

CASE STUDY

Social contract theory applied to immigrants in the United States

The United States has been a nation of immigrants since its inception. She has a long history of welcoming immigrants to her shores. Some immigrants come to the U.S. legally and voluntarily in the hopes of achieving social and economic mobility, while others arrive to avoid persecution and seek asylum, still others enter illegally in the hope of a better life. All of them come full of hopes and dreams of the 'Promised Land.'

A walk through American history notes that the settlers in the early 1600s arrived in search of religious freedom. The next two centuries brought various groups of people to America's shores in search of better lives. However, Africans were brought to America against their will, while some individuals of other nationalities came as indentured servants. The influx of newcomers over the years resulted in anti-immigrant sentiment among certain

CASE STUDY *(continued)*

factions in the United States. The first significant legislation restricting immigration was the 1882 Chinese Exclusion Act.³⁰ For the next 80 years following the exclusion act, various laws were enacted that excluded groups of people or restricted the number of immigrants from certain parts of the world like Japan, India, and China, while favoring immigrants from European countries. The 1965 Immigration and Naturalization Act ended the quota system that excluded certain groups, and the United States' borders became more welcoming. At this point, the nation began experiencing a shift in immigration policy in favor of diversity.

Today's immigrants come to the U.S. from all parts of the world. They belong to various backgrounds, ethnicities, generations, social economic statuses, and practice a range of religions. In theory, the United States holds the perspective that immigration provides the rich tapestry of diversity that America is known for. It works in the best interests of the State since it permits individuals to better themselves, thereby strengthening the country. The Center for Immigration Studies shares, 'The nation's 42.4 million immigrants (legal and illegal) in 2014 [was] the highest number ever in American history.'³¹ 'Immigrants comprised 13.3 percent of the nation's population in 2014 – the highest percentage in 94 years.'³² The reasons are varied, and include economic, educational, and political reasons; still, others arrived seeking asylum and escaping persecution. While immigration numbers in general are rising, the unauthorized migration of individuals seems to be a major policy concern as 'unauthorized foreigners peaked at 12.2 million in 2007, fell by almost 1 million during the [2008] recession, and may have increased again with economic recovery.'³³

Current debates to curb unauthorized migration seem polarized at best. Both political parties in the United States – Democrats and Republicans – want some type of immigration reform that could restrain, enforce, or at best discourage entry and employment for those planning to emigrate voluntarily or otherwise. But while the United States' immigration policies in the twentieth century favored diversity, changes in political climate in 2016 once again clouded national perceptions towards immigrants and their descendants causing another round of anti-immigrant hostility. This change was evident in legislation passed around this time, such as the rollback of the Deferred Action for Childhood Arrivals policy (DACA) that allowed people who illegally entered the United States as minors to apply for the ability to legally stay and work in the country; limitations on H-1B work visas that enabled foreign workers to gain employer-sponsored work permits; and a travel ban targeting those who hailed from predominantly Muslim countries. While the 1965 Act opened wide the doors of immigration, the legislation passed in the early twenty-first century seemed to slam them shut. The policies of these eras present two very different views of immigration. This shift in U.S. policy had – and continues to have – ethical ramifications. The rescinding of Deferred Action for Childhood Arrives Act (DACA), the H-1B visa cap, and 'Muslim travel ban' all proposed in 2017 appear discriminatory against certain populations and seem to restrict 'unfavorable' immigration. We shall explore these issues and their ethical implications later in this case study. But first, a brief evaluation of social contract theory in relationship to the United States' Declaration of Independence and the U.S. Constitution is in order.

CASE STUDY *(continued)*

The United States' Declaration of Independence and Constitution

The United States' Declaration of Independence is a restatement of the social contract originally articulated by Locke. The framers of the U.S. Declaration of Independence drew heavily on Locke's view of the Social Contract and his Natural Rights Theory. This historical document outlines the U.S. colonies' grievances against the King of Great Britain and provided a justification for seeking independence. It is based on the Lockean ideas of the natural rights of life, liberty, and property; the property part was substituted with 'pursuit of happiness.' The preamble reads, 'We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty, and the pursuit of Happiness.'³⁴

Further, the framers of the Declaration provided a formal explanation by listing colonial grievances thereby necessitating separation from Great Britain. The introduction of the Declaration reflects this particular idea. It states:

When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.³⁵

A later document, the U.S. Constitution signed on September 17, 1786, provided the framework for a national government and fundamental laws, one that guaranteed certain basic rights for its citizens. It includes the functioning of a just and fair government that was representative of the people, based on individual rights and the rule of law. It also lists the duties of the government to protect the rights of the individual. The preamble of the Constitution provides a succinct statement about the government. It is an example of the social contract theory in practice. The preamble states:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.³⁶

The Constitution highlights a contractual relationship between the three branches of federal government – legislative, executive, and judicial – and its citizens. Built into the contract is a system of checks and balances to ensure no branch of government has too much power. It outlines the government's role and responsibilities to its citizens, as well as the reciprocal rights and duties of the citizens towards the government. If the government fails in its duty to provide the necessary protection, then the people are justified in resisting, even to the point of the dissolution of the government. This iteration of the Social Contract has ramifications for our case study explored here.

CASE STUDY *(continued)*

Specifically, these documents beg a few questions. If immigrants voluntarily enter the U.S., are they bound by an implicit contract already in place? What about those who enter the U.S. escaping persecution in their homeland? Are they bound by that contract? In what ways does the Social Contract apply to them? Can immigrants choose to reject portions of the contract and yet remain in society? Let's take a closer look at some of these questions.

The Social Contract and immigrants

Let's revisit the Social Contract. In the traditional sense, the Social Contract asserts that government has a duty to protect its citizens from aggression of any kind – aggressions from inside as well as outside the state – from criminals to hostile foreign governments. This suggests that the citizens are provided broad and general protections by the government. The citizens give some of their rights to the government in return for the autonomy and protections it affords. Every citizen of the United States is provided these protections; a lack thereof would be considered an infringement on a citizen's inalienable rights. But what about immigrants who are not yet technically citizens? Do the protections, obligations, and duties that are afforded to the citizens by the government apply to immigrants? And what about illegal immigrants – those who come into the country by primarily breaking the law? Does the government have a moral responsibility to them?

From a purely theoretical lens of the social contract, the state does not seem to have the same obligations to protect immigrants because they are not yet citizens of the state. Neither has the state any moral responsibility to those who enter illegally by breaking the law. If we consider the previous argument that the state has more duty towards citizens as opposed to duties towards non-citizens (the main justification being immigrants are soon-to-be citizens but not yet), the government may have a lower propensity to provide protections towards those who are presently not citizens. So, the obligations that are afforded to its citizens differ from the obligations (or lack thereof) towards non-citizens. In the same vein then, the immigrants or non-citizens are not bound by the existing social contract present. Thus, one might argue that each is not obligated to the other as they are not contractually bound. But in the hopes of gaining citizenship immigrants may express tacit consent. Would tacit consent, in this case, be a sufficient requirement for a social contract?

Additionally, implicit or explicit laws that govern any society may not guarantee that individual members of that society treat each other fairly. While laws are necessary for the functioning of a democratic society, it remains that individuals may access it in nuanced ways. Stereotypes and prejudiced perspectives about the 'other' seem to justify differences in treatment. Perhaps this may be the underlying reason for immigration reform in the form of restrictions placed on those who can enter the State, specifically restrictive reforms based on cultural homogeneity.

Additionally, the lived experiences of immigrants vary based on assimilative and socio-political factors, structural constraints of society, their particular backgrounds, and mainstream perceptions. Most immigrants are drawn to the U.S. for economic reasons

CASE STUDY *(continued)*

and personal freedoms. Some hold the view that immigrants are a financial burden on the United States' economy, while others perceive U.S. workers to be at a disadvantage due to competition from immigrants.³⁷ The perceptions of immigrants might be at odds with the larger populace. A survey conducted by the Public Agenda Organization in 2003 found 32 percent of immigrants to the United States mentioned lack of civility among its people towards them.³⁸ That number may be even higher now given the proposed reforms described earlier. If this is the case, perhaps the social contract does not adhere to immigrants in the United States.

It is true that any contract should be explicit signaling consent from both parties, so, if one party fails to hold their part of the contract, then the other party is technically not obligated to honor the agreement. However, the social contract in society depends on the proper ordering of constitutional laws thereby avoiding an excessive concentration of power in the hands of a select few. Therefore, when anyone enters into a country – providing it is with the consent of that country – the individual is implicitly consenting to be bound by the rules of that country's government. If the individual knowingly refuses to respect and abide by the governing rules, then that individual – according to Locke – is at 'war' with that society.

While the social contract may have been notably influential in shaping political thought previously, it has many ethical implications when considering its application in society today. Let's look at three issues that seem to be at odds with the Social Contract – the repeal of DACA, the H-1B visa cap, and the 'Travel Ban of Foreign Nationals.'

Deferred Action for Childhood Arrivals (DACA)

In 2012 the Obama administration created the Deferred Action for Childhood Arrivals program – or DACA for short. The administration announced the directive that certain undocumented youth (under the age of 16) brought into the country illegally by their parents or who came to the United States as young children (under the age of 7) would not be deported. Through executive action, the government granted them temporary permission to stay in the United States – otherwise referred to as 'deferred action.'³⁹ Additionally, this program allowed those less than 31 years of age as of June 15, 2012, to apply for the DACA program. By 2017, nearly 800,000 immigrants had enrolled or renewed their DACA protected status.⁴⁰

DACA allowed for law-abiding eligible individuals to apply for work authorization and provided relief from the threat of deportation. The Center for American Progress, the National Immigration Law Center, and scholars from the University of California-San Diego fielded a survey that reported DACA improved the lives of undocumented young people.⁴¹ Many of the recipients of DACA contributed positively and in significant ways to the United States. While current numbers are not immediately available, many DACA recipients (also known as 'dreamers') are parents; therefore, their children are citizens of the U.S. by virtue of birth.

CASE STUDY (continued)

The U.S. government rescinded DACA in 2017; although, due to federal court orders, the USCIS resumed accepting requests to renew deferred action requests under DACA later that year. Critics of DACA made the case that the policy was a presidential overreach by the previous administration, and many recipients were taking jobs away from legal U.S. citizens and residents. The program's proponents asserted that DACA recipients were making valuable contributions to U.S. society, and ending DACA was punishing children for their parents' decisions.

In the strictest sense of the term, the State is not obligated to protect those who are not citizens or those who have broken the law. Those who are illegal (in the broadest sense of the term) exist outside the jurisdiction of the state. Why would the State provide services and protection to these individuals by taking from those who are citizens and legal aliens of the state? While contextually different, law-abiding DACA individuals provided tacit consent and obeyed the laws of the land even though they were not in a formal agreement. Does this then preclude them from citizenship?

The H-1B visa cap

Let's look at a similar issue. As mentioned earlier, many immigrants come into the country for better economic prospects. Many Silicon Valley Tech companies and other major companies have long depended on highly skilled foreign nationals to meet the needs of particular jobs. Once selected for a position, their H-1B visa is expedited to ensure their immediate arrival. In 2017, the United States announced it would temporarily suspend expedited applications for H-1B visas. Following the announcement, the U.S. Citizenship and Immigration Services (USCIS) suspended 'premium processing' for up to six months.⁴² This meant that foreign nationals would have to undergo a longer wait for the visa to be approved. The administration's messages regarding the H-1B status in part read 'The H-1B program is neither high-skilled nor immigration: these are temporary foreign workers, imported from abroad, for the explicit purpose of substituting for American workers at lower pay.'⁴³ The United States President commented at the time, 'I remain totally committed to eliminating rampant, widespread H-1B abuse.'⁴⁴ The United States did later resume premium processing for certain visas later that year.

In critiquing the abuses of the visa program, the directive to 'buy American, hire American' is aimed at – according to some – limiting foreign workers. Others assert that the program allocates positions to foreign nationals at a less expensive cost than that for Americans, thereby restricting opportunities for American nationals. Regardless, changes to this policy impact a workforce that fuels economic growth. While this is a broad generalization, the concern is valid.

While explicitly not concerned with the social contract, the cap on visas does pose an ethical dilemma. The H-1B visa is a non-immigrant visa. Those selected are in the country legally because of the social contract that is in place between the company that hires them and the U.S. government. Let's call this a Social Contract for non-immigrants. From this

CASE STUDY *(continued)*

perspective, the protections given to citizens extend to non-immigrants by virtue of work. Setting a cap of visas not only reduces the entry of highly skilled workers into the country, but also reduces the economic capability of U.S. society.

Travel ban of foreign nationals

Finally, we look at yet another issue. In 2017, the White House also released executive order 13769 'Protecting the Nation from Foreign Terrorist Entry into the United States.'⁴⁵ The purpose of the order was to target individuals with terrorist ties by denying entry into the U.S. Additionally, the document suspended the entry of individuals from seven countries for 90 days: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. The travel ban took effect immediately stranding many legal residents and U.S. naturalized citizens visiting their country of birth. A March 6, 2017 document amended and revised the original order with clarifications that the travel ban did not apply to legal permanent residents or current visa holders.

This ban caused concerns for potential students and refugees from these countries. While various aspects of the ban were being heard in the U.S. courts at the time this chapter went to press, the ban in itself is problematic in nature. The countries listed on the travel ban were predominately Muslim. While it is known that many terrorist acts committed around the time of the ban were committed by Islamic extremists, many human rights and religious organizations argued that banning people due to their national and religious background was unethical.

How does the social contract apply here? Security for individuals who are citizens and legal residents are guaranteed protections at home as well as overseas by virtue of the social contract willingly entered into. When the country's laws and protections do not effectively respond to the needs of its citizens the social contract is in danger of collapsing. In the case of the 2017 travel ban, many citizens and legal residents were affected as their birth countries were listed in the document. Additionally, discriminating against people due to their religious and ethnic background is morally reprehensible. The administration defended itself from claims of anti-Muslim bias arguing that the travel-ban orders had nothing to do with Islam. Ironically, by doing this, the administration was tacitly agreeing that restrictions on alien admissions would be unconstitutional, and therefore invalid, if based on religious grounds.

Application of the Five Components of Leadership Model to the U.S. immigrants case study

The model proposed by McManus and Perruci articulate five components of leadership: leaders, followers, the goal, context, and cultural values and norms. For the purposes of analyzing the issue of immigration and social contract, the two components that seem to

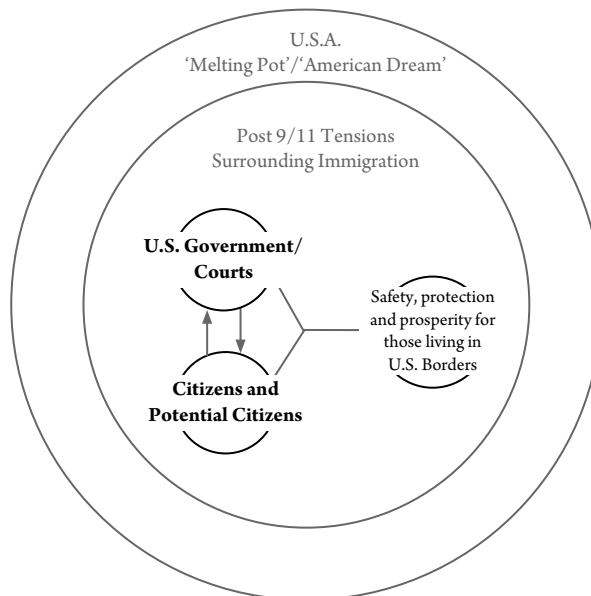
CASE STUDY (continued)

fit appropriately are leaders (the United States Government and the Courts) and followers (citizens and potential citizens). Let's analyze immigration and social contract through the leadership lens of leaders and followers. Additionally, within the context of U.S. immigration and from the relationship of leader–follower we will extrapolate the goal, one of safety and protection of citizens and immigrants in the context of a post 9/11 world, and holding the cultural value and norms of the American 'Melting Pot' of peoples hailing from nations across the earth.

As McManus and Perruci maintain, leaders provide the energy and vision that guide followers' actions. They assert that the context and culture and the common goal is of utmost importance when evaluating the relationship between the leader and the follower. Consider the United States government and the U.S. courts as the leaders. The three policies discussed here seem to impact immigration negatively. One could assume most U.S. citizens would be in favor of some form of immigration reform. However, examples evaluated here – DACA, the H-1B visa cap, and the travel ban – are decried by many business leaders, religious heads, and human rights advocates. From the lens of the social contract, while the administration may consider itself justified in the strict application of the laws, the government is still based on the will of the people. Only when the will of the people and the government strive for the same ethical ideals can they achieve a good outcome for both parties.

It is a given that leaders exert power in setting an agenda. They have the platform to provide a vision for the future. However, the successful implementation of the vision

Figure 9.3 The Five Components of Leadership Model applied to the U.S. immigration case study



CASE STUDY *(continued)*

ultimately depends on the followers, in this case, U.S. citizens and immigrants. The followers can maximize the vision and further the goals set by the leader. From this perspective, followers shape the legitimacy of the goals through express consent; they can either accept and validate the leader's vision or reject it entirely. A leader, therefore, cannot be successful without the help and cooperation of the followers. Let us consider the immigrants and the administration. The policies proposed by the United States government in 2017 seemed detrimental to the current immigrant situation. Most recipients of DACA were fearful of their future. Obeying the laws and being a model citizen was still not enough to help negotiate a pathway to citizenship. In the case of the travel ban, affected individuals, some of whom were legal residents and had valid reasons for being in the United States, were denied entry into the country. The H-1B visa cap restricted immigration at its conception. In all these cases, the social contract was weakened or broken. For the social contract to be upheld, both parties – leaders and followers – must be ethically and morally responsible and follow the rule of law. If one does not uphold their end of the contract, the other is not expected to uphold theirs. The leader cannot ignore the aspirations of the followers, and the followers must consider the common good rather than their individual good.

Assuming that the social contract is in place, the U.S. government and the courts (the leader) have the legal authority to impartially and uniformly enforce the law in a society for the purpose of providing stability to its citizens and immigrants alike. The law prevails for the purpose of the common good, the leader and follower work together towards the goal of a safe and prosperous society. Since the individuals provide consent (express or tacit), such an environment empowers them to make informed ethical decisions that affect their lives and others in positive ways.

There are some issues with regards to the idealistic perspective articulated above. This view assumes: (1) the law for the common good is not the arbitrary decision of a leader; and (2) followers set aside individualistic and egotistical choices for the maximization of the collective good. With regards to the first assumption, even in democratic societies the possibility of a disconnection between the leader and the follower exists. Additionally, laws for the collective good must not favor political agendas and appease or marginalize specific groups over others, as what appears to be the case with DACA, the H-1B cap, the travel ban. Concerning the second assumption, individuals can be expected to make decisions based on self-interest. (See Chapter 5 Ethical Egoism.) This is not suggesting that individual success is not valued, but success must not come by devaluing others. When one understands that individual success (leader and follower) cannot be to the detriment of the collective good, it sets the ethical framework for a common goal – prosperity and safety, one that is built on mutual trust, benevolence, generosity, and empathy.

Within the perspective of context, immigration according to Martin ' . . . is widely considered to be in the national interest, since it permits individuals to better themselves as it strengthens the United States.'⁴⁶ In this context, the relationship between the leader and follower is one of interdependence. True leadership takes place only when both the leader and the follower are genuinely invested in each other. When both parties honor the contract

CASE STUDY *(continued)*

set by working towards a collective good and the leader provides the necessary stability in the pursuit of happiness, a prosperous ethical society is a reality.

There is a real possibility of achieving the American Dream when working together for the collective good. Coined very early by historian James Truslow Adams who asserted 'there has also been the American dream, that dream of a land in which life should become fuller for every man, with opportunity for each according to his ability or achievement.'⁴⁷ This can be accomplished with the help and support of the government (leader) that actively protects individuals (follower) in the pursuance of happiness.

Reiterating the assertion of the Declaration of Independence, '... all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,' and 'to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.'⁴⁸ As evidenced by this quote, the Declaration of Independence protects the American Dream. From the nation's inception to modern times, citizens and immigrants both seek opportunities to pursue this dream. While factors of hard work, individual tenacity, education, and supportive networks certainly help towards this individualized achievement, policies such as DACA, the H-1B visa cap, and the travel ban makes this achievement difficult if not impossible. Individuals who are marginalized due to the implementation of these policies may find the American Dream beyond their reach. When the leader and follower work towards the collective goal of a safe and prosperous society, with the leader providing the stability and resources for each individual to maximize their potential and creativity, achievement of the American Dream can become a definite possibility.

Achieving the American Dream is the vision that draws millions of immigrants to U.S. shores. The steady stream of immigrants to U.S. shores has profoundly affected the American character, enriching modern-day life as we know it. However, recent policies put in place by the government is restrictive in setting limitations on immigration. While most maintain that immigration reform is necessary, it shouldn't be devaluing of individuals not meeting a set criteria. Additionally, when the government proposes laws that are not 'by the people, for the people,' it sows seeds of doubt and distrust eroding the social contract between the government and its people. The cleavage between the leader and the followers in this situation weakens their contractual ties. When the contract is broken, one must ask if the other side is ethically required to honor the bargain. Social contract theory would say, 'No, they are not.' This is not to say all is lost; through hardship, valuable lessons can be learned. The U.S. is, after all, 'a nation of immigrants,' and remains, 'By the people, for the people.'