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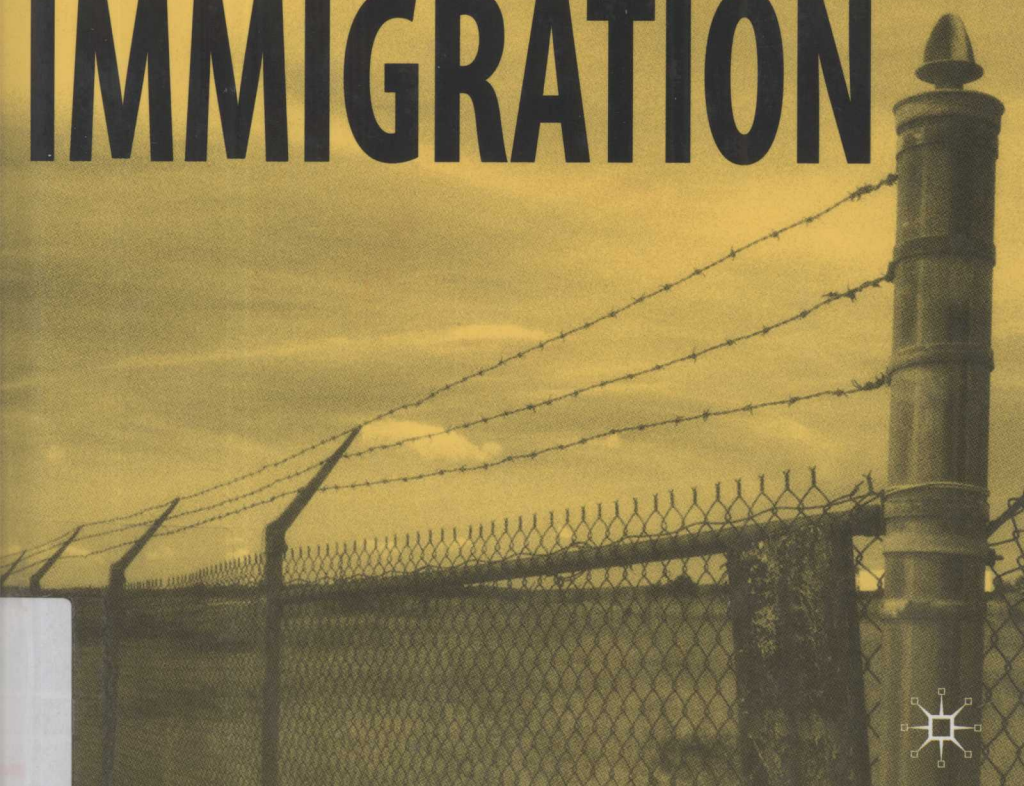
TOWARD A
THEORY OF
IMMIGRATION

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of Immigration

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Acknowledgments

greatly to be praised for having put up with that stellar example for so many years.

My father-in-law, Erhard Mackenberg, helped me obtain numerous materials relating to German immigration law and policy, for which I am grateful.

Finally, I should note that this project originated in my own fortuitous—or rather providential—personal experience. The debt incurred here cannot be repaid; the dedication offers an all-too-meager recognition of its significance.

Contents

Introduction

This book seeks to defend a view that most people probably still take for granted: that states are entitled, within certain wide limits, to craft immigration policies as they see fit, based upon their particular histories, cultures, interests, and desires. In the not-too-distant past, such a defense would not have been necessary. The right to control immigration has long been considered a sovereign right of states in the modern world. It is part and parcel of the state's power over its territory, recognized as a fundamental principle of international law. Needless to say, that power has never been exercised absolutely; people have always crossed boundaries, licitly and illicitly. But that states are entitled to exercise such control has not been in question, nor have states indicated a desire to abandon their right to this authority.

Today, however, the state's control over its borders is being compromised in a host of familiar ways.[1] Illegal immigration to the United States and Western Europe has increased enormously and attracted significant attention. Such migration is fueled not only by the strong economies in those destinations, but also by rapid population growth elsewhere, growth that is not expected to abate until well in the future. Advances in transportation and communications put long journeys to new places within reach of enormous numbers of people. The growth of multinational corporations creates large and powerful bodies that operate across boundaries, possessing both the incentive and the power to influence states in decisive ways. As barriers to free trade fall in many areas of the world, goods and people flow back and forth across state borders in greater numbers, a process with its own internal momentum. The United States saw impressive evidence of this recently when Mexico's new president made a splash by traveling

throughout North America calling for the eventual opening of borders across the continent.

Political changes reinforce these economic and demographic ones. Not only corporations cut across national boundaries; so too do a host of extra-territorial interest groups, the familiar NGO's of international relations literature. The growth of international institutions, both political and legal, chips away at traditional state sovereignty in a variety of ways, as does the proliferation of treaties governing subjects such as trade, the environment, and human rights. Numerous domestic factors within Western polities—affirmative action, bilingual education, public support for multiculturalism, the opening of borders within the European Union—combine with economic growth, aging populations, and a demand for labor to make those countries even more attractive destinations. And, of course, as migrants settle in and join democratic polities, they acquire political influence and can oppose efforts to restrict further migration by their former compatriots. Similarly, migrants' countries of origin more frequently attempt to retain close ties to their emigrants; again, Mexico's outreach efforts towards its citizens residing in the United States provide an instructive example.

These transformations in global migration and political reactions to it have sparked relatively little normative reflection among political theorists. Or, to be more precise, they have sparked little reflection on migration specifically. Normative theorizing about various closely related subjects, such as citizenship, globalization, and nationalism, has exploded, so much so that it is difficult to keep up with the endless stream of articles on these subjects. Presumably, (im)migration will begin to attract similar attention—indeed, there are indications (this book among them) that this is happening. Thus far, though, it has remained relatively unexamined. To be sure, the literature on immigration in other fields—history, sociology, economics, as well as other branches of political science—is immense. But this work is often of little help to those interested in the practical moral question of what we ought to do in the face of increasing migratory pressures. What is the range of acceptable responses open to us? What types of responses must we reject as immoral? What sorts of claims do would-be migrants make upon us, and what sorts of claims may we make against them? These are the sorts of questions I wish to explore here.

To the extent that political theorists have addressed such questions, their response has, as it were, supported and reinforced the contemporary forces that are challenging the traditional prerogatives of state sovereignty. Almost invariably—Michael Walzer is the notable exception—they contend that the kinds of immigration restrictions that most contemporary states still

seek to enforce are unjust. They do not all go so far as to endorse Joseph Carens's argument for open borders. But there is surprising unanimity around the view that, whatever policies states currently pursue, justice requires a world of far more open borders than now exists.[2] I call this unanimity surprising not because it differs from broader currents in contemporary political theory. On the contrary, any number of signs—the influence of Kantianism following Rawls's *A Theory of Justice*, increasing interest in cosmopolitanism, liberal theorists' response to the wave of nationalism unleashed after the Cold War, the growing appeal and influence of theories of human rights, multiculturalism's status as a doctrine practically beyond question—indicate that skepticism towards the state's traditional right to control immigration is perfectly in keeping with other developments within the discipline. It is surprising because it differs so widely from the ordinary, everyday assumptions about immigration that most people probably hold without even thinking about them. The confluence of and mutual reinforcement between intellectual trends and global economic, demographic, and legal developments has now made it necessary to offer a fuller and more reflective defense of those ordinary, everyday assumptions.

Not only immigration policies are at stake, however. Raising as it does questions about the constitution of a polity and its preservation over time, immigration is also a useful lens for focusing our attention on deep and abiding dilemmas of political theory, dilemmas about the nature of political community, the sorts of bonds that do or do not (and should or should not) connect citizens with other citizens and human beings with other human beings, the relationship between politics and culture. I shall argue that at its core, immigration is one manifestation of a fundamental ethical problem: May (or perhaps must) we prefer "our own"—our families, friends, neighbors, and compatriots, the shared way of life we develop together, even the familiar vistas of our native land—to other people, in different places, with different ways of life? And if so, in what ways and to what degree, and within what limitations? Specifically—since immigration restrictions, if they are to be meaningful, must be enforced—may we prefer our own *politically*, supporting our preference with the coercive force of the state?

Questions such as these have always been at the heart of political theory. We cannot even discuss the attempt to preserve "our own" without some idea of what that means—of who "we" are, of the characteristics we share and that are distinctive of us, of the sorts of bonds that hold us together, ultimately of what sort of thing political community is and of our own particular political community as a member of that larger set. The classics of political thought necessarily address this question, in a variety of ways.

Plato famously spoke of the need to tell citizens the "noble lie" of autochthony, to persuade them that they are all related to each other, sharing the deep and intimate bonds of an extended family and enjoying a special, familial relationship with a particular territory. Aristotle made the concept of civic friendship an important element in his understanding of politics. St. Augustine defined a people as "a multitude of rational beings united by a common agreement on the objects of their love" and, through his description of the Two Cities and their mutual desire for earthly peace, outlined the rough limits on what kinds of loves they could and could not expect to agree upon.[3]

Debate over the nature of political community is central to the rise of modern liberal thought as well. As a theory of political legitimacy, liberalism insists that legitimate government can arise only by consent. But this naturally raises questions about other bonds that join people together and how they affect the granting of consent. Does liberalism's focus on individual consent undermine other kinds of social bonds? Does it simply relegate them to a non-political sphere of civil society about which it remains agnostic? Does it superimpose the additional bond of political consent upon other, pre-existing group ties in a way that might actually reinforce them? Such questions are posed by the development of liberal theory and its attempts to grapple with problems of community, culture, and politics. Hobbes focuses exclusively on individual consent in establishing his "Artificiall Man," the Leviathan, and the centrality of self-interest in his logical grammar of human motivation and behavior can make any broader concern for the larger community appear mere ignorance or sentimentality, as when he describes exile (to pick a relevant example) as not a punishment at all: "the mere change of air is no punishment." Locke also emphasizes individual consent as the sole source of legitimate political obligation; but his account of how "the natural *Fathers of Families,* by an insensible change, became the *politick Monarchs* of them too" suggests that he views identifiable pre-political groups as the natural locus for such a consensual politics, just as his explicit legitimation of tacit consent allows political community to map onto any already existing territorial community. Rousseau famously tied himself into theoretical knots, which political theorists have never fully succeeded in disentangling, when he sought, through "the total alienation by each associate of himself and all his rights to the whole community," to create a social bond so tight that "the sovereign . . . has not, nor could it have, any interest contrary to" that of its members, but in which "each individual, while uniting himself with all the others, obeys no one but himself, and remains as free as before."[4]

Similar disputes have been at the very heart of some of the most important arguments in contemporary political theory. Thus John Rawls, in his restatement of social contract theory in *A Theory of Justice,* held that principles of justice are those that would emerge from "a fair agreement or bargain" among "free and rational persons concerned to further their own interests" in an original situation of equality and in which "no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like." His attempt to derive principles of justice from this original position with its veil of ignorance gave rise to the great liberal-communitarian controversy, which dominated Anglo-American political theory for approximately two decades and from which the dust has not yet settled. Central to that controversy is, of course, the question of what constitutes a political community, what kinds of bonds join citizens together, how far they extend, what their consequences are—precisely the questions which immigration forces us to confront.[5]

In the discussion that follows, I shall not often refer the reader to Plato or Aristotle, Locke or Rousseau, but it is worth emphasizing here at the outset that the questions under discussion have this long and rich theoretical background. Because I do not explicitly discuss these canonical thinkers, because my response to the problems posed by immigration seeks to leave as much room as possible for countries to approach these fundamental dilemmas of political theory in different ways, and finally because I shall argue that different positions on immigration are closely related to different underlying views of political community, it seems only fair to give the reader some indication of my own theoretical starting point for addressing such matters. I regard the argument that follows as essentially a liberal argument, though perhaps not of the sort found today in most conventional presentations of liberalism. When forced to give my approach a label, I generally refer to it as "Augustinian liberalism," but since that particular tag may be of little help to many readers, I will describe what I mean ever so briefly here.

I begin with the assumption that humans naturally live in communities with each other, that these communities are of different sorts, that we can characterize and describe them in meaningful and recognizable ways, and that people ordinarily wish to see their particular community and its way of life survive and flourish. Liberal democracy is one way in which such communities order their political lives. What is distinctive about liberal democracy is not merely, as is sometimes suggested, a devotion to individual rights, or even to the ideals of equality and freedom, important though

these are. Liberal democracy is committed to pursuing and defending a complex variety of goals, which it does by means of familiar institutional devices (separation of powers, checks and balances) and legal protections (*habeas corpus,* trial by jury, prohibitions on *ex post facto* laws) that emerged through a long process of historical development. Because these goals can be in tension with one another, they may be weighed and balanced by a particular community as it sees best in light of its traditions, culture, and circumstances. Together these goals are necessary to prevent tyranny and preserve independent self-government. They include not only freedom, equality, and individual rights, but also stability, security, and limited government, as well as "majority rule and property rights, personal liberty and domestic tranquillity, popular government and the rule of law."[6] Combining the adjective "liberal" with the noun "democracy" helps to emphasize—as does the inclusion of goals such as majority rule and popular government in the above list—the valuable point (relevant to my discussion of immigration) that, though it is not the aim of liberal democracy as such to give voice to or embody the common life and culture of a people, liberal democracy has no special stake in thwarting such expressions of the broader culture or in preventing its shaping and being reflected in law.[7]

Because liberal democracy so understood pursues a variety of conflicting goals, it contains room for extensive variation. Liberal democracy, in other words, can take a host of different forms; it leaves much to be settled through the contestation and give-and-take of politics. This points toward another insight: that liberalism's list of goals, though complex and broader than usually acknowledged, is not exhaustive, that some communities of people may prefer to pursue a different mix of human goods and may assess some of the goods on the liberal list differently, that they may pursue their ends through very different institutional means than those typical of liberalism, and, finally, that they are presumptively entitled to do so. If there is a case to be made for the superiority of liberalism to other ways of ordering political life (as I think there is), it rests on liberalism's historically demonstrated ability to achieve a variety of very important human goals more effectively than other alternatives. But that is at most a contingent case—in any given place and at any given time, people may wish to pursue different goals in different ways. If the system of their choice allows them to lead decent lives without causing serious injustice, liberalism, in my view, has no ultimate quarrel with them. That "if" is important, of course, because it does indicate the existence of some minimal standards that must be met—a government that slaughters its own citizens does not make the grade. But these standards are minimal, and they are to be balanced against the reality

of different communities with different ways of life and different goals. As long as people can maintain a basic level of peace and civil concord, there is no reason for insisting that they pursue our mixture of goals in the ways we think best. Liberalism is one way of ordering political life, perhaps the best way, but not the only or only legitimate way.[8]

This, of course, is only a brief description of my version of liberal democracy, not a defense of it. The latter is a task for another day.[9] The reader familiar with contemporary discussions of liberalism will recognize that, just as my argument about immigration is at odds with broad political and intellectual trends, so too is the underlying account of politics upon which it draws. This dual dissent will be controversial, of course, as almost all important questions are. But it reflects my belief that using the concrete issue of immigration as a lens through which to focus on certain theoretical problems can contribute to our understanding at both levels. And if this attempt at a "theory of immigration" encourages the reader to consider in new or unfamiliar ways questions of political community and the relation between culture and politics, then I will be quite pleased.

The structure of the book is as follows. Before moving into my more theoretical discussion of immigration, it is worth reminding ourselves of just what it is we are thinking about, and in particular of the diverse variety of events included under the general label "immigration." A business CEO relocating to a foreign country in order to head up an international branch is an immigrant, but so is a poverty-stricken refugee fleeing ethnic cleansing. And countries may receive immigrants gladly or with hostility. In the first chapter, I explore this broad range of different kinds of immigration, seeking to give real examples of a variety of reasons why people migrate, as well as why countries do or do not wish to receive them. The implicit purpose of this catalog is to raise doubts about suggestions that any single policy—and here I have arguments for open borders especially in mind—would be appropriate for handling this vast spectrum of very different situations.

Chapter two reviews the existing normative literature on immigration. Because there are few scholarly arguments defending the state's right to restrict immigration, I begin by examining three recent works of intellectual journalism that call for restrictions on American immigration. These, I suggest, have not fully explored their own intellectual premises. I then turn to the scholarly literature, focusing primarily on Joseph Carens's case for open borders. This more sophisticated argument is, of course, aware of its own premises, but it has not, I argue, defended them in a way that is really able to engage those who do not already agree with them. My third chapter seeks to address this standoff by presenting what I hope is a more

sophisticated defense of the premises necessary to support the state's right to restrict immigration. Chapter two ends with a consideration of what a postmodern approach to immigration might look like.

Chapter three's argument for broad state discretion in regulating immigration is the theoretical heart of the book. Here I argue that immigration policies are closely linked to particular understandings of political community and national identity; that a broad range of such understandings is legitimate; and that, both because we lack an argument that would persuade all peoples to adopt the same identities and visions of political community, and also because there appear to be quite plausible arguments in favor of a people's right to enact policies designed to preserve its particular way of life, countries are presumptively entitled to craft immigration policies that reflect their own particular national identities and conceptions of politics.

Chapters four and five both attempt, in different ways, to illustrate one of the key premises from chapter three's argument, the claim that immigration policies are closely tied to particular understandings of political community. Chapter four seeks to illustrate this at the level of political practice, through an examination of immigration law and policy in two countries that have recently engaged in fierce arguments over immigration, the United States and Germany. In both cases, I explore how these countries' national identities have shaped immigration policy and the debates surrounding it. Chapter five seeks to illustrate the same point at the level of political theory. Here I reflect upon the arguments of Will Kymlicka and Michael Walzer, both of whom write powerfully about the relationship between politics and culture. Again, I wish to show how their arguments' implications for immigration are closely connected to fundamental ideas within their broader theories about the nature of political community.

Chapter six, finally, is in a sense the counterpoint to chapter three. Having spent most of the book defending broad state discretion over admissions, I conclude by asking what the limits of that discretion might be. This is in part to forestall concerns that my argument is intended as a defense of complete state authority, or that it is simply a relativist position. But it is also an attempt to flesh out my earlier arguments. I criticize the open borders view for conceding legitimacy to an overly narrow range of regimes, and I hope that my own argument is open to a much broader array of different visions of political community. But every argument is based on some premises, and no position can avoid excluding at least some alternative possibilities; and in my final chapter, I ask what possibilities my own views exclude. I thus close by arguing that if borders need not be completely open, neither should they be completely closed.

Chapter 1

MIGRATION'S MANY FACES:
THE COMPLEXITY OF THE PROBLEM

People move for many reasons. A poverty-stricken family fleeing starvation; an international sports star relocating to a country with lower taxes; a man moving to another country to join his foreign wife; hordes of people trying to escape an invading army—all are migrants, but in very different circumstances and with very different motives for their journeys. And the countries that accept them are similarly diverse, with correspondingly different reasons for wanting to accept or reject various would-be immigrants.

In this book I hope to reflect upon cases such as these and offer some modest suggestions for how we ought to think about and deal with immigration. First, though, I simply want to explore the vast range of situations that fall under the general heading "immigration." There is, after all, no obvious reason why examples as diverse as those mentioned above should be dealt with in the same way. It is therefore worthwhile, I think, to begin by simply elaborating as many reasons as we can think of why people migrate, as well as reasons why countries do or, more interestingly, do not want to admit them. This need not be an extremely lengthy, detailed affair (though it could easily become one). Nor will it be exhaustive—further thought would doubtless continue to reveal motives, or combinations of motives, not mentioned here. The purpose of this brief catalogue is simply to open our minds, to make us sensitive to the broad spectrum of cases of which a theory of immigration needs to take account. And if the reader begins to doubt that any single immigration policy could appropriately cover so many diverse situations, then the groundwork for the argument of the following chapters will have been well-laid.

Motives of Migrants

Why, then, do people migrate? Why do they uproot themselves, leave their homes, and seek to settle somewhere else? We can begin, perhaps, by making a general distinction between two broad types of immigration: voluntary and involuntary. In a sense, of course, all immigration is voluntary: one could always simply refuse to leave, preferring to die where one is. Nevertheless, it seems reasonable to call people driven into flight by the ravaging soldiers of an invading army involuntary migrants.[1] On the other hand, it is surely possible to stretch the category of "involuntary" so far that it is no longer helpful. Consider, for example, contemporary debates over so-called "economic refugees," people who, though certainly poor, may not be facing real destitution or the possibility of death. Are such people voluntary or involuntary migrants? In cases like these the distinction between voluntary and involuntary begins to blur. By employing the distinction, then, I by no means intend to propose any rigorous theoretical model for analyzing immigration; I use it merely as a handy way of providing some structure to the discussion. By using the term in a narrow, restricted sense, we can delineate a category of people whom we can meaningfully, and I think uncontroversially, refer to as involuntary migrants.

Even within this limited class of involuntary migrants we can imagine a number of different motives for leaving. I have already suggested the example of people fleeing a hostile army. Thomas Sowell points out that "[t]he havoc and chaos of war raging through ancient China sent refugees fleeing to adjoining lands, where they spread the Chinese culture."[2] More recently, the population movements caused by ethnic conflict in the former Yugoslavia, for example, or between Hutus and Tutsis in Rwanda and the Congo (formerly Zaire) seem similarly involuntary. The westward movement of American Indians in the face of advancing European settlement is a slightly different example of the same phenomenon.

Civil war and political anarchy often create involuntary refugees. Civil war in Liberia during the 1980s and '90s created 1,260,000 refugees, "more than one half of the population of Liberia." They fled to Ghana, Nigeria, Guinea, the Ivory Coast, and Sierra Leone.[3] Civil and ethnic warfare in Somalia over the past decade caused several hundred thousand refugees to flee to Kenya.[4] The collapse of political order in Albania in 1997 drove thousands of people across the Adriatic Sea to Italy.[5] Even before the crisis in Kosovo, civil war in the former Yugoslavia had already created millions of refugees, of whom "between 500,000 and 600,000 are currently residing in different European countries outside the region of former Yugoslavia, with

Germany, Switzerland and Sweden . . . as the main receiving countries."[6] And in the Kosovo crisis, of course, Serbia expelled roughly a million ethnic Albanians from Kosovo.[7]

Victims of natural disasters, like victims of war, can be included in the category of involuntary migrants. Fires, floods, earthquakes, volcanic eruptions, hurricanes, and similar events can all leave people in search of a new home. Famines are a common example of such events. One of the most famous—or infamous—migrations in history was caused by the Irish Potato Famine. The years of the potato famine produced "a flood of nearly two million emigrants, to be followed in the following decade by nearly a million more."[8] Similar to natural disasters in their effects are environmental disasters, such as the breakdown of the nuclear reactor in Chernobyl, which, according to Klas-Göran Karlsson, produced an "enduring migration flow."[9]

The slave trade is yet another example of involuntary migration. We are most familiar with the enslavement of Africans, and with good reason: as Sowell writes, "Over the centuries, somewhere in the neighborhood of 11 million people were shipped across the Atlantic from Africa as slaves, and another 14 million African slaves were taken across the Sahara Desert or shipped through the Persian Gulf and other waterways to the nations of North Africa and the Middle East".[10] Sowell also points out, though, that slavery, and the corresponding transportation of enslaved peoples, has in fact been a worldwide phenomenon, existing "in the Western Hemisphere before Columbus' ships appeared on the horizon, and . . . in Europe, Asia, Africa, and the Middle East for thousands of years."[11] Sowell's own examples of those carried off to serve as slaves in another land include "thousands of Christians" from the Balearic islands, "a thousand girls and fifteen hundred boys" from Venice, "tens of thousands" of "Europeans living in vulnerable coastal settlements in the Balkans," "hundreds of thousands" of Russians, 10 percent of the Hungarian population each decade of the sixteenth century, "6,000 Greeks" sent to Egypt, and "many thousands" of people from Bali.[12] Quite a few involuntary migrants, to say the least.

Involuntary migrants are also created when a government removes people from its own territory. In 1492, for example, the Spanish government expelled all religious Jews from the country.[13] The expulsion of non-nationals has been commonplace in post-colonial Africa; Aderanti Adepoju lists Sierra Leone, the Ivory Coast, Ghana, Chad, Uganda, Zambia, Equatorial Guinea, Zaire, Kenya, Senegal, Cameroon, Guinea, Nigeria, and Liberia as countries which did this between 1968 and 1983.[14] The same phenomenon occurred on a massive scale in Germany and eastern Europe follow-