, 2018, 10:37 AM), <https://time.com/5314769/family-separation-policy-donald-trump/> (last visited Nov. 20, 2019) (stating the repercussions of illegal crossings under the new zero-tolerance policy) [<https://perma.cc/Z634-A897>].

101. See *id.* (describing the establishment of the Office of Refugee Resettlement in 2002, which oversees the care of unaccompanied kids). This assumes that the enforcement of immigration law in a particular instance is absolutely necessary. I join my colleagues who argue for both the wise exercise of prosecutorial discretion and perhaps the abolition of deportation, given the current climate and the severe consequences for children and families. See, e.g., Angélica Cházaro, *The End of Deportation*, UCLA L. REV. (forthcoming) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3415707 (last visited Nov. 20, 2019) (arguing that deportation should be abolished) [<https://perma.cc/7L6G-DZVV>]; see also SHOBA SIVAPRASAD WADHIA, BEYOND DEPORTATION: THE ROLE OF PROSECUTORIAL DISCRETION IN IMMIGRATION CASES 7–13 (2015) (making the case for the effective use of prosecutorial discretion in the immigration field). Political ethicist Joseph Carens has long argued for open borders. See, e.g., Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 REV. POL. 251–73 (1987) (arguing for open borders while incorporating communitarian objections to the argument); JOSEPH H. CARENS, IMMIGRANTS AND THE RIGHT TO STAY (2010) (proposing that immigrants should be given a path to legal citizenship).

102. See *Ms. L. v. U.S. Immigration & Customs Enft.*, No. 18-cv-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction) (finding that a class-wide preliminary injunction was warranted based upon the evidence before

Two polls from June 2018 saw a majority of Americans oppose the family separation plan (sixty-six and fifty-five percent, respectively),¹⁰³ while a more recent poll from April 2019 saw opposition remain stable at sixty-five percent.¹⁰⁴ Perhaps most interestingly, Republican support for the policy has appeared to wane over time, now standing at a mere forty-nine percent, slightly less than a majority.¹⁰⁵

While some might argue that substantial, if minority, public support for the policy might justify its necessity, a recent Congressional report released in July 2019 challenges this perspective.¹⁰⁶ Based on information delivered by the Trump Administration pursuant to congressional subpoena, the report reached three primary conclusions on the over 2600 children studied: First, many children were separated from their parents for far longer than suspected or required by applicable guidelines.¹⁰⁷ Some were moved among multiple sites and others were housed in temporary tent cities in suboptimal conditions.¹⁰⁸ Second, in many cases, the Trump Administration did not prosecute the children's parents—the primary reason for the

the court following the implementation of the zero-tolerance policy).

103. See Dylan Matthews, *Polls: Trump's Family Separation Policy Is Very Unpopular—Except among Republicans*, VOX (June 18, 2018, 4:10 PM), <https://www.vox.com/policy-and-politics/2018/6/18/17475740/family-separation-poll-polling-border-trump-children-immigrant-families-parents> (last visited Nov. 20, 2019) (citing Quinnipiac and Ipsos polls) [<https://perma.cc/9H8X-77KJ>].

104. See Shibley Telhami & Stella M. Rouse, *New Poll: Despite Partisan Divides on Immigration, Americans Oppose Family Separation*, LAWFARE BLOG (Apr. 10, 2019, 7:27 AM), <https://www.lawfareblog.com/new-poll-despite-partisan-divides-immigration-americans-oppose-family-separation> (last visited Nov. 20, 2019) (citing University of Maryland poll that authors conducted) [<https://perma.cc/NV68-C4CT>].

105. *Id.*

106. COMM. ON OVERSIGHT & REFORM, CHILD SEPARATIONS BY THE TRUMP ADMINISTRATION 2 (July 2019), <http://cdn.cnn.com/cnn/2019/images/07/12/staff.report.-immigrant.child.separations.pdf> (last visited Nov. 20, 2019) [<https://perma.cc/332K-G9FE>].

107. See *id.* (“The records obtained by the Committee indicate that the Trump Administration separated children unnecessarily—even under its own rationale—causing lengthy delays to reunifications and separations that continue to this day.”)

108. See *id.* at 1–2 (“More than 400 children were moved to multiple CBP facilities At least ten separated children were sent to the ‘tent city’ in Tornillo, Texas.”).

family separation policy—and still did not expeditiously reunite the families.¹⁰⁹ Third, and perhaps most disturbingly, these family separations continue today, despite last year’s injunction.¹¹⁰

Unfortunately, more recent reports support these congressional findings.¹¹¹ The American Civil Liberties Union recently filed court documents alleging that an additional 900 parents and children were separated after Judge Sabraw’s order requiring family reunification a year ago.¹¹² Several members of Congress visited border detention facilities in early July 2019 and affirmed the squalor endured by detainees.¹¹³ Congresswoman Madeleine Dean tweeted that “conditions are far worse than we ever could have imagined,” describing the situation at the border as a “human rights crisis.”¹¹⁴

Finally, testimony by a top border enforcement official before a Senate Homeland Security Committee revealed that, when the family separation policy was initially adopted, there was no intent

109. See *id.* at 2 (“[T]he documents describe parents who were never sent to federal criminal custody, as well as others who were briefly taken into custody and then returned within a day or two likely because prosecutors declined to prosecute their cases.”).

110. See *id.* at 2 (“Hundreds of additional children have been separated from their parents since the end of the Administration’s zero tolerance policy in June 2018.”).

111. See Richard Gonzales, *ACLU: Administration Is Still Separating Migrant Families Despite Court Order to Stop*, NPR (July 30, 2019), <https://www.npr.org/2019/07/30/746746147/aclu-administration-is-still-separating-migrant-families-despite-court-order-to-> (last visited Nov. 20, 2019) (“The Trump Administration continues to separate hundreds of migrant children from their parents despite a federal court ruling that ordered an end to the practice.”) [<https://perma.cc/E9A4-KTCR>].

112. See Memorandum in Support of Motion to Enforce Preliminary Injunction at 2, *Ms. L. v. U.S. Immigration & Customs Enf’t*, No. 18-CV-00428 (S.D. Cal. July 30, 2019), ECF No. 439-1 (“From June 28, 2018, through June 29, 2019, Defendants have now separated more than 900 children—including numerous babies and toddlers . . .”).

113. See Priscilla Alvarez, *Lawmakers, Including Ocasio-Cortez, Lash Out over Conditions Following Border Facility Tours*, CNN (July 2, 2019), <https://www.cnn.com/2019/07/01/politics/alexandria-ocasio-cortez-clint-texas-facility/index.html> (last visited Nov. 20, 2019) (“Democratic members of Congress expressed outrage . . . over the growing humanitarian crisis on the southern border after touring two Texas border facilities prompted by reports of deteriorating conditions.”) [<https://perma.cc/AR22-D9KF>].

114. See *id.* (“(Fifteen) women in their 50s–60s sleeping in a small concrete cell, no running water. Weeks without showers.”).

to ever reunite detained migrant parents with their children.¹¹⁵ Instead, the Administration's mandate to the border patrol was simply to deport the parents.¹¹⁶ Note the following exchange between Senator Jerry Nadler and Customs and Border Protection Chief of Enforcement Operations Brian Hastings:

Nadler:	You would do the deportation while the child was in a different city in the United States.
Hastings:	We don't do the reunifications is my point, sir.
Nadler:	So you would do the deportation before the reunification without any knowledge of whether the parents are being reunified?
Hastings:	Yes. ¹¹⁷

This testimony also contradicted the view articulated by acting Homeland Security Secretary Kevin McAleenan, who had previously said, "[Zero tolerance had] the impact of . . . 2,000-plus families being separated during that prosecution [period]. . . . They were always intended to be reunited."¹¹⁸

At best, this evidence suggests an Administration unable or unwilling to ensure that children in their custody are treated with dignity, abjectly failing to reunite families, a core value of immigration policy.¹¹⁹ Indeed, most recently the Trump

115. Jeremy Stahl, *Top CBP Officer Testifies He's Unsure if Three-Year-Old Is "A Criminal or National Security Threat,"* SLATE (July 26, 2019), <https://slate.com/news-and-politics/2019/07/cbp-chief-brian-hastings-family-separation-judiciary-hearing-not-mueller.html> (last visited Nov. 20, 2019) ("[Customs and Border Protection official Brian] Hastings confessed what the Administration had long denied: that there was no intent *ever* to reunite the families when the policy was first implemented.") [<https://perma.cc/47SG-8W4Q>].

116. *See id.* (explaining that CBP guidelines required officers to deport parents without making sure they were first reunited with their children).

117. *Id.*

118. *See id.* (citing McAleenan's April 2019 comments to Lester Holt).

119. *See, e.g.,* Angelina Chapin, *Trump Admin Says It's Too Hard to Reunite Thousands of Separated Families: Court Filing*, HUFFPOST (Feb. 2, 2019), https://www.huffpost.com/entry/report-trump-admin-does-not-plan-to-reunite-families-separated-before-zero-tolerance_n_5c55c3c4e4b087104753e468 (last visited Nov. 20, 2019) ("[T]he Trump [A]dministration said it would require too

Administration issued a rule allowing for the indefinite detention of children.¹²⁰

3. Prosecuting Good Samaritans as Harborers

The recent prosecution of Good Samaritans as unlawful harborers appears to be guided by the same rationale as the family separation policy: deterrence at all costs.¹²¹ To stem the tide of undocumented border crossings, the Trump Administration has taken to prosecuting those who aim to provide assistance to such individuals, alleging that they have harbored “illegals” in violation of federal law.¹²²

much effort to reunite the thousands of families it separated before implementing its ‘zero-tolerance’ policy in April, according to a declaration filed as part of an ongoing lawsuit between the American Civil Liberties Union and U.S. Immigration and Customs Enforcement.”) [<https://perma.cc/3GNN-4M2L>].

120. See Jaclyn Kelly-Widmer, *A Federal Judge Blocked a Trump Administration Rule that Would Allow Children to Be Detained Indefinitely*, WASH. POST (Sept. 28, 2019, 1:51 AM), <https://www.washingtonpost.com/politics/2019/08/24/new-trump-administration-rule-allows-children-be-detained-indefinitely-heres-what-you-need-know/> (last visited Nov. 20, 2019) (“On Aug. 23, the Trump [A]dministration released a regulation that would allow it to detain migrant children indefinitely.”) [<https://perma.cc/3BG6-A3E7>]; see also Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44,392 (Aug. 23, 2019) (to be codified at 8 C.F.R. pts. 212 & 236; 45 C.F.R. pt. 410) (“DHS’s portion of the proposed regulations proposed to detain accompanied children indefinitely and consign them to unlicensed family detention centers.”); see also Veronica Stracqualursi, Geneva Sands, Elizabeth Elkin & Veronica Rocha, *What Is the Flores Settlement that the Trump Administration Has Moved to End?*, CNN POL. (Aug. 23, 2019), <https://www.cnn.com/2019/08/21/politics/what-is-flores-settlement/index.html> (last visited Nov. 20, 2019) (noting that the Trump Administration does not consider itself bound by the specifics of the *Flores* settlement and believes that changed circumstances require modifying the settlement) [<https://perma.cc/Y4LH-JYYL>].

121. See, e.g., Debbie Nathan, *Good Samaritans Punished for Offering Lifesaving Help to Migrants*, APPEAL (Apr. 17, 2019), <https://theappeal.org/good-samaritans-punished-for-offering-lifesaving-help-to-migrants/> (last visited Nov. 20, 2019) (“In recent years, the number of people federally charged with smuggling and harboring has jumped nearly a third.”) [<https://perma.cc/3LKX-N6AM>].

122. Ryan Devereaux, *Bodies in the Borderlands: Scott Warren Worked to Prevent Migrant Deaths in the Arizona Desert. The Government Wants Him in Prison.*, INTERCEPT (May 4, 2019), <https://theintercept.com/2019/05/04/no-more-deaths-scott-warren-migrants-border-arizona/> (last visited Nov. 20, 2019)

The recent trial of Scott Warren provides a window into the government's view of how assisting migrants morphs into illegal harboring¹²³ and conspiracy¹²⁴ to transport undocumented persons.¹²⁵ In the government's view, Warren did more than provide humanitarian aid; they allege he intentionally helped two undocumented men, shielding them from border patrol agents by keeping the men on his property and providing them with directions on how to avoid detection as they continued their journey.¹²⁶ Warren's counsel does not dispute that undocumented men stayed on his property, but argues that the government misinterpreted his client's intent.¹²⁷

As a member of the humanitarian border group, No More Deaths, Warren contends he simply followed the group's guidelines regarding providing legal assistance to migrants.¹²⁸ First, Warren was surprised to find the two men on his property, but after

People have been dying in the desert for decades because U.S. policy deliberately funnels them there. The Trump [A]dministration has doubled down on that approach, while adopting a strategy popular among far-right regimes around the world, in which humanitarian organizations working to keep migrants alive are prosecuted as criminal enablers.

[<https://perma.cc/6FMN-MRA9>].

123. See 8 U.S.C. § 1324(a)(1)(A)(iii) (2018) (defining as a crime the act of engaging in any conspiracy to commit any of several listed acts, including transporting and harboring alien immigrants who have come to the United States in violation of the law).

124. See *id.* § 1324(a)(1)(A)(v)(I) (“[E]ngages in any conspiracy to commit any of the preceding acts [including harboring].”).

125. See Miriam Jordan, *An Arizona Teacher Helped Migrants. Jurors Couldn't Decide if It Was a Crime*, N.Y. TIMES (June 12, 2019), <https://www.nytimes.com/2019/06/11/us/scott-warren-arizona-deaths.html> (last visited Nov. 20, 2019) (“Mr. Warren was charged with one count of conspiracy to transport undocumented immigrants, which carries a ten-year sentence, and two counts of harboring them.”) [<https://perma.cc/6PT9-4RUY>]; see also Devereaux, *supra* note 122 (“If convicted and sentenced to consecutive terms, Warren could serve up to twenty years in prison.”).

126. See Jordan, *supra* note 125 (“Border Patrol agents . . . testified that they saw [Warren] giving the men directions that would help them avoid a checkpoint.”).

127. See Devereaux, *supra* note 122 (explaining that Warren's mission is not to break the law but “to end death and suffering along the Sonora O’odham borderlands”).

128. See Devereaux, *supra* note 122 (describing the No More Deaths protocol for assisting migrants).

discovering their presence, followed his group's procedures by inquiring into and attending to their health needs, both nutritional and medical.¹²⁹ Second, what the border patrol officers observed as collusive deception was actually Warren making sure that the migrants were aware of their surroundings so they could safely "self-rescue"—advice he gave pursuant to No More Deaths' guidelines.¹³⁰ From Warren's perspective, this was humanitarian aid, no more, no less.¹³¹

Because of the inherent difficulty in proving the requisite mens rea for both the conspiracy and harboring charges¹³² beyond a reasonable doubt in Warren's case, it is unsurprising that the jury could not agree to convict, and a mistrial was declared.¹³³ Instead of dropping the charges, however, the prosecutors tried Warren a second time in November 2019; the jury acquitted him after only hours of deliberation.¹³⁴

From a communitarian perspective, there are additional reasons to wonder whether this extension of Trump's zero-tolerance policy is warranted in Warren's particular case and

129. See Devereaux, *supra* note 122 ("[The migrants] asked for food, water, and, perhaps, a place to sleep. Warren obliged. . . . The migrants spent two nights at the Barn, cooking, resting, and preparing to carry on with their journey, while Warren and other No More Deaths volunteers came and went.").

130. See Jordan, *supra* note 125 ("Mr. Warren said that he was helping the migrants orient themselves in their surroundings to 'self-rescue,' part of the No More Deaths protocol.").

131. See Jordan, *supra* note 125 ("Scott intended one thing, to provide basic human kindness in the form of humanitarian aid," [Warren's lawyer] said in court.").

132. See 8 U.S.C. §§ 1324(a)(1)(A)(iii), (v)(I) (2018) (defining mens rea for "harboring" and "conspiracy").

133. See Bob Ortega, *No Verdict in Controversial Border Aid Case*, CNN INVESTIGATES (June 11, 2019), <https://www.cnn.com/2019/06/11/us/verdict-scott-warren-no-more-deaths-migrant-trial-invs/index.html> (last visited Nov. 20, 2019) ("After three days of deliberations, jurors told U.S. District Court Judge Raner Collins that they were unable to reach a verdict against aid worker Scott Warren.") [<https://perma.cc/S4SG-XB9S>].

134. See Associated Press, *Arizona Activist Who Gave Migrant Humanitarian Aid Acquitted in Second Trial*, THE GUARDIAN (Nov. 20, 2019), <https://www.theguardian.com/us-news/2019/nov/20/arizona-activist-migrants-trial-scott-warren> (last visited Nov. 23, 2019) ("The Wednesday verdict by a jury in US District Court came after jurors deliberated for just hours. It was the second trial for Warren; a mistrial was declared last June after a jury deadlocked on harboring charges.") [<https://perma.cc/BB9E-YGN8>].

in the cause of humanitarian assistance writ large.¹³⁵ Warren claims that he was prosecuted because No More Deaths posted videos of border patrol agents destroying water jugs left by the group for thirsty migrants.¹³⁶ Apparently, eight other group members were also arrested.¹³⁷

More broadly, however, No More Deaths and similar humanitarian groups grew out of a tradition of civil disobedience stemming from the church-based sanctuary movement of the 1980s.¹³⁸ When President Ronald Reagan appeared to politically manipulate the asylum process to deny worthy Latin American claimants, churches on both sides of the southern U.S. border mobilized to assist refugees in their northward journey.¹³⁹ This church-based resistance was not unlike either the Underground Railroad or the Civil Rights struggle—both social movements consistent with the Christian doctrine of cosmopolitanism and the belief in the inherent dignity of all persons, regardless of race, ethnicity, socioeconomic status, or national origin.¹⁴⁰

135. See Ryan Devereaux, *Criminalizing Compassion: The Unraveling of the Conspiracy Case Against No More Deaths Volunteer Scott Warren*, INTERCEPT (Aug. 10, 2019), <https://theintercept.com/2019/08/10/scott-warren-trial/> (last visited Nov. 20, 2019) (“Here were two assistant U.S. attorneys interpreting a law in a new, and radically more aggressive, direction and getting institutional support from the Department of Justice to do so.”) [<https://perma.cc/2674-2NDT>].

136. See Jordan, *supra* note 125 (“Mr. Warren was arrested a few hours after the video was posted online.”).

137. See Devereaux, *supra* note 122 (“Warren was one of nine No More Deaths volunteers hit with federal littering charges for leaving water on the Cabeza Prieta National Wildlife Refuge.”)

138. See Devereaux, *supra* note 122 (“[No More Deaths and two other] groups were born out of the Sanctuary Movement of the 1980s, when religious leaders in the desert banded together to move Central American refugees across the border after it became clear that the Reagan [A]dministration was systematically, and illegally, denying their asylum claims.”).

139. See Devereaux, *supra* note 122 (“Using the Underground Railroad as their blueprint, nuns, priests, reverends, and parishioners smuggled hundreds of refugees into the U.S. so they could take sanctuary in houses of worship around the country.”).

140. See, e.g., Sebastian C. Galbo, *The “Roving Ambassador”: Bayard Rustin’s Quaker Cosmopolitanism and the Civil Rights Movement*, 6 INQUIRIES J. 1, 1 (2014), <http://www.inquiriesjournal.com/articles/884/the-roving-ambassador-bayard-rustins-quaker-cosmopolitanism-and-the-civil-rights-movement> (last visited Nov. 20, 2019) (“Despite the simmering strains of racism that undergirded the customs of West Chester, [Pa.] the Religious Society of Friends continued to serve as a vital coordinate on the Underground Railroad.”) [<https://perma.cc/9799->

For communitarians, to take care of U.S. citizens first is pragmatic and politically savvy given the continued prominence of nation-states (and notwithstanding efforts at cross-border transnationalism like in the European Union);¹⁴¹ however, there are ways to take care of our citizenry without demonizing the migrants in our midst, even in the name of economic or national security.¹⁴² Seeking to build walls, whether literal or figurative, does little to protect U.S. citizens and does great harm to those who may one day be citizens themselves.¹⁴³ It therefore becomes exceedingly difficult to justify any of the foregoing Trump Administration initiatives—the Muslim Ban, family separation, and prosecution of Good Samaritans—from a Christian

GP4S]. Even if Scott Warren and others like him could be found technically guilty of harboring or assisting migrants, I believe the government should exercise its discretion and not prosecute them, just as the Civil Rights marchers should not have been prosecuted.

141. See, e.g., DESMOND DINAN, *EUROPE RECAST: A HISTORY OF THE EUROPEAN UNION* 13–41 (2004) (detailing the development of the E.U.).

142. See Maeve Reston, *In This Michigan County, Voters Feel Economic Gains and Trump Fatigue*, CNN POL. (July 29, 2019), <https://www.cnn.com/2019/07/29/politics/2020-election-michigan-voters/index.html> (last visited Nov. 20, 2019)

[One interviewee,] Gaither[,] underscored that he doesn't agree with everything Trump says. But "I'll take [economic] progress over a few sh**ty words that are said here and there," Gaither said. "The guy says stupid things, but as long as things are going good, I could give two sh***." "Until he says a literal N-word or something like that. Then yeah, I might be pissed, but that is beyond irrelevant to me," said Gaither, who is white, referring to the uproar over the President's comments about the congresswomen.

[<https://perma.cc/DM8C-NA5C>]. A recent CNN report noted that some Michigan residents have grown weary of Trump's xenophobic and racist comments, but would still prefer him to an untested Democrat if the economy holds. See *id.* ("[T]he 2020 election could turn on the question of whether Americans turned off by Trump's racist and xenophobic rhetoric will give him a pass because they and their loved ones are doing better financially."). Along with Pennsylvania and Wisconsin, Michigan was a crucial bellwether state for Trump during the 2016 election. *Id.*

143. See Tom Vanderbilt, *The Walls in Our Heads: The Idea That We Can Solve Problems by Building Physical Barriers Is a Persistent Human Fantasy*, N.Y. TIMES (Nov. 4, 2016), <https://www.nytimes.com/2016/11/06/opinion/sunday/the-walls-in-our-heads.html> (last visited Nov. 20, 2019) ("Today's walls similarly function as political placebos, *seeming* to produce effects, if only masking larger symptoms.") [<https://perma.cc/DC8W-77HT>].

communitarian perspective.¹⁴⁴ Even if one grants that there may be a modicum of national interest embedded in these policies, the means to achieve such goals is unnecessary.¹⁴⁵

C. Alternative Approaches that Evince Compassionate Communitarianism

The need for an alternative approach to immigration becomes even more clear when one considers the thoughtful proposals by many immigration academics. These range from a continued emphasis on supporting economic development abroad, thereby reducing the attraction of emigration,¹⁴⁶ to a more fundamental rethinking of our byzantine immigration procedural rules—the so-called alphabet soup of visas and forms—by refocusing our immigration enforcement efforts solely on those who would do harm via crime or terror,¹⁴⁷ to the elimination of deportation

144. See, e.g., *Statement Condemning the Immigration Ban*, CHRISTIAN THEOLOGICAL SEMINARY (2019), <https://www.cts.edu/about-christian-theological-seminary/tatement-condemning-the-immigration-ban/> (last visited Nov. 20, 2019) (“Reach out in a special way to supposed outsiders, so as to welcome the one who is a stranger (not the one who is familiar!), the one who is a foreigner, the one for whom your mercy, your imagination, your love must stretch the farthest.”) [<https://perma.cc/SHP2-KF2Y>].

145. See Victor C. Romero, *The Congruence Principle Applied: Rethinking Equal Protection Review of Federal Alienage Classifications After Adarand Constructors, Inc. v. Peña*, 76 OR. L. REV. 425, 429 (1997) (“[C]ourts should strictly scrutinize all federal alienage classifications that affect immigrants’ rights in the alienage law context. In addition, courts should strictly scrutinize such classifications within immigration law that impair fundamental rights.”). Although my primary focus is to argue for more cosmopolitan-based immigration leadership, I would not oppose the application of either a strict scrutiny review of such policy choices; indeed, I’ve argued for the same where important immigrant rights are compromised. In addition, one might conceive of “gratuitous cruelty” as being similar to the constitutional concept of “animus” in that a law that evinces either is irrational and unconstitutional. For a comprehensive primer on the animus doctrine, see WILLIAM D. ARAIZA, *ANIMUS: A SHORT INTRODUCTION TO BIAS IN THE LAW* (2017).

146. See HIROSHI MOTOMURA, *IMMIGRATION OUTSIDE THE LAW* 218–23 (2008) (arguing that effective international development importantly reduces the impetus for emigration from sending states).

147. See KEVIN JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* 196–99 (2007) (“An anti-terror approach is consistent with the recommendations of the 9/11 Commission Report.”).

altogether.¹⁴⁸ All of these proposals offer detailed, specific ways to promote communitarianism—the good of U.S. citizens and residents first—while also honoring human flourishing; call it “compassionate communitarianism,” if you like.¹⁴⁹ These proposals do not abandon the notion of a nation-state that sets forth our immigration policy.¹⁵⁰ And yet, unlike Trump’s priorities, all of these endeavor to treat noncitizens with compassion.¹⁵¹

It is, indeed, a sad commentary on our politics when even modest proposals for congressional action on bipartisan issues such as the Development, Relief, and Education for Alien Minors (DREAM) Act continue to receive little purchase¹⁵² or when a majority of the U.S. Supreme Court—just as it did with Muslim Ban 3.0¹⁵³—washes its hands of responsibility by permitting the

148. See Cházaro, *supra* note 101, at 5–6 (promoting research into the subject of deportation abolition to end deportation).

149. Cf. IAN BUTLER & MARK DRAKEFORD, SCANDAL, SOCIAL POLICY AND SOCIAL WELFARE 245 (2005) (“[Compassionate communitarianism] contained elements of inclusivity, a sense of the common good and a degree of optimism for what the state could achieve on behalf of its citizens . . .”).

150. See Samuel Gregg, *National Sovereignty and the Challenge of Immigration*, THE PUB. DISCOURSE (Aug. 22, 2017), <https://www.thepublicdiscourse.com/2017/08/19911/> (last visited Nov. 20, 2019) (“[T]he concept of national sovereignty provides an indispensable framework for any coherent response by legislators and citizens to the challenges—and opportunities—associated with the movement of individuals who, for many reasons, desire to reside permanently in countries of which they are not citizens.”) [<https://perma.cc/4MQA-LDNW>]. But see Jeb Bush & Thomas F. McLarty, *U.S. Immigration Policy: Independent Task Force Report No. 63*, COUNCIL ON FOREIGN REL. (2009), https://cdn.cfr.org/sites/default/files/report_pdf/Immigration_TFR63.pdf (last visited Nov. 20, 2019) (“Both the United States and Mexico have long been wary of the sacrifices to sovereignty involved in the European model of integration, and there is little likelihood of that changing in the near future.”) [<https://perma.cc/47GW-2GUM>].

151. See Gregg, *supra* note 150 (“[There are] genuine apprehensions about the possibility of governments breaking up intact families, not to mention the compassion that we should have for those fleeing war, persecution, terrorism, and bleak economic futures.”).

152. See Felicia Sonmez, *House Passes Immigration Bill to Protect “Dreamers,” Offer a Path to Citizenship*, WASH. POST (June 4, 2019), https://www.washingtonpost.com/powerpost/house-poised-to-pass-immigration-bill-that-would-protect-dreamers/2019/06/04/bac5cf98-86d7-11e9-a491-25df61c78dc4_story.html?utm_term=.3ff9c17b4398 (last visited Nov. 20, 2019) (noting that the House of Representatives passed a bill that would provide a pathway to citizenship for certain DREAMers but that it is not expected to garner Senate approval) [<https://perma.cc/D2FG-JHK3>].

153. See No Muslim Ban Ever, *supra* note 10 (“The Supreme Court’s decisions

reallocation of funds toward a border wall¹⁵⁴ while effectively gutting President Obama's Deferred Action for Parents of American Citizens and Lawful Permanent Residents (DAPA) program, which would have allowed certain removable parents to be reunited with their U.S. citizen children.¹⁵⁵

All the foregoing suggests the need for an alternative vision of leadership, one that embraces cosmopolitanism and restores a truer sense of communitarianism than the distorted version currently in play.¹⁵⁶ We will explore cosmopolitanism as a possible antidote to our faux communitarianism in the next Part.¹⁵⁷

IV. Christian Cosmopolitanism and Immigration Policy

In his book *Just Immigration*, Mark Amstutz asserts:

are an endorsement of bigoted ideals and a tacit approval of religious and ethnic discrimination.”).

154. See *Trump v. Sierra Club*, 140 S. Ct. 1 (2019) (mem.) (granting stay of permanent injunction, effectively permitting diversion of funds toward border wall construction). Following the Supreme Court's decision, the Pentagon now has the task of re-directing funds from other projects to the wall. See, e.g., Helene Cooper & Emily Cochrane, *Pentagon to Divert Money from 127 Projects to Pay for Trump's Border Wall*, N.Y. TIMES (Sept. 3, 2019), https://www.nytimes.com/2019/09/03/us/politics/pentagon-border-wall.html?te=1&nl=morning-briefing&emc=edit_NN_p_20190904§ion=whatElse?campaign_id=9&instance_id=12109&segment_id=16704&user_id=4e1f4b70bbf3097dfc752b3abde66d92®i_id=94728433ion=whatElse (last visited Nov. 20, 2019) (“Defense Department officials . . . said that about half of the \$3.6 billion would be taken from planned military construction projects overseas.”) [<https://perma.cc/7FRS-DKDU>].

155. See *United States v. Texas*, 136 S. Ct. 2271, 2272 (2016) (per curiam) (affirming lower court opinion striking the Deferred Action for Parents of American Citizens and Lawful Permanent Residents (DAPA) program and preventing expansion of the earlier Deferred Action for Childhood Arrivals (DACA) order).

156. See, e.g., Allen E. Buchanan, *Assessing the Communitarian Critique of Liberalism*, 99 ETHICS 852, 861 (1989) (“[T]he argument also makes it clear that communitarianism—understood narrowly simply as the view that community is of such great value that it ought to be taken into account in the design of the most basic political institutions—does not presuppose an objective theory of value.”).

157. See, e.g., Aaron Miguel Cantú, *Baristas of the Brave New Data State*, 33 BAFFLER 86, 89 (2016) (“People, particularly Muslims, are encouraged to watch their neighbors and children for signs of ‘radicalization’—which can include behaviors as innocuous as logging on to a computer for hours on end, or being overly critical of ‘the West’—and then report the suspicious conduct to law enforcement.”).

A Christian worldview shares with cosmopolitanism three central beliefs: First, the well-being of persons is primary; second, because people are entitled to dignity and equality, the international community is an inclusive moral society; and third, because the international community is a coherent ethical society, people have a right to migrate.¹⁵⁸

We see this broad emphasis on individual rights in calls to personhood, as seen in the argument from constitutional law that the Founders specifically chose the word “person”—and not “citizen”—to ensure that all individuals subject to governmental authority receive due process and equal protection of the law.¹⁵⁹

In the academic literature, we see this sentiment play out in Rose Cuison Villazor’s important investigation of the sanctuary movement,¹⁶⁰ itself stemming from the church’s leadership in providing refuge for Latin Americans seeking a better life by defying national boundaries.¹⁶¹ Although sometimes considered

158. AMSTUTZ, *supra* note 40, at 97.

159. See U.S. CONST. amend. XIV, § 1 (using the word “citizen” in the Citizenship Clause to refer to individuals but using the word “persons” in the Due Process and Equal Protection Clauses to refer to individuals).

160. See, e.g., Rose Cuison Villazor, *What is a Sanctuary?*, 61 SMU L. REV. 133, 144 (2008) (“Similar to churches in the 1980s, today’s sanctuary churches and private organizations formed a network to provide shelter and other services to undocumented immigrants.”); see also Rose Cuison Villazor, “*Sanctuary Cities and Local Citizenship*,” 37 FORDHAM URB. L.J. 573, 576 (2010) (“Recognizing sanctuary cities as sites of local citizenship for undocumented immigrants takes the first step towards analyzing what implications, if any, these places might have on national citizenship, which may be examined more fully in the future.”). Outside the immigration law literature, both Kwame Anthony Appiah and Martha Nussbaum have written eloquently about cosmopolitanism in a secular sense. See, e.g., KWAME ANTHONY APPIAH, *COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS*, at xv (2007) (noting two strands in cosmopolitanism as:

One is the idea that we have obligations to others, obligations that stretch beyond those to whom we are related by the ties of kith and kind, or even more formal ties of a shared citizenship. The other is that we take seriously the value not just of human life but of particular human lives, which means taking an interest in the practices and beliefs that lend them significance.

See also Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, BOS. REV., Oct. 1, 1994, at 3–4 (arguing that educating American students in the cosmopolitan tradition—that is, the idea that our “primary allegiance is to the community of human beings in the entire world”—furtheres patriotic notions of justice and equality better than nationalism).

161. See Villazor, *What is a Sanctuary?*, *supra* note 160, at 139 (providing an example of how churches have offered refuge for those accused of crimes and who

pejoratively, “sanctuary” has also been linked to the decisions of state and local entities not to cooperate with federal officials seeking to overzealously enforce immigration laws.¹⁶²

The dignity of each individual also comes into sharp relief in Christian thought when we look at its emphasis on “agape” love—selfless, kinship love seen between the closest of friends, as seen in Jeffrie Murphy’s work on criminal law.¹⁶³ As Jennifer Koh reminds us, the thrust of Jesus Christ’s teachings is for his followers to lead lives of selflessness, exuding the agape love that grows out of the Great Commandment to love others as Christ loves us, to lead lives of service for a greater purpose.¹⁶⁴ The foot-washing story from the Last Supper is but one example of the theme of selfless living.¹⁶⁵

But more than just extending that grace, that agape love, to those within our inner circle—relatives, friends, community members—Jesus challenges us through the Parable of the Good Samaritan to love all our neighbors, even those we may consider alien. Jesus also taught us to “love [our] enemies, and pray for those who persecute [us].”¹⁶⁶ In addition, Michael Scaperlanda has argued that the Good Samaritan story provides a basis for a Catholic ethics of immigration policy.¹⁶⁷

So, while I agree with Amstutz that there is much to commend the communitarian view—after all, we live in a world of

may be subject to vengeful attacks by their victims).

162. See generally Ming H. Chen, *Trust in Immigration Enforcement: State Noncooperation and Sanctuary Cities after Secure Communities*, 91 CHI.-KENT L. REV. 13 (2016) (arguing that subfederal entities refused to cooperate with federal immigration enforcement efforts following the Secure Communities initiative, revitalizing the debate around sanctuary cities).

163. See *supra* Part III.B (describing Murphy’s view that a Christian perspective on criminal law eschews gratuitous punishment).

164. See generally Jennifer Lee Koh, *Agape, Grace, and Immigration Law: An Evangelical Perspective*, in AGAPE, JUSTICE, AND LAW 228 (Robert F. Cochran, Jr. & Zachary R. Calo eds., 2017) (offering a framework for thinking about immigration as it relates to evangelical Christian faith).

165. See *John* 15:13 (“Greater love has no one than this: to lay down one’s life for one’s friends.”).

166. See *Matthew* 5:43–45 (“You have heard that it was said, ‘Love your neighbor[a] and hate your enemy.’ But I tell you, love your enemies and pray for those who persecute you, that you may be children of your Father in heaven.”).

167. See generally Scaperlanda, *supra* note 7 (using the Parable of the Good Samaritan to illustrate his Catholic Christian vision of how permanent resident aliens in America should be treated under the Constitution).

nation-states which all claim exclusive authority to admit strangers as they wish—reflecting upon our current leadership and the immigration policy choices that have been made, I find it hard to embrace a communitarian ethic that can be so callously manipulated.¹⁶⁸ President Trump has not even come close to the biblical idea of servant leadership—indeed, he often seems to wash no one’s feet but his own—and his Christian supporters who claim an affinity to Jesus, distort both biblical and communitarian principles to scapegoat the other, whether intentionally or not.¹⁶⁹

When Jesus washed his apostles’ feet, he came to them as individuals, as his call to all is to “follow him.”¹⁷⁰ Put differently, Jesus Christ’s call is a call to cosmopolitan ministry, to the unselfish service of individuals, not nations, with the goal of honoring the divine in each person.¹⁷¹ Now, whether the practical incarnation of cosmopolitanism on this side of the Fall is some compassionate version of communitarianism because the nation-state serves as a Hobbesian Leviathan, constructed to keep us from living “nasty, brutish, and short”¹⁷² lives or is the product of a necessary Lockean social contract,¹⁷³ it seems that the Christian ideal is cosmopolitan.¹⁷⁴ As the apostle Paul writes, “There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus.”¹⁷⁵ In

168. See generally Wadhia, *supra* note 10 (providing an overview and analysis of immigration policy in the United States under the current Administration).

169. See WADHIA, *supra* note 10, at 98 (illustrating how President Trump’s immigration policy decisions depart from biblical ideas of servant leadership because of a lack of empathy for those seeking refuge in the United States).

170. See *Luke* 9:23 (“Then he said to them all: ‘Whoever wants to be my disciple must deny themselves and take up their cross daily and follow me.’”).

171. See *id.* (illustrating how Jesus displayed servant leadership by giving up personal desires, making sacrifices, and bearing burdens for a greater purpose).

172. See THOMAS HOBBES, *LEVIATHAN* 186 (Penguin Classics 1982) (1651) (arguing for rule by an absolute sovereign as the only way to avoid civil war and the brute situation).

173. See JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* 52 (C.B. Macpherson ed., Hackett Classics 1980) (1689) (“Men being, as has been said, by nature, all free, equal and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent.”).

174. See AMSTUTZ, *supra* note 40, at 97 (discussing the commonalities between Christianity and cosmopolitanism’s view of universal bonds amongst all humans).

175. See *Galatians* 3:28 (teaching that believers in Christ are equal in God’s eyes).

modeling servant leadership, Jesus washes our feet so we will wash others', not create nations, amass power, or sow divisiveness.¹⁷⁶ Given man's fallibility, I acknowledge that cynical, self-serving leaders who espouse a cosmopolitan outlook may end up manipulating policy by paying lip service to the theory, although I suspect that would be more easily detected by the public.¹⁷⁷ Still, such fallibility does not mean we cannot strive for the all-inclusive community.¹⁷⁸

V. Foot Washing in Action: Examples from California

When Donald Trump was elected president in 2016, Hillary Clinton was outwardly gracious and hopeful: Her wish was that Trump would become "a successful president for all Americans."¹⁷⁹

176. See *John* 13:1–17 (illustrating that servant leadership is caring for the needs of others without expecting anything in return).

177. See Harriet Sherwood, "Toxic Christianity": *The Evangelicals Creating Champions for Trump*, *THE GUARDIAN* (Oct. 21, 2018), <https://www.theguardian.com/us-news/2018/oct/21/evangelical-christians-trump-liberty-university-jerry-falwell> (last visited Nov. 20, 2019) (describing how many devout Christians view toxic Christianity as full of vitriol and hate, going against the religion's teachings to be loving, inclusive, and compassionate) [<https://perma.cc/GX7T-H9WS>].

178. See RICHARD J. FOSTER, *CELEBRATION OF DISCIPLINE: THE PATH TO SPIRITUAL GROWTH* 189 (Harper San Francisco ed., 1998) ("The aim of God in history is the creation of an all-inclusive community of loving persons, with Himself included in that community as its prime sustainer and most glorious inhabitant.").

179. MANUEL PASTOR, *STATE OF RESISTANCE: WHAT CALIFORNIA'S DIZZYING DESCENT AND REMARKABLE RESURGENCE MEAN FOR AMERICA'S FUTURE* 3 (The New Press ed., 2018) (citations omitted). Pastor contends that California's own anti-immigrant past and now pro-inclusion stance charts a way forward for the nation and other States on immigration policy. *Id.* According to Pastor, "as much as those in the Midwest, the South, New England and indeed any other part of the country may hate to hear it, the demographic, economic, and social trends reveal a simple truth: California is America fast-forward." *Id.* To be clear, Pastor does not embrace the cult of personality—i.e., that replacing Trump with a new leader will change things—but rather he believes in the collective, grassroots forces that impel change:

[W]hile Americans are normally tempted to think that what matters is the right person—that Obama could magically save us from our own divisions or that Trump alone can make the difference between decline and recovery—it is really the right collective capacities and alliances that are needed to drive change and make it stick.

Id. at 17. With respect to immigrants in particular, Pastor argues that fortifying

Unfortunately, his Administration has been marked by divisiveness and disorder.¹⁸⁰ In contrast, here are two specific examples of foot-washing, servant leadership out of California that have the potential to successfully promote immigrant inclusion.

The city of Fresno, California, is not generally known as a progressive town, but it is known for being an agricultural one.¹⁸¹ Like many agricultural communities around the country, it has become increasingly diverse, thanks to migration.¹⁸² Its leaders recently decided to take concrete steps to facilitate better immigrant integration, and earlier this year, the Fresno City Council unanimously adopted a resolution to create a fifteen-member immigrant affairs advisory committee.¹⁸³

The first few lines of the resolution set forth the committee's aspirations for this diverse community:

WHEREAS, fostering a welcoming environment for all individuals, regardless of race, ethnicity, or place of origin, enhances the City of Fresno's cultural fabric, economic growth,

the education of migrant children is key. *Id.* at 20.

180. See, e.g., Peter Baker, *A Divider, Not a Uniter, Trump Widens the Breach*, N.Y. TIMES (Sept. 24, 2017), <https://www.nytimes.com/2017/09/24/us/politics/trump-divisiveness.html> (last visited Nov. 20, 2019) ("Never in modern times has an occupant of the Oval Office seemed to reject so thoroughly the nostrum that a president's duty is to bring the country together. . . . Mr. Trump has made himself America's apostle of anger, its deacon of divisiveness.") [<https://perma.cc/5247-8CBF>].

181. See *Fresno County Ag*, FRESNO COUNTY FARM BUREAU, <http://www.fcfb.org/Fresno-Ag/Fresno-Ag.php> (last visited Nov. 20, 2019) ("Fresno County is home to 1.88 million acres of the world's most productive farmland, with agricultural operations covering nearly half of the county's entire land base of 3.84 million acres.") [<https://perma.cc/DVT7-ANRM>].

182. See PolicyLink & USC Program for Env'tl. & Reg'l Equity, *Advancing Health Equity and Inclusive Growth in Fresno County*, NAT'L EQUITY ATLAS 17–18 (2017), https://nationalequityatlas.org/sites/default/files/FresnoProfile_final.pdf (detailing demographics in Fresno County and stating levels of growth of racially and ethnically diverse groups) [<https://perma.cc/KV4V-G9K9>].

183. See Kevin Johnson, *What Cities Can Do to Promote Immigrant Integration? An Example from the Central Valley of California*, IMMIGRATIONPROF BLOG (Feb. 18, 2019), <https://lawprofessors.typepad.com/immigration/2019/02/what-cities-can-do-to-promote-immigrant-integration-an-example-from-teh-central-valley-of-california.html> (last visited Nov. 20, 2019) ("Some have argued that, with respect to immigrants, state and local governments should focus on how to best integrate immigrants into the community rather than to attempt to facilitate immigration enforcement.") [<https://perma.cc/P8CZ-JLER>].

global competitiveness, and overall prosperity for current and future generations; and WHEREAS, the City of Fresno is home to a diverse population of immigrants from around the world, speaking over one-hundred different languages, and adding to the cultural richness of our community¹⁸⁴

This is not to say that the resolution will immediately produce results.¹⁸⁵ After the committee members were selected in May 2019, a proposal to fund the committee's efforts was rejected by the Fresno mayor in July, citing budgetary concerns.¹⁸⁶ Still, the committee's formation is a good first step toward addressing the needs of the Fresno community and stands in stark contrast to more infamous anti-immigrant ordinances that have emerged from similarly rural towns like Hazleton, Pennsylvania.¹⁸⁷

The second example comes from the California governor's office.¹⁸⁸ A recent report noted that Governor Gavin Newsom is celebrating an unusually large budget surplus, and in stewardship of that bounty, his government is prepared to provide expanded health care for indigent undocumented immigrants in the state.¹⁸⁹

184. *Id.*

185. See Brianna Calix, *Fresno Mayor Axes Funding for These Controversial Items in City Budget*, FRESNO BEE (July 8, 2019), <https://www.fresnobee.com/news/local/article232407862.html> ("Fresno Mayor Lee Brand announced Monday he's vetoing funding for the controversial Advance Peace program and an immigrant affairs committee, among other items, in an effort to ensure the city budget is balanced.").

186. See *id.* ("Just like any family does when they are faced with difficult decisions on where to spend their limited budget, the city of Fresno has to do the same. . . .").

187. See Michael Matza, *10 Years After Immigration Disputes, Hazleton is a Different Place*, PHILA. INQUIRER (Apr. 1, 2016), https://www.inquirer.com/philly/news/20160403_10_years_after_immigration_disputes_Hazleton_is_a_different_place.html (reporting that the anti-immigration movement arose out of "'misconceptions about Latino immigrants, and nostalgic imagery of Small Town, America,' and that it masked 'the real story' of a city abandoned by its mainstay light industries") [<https://perma.cc/AL6F-PNGK>].

188. See Sophia Bollag & Adam Ashton, *Undocumented Immigrants to Get Health Care in Governor Newsom's California Budget Deal*, SACRAMENTO BEE (June 9, 2019, 5:58 PM), <https://www.sacbee.com/news/politics-government/capitol-alert/article231310348.html> (last visited Nov. 20, 2019) (detailing how California Governor Newsom embodied servant leadership by using a budget surplus to provide healthcare to undocumented immigrants) [<https://perma.cc/F4FQ-T8JS>].

189. See *id.* ("The expansion will take effect Jan. 1, 2020 and cost \$98 million in the upcoming fiscal year. It will make California the first state to allow

The plan will allow undocumented youth under the age of twenty-six an opportunity to enroll in Medi-Cal, the state's healthcare program for indigent residents.¹⁹⁰

Just as with the civil rights freedom fighters in the South, community leaders today can find ways to promote hope by committing to doing the work of serving all of their diverse members, especially those most vulnerable to marginalization in the current political climate.¹⁹¹ Fresno's recent resolution and California's new health care proposal seek to do just that.¹⁹² These initiatives promote cosmopolitanism by honoring human dignity, but they also advance compassionate communitarianism by expanding the circle of membership¹⁹³ to include previously excluded outsiders.¹⁹⁴

In contrast to California's (and Fresno's) welcoming stance, the Trump Administration has seen it fit to aggressively prosecute Good Samaritan foot washers.¹⁹⁵ For years, organizations such as

undocumented adults to sign up for state-funded health coverage.”).

190. See *id.* (“But it doesn’t extend that eligibility to undocumented seniors, as state senators had proposed.”).

191. See *Inspiring Leadership in Immigrant Communities*, IMMIGRANT LEGAL RESOURCE CTR. (Nov. 30, 2010), <https://www.ilrc.org/inspiring-leadership-immigrant-communities> (last visited Nov. 20, 2019) (explaining why it is important to ensure new immigration legislation includes adequate provision of services) [<https://perma.cc/YBE6-U8VH>].

192. See, e.g., Bobby Allyn, *California Is First State to Offer Health Benefits to Adult Undocumented Immigrants*, NPR (July 10, 2019), <https://www.npr.org/2019/07/10/740147546/california-first-state-to-offer-health-benefits-to-adult-undocumented-immigrants> (last visited Nov. 20, 2019) (“On Tuesday, Newsom said the state law draws a sharp contrast with Trump’s immigration policies.”) [<https://perma.cc/R92Q-DQZ2>].

193. See Victor C. Romero, *Expanding the Circle of Membership by Reconstructing the “Alien”: Lessons from Social Psychology and the “Promise Enforcement” Cases*, 32 MICH. J.L. REF. 1, 33–34 (1998) (“So long as the government continues to value the membership paradigm (and its enforcer—the plenary power doctrine) over equal personhood for noncitizens, the circle of membership will continue to tighten.”).

194. See *Inspiring Leadership in Immigrant Communities*, *supra* note 191 (providing information about how to increase communitarianism among immigrant and refugee communities who are discriminated against by informing employers on how they can be inclusive leaders).

195. See *Punishing Refugees and Migrants: The Trump Administration’s Misuse of Criminal Prosecutions*, GRANTMAKERS CONCERNED WITH IMMIGRANTS & REFUGEES (Jan. 2018), <https://www.gcir.org/resources/punishing-refugees-and-migrants-trump-administrations-misuse-criminal-prosecutions> (last visited Nov. 20, 2019) (detailing how the Trump Administration has issued an executive order

No More Deaths (or *No Mas Muertes*) have strategically placed gallon jugs of water across often-trod desert paths that Latin American migrants travel en route to the United States.¹⁹⁶ While federal law prohibits assisting immigrant smuggling, the current Department of Justice has doubled-down on efforts to criminally charge individuals who provide this humanitarian aid.¹⁹⁷ As human experience suggests, any person in the United States can likely be found guilty of some infraction daily, whether it is speeding or jaywalking or littering.¹⁹⁸ And yet, due to both customary non-enforcement norms and limited law enforcement resources, the government does not bring charges against all the persons it can.¹⁹⁹ Such reasonable prosecutorial discretion is lost in the current move to show zero tolerance for undocumented migration.²⁰⁰

prioritizing prosecuting immigration offense, subverting the prohibition on penalizing refugees) [<https://perma.cc/YGZ4-44YF>].

196. See generally Curt Prendergast, *Analysis: Cartel Scout Cases Show Potential Future of Border-Air Prosecutions*, NO MORE DEATHS • NO MÁS MUERTES (Aug. 18, 2019), <https://nomoredeaths.org/en/author/campaign/> (last visited Nov. 20, 2019) (describing how the current Administration has made it a priority to pursue criminal charges against border aid workers, such as those who treat migrants for ailments and injuries at shelters) [<https://perma.cc/46CL-HQHW>].

197. See *supra* Part III.B.3 (discussing how assisting migrants morphs, in this government's view, into illegal harboring and conspiracy to transport undocumented persons).

198. See e.g., Jennifer Schultz & Mindy Bridges, *States with Littering Penalties*, NATIONAL CONFERENCE OF STATE LEGISLATURES, NCSL (Mar. 20, 2014), <http://www.ncsl.org/research/environment-and-natural-resources/states-with-littering-penalties.aspx> (last visited Nov. 20, 2019) (detailing the penalties for littering in every state, many of which are minor punishments) [<https://perma.cc/CJR7-FF5H>].

199. See *No More Prosecuting Petty Crimes: Does the Dallas County DA's Plan for Justice Reform Go Too Far?*, DALLAS MORNING NEWS (Apr. 14, 2019), <https://www.dallasnews.com/opinion/editorials/2019/04/14/no-more-prosecuting-petty-crimes-does-the-dallas-county-das-plan-for-justice-reform-go-too-far/> (last visited Nov. 20, 2019) (illustrating the Dallas DA's plan to enact sweeping policy change for his prosecutors' handling of low-level crimes) [<https://perma.cc/K6WU-2D2B>].

200. See Sebastian Rotella, Tim Golden & ProPublica, *Human Smugglers Are Thriving Under Trump*, THE ATLANTIC (Feb. 21, 2019), <https://www.theatlantic.com/politics/archive/2019/02/human-smugglers-thrive-under-trumps-zero-tolerance/583051/> (last visited Nov. 20, 2019) ("Over the past two years, as smuggling networks have thrived, the Department of Homeland Security has shifted money and manpower away from more complex investigations to support the [A]dministration's all-out push to arrest, detain, and

VI. Conclusion

This Article was not an attempt simply to bash the current President, but to view his immigration policies through the lens of Christian servant leadership.²⁰¹

Although ostensibly about communitarianism, the prejudice-laden, family-separating, Good-Samaritan-prosecuting policies of the current Administration veer more toward gratuitous punishment.²⁰² It will be interesting to see whether, if a Democrat prevails in the 2020 presidential election, she or he will be able to effectively employ a model of servant leadership that embraces cosmopolitanism and promotes compassionate communitarianism.²⁰³ Among the contenders, Julián Castro seems to be the strongest on this point, given his advocacy for the decriminalization of border crossings.²⁰⁴ Castro recognizes that such migration is correctly viewed as a desperate attempt to

deport immigrants here illegally.”) [<https://perma.cc/ZD8R-Y4S2>].

201. Indeed, my piece on Christian Realism criticized President Obama for his mass deportation policies, seemingly at odds with his professed admiration for Reinhold Niebuhr. See Victor C. Romero, *Christian Realism and Immigration Reform*, 7 U. ST. THOMAS L.J. 310, 313 n.5 (2010) (stating that during his second year in office, most of the rhetoric coming out of his Administration echoed his predecessor’s emphasis on interior and exterior enforcement first); see also *Immigration Enforcement Under Obama Returns to Bush-Era Highs*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (July 21, 2009), <https://trac.syr.edu/whatsnew/email.090721.html> (last visited Nov. 20, 2019) (“Very timely Justice Department data obtained and analyzed by the Transactional Records Access Clearinghouse (TRAC) show that immigration enforcement under the Obama Administration is returning to the unusually high levels that were reached under President Bush.”) [<https://perma.cc/2XC8-T7CW>].

202. See *supra* Part III.B (explaining how current immigration policies evoke gratuitous punishment).

203. See John Thornton, Jr., *Why Democratic Candidates Like Buttigieg Keep Failing to Usher In the “Christian Left”*, VOX (May 21, 2019), <https://www.vox.com/first-person/2019/5/21/18633090/2020-buttigieg-mayor-pete-policies-religious> (last visited Nov. 20, 2019) (“Having a progressive presidential candidate place their faith so squarely at the fore offers many liberal and Democrat-voting Christians the opportunity to more openly embrace their beliefs and progressive politics.”) [<https://perma.cc/FBK9-4EQZ>].

204. See, e.g., Chris Mills Rodrigo, *Julian Castro Calls for Border Crossing to Be Decriminalized*, THE HILL (Apr. 2, 2019), <https://thehill.com/latino/436937-julian-castro-calls-for-border-crossing-to-be-decriminalized> (last visited Nov. 20, 2019) (“Castro, who announced his Democratic White House bid in January, wrote in a blog post that ‘the truth is, immigrants seeking refuge in our country aren’t a threat to national security.’”) [<https://perma.cc/6CTV-DKTR>].

improve the lives of individuals and their loved ones, not a crime.²⁰⁵ The Democratic front runner, Joe Biden, has, in (mistakenly) trumpeting his ability to work with southern segregationists,²⁰⁶ revealed that politics requires vigilance and that an attempt at community through compromise with others may easily slip into a failure to protect the most vulnerable and to uphold the cosmopolitan ideal that we are all children of God.²⁰⁷

I would like to close by offering a final, perhaps more personal, reaction to the notion of foot washing, through the words of the evangelical pastor Jonathan Martin, who admits to a certain uneasiness and discomfort around having his feet washed, just as the apostle Peter first did:

I understand why Peter protested when Jesus wanted to wash his feet. I don't know anybody as holy as Jesus, but I have yet to meet a person who I felt wasn't above washing my feet. When I feel the touch of human hands on my hairy toes and calloused soles, it is terrible in all the ways it must be for Christ Himself

205. See *id.* (“Castro called for the removal of Section 1325, the law which has made illegal entry a federal misdemeanor since 1929, arguing that the rule has been weaponized to target immigrants.”).

I have written on and endorse such decriminalization. See Victor C. Romero, *Decriminalizing Border Crossings*, 31 *FORDHAM URB. L.J.* 273, 275–76 (2011) (“To err on the side of criminalizing innocent border crossings only adds to the stigma that already plagues undocumented persons, most of whom are unable to meet our stringent requirements for admission, and once here, become productive members of our society.”). For a recent, comprehensive update of the current movement, see Ingrid V. Eagly, *The Movement to Decriminalize Border Crossing*, B.C. L. REV. (forthcoming 2020).

206. See, e.g., Matt Stevens, *When Kamala Harris and Joe Biden Clashed on Busing and Segregation*, N.Y. TIMES (July 31, 2019), <https://www.nytimes.com/2019/07/31/us/politics/kamala-harris-biden-busing.html> (last visited Nov. 20, 2019) (stating that Harris said she does not believe Biden is racist, but that it was nonetheless hurtful to hear him talk about reputations of two senators who built their careers on segregation). [<https://perma.cc/TQ4K-9T9K>].

207. See Andrew Prokop, *Joe Biden's Controversial Comments about Segregationists and Wealthy Donors, Explained*, VOX (June 19, 2019), <https://www.vox.com/policy-and-politics/2019/6/19/18690910/biden-fundraiser-controversy-segregationists-donors> (last visited Nov. 20, 2019) (“[C]ritics argue that this supposedly more civil age in politics should not be idealized—because it was in fact dominated by white men who were happy to minimize or trade away nonwhite voters’ concerns to retain political power.”) [<https://perma.cc/RWF2-8PY7>].

to touch my most unlovely places with His tenderness. Every time, the tears burn my eyes. And as my self-consciousness and self-confidence begin to crumble, it's not just my feet that are being washed; it's the love of God like a warm balm on a bruised and battered soul.²⁰⁸

May we each continue to engage in the kind of servant leadership the foot-washing story represents—to love all our neighbors selflessly and graciously—and to encourage our political leaders to do the same.

208. JONATHAN MARTIN, PROTOTYPE: WHAT HAPPENS WHEN YOU DISCOVER YOU'RE MORE LIKE JESUS THAN YOU THINK? 160-61 (2013). The beauty of Martin's description of having his feet washed lies in the Christian belief that we could all use the healing power of God's grace, which then empowers us to extend neighborly love to others.