

III. The Challenge of Immigration

Transportation technology has changed everything that we once knew about politics. Many of us now live with a global orientation, and our loyalties are split between parochial (local), national, and international frames of reference. We may spend most of our civic energy on neighborhood or community projects, contribute most of our taxes to a national government, and work for an organization or company with offices around the world. So where do our loyalties lie?

Narrow, local loyalties flourish in today's "me culture." We are preoccupied with our homes, their property value, convenience to shopping malls, and enjoying the amenities of life. Our national life is portrayed on continuous news channels. We pay our taxes to distant national capitals when the funds are used for homeland security, protecting our global interests, and exploiting the country's natural resources. In today's world economy, individuals and families often pick up and move away from what once would have been their ethnic homelands. This is particularly true for well-educated professionals on the one hand and manual laborers on the other. Neither group is always afforded opportunities and freedoms in their birth country. It may seem that we "do not know who we are" as a people compared to our grandparents' generation.

Over time, the populations of national states become more heterogeneous. For some immigrants, their unique ethnicity, language, and culture yield to intermarriage, Standard English, and the mass culture of movies, television, and the Internet. For others, life is defined by routines within an ethnic enclave that tries to isolate itself from the mainstream mass culture. Modern national states are not necessarily melting pots (Schlesinger, 1998: 40).

A. Economic Migration

People from less developed parts of the world often want to migrate to locales where there are more economic opportunities. This is happening in the case of immigration to Western Europe and North America. Turkish workers hold many of the jobs in Germany that were once held by native Germans. Chinese workers hide in shipping containers and below deck on merchant ships hoping to slip into the United States and Canada. Latin Americans from many countries hope to enter the United States to work in agriculture, and engineers from Pakistan and India are employed in multinational corporations around the world. People are on the move looking for economic opportunities and a chance at the good life.

Ironically, the poorest of the poor often do not migrate because they are weak from hunger, lack marketable skills, or are too emotionally invested in rural kinship networks. Rural people often are in poor health, functionally illiterate, and tied to the land in many countries. The urban poor lack the price of

a plane or boat ticket to a better life. Women are afforded few educational opportunities in many Muslim societies and in other socially conservative countries throughout the world. And children are not permitted to work legally in the industrialized societies as they are in poorer societies. Manual labor jobs, service, and entry level manufacturing jobs actually are available in the more industrialized countries. Citizens there may not want to work at strenuous jobs that pay the minimum wage. It's just the case that one has to have the good health, basic education, and mobility to get to the job.

Instead of the poor, it typically is the more educated and more ambitious who move on, and many poorer countries are experiencing serious "brain drains." From the perspective of employers in the host countries, these educated workers are a wonderful find. They are highly motivated and will work hard for lower salaries and fewer benefits than will Europeans and North Americans. They are more often deferential in their workplace demeanor; they aim to please. It would be economically irrational to not give them an opportunity, and so business people argue for open immigration.

Modern transportation systems and international law permit free movement and encourage people to seek opportunities where they may be found. For some, mobility literally is a ticket to prosperity. For others, it is at least a chance to send modest wages back home. Some migrants may seek citizenship in the host country; others remain legal resident aliens. The work permit is the key consideration for the new arrival. Perhaps more importantly,

any immigrant – historically or in the present world – has to sort out the question of political loyalties. Am I Chinese or Canadian? Am I Mexican or American? Will I have an orientation to the old homeland while my children abandon old ways for the mass culture of the host country? In the era of the national state, this question of loyalties is an important issue that countries must address.

Box 2.3 Allowing Languages other than English in the Schools

Parents of immigrant children are asking school boards to permit initial instruction in the language spoken in the home. Teachers are divided on the issue. What do you think? Can children be assimilated without forced English?

B. The U.S. Immigration Experience

The United States is an interesting case study for the immigration phenomenon because – like Canada and Western Europe -- it has been a destination for people from all over the globe at important moments in world history. There have been spurts of new arrivals during times of global economic depression and instability, and there have been troughs when the nation was at war. While the international ebb and flow of immigrants is doubtless subject to just such economic and political influences, the dynamics are easier to see when we focus on a single's country's experience with immigration.

The level of immigration into the United States has never been higher, even during the decades of the early 20th Century when many of our ancestors came over from Ireland, Scandinavia, and Southern Europe. Roughly 10 percent of the current U.S. population is foreign born. Better than one in four of our

foreign-born population (27 percent) came to the United States from Mexico, and significant numbers have emigrated from Cuba, El Salvador, and the Dominican Republic (Bureau of the Census, 1998). Proximity and the quest for economic opportunity obviously play a role in the movement of people across national borders.

Other countries of origin for foreign-born U.S. residents show a more long distance emigration pattern. The Philippines, China, Vietnam, India, and Korea all have contributed large numbers of immigrants in recent decades. Asian immigration to the United States illustrates both the economic and the political motivations that prompt people to make radical moves. Some Chinese (e.g., Hong Kong residents) and Vietnamese do not care to live under communist rule where they may face economic hardship and political repression. Philipinos, Indians, and Koreans have likely been motivated more by economic opportunity than by political repression.

Nine of the top ten countries of origin for foreign-born U.S. residents are countries where economic opportunities are scare or at least unpredictable. The only European country in the top ten is Great Britain, North America's motherland. This lends credibility to the thesis that people immigrate for economic reasons. However, there remains the special case of the political refugee.

C. Political Refugees

Some people in the world literally have to run for their lives. Civil wars in Africa and Asia and both radical and state sponsored terrorism in Latin American and the Middle East have produced hundreds of thousands of displaced civilians. Natural disasters like volcano eruptions in The Congo – and their political aftermath -- have created even more. There are roughly 20 million known refugees today. One-third of them are located in Southwest Asia, North Africa, and the Middle East; another third are in Sub-Saharan Africa. The rest are dispersed throughout the world. Many political refugees live in huge camps operated by the United Nations. Only the most fortunate have the resources to immigrate to a safe host country. The vast majority of them are trapped by poverty in proximity to the terrors that they have fled.

Refugee policy and its enforcement differ by country around the world. A national state may offer refuge for oppressed or traumatized people for any of a number of reasons. The motivations can range from humanitarianism to political expediency. The culture of the host country may prescribe that hospitality be offered fellow Muslims as is the case with Iranian acceptance of Afghani refugees. Or domestic politics may constrain such hospitality as in the case of Pakistan's periodic closure of its border with Afghanistan. Any national state has the right to open or seal its borders.

International organizations encourage the humane treatment of refugees. In recognition of its humanitarian activities, the office of the United Nations

High Commissioner for Refugees (UNHCR) was awarded the Nobel Peace Prize in 1954 and 1981. This international relief is often combined with practical aid delivered by private nongovernmental organizations. Virtually all national states pay lip service to aiding political refugees and the survivors of natural disasters, but few transcend their self-perceived national interests to do so. Unfortunately, the ethnicity, religion, or politics of the refugees frequently determines who helps them in their time of need.

D. Permanent Residents

Time passes, and the conditions may never emerge for economic migrants or political refugees to return home. They remain as legal or illegal aliens in a host country. Mass media and immersion in the host culture may gradually transform the new arrival into a member of that society. Some immigrants seek citizenship in the host country. Others seek approval to stay as permanent residents. Yet others see their children and grandchildren merge into the mainstream culture. Some lose the language and culture of the old world, and perhaps intermarry and adopt the ways of the new country. Others cling to the old ways and denounce aspects of the new environment in which they live. There is a wide range of experiences among the immigrants who become permanent residents of their host country. There is no single formula of assimilation.

Immigrants and the children of immigrants will rarely forget their foreign roots altogether, nor should they. Ethnic pride and cultural preservation are virtues worth defending. And yet the fabric of the national state must be constantly rewoven as successive waves of immigrants enter the country. What was alien becomes familiar to both the new immigrant and the old resident. Eventually, an accommodation is reached in the neighborhood, school, and workplace. Outsiders become insiders.

Nevertheless, immigration shakes up the nativist view of the nation state. Once a distinctive people's homeland, the modern national state evolves into a more rationalized form of government. The increasingly diverse population does not share all of the cultural baggage of the founders. Instead of embodying the folk wisdom of a founding ethnic group, the law becomes the shield for protecting old-timer and newcomer alike. The constitution becomes a living document whose meaning changes with changing times. Bedrock principles may remain the same, but the modern nation state has had to change to accommodate a world of people on the move.

IV. The National Rule of Law

No principle is more central to the life of modern national states than is the rule of law. The immigrant cannot seek the protection and comfort of tradition or custom in his or her new country. Neither can the minority group member count on the good will of majority group public opinion or popular

votes. The newly successful woman cannot let herself work at the mercy of an old boy network. Neither can gays rely on the open-mindedness and goodwill of the heterosexual majority. We no longer live in folk states; we live in nations of laws.

The majority ethnic group in a national state does not go quietly when its position of advantage is challenged. In the United States, 19th and early 20th Century politicians tried to enact laws to disenfranchise women, African Americans, and immigrants. Race laws were passed and enforced in immigration rules and civil and criminal courts (Jacobson, 1998). But the American apartheid could not withstand the steady challenge inspired by it's the country's own Declaration of Independence. If we were all created equal with inalienable rights, then how long could the laws enshrine racial preference? The great debt owed the Civil Rights Movement of the 1960s is that it laid to rest once and for all the primacy of law over prejudice.

The emancipation of repressed people has not been an American phenomenon. For generations, people around the world have read Jefferson's words and taken them seriously. Mahatmas Gandhi, Martin Luther King, and Nelson Mandela have all been international as well as national heroes. Eleanor Roosevelt spoke out for women all over the world when she served as the U.S. Ambassador to the United Nations. The subject is so immense that we devote the next chapter to examining the liberty interests of civil society. For now, the critical point for understanding the modern nation state is that it has become a

legalistic entity. Even this narrow focus adds volumes to our understanding of the nation state and its prospects as a form of government suitable for the 21st Century and beyond.

A. Primacy of the Rule of Law

In a properly functioning national state, everyone is subject to the law, and no one is above it. We may approve of the laws that are on the books, or we may disapprove of them, and yet none of us is free to ignore or violate them. This somewhat rigid view of the law is not popular with liberation scholars who see the law as an instrument of repression. However, it is hard to imagine any protection of the weak or the newcomer in the absence of the primacy of the rule of law.

Citizenship makes equals of us all. This is the truly revolutionary notion embedded in the modern national state. We are not subject to our governments; they are constituted by us for our convenience. That having been said, anyone born within the nation's boundaries enjoys the full measure of his or her citizenship. We are not captive of our social status; there are no degrees of citizenship. For the weak or the newcomer, this makes securing citizenship a great quest. For the native born, the power of citizenship should not be taken for granted. Citizenship is the fundamental guarantor of our human and civil rights. And the rule of law guarantees these rights.

B. Constitutional Law

A bulwark for the national protection of citizenship rights is the national state's constitution and the constitutional court that enforces its precepts. Written guarantees of rights are enumerated in the constitutional document, and special courts are charged with ensuring that acts of government at all levels respect citizenship rights. Some examples of constitutional safeguards are the prohibitions against torture and forced confessions, requirements for a legal warrant to search a citizen's home, and the right to legal counsel for criminal detainees. Such rights might be outlined in the constitution or in a companion bill of rights.

Without oversight of the constitutional guarantees of rights, government actions go unchecked. Even with constitutional safeguards, the growing power of the state to dominate the individual has increased throughout the world. There is even a passing temptation to forgo some rights. Citizens with heightened concerns for personal security may actually be willing to sacrifice rights for protection. This is why constitutional law is relatively insulated from transient public opinion and political expediency.

C. Statutory Protection

In addition to constitutional protections, modern national states typically enshrine specific citizenship rights in statutory law. A legislative body might enact a law that makes it illegal to discriminate in housing sales based on race or

religion. Or a law might protect voting rights, property rights, or work rights. The statutes that protect these rights flesh out the details of citizenship protections that are stated in general terms in the national constitution.

The relationship between custom and statute is a complex one. All laws embody value judgments, and a society's customary practices typically reflect habits of mind born of religion, ethnic identity, and shared culture. However, the modern national state serves such a heterogeneous population that customs are not universally recognized throughout the society. It is therefore necessary for the secular political authorities and not cultural leaders to officially sanction protections and encode them in the rule of law.

Rights are dynamic. New threats to individual autonomy and privacy constantly arise. Today, we may be concerned with the unauthorized sharing of computer records, but tomorrow even our genetic codes may require protection. We will have more to say about the protection of rights in Chapter 3 (on Liberty) and Chapter 10 (on Equity). But for now suffice it to say that rights policy is a continuing concern for legislators, political executives, and public administrators as well as jurists. A stream of advocacy for enhanced citizenship rights flows into government decision-making processes at all levels. Effective human rights protections require effective public law.

D. Treaties with Autonomous Peoples

Few national states have been created in purely open, unclaimed land. There are often *indigenous people* living on the land who have been there for many generations. Examples would include American Indian tribes and the Aboriginal people of Australia. Some indigenous people choose to integrate with the greater nation; others do not. In some cases, national governments will recognize the rights of groups to live apart as autonomous, largely self-governing communities. Land sometimes is set aside as a reserve or reservation for such purposes. The agreement between the indigenous group leaders and the national government may take the form of a treaty. Since the ability to sign a treaty is an act of sovereignty, the national state is at least partially acknowledging the autonomous claims of the group. And yet whatever accommodation is to be made must be incorporated into plans for the national state.

Ideally, national cohabitation can function effectively with both the interests of the indigenous people and the broader society being served. But few governing issues go that smoothly. The American Indian Movement (AIM) has voiced complaints about the policies and behavior of federal officials in the United States. Government officials may not always respect religious practices, burial customs, language preferences, communal property agreements, and other features of a group's traditional culture. Complaints about compensation for expropriated lands and the violation of human rights have led to conflict in South and Central America, parts of sub-Saharan Africa, and Southeast Asia.

The rights of ethnic and linguistic minorities are not always secure, even when treaty law is in place to protect them. Indigenous peoples are always on guard to protect their limited sovereignty and their native traditions and rights. Perhaps the treaty route is a “useful fiction” that enables both parties to achieve some of what they want within a national context that both can abide.

E. Conclusions About the Rule of Law

Constitutional law, statutory law, and special treaties provide a required code of behavior that restrains government officials and private citizens from encroaching on citizens’ rights. The equal protection of the law is something that each citizen must be able to rely upon whether one is a descendant of founders, a life-long citizen, an immigrant newcomer, or an indigenous resident. The potential tyranny of government officials or of voter majorities can only be counterbalanced by codified respect for minority and individual rights. If a neutral judiciary can impartially apply a law of civil protections, then the national state comes to be founded on law rather than shared ethnic identity. Since we cannot expect modern national states to be homogeneous in an era of worldwide mobility, then we best hope that the primacy of the rule of law can bind us together.

Exploring on Your Own 2.2 The Worldwide Immigration Phenomenon

Who are today's immigrants in Europe? Use a Web-based search engine to inquire about the country of origin of immigrants to France, Germany, Great Britain, and the Netherlands. What would you expect are the motivations of these immigrants? Are they seeking political asylum? Are their motivations largely economic? How are they being received? Do preexisting residents of those European countries welcome or resist the immigrants? Are employers pleased? What if any new politics is this causing within these countries?