

NOTE

U.S. INTERVENTION AND CORRECTIVE JUSTICE REQUIRE OPEN BORDERS

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I. INTRODUCTION AND BACKGROUND

The Immigration Debate. Immigration has, and continues to be, a contentious topic in the United States. Especially now, after the Trump administration has proposed changes to immigration policy based around anti-immigration sentiment, voices from both sides have brought forth passionate arguments for or against such policy changes. Perhaps one of the most common sentiments from the anti-immigration camp is the idea that

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immigrants take American jobs.¹ Anti-immigration supporters argue that a country has the sovereignty to control its borders.² Undocumented immigrants, they contend, violate this sovereignty and American immigration laws and thus are unentitled to the benefits that come with living in the United States and under the U.S. government. In their eyes, immigrants have done nothing to deserve the benefits conferred by living in the United States—in fact, immigrants have robbed more deserving U.S. citizens of such benefits. A common response from the pro-immigration camp is an appeal to ethics and humanity. One’s presence cannot be “illegal.”³ Where immigrants are coming to the U.S. from a country with less humane conditions—which is often the case—the United States has a moral and ethical duty to provide the basic necessities of life to these people: shelter, protection, and the chance to make a living. Opponents of open borders counter that the U.S. has no such ethical duty beyond its borders but rather only has duties to the citizens already living inside them. Why should the U.S. take on the burden of more people—more people to protect and more stress on the economy?

These arguments—on both sides—fail to take into account the U.S.’s role in creating push factors in other countries that cause many immigrants to come to the U.S. The principle push factors the U.S. has played a role in creating are political instability and the resulting violence or poor economic conditions in other countries. While proponents of open borders recognize the existence of such conditions, their arguments often appeal to the inhumanity of the conditions and not the U.S.’s role in creating them.⁴ Similarly, opponents of open borders also do not take into account the U.S.’s role in creating push factors.⁵

Thesis. Rather than taking the broad approach of suggesting that the U.S. has a moral duty to let in all immigrants based on the idea that people can never be “illegal,” this paper argues that the U.S. owes a reparative duty to many immigrants who come from countries where U.S. intervention has created aforementioned push factors such as instability, violence, and poor economic conditions, and this duty includes relaxing border controls towards these countries.

Overview of U.S. Intervention in Other Countries. Since the United States became a world power, its foreign policy has affected, in varying degrees, the affairs of many countries all over the world. Some examples include interfering with the internal politics of a country by supporting—both ideologically

1. Brennan Hoban, *Do immigrants “steal” jobs from American workers?* The Brookings Institution (Aug. 24, 2017), <https://www.brookings.edu/blog/brookings-now/2017/08/24/do-immigrants-steal-jobs-from-american-workers/>.

2. Kieran Oberman, *Immigration, Global Poverty and the Right to Stay*, 59 POL. STUD. 253, 255 (2011).

3. Lauren Gambino, *‘No human being is illegal’: linguists argue against mislabeling of immigrants*, THE GUARDIAN (Dec. 6, 2015), <https://www.theguardian.com/us-news/2015/dec/06/illegal-immigrant-label-offensive-wrong-activists-say>.

4. *Id.*

5. Hoban, *supra* note 1.

and by supplying them with weapons and training—a side deemed to favor U.S. interests. Such intervention in the politics of foreign countries usually creates a culture of instability and violence which persists, causing many inhabitants to flee for their safety. Such instability often also has adverse effects on the economy which also persist, causing inhabitants to leave the country looking for better economic opportunities elsewhere. Additionally, such intervention can create corruption which affects the distribution of wealth, again causing those who are disadvantaged by this unequal distribution to leave the country looking for better opportunities. Furthermore, by helping to put U.S.-friendly leaders in power, the U.S. has been able to reap the natural resources of foreign countries, taking resources that arguably belong to the foreign country's inhabitants. Such reaping of natural resources has also had an effect on these foreign countries' economies, taking wealth that would have contributed to the countries' economies to the United States. In some instances, the reaping of foreign natural resources has also depleted the natural resources of the country, leaving the landscape in ruin and unusable.

Corrective Justice. It seems more likely that, when knowing this history of U.S. foreign policy and the U.S.'s role in creating push factors that cause people to immigrate to the U.S., one would feel that the U.S. has a responsibility to such people affected by the U.S.'s actions. This general notion is rooted in the framework of corrective justice:

Corrective justice, which deals with voluntary and involuntary transactions. . . focuses on whether one party has committed and the other has suffered a transactional injustice. . . Corrective justice. . . features the maintenance and restoration of the notional equality with which the parties enter the transaction. This equality consists in persons' having what lawfully belongs to them. Injustice occurs when, relative to this baseline, one party realizes a gain and the other a corresponding loss. The law corrects this injustice when it re-establishes the initial equality by depriving one party of the gain and restoring it to the other party.⁶

In other words, corrective justice states that when one party's ("Party 1") actions have caused a loss to another party ("Party 2") while Party 1 has realized a gain, there is injustice. The only way to correct this injustice is to take the gain from Party 1 and give it back to Party 2, who has suffered a loss. This seems to make logical sense. If we think of the benefits and rights both parties start out with as weights, we assume both parties have an equal amount of weights. If we imagine these weights on a scale, the scale balances. The action of Party 1 takes a weight from Party 2's side, and the scale becomes doubly unbalanced—not only is the second party's side lighter, but

6. Ernest J. Weinrib, *Corrective Justice in a Nutshell*, 52 U. TORONTO L.J. 349, 349 (2002).

the first party's side is heavier. Aristotle says that the only way to correct this "double injustice" is for the first party to give back to the second party what it took.⁷ In this sense, the first party's taking of the second party's weight, which doubly unbalances the scale, creates a reparative duty on the part of the first party. This idea appeals to humans' inherent sense of fairness and the idea of equilibrium in the universe, evidenced by the fact that corrective justice is not only found in the work of Aristotle, but also the Bible, the work of moral philosopher Immanuel Kant, and is enshrined today in U.S. tort and contract law.⁸ It seems only fair that people should not be able to unjustly enrich themselves at the expense of others.

The interventions of the United States in other countries has created a transactional relationship like the one mentioned above. The United States, by intervening in the affairs of other countries, has taken actions that have enriched it at the expense of those countries, a fact this paper will demonstrate. In creating this imbalance—where the United States has taken "weights" from the countries in which it has intervened, the scale of justice is now doubly unbalanced—there is injustice between the United States and these countries. According to the principles of corrective justice, the only way to rectify this injustice is for the U.S. to make reparations to the countries in which it has intervened, countries that have experienced a loss as a result of this intervention. One such reparation would include relaxing border controls for these countries. To date, the United States has not made such reparations, the loss still persists in these countries, and the U.S. thus owes a reparative duty to these countries.⁹

What is Reparative Duty? One question left open by the above discussion of corrective justice is what these hypothetical "weights" actually are. What benefits and rights are human beings entitled to have? Another way of phrasing this question is: What violations of rights would be considered an injustice? Kant's tradition of natural right supplies the criteria for answering these questions. This tradition defines rights as including: (i) "the right to the integrity of one's [body] as the organ of purposive activity," (ii) "the right to property in things appropriately connected to an external manifestation of the proprietor's volition," and (iii) "the right to contractual performance in accordance with the mutually consensual exercises of the parties' purposiveness."¹⁰ Anyone who violates such rights owes a reparative duty to the people whose rights were violated. This list of rights also seems to appeal to a general sense of fairness inherent in humans; many liberal democracies, even communist countries, adhere to laws and norms that codify one or more

7. *Id.* at 350.

8. *See id.*; Geoff Broughton, *Restorative Justice: Opportunities for Christian Engagement*, 3 INT. J. PUB. THEOLOGY 299, 299 (2009).

9. Daniel Butt, *Repairing Historical Wrongs and the End of Empire*, 21 SOC. & LEGAL STUD. 227, 239 (2012).

10. Weinrib, *supra* note 6, at 354.

of these rights. Thus, if an action (1) violates one of these rights *and* (2) unjustly enriches the actor, the transactional corrective justice bond has been formed between these two parties and the actor owes a reparative duty.

The United States' relationship with countries in which it has intervened meets both of these criteria. U.S. intervention in other countries particularly falls under category (ii). These interventions generally have taken away "property" belonging to the nationals of other countries, property closely "connected to the external manifestation of the proprietor's volition." As this paper will describe *infra*, U.S. intervention in other countries included meddling in internal politics to enhance its geopolitical position and to benefit its economy. It also took advantage of the natural resources of some countries, also to benefit its economy. Interference in the internal politics of a country falls under category (ii) because this action violates the "property right" of an individual to have his or her vote count, the right to make political decisions. Although the right to make political decisions is not a tangible property right, the idea of "property" has come to encompass intangible rights that have become essential to manifesting one's volition. Voting and making political decisions has arguably become one such right. The fact that political intervention also adversely affects the economy and wealth distribution, as this paper will demonstrate, deprives people of property connected to manifestation of the proprietor's volition. Wealth is property that allows people to manifest their volition and is also a tool to obtain food and the other essentials of life. Lastly, the U.S.'s exploitation of natural resources is probably the most literal taking of property under category (ii). Under traditional notions of property, those who own the land usually also own what is on it. Thus, the U.S. taking of natural resources found in other countries, which benefitted the U.S. economy, was taking of another's property. These natural resources could have been a food source for the owner country's people, thus allowing these people to manifest their volition. Additionally, the resources could have been used to procure wealth, which would have also allowed them to manifest their volition. Since the U.S.'s interventions violated the rights of other countries that fall under (ii), and the U.S. has been unjustly enriched by these interventions, the U.S. owes reparative duties to the countries in which it intervened, discussed *infra*. Part of this reparative duty includes relaxing border controls for countries in which the U.S. has intervened.

As mentioned before, U.S. foreign policy has affected other countries in varying degrees. This paper deals specifically with direct interventions in other countries which have included: (1) interfering with internal politics by stationing the U.S. military in or near a country, (2) interfering with internal politics by supplying weapons/resources to a faction in another country, (3) interfering with internal politics by training the militants of a faction in another country, and/or (4) exploiting the natural resources of a country. These actions, as discussed *supra*, fit under category (ii) of Kant's tradition of natural rights, and there is a strong case to be made that these actions give

rise to a reparative duty on the part of the U.S. Although U.S. foreign policy has affected many countries, this paper only argues that there is a reparative duty for countries that have experienced one or more of the interventions described above. This is not to say that the U.S. owes a reparative duty exclusively to such countries—it may owe reparative duties to other countries, but other such countries are not discussed here.

Counterarguments to Corrective Justice in the Framework of Intervention. One question that may arise in the context of this paper's argument is: How can one prove that the intervened-in countries would have had the rights they've claimed to have lost if the U.S. hadn't intervened? Put another way, if another country other than the U.S. had intervened, wouldn't these countries be in the same position that they are now, and the U.S. wouldn't owe a reparative duty? Why does it matter that the U.S. was the perpetrator of actions that probably would have occurred at the hand of another world power? Daniel Butt provides an answer to this question in "Repairing Historical Wrongs and the End of Empire." Butt argues, using the colonial context, that:

The appropriate counterfactual here is not that which would most probably have come about in the absence of any interaction between colonizers and their colonies, nor that whereby the colonies are subject to even more brutal treatment at the hands of a different power. Instead, we should imagine a possible world – however unlikely – where there was productive interchange between the different political communities, but where this was consensual and non-exploitative.¹¹

Essentially, when one begins to question whether the damage would have happened in absence of the actor's actions, the transactional relationships under corrective justice and their correlating reparative duties break down. No one can owe anyone anything if this line of logic is undertaken. It's possible to spin out numerous possibilities of what would have happened to the victim in the absence of the perpetrator's actions. In some cases, the victim ends up with the same harm or even worse off. It's impossible to account for all of the possible counterfactuals and adhere to a system of compensatory justice. However, in a situation where the perpetrator has violated a right that caused harm to the victim, we know that there has been an unjust gain and a corresponding loss. The perpetrator has committed a wrong and should be punished for doing so, regardless of the counterfactuals, and the victim should be made whole.¹² We know, in this situation, exactly what the state of affairs before the harm was, what the state of affairs is after, and what caused the harm. For the entire system of corrective justice to function, one must

11. Butt, *supra* note 9, at 238.

12. *Id.* at 236.

suspend the numerous counterfactuals and assume that justice is accomplished “by restoring the state of affairs that obtained prior to the act of injustice.”¹³

Another issue that comes up in the argument of this paper is: “Why should present-day communities, not alive at the time of the original injustice, be obliged to pay for the sins of their ancestors?”¹⁴ Specifically, why should U.S. leadership, citizens, and nationals who had no role in the past interventions in other countries pay reparations to these countries? The response is that a reparative duty is still currently owed by the U.S. because of the principle of unjust enrichment. This principle “holds that those who benefit from the wrongdoing of others can possess reparative obligations to the victims of injustice, even though they are not responsible for the original wrongdoing.”¹⁵ A case can be made that the U.S. has benefitted and continues to benefit from its interventions in other countries, which will be discussed *infra*. Thus, because the U.S. continues to benefit from its wrongful interventions in other countries, it continues to owe a reparative duty to these countries in which it has intervened—countries that continue to suffer the effects of past intervention.

Overview of Paper. The rest of the paper demonstrates how the United States’ interventions in foreign countries violated these countries’ rights described in category (ii) of Kant’s tradition of natural rights and how these violations created immigration push factors in those countries. The paper also demonstrates how these interventions benefitted the United States and continue to do so. Thus, because the U.S. violated these countries’ and citizens’ rights, and the U.S. benefitted at their expense, the U.S. owes a reparative duty to these countries, which includes relaxing border controls towards them. To make this demonstration, this paper investigates U.S. interventions in countries in three different regions around the world: Latin America, Southeast Asia, and the Middle East. From Latin America, this paper examines Guatemala; from Southeast Asia, the Philippines; from the Middle East, Syria. These countries were chosen as representative of U.S. intervention in many other countries in these regions and around the world, so the argument that the U.S. owes a reparative duty to the three countries discussed is not meant to apply only to these three countries.

Later, this paper also briefly discusses what the counterarguments are to open borders and what a reparative scheme would look like. Although, as discussed *supra*, this paper does not claim that the interventions discussed here are the only violations that would give rise to a reparative duty on behalf of the U.S., it also attempts to draw the line for reparative duty by briefly

13. *Id.* at 235.

14. *Id.* at 232.

15. *Id.* at 232-33.

discussing the United Kingdom, a country to whom the U.S. is unlikely to owe reparative measures of relaxed border controls.

II. U.S. INTERVENTION IN GUATEMALA

Introduction. In the film, *Harvest of Empire*, which gives an overview of U.S. involvement in Latin America, one of the speakers interviewed notes that most of the migrants to the U.S. are from countries the U.S. once dominated and even occupied. One explanation for this fact is that during its domination of such countries, the U.S. created violent and unbearable conditions that caused inhabitants to leave their home countries and seek refuge in the U.S. Throughout the 20th century, the U.S. dominated several Latin American countries, interfering in their politics for both economic and political gain.¹⁶ In these countries, U.S. intervention led to states of violence and unrest, causing inhabitants of these countries to seek safety and economic stability in the United States.¹⁷ This narrative given in *Harvest of Empire* is a general narrative for many Latin American countries. This section will look at specific U.S. intervention in Guatemala and will demonstrate that these interventions violated the rights of Guatemalans while unjustly enriching the United States. These violations gave rise to conditions in these countries that caused many Guatemalans to immigrate to the U.S.; thus, part of the reparative duty of the U.S. includes relaxing border controls towards Guatemalans.

United Fruit Company. United Fruit Company, a multinational U.S. company, “has been considered the quintessential representative of American imperialism in Central America.”¹⁸ United Fruit Company was one of the leading banana producers and is now currently known as “Chiquita Banana.”¹⁹ United Fruit Co. came into Guatemala around 1900 and enjoyed “unprecedented” economic and political power in the country.²⁰ United Fruit Company:

built impressive production and distribution networks of bananas from Central America and the Caribbean to the United States. They included plantations, railways, telegraph lines, housing, hospitals and ports in the producing areas. Many of these investments were made after getting concessions from local governments eager to attract foreign capital to modernize their economies. United Fruit employed thousands of local workers and created an export infrastructure where one did not exist before.²¹

16. HARVEST OF EMPIRE (Onyx Films 2012).

17. *Id.*

18. Marcelo Bucheli, *Multinational Corporations, Totalitarian Regimes and Economic Nationalism: United Fruit Company in Central America, 1899–1975*, 50 BUS. HIS. 433, 433 (2008).

19. Stephen J. Dubner, *The Economics of Bananas*, FREAKONOMICS (June 19, 2008), <http://freakonomics.com/2008/06/19/the-economics-of-bananas/>.

20. Bucheli, *supra* note 18, at 435.

21. *Id.* at 434.

United Fruit company “kept costs low by exercising iron-fisted control” over Guatemala.²² “Workers could not be allowed such basic rights as health care, decent wages, or the right to congregate.”²³ Whenever Guatemalan workers showed any resistance towards United Fruit Company, the company, with the backing of the American military, quelled this resistance.²⁴ An integral factor that allowed United Fruit Co. and the U.S. military to quell such resistance and maintain control was the cooperation of Guatemalan authoritarian dictators.²⁵ These dictators were often installed by the U.S. government, or, at the very least, the U.S. government had substantial influence over them. One such example of a Guatemalan authoritarian ruler under U.S. influence is Jorge Ubico.

U.S. Influence Over Jorge Ubico. U.S. influence over Guatemalan authoritarian dictator Ubico allowed United Fruit Company to maintain its power in Guatemala. Ubico rose to power in 1931 after winning the Guatemalan presidential elections.²⁶ Although the U.S. did not put Ubico in power:

As the predominant power in the Caribbean, the United States inevitably was involved in every crisis in the in the area and exerted some influence on all governments throughout the region. . . The degree of influence varied with the situation, but Central American politicians were fully cognizant of the presence of United States Marines in Nicaragua, and of the ships of the special services squadron in the Caribbean. These factors rendered most isthmian governments receptive to American “advice.”²⁷

Indeed, “Friendship for the United States was a hallmark of the Ubico regime, and the Guatemalan president prided himself on his self-assumed role as the staunchest American ally in the isthmus.”²⁸ As a result, Ubico showed special favor to the United Fruit Co. Ubico gave United Fruit Co. “complete exemption from any internal taxation and no duties on imports that the company deemed necessary.”²⁹ The United States’ military presence in the region allowed it to influence Jorge Ubico, an influence which in turn allowed the United Fruit Co. to remain in Guatemala, exploiting Guatemalan natural resources.

U.S. Role in 1954 Coup to Protect United Fruit Co. Interests. U.S. took on a prominent role in the 1954 coup to overthrow President Arbenz with the

22. Dubner, *supra* note 19.

23. *Id.*

24. *Id.*

25. Bucheli, *supra* note 18, at 433.

26. Kenneth J. Grieb, *American Involvement in the Rise of Jorge Ubico*, 10 CARIBBEAN STUDIES 5, 15 (1970).

27. *Id.* at 5.

28. *Id.* at 17-18.

29. Stephen J. Whitfield, *Strange Fruit: The Career of Samuel Zemurray*, 73 AMERICAN JEWISH HISTORY 307, 314 (1984).

goal of supporting United Fruit Co. interests.³⁰ In 1954, the U.S. effectively occupied Guatemala.³¹ The CIA and the U.S. government had schemed to overthrow the progressive government that was in power in Guatemala.³² To achieve this objective, the U.S., under CIA supervision, employed and trained local proxies.³³ Overthrowing the progressive government, the U.S. reasoned, would make it easier for U.S. companies such as United Fruit Co. to come into the country to harvest its natural resources.³⁴ The U.S. achieved its objective and overthrew President Jacobo Arbenz in 1954.³⁵ Indeed, after a democratic, U.S.-friendly regime was put in place, United Fruit Co. and other U.S. companies barged into Guatemala.³⁶

Additionally, following this change in power, chaos and civil war broke out, with a genocidal campaign against the Mayas as the new government struggled to maintain its power.³⁷ The aftermath of the change in power was much like the aftermath of any non-peaceful change in power. As the new regime struggles to gain and maintain legitimacy, it looks to eliminate any opposition or to scapegoat a group it paints as the opposition to make an example of any who dare oppose. During this period of unrest, approximately 200,000 Guatemalans were killed and approximately 50,000 Guatemalans went missing.³⁸ The CIA had secretly trained some of the Guatemalan death squads that executed these innocent Guatemalans.³⁹

Effects of These Interventions. U.S. intervention in Guatemala created many adverse effects, violating Guatemalans' rights under Kant's tradition of natural rights. One aspect of these adverse effects was the creation of push factors that have caused Guatemalans to immigrate to the U.S. First, several studies find that "interventions by democratic countries have a positive effect on democratic reform in the short term but generate political instability in the long term."⁴⁰ Such is the case for Guatemala, where political instability persists.⁴¹

Second, U.S. intervention with the goal of supporting the United Fruit Co. had adverse effects on Guatemala's economy that persist today. One reason for the demise of Guatemala's economy is that United Fruit Co.'s presence in

30. Geoffrey Jones & Marcelo Bucheli. "The Octopus and the Generals: The United Fruit Company in Guatemala." Harvard Business School Case 805-146. (May 2005, revised July 2016).

31. HARVEST OF EMPIRE, *supra* note 16.

32. *Id.*

33. *Id.*

34. *Id.*

35. Jones & Bucheli, *supra* note 30.

36. HARVEST OF EMPIRE, *supra* note 14.

37. *Id.*

38. *Id.*

39. *Id.*

40. William Easterly et al., *The Economic Consequences of US Interventions: An Empirical Inquiry* (2009).

41. Benedetta Di Matteo, *Guatemala faces political uncertainty amid corruption scandal*, Global Risk Insights (Sept. 18, 2017), <https://globalriskinsights.com/2017/09/guatemala-faces-political-uncertainty-continues-fight-corruption/>.

Guatemala interfered with the “international division of labor.”⁴² “The division of labor enables workers to specialize in a certain field of work, allowing the entire production of a commodity to be more efficient. This idea of the division of labor can be applied to the international division of labor, in which countries specialize in producing certain goods.”⁴³ Allowing a country to specialize in a certain good allows the country to become more efficient at producing the good, allowing the country’s economy to become independent and to grow around production of this specialized good.⁴⁴ When United Fruit Co. took over production of bananas in Guatemala, Guatemala was unable to become an independent specialist in producing bananas, which stunted the growth of the Guatemalan economy.⁴⁵ Additionally, the presence of United Fruit Co. in Guatemala stunted the growth of the Guatemalan economy because “the total revenue earned did not return to the host country since the United Fruit Company belonged to the United States. If the host countries owned banana plantations, they could have earned more revenue for their country.”⁴⁶ An essential ingredient for the growth of an economy is the accumulation of capital.⁴⁷ Receiving the vast amount of wealth generated by banana production and exportation would have made accumulating capital much easier for the Guatemalan government, but alas, due to the intervention by the U.S. and United Fruit Co., this wealth that rightfully belonged to Guatemala was diverted to the United States. Additionally, the intervention of the United States in the economy of Guatemala contributed to the current inequality in the distribution of wealth. Economic historians Sokoloff and Engerman have found that under rule by Spain, economic institutions were formed that promoted the unequal distribution of wealth.⁴⁸ Foreign intervention which preserves these economic institutions also preserves the unequal distribution of wealth.⁴⁹ The U.S. economic intervention under United Fruit Co. in Guatemala discussed *supra* arguably preserved these institutions, giving concessions to the political elite who supported United Fruit Co. and underpaying laborers.⁵⁰ Indeed, today:

Guatemala’s income distribution is among the most unequal in the world, with the wealthiest 10 percent of the population owning nearly 50 percent of the national wealth and the poorest 10 percent owning less than 1 percent. As a result, there is a very small middle class in

42. Sanu Dev, *The United Fruit Company Hindering the Division of Labor*, J. CORE CURRICULUM 39, 45.

43. *Id.* at 39.

44. *Id.* at 46.

45. *Id.* at 45.

46. *Id.* at 44.

47. Bruce R. Scott, *How Do Economies Grow?*, HARV. BUS. REV. (1997).

48. Kenneth L. Sokoloff & Stanley L. Engerman, *Institutions, Factor Endowments, and Paths of Development in the New World*, 14 J. ECONOMIC PERSPECTIVES 217, 220, 228 (2000).

49. *Id.* at 228.

50. Marcelo Bucheli, *Good dictator, bad dictator: United Fruit Company and Economic Nationalism in Central America in the Twentieth Century* (2006); Dubner, *supra* note 19.

Guatemala, and political power rests almost exclusively with elite groups. Land, just like monetary wealth, is concentrated in the hands of the few, making it very difficult for poor rural workers to improve their financial situation, as the amount of land they own or have access to is minimal.⁵¹

Conclusion. As discussed *supra*, U.S. actions in Guatemala have given rise to a reparative duty to Guatemala on the part of the U.S. The U.S.'s support of United Fruit Co. unjustly enriched the U.S.'s economy by taking resources—bananas—that rightfully belonged to Guatemala, as they were on Guatemalan land. This taking came at the expense of slowing down Guatemala's economic growth as well as contributing to the persisting inequality in wealth distribution in the country. Intervention in Guatemalan internal politics supported by the U.S. military the U.S. military has helped contribute to the persisting political instability that exists in the country today. As discussed *supra* in Section I, such actions constitute a violation of Guatemalans' rights under Kant's tradition of natural rights. Thus, a transactional corrective justice relationship giving rise to a reparative duty exists between the United States and Guatemala.

As demonstrated *supra* in this section, part of the loss that Guatemala has suffered due to the intervention of the U.S. includes unlivable conditions in the country that cause many Guatemalans to immigrate to the United States. Indeed, in 2015, Guatemalans were the second largest group of immigrants from Central America in the U.S.⁵² In explaining the influx of Guatemalans to the U.S., Rigoberta Menchú, a Guatemalan human rights activist and winner of the Nobel Peace Prize, says: "If what exists in Guatemala is persecution, murder, killing, if what you have is insecurity, then I prefer to cross the border and go to a place where I feel safer."⁵³ Indeed, many Guatemalans who come to the U.S. cite violence and insecurity as one of the reasons for leaving Guatemala.⁵⁴ Guatemalans also cite economic insecurity as a reason for leaving Guatemala.⁵⁵ Since part of the loss experienced by Guatemalans due to the U.S.'s intervention includes immigrants having to/wanting to leave Guatemala in search of physical and economic security in the U.S., part of the U.S.'s reparative duty to Guatemala should include relaxing border controls towards Guatemalans. This would help to correct some of the wrong

51. *Guatemala—Poverty and Wealth*, Nations Encyclopedia (last visited May 1, 2018), <http://www.nationsencyclopedia.com/economies/Americas/Guatemala-POVERTY-AND-WEALTH.html#ixzz5EHAKnxtu>, (emphasis added).

52. Gabriel Lesser & Jeanne Batalova, *Central American Immigrants in the United States*, Migration Policy Inst. (Apr. 5, 2017), <https://www.migrationpolicy.org/article/central-american-immigrants-united-states>.

53. HARVEST OF EMPIRE, *supra* note 16.

54. Ctr. for Migration Studies and Cristosal, *Point of No Return: The Fear and Criminalization of Central American Refugees*, CMS-Cristosal Report 1, 9 (2017), <http://cmsny.org/wp-content/uploads/2017/06/CMS-Cristosal-Report-final.pdf>.

55. *Id.* at 10.

done to Guatemala. As discussed *supra* in Section I, reparative duty requires restoring the harmed party to its state before the violation of its right(s) occurred. Also discussed *supra*, this state would be the bloodless, stable future that Guatemala could have had, had there been no foreign interventions and exploitation of natural resources. Letting Guatemalans who wish to do so immigrate to the U.S. would give them a chance at life in a relatively stable and safe environment, the kind of lives they might have had but for U.S. intervention.

III. U.S. INTERVENTION IN THE PHILIPPINES

Introduction. There is little doubt that the United States has had many significant effects on the affairs of the Philippines. “[L]ong decades of colonization created complex relations between the Philippines and the United States. There was a high level of interaction in the cultural, economic, political, and military spheres.”⁵⁶ The Philippines was one of the U.S.’s only “official” colonies and was once a U.S. territory.⁵⁷ But even after the Philippines gained its independence in 1946, the U.S. still intervened in the Philippines much like it did in Guatemala.⁵⁸ Just like the intervention in Guatemala, the U.S. intervention in the Philippines involved propping up a dictator who would be friendly to U.S. interests. This section will look at specific U.S. intervention in the Philippines and will demonstrate that these interventions violated the rights of Filipinos while unjustly enriching the United States. By interfering with Philippine politics, the U.S. created political instability and violence to the detriment of Filipinos. It benefitted itself by keeping open Southeast Asian trade routes and accomplishing the Cold-War-foreign-policy objective of asserting its presence in the region. Since these violations gave rise to conditions in the Philippines that caused many Filipinos to immigrate to the U.S., part of the reparative duty of the U.S. includes relaxing border controls towards Filipinos.

U.S. Backing of Marcos. The quintessential example of U.S. intervention in the Philippines, which enriched the United States at the expense of Filipinos, is the U.S. backing of dictator Ferdinand Marcos. Marcos was the authoritarian dictator of the Philippines from 1965-1986.⁵⁹ Although he was elected, his reign was one of unrest and terror. In 1972, Marcos declared martial law “with the full support of Washington” and “ruthlessly moved to stamp out dissent.”⁶⁰ Marcos was able to maintain power while continuing his reign of terror with help from the United States military. Under the agreement made between the

56. Gary Hawes, *United States Support for the Marcos Administration and the Pressures that made for Change*, 8 CONTEMPORARY SE. ASIA 18, 19 (1986).

57. Thomas Lum, *The Republic of the Philippines and U.S. Interests*, Cong. Research Serv. 1, 2 (2012), <http://www.refworld.org/pdfid/4fa24982.pdf>.

58. *Id.*

59. *Marcos: Rise and fall of a dictator*, Phil. Daily Inquirer (Nov. 19, 2016), <http://newsinfo.inquirer.net/845784/marcos-rise-and-fall-of-a-dictator>.

60. *Id.*; James Hamilton-Paterson, *America's Boy 57* (Granta Publications 1998).

U.S. and the Philippines in 1979 regarding U.S. bases in the Philippines, “the United States contributed to the Philippines. . . US\$50 million for military assistance, US\$250 million for foreign military sales credits, and US\$200 million for security supporting assistance.”⁶¹ Additionally, “as part of the military assistance package, the United States [had] been donating or selling to the Philippines many kinds of military hardware which have dual capabilities—they could be used for external defense or in combating internal opposition.”⁶² Furthermore, “many police and military officers involved in torture and the forcible disruption of legitimate political demonstrations [under Marcos] were trained by the United States.”⁶³ Indeed, “the evidence is clear and convincing that American economic and military assistance [did] help President Marcos undertake further repression.”⁶⁴ The United States’ motivation in propping up Marcos was that he was supportive of U.S. military objectives in the Philippines. Both President Ford and President Marcos “agreed that the military bases used by the U.S. in the Philippines remain[ed] important in maintaining an effective United States presence in the Western Pacific” to support U.S. geopolitical objectives in this region.⁶⁵

Effects of These Interventions. U.S. intervention in the Philippines has caused many adverse effects, violating Filipinos’ rights under Kant’s tradition of natural rights. One aspect of these adverse effects was the creation of push factors that have caused Filipinos to immigrate to the U.S. First, as discussed *supra* in Section II, several studies find that “interventions by democratic countries have a positive effect on democratic reform in the short term but generate political instability in the long term.”⁶⁶ Such is the case for the Philippines, where political instability persists.⁶⁷

Second, economic inequality in the Philippines grew under Marcos, who was only able to maintain power with the support of the United States. Under Marcos, “development [had] not been able to provide many Filipinos with sufficient levels of income and services to maintain human dignity. This situation of want [had] for many grown to unbearable proportions with the onset

61. Hawes, *supra* note 56, at 21.

62. *Id.* at 23.

63. *Id.* at 24.

64. *Id.* at 23.

65. *Id.* at 20-22. The U.S.’s objectives in the Western Pacific to which U.S. bases in the Philippines were essential included:

First, to support U.S. bilateral and multilateral defense commitments with countries in Southeast and Northeast Asia, Australia, and New Zealand. Second, to protect the sea lines of communication and trade routes which pass through the strategic waterways of Southeast Asia that are of major importance to the U.S. and Japan. Third, to support the American presence in the Indian Ocean and Persian Gulf region, particularly Diego Garcia. Fourth, to counter the increasing Soviet military presence in Southeast Asia.’

Id. at 20.

66. Easterly, *supra* note 40, at 4.

67. *Philippines: Political stability*, The GlobalEconomy.com (last visited May 1, 2018), https://www.theglobaleconomy.com/Philippines/wb_political_stability/.

of world recession and [had] driven an alarming number to lawlessness and desperation.”⁶⁸

Conclusion. As discussed *supra*, U.S. intervention in the Philippines has given rise to a reparative duty to the Philippines on the part of the U.S. The U.S.’s backing of Marcos enriched the U.S. by furthering its geopolitical interests in the Western Pacific. This support of Marcos came at the expense of creating long-term instability in the Philippines and the persisting inequality in wealth distribution in the country. As discussed *supra* in Section I, such actions constitute a violation of Filipinos’ rights under Kant’s tradition of natural rights. Thus, there exists a transactional corrective justice relationship giving rise to a reparative duty on the part of the U.S. to the Philippines.

As demonstrated *supra* in this section, part of the loss the Philippines has suffered from the intervention of the U.S. includes inhumane conditions in the country causing many Filipinos to immigrate to the United States. Indeed, “Between 1980 and 2016, the Filipino population in the United States nearly quadrupled, rising from 501,000 to 1.9 million” and since 2010, the Philippines has been ranked as 4th in countries sending the most number of immigrants to the U.S.⁶⁹ Indeed, many Filipino immigrants to the United States have cited economic security as a reason for immigrating to the U.S.⁷⁰ Additionally, some Filipinos who apply to immigrate to the U.S. apply for asylum.⁷¹ Since part of the harm the U.S. has caused includes immigrants having to/wanting to leave the Philippines and find economic security and asylum in the U.S., part of the U.S.’s reparative duty to the Philippines should include relaxing border controls towards Filipinos. This would help to correct some of the wrong done to Filipinos. Mirroring the analysis for Guatemala in Section II, *supra*, letting Filipinos who wish to do so immigrate to the U.S. would give them a chance at life in a relatively stable and safe environment, the kind of lives they might have had but for U.S. intervention.

IV. U.S. INTERVENTION IN SYRIA

Introduction. Although on the surface, U.S. intervention in Syria looks different than U.S. involvement in Guatemala and the Philippines, these three interventions have core factors in common. Currently in Syria, there is an ongoing civil war that has resulted in many lives lost, with the death toll still rising.⁷² As with the internal conflicts mentioned *supra* in Guatemala and the Philippines, the Syrian Civil war includes a U.S.-favored faction receiving

68. Hawes, *supra* note 56, at 25.

69. Jie Zong & Jeanne Batalova, *Filipino Immigrants in the United States*, Migration Policy Inst. (Mar. 14, 2018), <https://www.migrationpolicy.org/article/filipino-immigrants-united-states>.

70. Kalena E. Cortes, *Are Refugees Different from Economic Immigrants? Some Empirical Evidence on the Heterogeneity of Immigrant Groups in the United States*, 85 R. ECONOMICS & STATISTICS 465, 467 (2004).

71. *Refugees from the Philippines*, WorldData.info (May 1, 2018), <https://www.worlddata.info/asia/philippines/asylum.php>.

72. *I Am Syria*, (last visited May 1, 2018), <http://www.iamsyria.org/death-tolls.html>.

military and monetary support from the U.S. as well as a U.S. economic agenda. This section will look at specific U.S. intervention in the Syrian Civil War and will demonstrate that these interventions violate the rights of Syrians while unjustly enriching the United States. Since these violations gave rise to and continue to perpetuate conditions in Syria that cause many Syrians to seek refuge in the U.S., part of the reparative duty of the U.S. includes relaxing border controls towards Syrians.

U.S. Role in the Syrian Civil War. While it's no secret that the U.S. is involved in the Syrian Civil War to some extent, many Americans seem to be unaware that this involvement seems to be another intervention meant to enrich the U.S. at the expense of Syrians. While U.S. officials claim that intervention in Syria is in part based on Assad's use of chemical weapons against his own people, there is another side to the story.⁷³ According to many sources and scholars inside and outside the government, Syria is a proxy war between the United States and Russia.⁷⁴ The U.S. wants Assad, who has close ties with Russia, to be overthrown so that it can put a leader favorable to U.S. interests in power. Indeed, "there are only twenty-two members of the Arab League, twenty-one of whom are client American states, and Russia wasn't going to give the one that remains up. So from the point of view of the U.S, they want to have all twenty-two."⁷⁵ The U.S. has thus chosen a faction in the conflict, one that it thinks will favor U.S. interests, to back and has supported it by sending the CIA to provide "organizational support and training."⁷⁶ Apparently, "The US has spent billions of dollars on arms, training, special operations forces, air strikes, and logistical support for the rebel forces, including international mercenaries."⁷⁷ Indeed, although the U.S. claims to have Syrians' best interests in mind, the fact that most Syrians support Assad makes it seem that the U.S., in supporting a faction that wants to topple the Assad regime, has ulterior motives.⁷⁸ Additionally, the U.S. has been using the Syrian Civil War to further its own economic interests as "the prospect of a lengthy war against Syria provides a boost to the profits of the arms and weapons companies."⁷⁹ In December 2017, the Pentagon announced that "US forces would remain indefinitely in Syria, ostensibly to support anti-Assad rebel forces in areas captured from

73. Pamela Engel, *Obama reportedly declined to enforce red line in Syria after Iran threatened to back out of nuclear deal*, Bus. Insider (Aug. 23, 2016), <http://www.businessinsider.com/obama-red-line-syria-iran-2016-8>.

74. Daniel Margrain, *How Western imperial power set out to destroy Syria*, Renegade (May 1, 2018), <https://renegadeinc.com/western-imperial-power-set-destroy-syria/>.

75. *Id.*

76. Jeffrey D. Sachs, *America's True Role in Syria*, Project Syndicate (Aug. 30, 2016), <https://www.project-syndicate.org/commentary/us-true-role-in-syria-by-jeffrey-d-sachs-2016-08>.

77. *Id.*

78. Margrain, *supra* note 74.

79. *Id.*

ISIS, without the assent of the Syrian government.”⁸⁰

Effects of These Interventions. The U.S.’s arming of anti-Assad rebels has perpetuated a war that has made Syria nearly unlivable.⁸¹ The Syrian Civil War has and continues to cause instability, crisis, and loss of life in Syria.⁸² Three million homes have been completely, or almost completely, destroyed.⁸³ “[B]asic infrastructure, [such as] hospitals, schools, [and] roads[,] [have] been pummeled into dust.”⁸⁴ In the wake of the civil war, 11.5 million Syrians do not have access to health care.⁸⁵ Nearly 6.5 million Syrians suffer from food insecurity.⁸⁶ As a result, these conditions have given rise to the Syrian Refugee Crisis. To date, “more than 11 million Syrians have been displaced from their homes,” are seeking refuge in foreign states, and are in need of humanitarian aid.⁸⁷ The continued U.S. involvement in the Syrian Civil War perpetuates the conflict, and more Syrians become refugees every year.⁸⁸

Conclusion. As discussed *supra*, U.S. intervention in the Syrian Civil War has given rise to a reparative duty to Syria on the part of the U.S. The U.S.’s continuing support for rebel factions enrich the U.S. by furthering its geopolitical interests in the Middle East as well as benefitting its economy through weapons sales. This intervention and the corresponding geopolitical gains come at the expense of creating instability and violence in the region, a large refugee population, and “the worst humanitarian crisis of our time.”⁸⁹ As discussed *supra* in Section I, such actions constitute a violation of Syrians’ rights under Kant’s tradition of natural rights. Thus, there exists a transactional corrective justice relationship giving rise to a reparative duty on the part of the U.S. to Syrians.

As demonstrated *supra* in this section, part of the loss that Syrians have suffered from the intervention of the U.S. includes inhumane and unstable conditions in the country that cause many Syrians to become refugees and seek asylum in the United States. In 2017, Syrians were one of the top three

80. Jeffrey D. Sachs, *Ending America’s Disastrous Role in Syria*, Project Syndicate (Feb. 16, 2018), <https://www.project-syndicate.org/commentary/ending-disastrous-american-role-in-syria-by-jeffrey-d-sachs-2018-02>.

81. Sheena McKenzie, *How seven years of war turned Syria’s cities into ‘hell on Earth.’*, CNN (Mar. 15, 2018), <https://www.cnn.com/2018/03/15/middleeast/syria-then-now-satellite-intl/index.html>.

82. *Quick Facts: What you need to know about the Syria crisis*, Mercy Corps (last visited Jan. 2, 2019), <https://www.mercycorps.org/articles/iraq-jordan-lebanon-syria-turkey/quick-facts-what-you-need-know-about-syria-crisis>.

83. *3m Homes Destroyed in Syria War*, Middle East Monitor (June 1, 2018), <https://www.middleeastmonitor.com/20180601-3m-homes-destroyed-in-syria-war/>.

84. McKenzie, *supra* note 81.

85. *The health crisis in Syria. What is happening, in ten simple points*, Avsi (Mar. 8, 2017), <https://www.avsi.org/en/news/2017/03/06/the-health-crisis-in-syria-what-is-happening-in-ten-simple-points/1342/>.

86. *Syrian Arab Republic*, World Food Programme (2018), <http://www1.wfp.org/countries/syrian-arab-republic>.

87. Mercy Corps, *supra* note 82.

88. *Id.*

89. *Id.*

origin groups of refugees coming to the United States.⁹⁰ Since part of the loss experienced by Syrians due to the U.S.'s intervention in the Syrian Civil War includes fleeing the country and seeking asylum in the U.S., part of the U.S.'s reparative duty to Syrians should include relaxing border controls towards Syrians. This would help to correct some of the wrong done to Syria. Mirroring the analysis for Guatemala in Section II, *supra*, relaxing border controls for Syrians seeking asylum in the U.S. would give these Syrian refugees a chance at life in a relatively stable and safe environment, the kind of lives they might have had but for U.S. intervention. Additionally, in the case of Syria, the reparative duty would also include ceasing involvement in the Civil War and letting the Syrians have the leader they want, who appears to be Assad.⁹¹

V. COUNTERARGUMENTS TO AND THE SCOPE OF REPARATIVE DUTY

Brain Drain. One critique of opening borders to these countries is the resulting brain drain that occurs in some of them. For example, many Filipino nurses have immigrated to the U.S. as part of visa programs directed solely at nurses, while the Philippines has a shortage of nurses to see patients.⁹² One response to this problem is to limit the scope of the U.S.'s reparative duty.

Scope of Reparative Duty. Professor Kieran Oberman provides helpful criteria for deciding when brain-drain-based immigration restrictions would be more ethical than opening borders. For a brain-drain-based restriction to be justified, "a series of demanding conditions must be fulfilled."⁹³ These conditions include:

- (1) that a skilled worker has a duty to assist her poor compatriots,
- (2) that this duty entails a duty to stay in her state of origin, (3) that a skilled worker's duty to stay and assist her poor compatriots can justly be enforced using immigration restrictions, and (4) that a rich state has the legitimacy to impose counter-brain-drain immigration restrictions.⁹⁴

Oberman further notes that few countries meet these criteria, and immigration restrictions based on brain-drain arguments only succeed in a minority of cases.⁹⁵ Brain drain does provide a successful argument for some immigration restrictions, but it is an argument that fails to justify restrictions beyond a small minority of cases. Thus, in assessing the reparative duty the U.S. owes

90. Jie Zong & Jeanne Batalova, *Refugees and Asylees in the United States*, Migration Policy Inst. (June 7, 2017), <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states>.

91. Margrain, *supra* note 74.

92. Barnaby Lo, *Where Have all the Nurses Gone?*, PBS (Dec. 18, 2007), http://www.pbs.org/frontlineworld/rough/2007/12/philippines_hav.html.

93. Kieran Oberman, *Can Brain Drain Justify Immigration Restrictions?*, 123 ETHICS 427, 427 (2013).

94. *Id.* at 430.

95. *Id.* at 427.

to the countries discussed in this paper and like countries, one should assess whether a country meets Oberman's criteria and brain-drain-based restrictions are thus justified.

Another way to address the issue of the brain drain is for reparative duty not only to constitute the opening of U.S. borders to these countries, but to include some form of support, such as monetary support, to help countries rebuild their economies. Sociology professor Douglas Massey suggests one framework that may help poorer countries rebuild their economies. Such a program would include acceptance of immigrants into the U.S. on a temporary basis, with the U.S. giving these immigrants legal and labor rights equivalent to those of U.S. natives.⁹⁶ These immigrant workers would send remittances back to their home countries, helping to grow these countries' economies, and then would return home.⁹⁷ Such a structure takes care of the brain drain problem because immigrants eventually return to their home countries, bringing their skills back with them, while also getting a chance to take advantage of the economic environment in the U.S.

As discussed *supra* in Section I, this paper does not claim that the U.S. interventions described here are the only conditions that would give rise to a reparative duty on the part of the U.S. U.S. interventions of a different nature in foreign countries may also give rise to similar reparative duties, and this paper does not address this issue. However, in an attempt to limit the scope of the reparative duty contemplated in this paper, one example of a country to whom the U.S. is unlikely to owe this reparative duty is the United Kingdom. The U.S. did not colonize the UK, nor did it have a significant military or economic presence in the UK, akin to neocolonialism, like it did in the Philippines and Guatemala.⁹⁸ To date, the U.S. has not intervened in the internal politics of the UK by militarily and monetarily backing a favored U.S. faction, as it is currently doing in Syria.⁹⁹ Thus, although it is difficult to say exactly which countries the U.S. owes a reparative duty to, it is easy to limit the scope of this duty. It's unlikely that the U.S. owes reparative duties that would include opening borders to countries like the UK, which the U.S. has not colonially occupied and whose internal politics remain relatively unaffected by direct U.S. action.

VI. CONCLUSION

As this paper has demonstrated, actions of the United States in foreign countries where the U.S. has used military and monetary aid to intervene in a country's internal politics for its own geopolitical and economic benefit have

96. Douglas S. Massey et al., *Beyond Smoke and Mirrors: Mexican Immigration in An Era of Economic Integration* 142, 155 (2002).

97. *Id.* at 157.

98. *U.S. Relations with United Kingdom*, U.S. Dep't of State (Feb. 26, 2018), <https://www.state.gov/r/pa/ei/bgn/3846.htm>.

99. *Id.*

caused push factors in those countries that cause inhabitants to immigrate to the United States. Such actions give rise to a reparative duty on the part of the U.S. to these countries, which would include relaxing border controls towards these countries. The U.S.'s reparative duty may vary from situation to situation and can include economic or other support to help countries rebuild their economies. The U.S., in crafting its immigration policy, should take into account the hand it has played in causing adverse living conditions in other countries and the resulting reparative duties it owes these countries. Additionally, open border supporters should employ this argument that appeals to the sense of fairness inherent in humans in their fight for open borders. In the current heated immigration debate, hopefully both sides can see the logic in this argument and will opt to favor ethics and logic over personal interests and inflammatory arguments.