

Philosophical Perspectives on States and Immigration

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Introduction: 'irresistible forces meet immovable ideas'¹

Migration is part of the human condition and is a fundamental fact with which political theory must contend. Where economic or other gradients are sufficiently strong, they create what is essentially an irresistible force for migration; in such cases democratic states tend to find it impossible to stop illegal immigration, if legal immigration is limited. Yet contemporary political theory debates immigration in terms of ideas which prescind from these realities, and which moreover are not always interpreted correctly in their implications for immigration. Three such 'immovable ideas' – sovereignty, democracy, and nationality – are explored in this chapter. I do not pretend here to offer a comprehensive approach for analyzing immigration in normative terms, but rather survey grounds for scepticism about the way these three values are commonly invoked in relation to immigration. Before turning to these normative considerations, the remainder of this introduction elaborates on the sense in which migration may count as an 'irresistible force', one which both precedes and in crucial respects supersedes modern states.

A survey in *Scientific American* of 'The Migrations of Human Populations' declared: 'Human beings have always been migratory' (Davis 1973: 93). Palaeolithic humans had already reached every major part of the globe except for Antarctica; it is only by migration that the globe became fully peopled in all of its habitable parts. The same source suggests that 'migration is generated by significant differences between one area and another' (Davis 1973: 100).² These differences, according to Davis, may lie in the environment, in the technological inequality of human groups, or in the demographic composition of those groups (so that groups with excessive young men send them to emigrate, an important factor today driving emigration from the non-EU countries of Mediterranean and eastern Europe into the EU³). Global migration is not an optional, adventitious or minor process which may be conveniently ignored in thinking about politics, in the way that John Rawls abstracted from it in assuming that one could make a reasonable (if simplified) model of political society as a closed community entered only by birth and exited only by death (Rawls 1971). Migration is not marginal or dispensable to politics, even though the terms and drivers of such migration have varied significantly over time.

Today, as in the past, global economic gradients of difference are among the most salient differences motivating migration. Setting aside the cases of refugees and many internally displaced persons, much of current and future global migration is essentially an

¹ I borrow this wonderful phrase from the subtitle of Pritchett 2003, who discusses global migration as an economist; my discussion here aims to complement his by drawing on political theory and the history of ideas.

² For a sophisticated account of the dynamics of migration over time, see Malmberg 1997.

³ Holzmann and Münz 2004: 3-7.

economic phenomenon, yet that fact is too often obscured by the narrowly political terms in which it is debated by political theorists. Modern societies have indeed two animating principles – the political and the economic -- which correspond to two different and sometimes conflicting bases for belonging to and in a society. It has been argued that the conception of full citizenship itself in the last hundred years rests as much on working as on voting⁴, in part because some social rights are conditioned on whether and how much each citizen has worked. Indeed working is widely viewed as more of an imperative than voting. And the discipline of the market driving people to work is relied upon at local, national, and global scales. Yet at the global level individual migrants are often criminalised for responding to the economic incentives which the global economy relies upon for its functioning.

In early modern mercantile states, it was skilled would-be emigrants whose movements were typically restricted, while immigrants were largely welcomed to build up population and wealth.⁵ In the last half of the twentieth century, the inverse is true: it is immigrants whose entry is typically restricted or barred, because jobs and welfare are now widely (if sometimes wrongly) assumed to be scarce and zero-sum goods. The result is a catch-22 for would-be immigrants, is captured in the defiant statement of the then President of Mexico, Ernesto Lopez Portillo, about illegal Mexican migration to the United States: “It is not a crime to look for work, and I refuse to consider it as such” (quoted in Teitelbaum 1980: 46⁶).

It follows that wherever there is a strong economic gradient attracting immigration; states that are integrated into the global economy are unlikely to be able fully to prevent it, though they have the power to force it into illegal channels by restricting the legal ones. In such circumstances, liberal democratic states are likely to lack not only the ability but also the concerted political will to prevent illegal immigration, since some employers and consumers depend on it and can exert political voice (if *sotto voce*) in its favour. (Non-democratic states may be able to crack down on immigration more ruthlessly, but again, to the extent that they are integrated into the global economy, they will be less able to prevent a ‘natural’ flow of it altogether.) Some developed economies may even depend on such a black market in cheap labour in order to compete effectively. In such circumstances, it has been remarked that policy makers may seek to ‘finesse social insecurities while concurrently maximizing economic gains...by shaping policy to address *fears* rather than *flows*’.⁷ Where that is the case, perceived economic necessity operates in contradiction to proclaimed political principles.

How should we approach such a conflict between self-conceived political and economic imperatives? Two possible analogies may help to clarify this question. One

⁴ Shklar 1991 makes this point for American citizenship but it applies more generally.

⁵ For more detailed accounts of mobility regimes in Europe into the early twentieth century, see the essays in Part III of Caplan and Torpey 2001.

⁶ Teitelbaum’s own reference is to Peter H. Smith, *Mexico: the Quest for a U.S. Policy*, The Foreign Policy Association, New York, 1980, 26.

⁷ Christopher Rudolph, *Security and the Political Economy of International Migration*, Institute of Governmental Studies, Berkeley, 2002, 36, emphasis original. John Tirman, who quotes this comment, himself remarks that in the 1990s ‘[p]olicy makers in the United States and Europe tended to make relatively minor adjustments in immigration policy, coupled with highly visible attempts to police borders to prevent illegal immigration. The latter...has had a minor impact on overall numbers of immigrants’ (Tirman ed. 2004, 8-9).

might think that the state's ability to control illegal immigration is like the state's ability to control domestic crime. It is central to the definition of the modern state that it monopolizes the means of legitimate violence and so in principle excludes the possibility of violent crime. Yet no modern state succeeds in preventing violent crime altogether, and this does not impair its legitimacy so long as it maintains some sort of cap on the level of such crime and also succeeds to some degree in punishing its perpetrators. Some governments are able to put up with quite widespread crime waves without losing legitimacy altogether.

But the flaw in the analogy is twofold: immigration, unlike ordinary domestic crime, has supranational drivers; and to the extent that it is economically valuable to the destination country, it benefits the very state that is theoretically committed to suppressing it. So the idea that states are committed, and able, to preventing illegal immigration altogether, must be treated sceptically. It is a claim which states may believe about themselves, and which starry-eyed theorists may also believe, but which is not necessarily a cornerstone of political life or of meaningful political theorising in democracies today. It is a shibboleth of modernity, one which is not necessarily true of modernity but which is central to the way that moderns view themselves (see a parallel argument in Latour 1993).

The second possible analogy is between illegal immigration and prostitution. Enlightened approaches to prostitution, such as those embodied in recent policy in Italy and Sweden, acknowledges that there is at present an irreducible demand to which individuals prostitutes are rationally responding. Prostitution is demand-led. If prostitution is viewed as socially undesirable, therefore, it is politically rational to treat the seeking and purchasing of paid sex as the more significant crime than the providing of it. Sweden accordingly now criminalizes the seeking of paid sex and the paying for it but has decriminalized the offering of it.⁸

This analogy usefully suggests that to the extent that politicians seek to prevent or punish illegal immigration, they should do so by putting heavier penalties on the employers of such labour who create the demand for it than on the desperately poor people who merely respond rationally to that economic demand from a relative position of market weakness. Such a redistribution of penalty could be supplemented by a policy of allowing migrants to remain in the country if they are caught while employed and while having been employed for a certain period of time.⁹ But the difficulty with this analogy is again that while the economic activity associated with prostitution is not normally seen as a significant public benefit or desideratum, the economic activity associated with illegal immigration is often a major contribution both to the unofficial and the official economy in multiple sectors. Whereas in many states public policy would prefer to eliminate prostitution if it could, few states want to eradicate the many parts of the agricultural, food, and service industries which may rely on illegal immigrant labour.

The failure of both crime and prostitution as analogies for illegal immigration reveals the latter as a special kind of problem for modern liberal democratic states in the

⁸ As described in *International Herald Tribune*, 25 April 2004.

⁹ The principle of time links also to a useful proposal in Hammar 1994: 195-7, that an international agreement should be reached fixing the maximum period of time after which states ought as a rule to transfer applicants from a lower to a higher immigration status in the sequence of entrant, denizen and citizen status.

global commercial economy. It is at once a concomitant of the global economic system and an apparent scandal for domestic political ideas. Yet our ability to discuss this predicament – the irresistibility of migration in certain circumstances, and the factors driving actual state responses to it – is distorted by clinging to an illusion about what the values of sovereignty, democracy and nationality entitle or require us to do.

In the remainder of this chapter, I shall argue that the common assumptions about what each of these values entail for immigration are mistaken, but that a more subtle interpretation of each value exists which does shed helpful light on migration. Our best theories of *sovereignty* do not rest (*pace* popular belief) on state control of immigration, though they do appeal to the principle of individual consent (not state consent) which can help us in understanding naturalization. Our best theories of *democracy* do not, similarly, rest on a club-like control of admission and exclusion, though they do appeal to a principle of democratic inclusion which likewise gives guidance on the question of naturalization. And our best theories of the value of *national* culture and *identity* do not, as many think, automatically outweigh the interests of immigrants in admission.

Scepticism about these claims can open space for policies which are at once more hard-headed about the actual cost of immigration restrictions and more creative about finding ways to handle the inevitable pressures for immigration. Once we are no longer self-blinded about what sovereignty, democracy, and nationality permit or require in this area, we can perhaps avoid some of the self-binding traps which currently bedevil our policies. When ‘irresistible forces meet immovable ideas’, it is the latter that must give way.

Sovereignty

Consent, representation, and the natural jurisprudence of political obligation

None of the great theorists of the emerging European state and state order – Grotius, Selden, Hobbes, Locke, Pufendorf, Rousseau, and Kant -- saw immigration as central to their theories of sovereignty and political obligation. The discussion of political obligation in this tradition seeks to legitimate political authority with reference to each individual and their obligation to obey.¹⁰ That problem is solved by focusing (in diverse ways according to each individual theory) on the individual’s binding himself, or having sufficient reason to consider herself bound, through the notion of consent linked to representation or participation.¹¹ Consent is thus classically conceived in terms of whether, and how to know whether, the individual consents to the establishment of sovereignty and to the formation of a political community. It has nothing to do with whether either the sovereign or the community consent to his or her being included in it.¹²

¹⁰ For an overview of this tradition, see Tuck 1993.

¹¹ I must dissent from one point made by Rainer Bauböck, that Hobbes’ explication of the process of mutual authorization of the sovereign means that ‘all individuals must have in some way consented to the membership of each’ (Bauböck 1994c: 56). Hobbes means that each person’s transfer of right to the sovereign is conditional on any and all others who will live under that sovereign doing the same.

¹² *Pace* Hampton 1995: 89, whose insistence that consent must be a two-way street – not only the potential member or immigrant consenting to political membership, but also the state consenting to her joining it – wrongly imposes current assumptions on her account of the tradition.

Far from dictating that states must consent to and control immigration, the classic European account of sovereignty focuses attention rather on the acts and choices of individuals themselves. Ironically, this complex of concepts is peculiarly well suited to accommodate immigrants, who according to these theories need only adopt the right self-conception and attitudes, and perform any necessary acts, to acquire the appropriate relationship of membership to a state. The real core of the doctrine of sovereignty is individual consent, not state control, and this means that sovereignty is rightly understood as a guide to naturalization (which on these theories is eminently possible) rather than as a barrier to it. For neither consent nor representation, as operationalised by these thinkers, depends on native birth. Even for Rousseau, who stressed the need of a people to share a common way of life in order to formulate a general will consenting to fundamental legislation, this way of life is a matter of customs, holidays and language rather than a matter of birth or blood.

No more than the philosophers did early modern rulers rest their claims of sovereignty on the control of immigration. Sovereignty was a matter of dynastic or constitutional claim, independent of the actual composition of the nation. Of course we must distinguish between the grounds of sovereignty and its concomitant powers. Sovereign states have long intervened in migration and assumed their entitlement to do so, an entitlement asserted in the United States from 1837 (*City of New York v. Miln*) and crystallized in 1889 (*Chae Chan Ping v. United States*) in the Supreme Court's declaration that the power to exclude foreigners is an incident of sovereignty unrestricted by treaties, previous statute, or constitutional limitations (Konvitz 1953: 1-2)¹³. But while sovereign powers may include the right to control immigration, the justification of sovereignty and its relationship to the individual does not rest on the exercise of that right. And indeed the motivation of sovereign states to exclude immigrants has historically been a function of policy and the conception of interest and advantage, rather than a deduction from theories of sovereignty.

Sovereignty is not, of course, the only value invoked to justify limitations on immigration. Democracy and nationality also play key roles here, and indeed were historically crucial in the reconfiguration of the political view of migration. I will consider here arguments of two of the most eminent theorists of each value respectively, Michael Walzer on democracy and David Miller on nationality, in the course of questioning whether these values do imply the strong entitlement of states to control immigration which Walzer and Miller assert.

¹³ The view was reasserted in the majority opinion in *Knauff v. Shaughnessy* 338 US 537 (1950), when Mr Justice Minton wrote: 'The exclusion of aliens is a fundamental act of sovereignty. The right to do so stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation'. But in a dissenting opinion in *Harisiades v. Shaughnessy*, 342 US 580 (1952), Mr Justice Douglas challenged the majority view that this was a plenary power unrestricted by the Bill of Rights: 'Why this implied power [to deport aliens - implied by sovereignty and the power delegated to Congress to establish a uniform rule of naturalization - Constitution Article I, section 8, clause 4] should be given priority over the express guarantee of the Fifth Amendment [right to life and liberty] has never been satisfactorily answered.' Both quotations, discussion, and parenthetical insertions from Konvitz 1953: 3; I owe the *City of New York v. Miln* reference to Aristide Zolberg.

Democracy

Michael Walzer's widely quoted contention that '[a]dmission and exclusion are at the core of communal independence' does not exclusively refer to democracy, but it does derive such force as it has from the image of a political community as a self-determining club whose first order of business is to decide who is in and who is out. His dictum nominally applies to ancient Athenian democracy, where the status of citizenship was jealously guarded and claimants suspected of fraud were likely to wind up in court. Here, democratic citizenship was seen as a source of privileges, including the privilege of political participation, which depended and could be accorded only to a bounded realm of participants.¹⁴ But it is important to see that this did not mean that Athenians conceived themselves as constantly deliberating about who should be in and who out, on the model of a club to which Walzer's contention is readily linked. For Athenian citizenship was normally limited to those born of two citizens (women for this purpose being accorded a certain status as citizens, though one not possessing rights of speech or voting in the democratic institutions). While a few metics and foreigners were naturalized each year by a complex procedure of the Assembly, the identity of the *demos* was largely and publicly treated as being fixed by inheritance, as was numerically overwhelmingly true.¹⁵

The idea that democratic communities are constantly exercising such deliberation about admission and exclusion is modern rather than ancient, born of the confluence of new state powers and technologies, economic relationships, and conceptions of naturalization and citizenship. But although we now tend to think of democratic states as clubs able to pick and choose whom to let in, this image is at odds with the economic force-field which attracts new residents into all but the most authoritarian states, legally or illegally, whenever certain gradients are sufficiently steep.¹⁶ Once illegal immigrants have integrated into the society in terms of work, education, residence, and social belonging, it becomes both impractical and evidently unjust not to grant them at least a path towards full citizenship. Hence the amnesties which have been periodically granted in the United States, Italy, and elsewhere.¹⁷

Whereas the common view of democracy is as implying club-like democratic control, a more realistic understanding of the value of democracy in relation to immigration is as implying the value and practices of what I will call democratic

¹⁴ Feudalism, however, shared to some extent in the view of membership of the political order and place in its hierarchy as a privilege. Even now the privilege attaching to birth in a rich country retains an air of feudal privilege, as several scholars have remarked (see for example Carens 1987, 252).

¹⁵ Hansen 1991, 88, 90-1. Hansen records however in the same pages that in 338 B.C. all metics were briefly made citizens, and all slaves freed, of fear of the advancing Philip of Macedon, an observation I owe to Richard Tuck.

¹⁶ Another gap in such control arises from the empowerment of individuals to bring new members into the political community by marriage or long-term partnership. This was until recently in many countries a prerogative of men rather than women, but it still remains a prerogative of individuals without reference to any club-like vote on the spouses or partners so incorporated. A club into which every member is entitled to introduce a new member at will lacks an important measure of the collective control which clubs normally command.

¹⁷ On the regularity of amnesties in Italy in recent years, imposed by coalition governments of the left and right alike, see Einaudi [XX]). On the injustice of refusing such a path to inclusion, see Miller forthcoming: 16-17; Walzer 1983; Barbieri 1998: 4 and *passim*; more subtly, Bauböck 1991, 1994b, 1994c, and Hammar 1990.

inclusion. Democracy conceived as democratic inclusion values the full recognition of all those who have become incorporated into a society through work and residence. As Rainer Bauböck argues in this volume (Bauböck [XX], those who are so incorporated deserve the chance to become full citizens, though they should not be coerced to do so. But if this path to citizenship is acknowledged, then the idea that the state maintains full plenary powers of deciding upon admission and exclusion as part of the definition of its democratic identity, becomes untenable.

Walzer's conception of admission and exclusion as key to political membership is not, therefore, a universal or timeless truth about the nature of politics or even democratic politics. It attaches only to a relatively active and arduous conception of such membership as conceived in terms of democratic rights and participation, which is grafted onto the somewhat recalcitrant skeleton of the sovereign modern state. And even where such a conception finds support, it remains at odds with the actual economic imperatives driving immigration and then its regularisation.

The club-like image which Walzer defends must be further qualified on liberal grounds, given that state 'clubs' monopolise the supply of goods crucial to the whole course of life. Most importantly, Walzer's conception misdirects our attention in the area of democracy, focusing exclusively on collective control and decision-making while obscuring deeper areas of democratic values. The democratic value of inclusion and the older logic of incorporation by sovereign-constituting consent, in which all living under a reasonably benign regime both can and should (be able to) obligate themselves to it, are better guides to what democracy requires in conditions of economic globalisation and inequality than is the old-fashioned image of the democracy as club.

Nationalism

The final value to be examined here as a putative justification for state control of immigration is nationalism. In its mid-nineteenth century heyday, John Stuart Mill already identified its impact in conjunction with democracy in leading to the view that state and national boundaries should coincide, writing in *Considerations on Representative Government* (1861) that '[i]t is in general a necessary condition of free institutions, that the boundaries of governments should coincide in the main with those of nationalities'. Again, this is an idea – child both of the French Revolution and of the resistance to its spread across Europe – which has come to seem natural though scarcely fully realized, since in a world of a limited number of states, some nationalities will inevitably be submerged in the states of others.

Nationality, and its modern re-envisioning as the idea of cultural identity, has come to play an important role in debates over immigration, both practically (as in the Latvian immigration and citizenship policies to which Bauböck 1994b draws attention) and ideologically. While conservatives appeal to the need to protect national or cultural identity, a band of 'liberal nationalists'¹⁸ among political philosophers have recently been arguing that liberals too have good reason to value and promote national identities for the sake of individual flourishing and well-being. Such arguments however generally fail to

¹⁸ Alan Patten helpfully groups David Miller with Will Kymlicka, Joseph Raz and Yael Tamir under this rubric (Patten 1999: 4).

prescribe a metric for how the value of national identity to some individuals -- those in an existing state to which immigrants seek entry -- should be weighed against the value of freedom and opportunity which immigrants seek to enjoy. In the absence of such a metric, liberal nationalists often speak of ‘balancing’ these interests, but tend to assume that national identity is sufficiently important as to at least balance against, if not outweigh, the values which immigrants pursue. By examining one such argument, in the work of David Miller, I seek to show that the idea of a balance¹⁹ here is problematic; that historical precedent should make us wary of the claim of ‘nationality’ in immigration debates; and that the framework of freedom rather than justice is the appropriate one for evaluating the claims of immigrants.

In his first major work defending nationality as a political principle, Miller was relatively sanguine about immigration so long as the immigrants accepted political structures and were willing to enter into dialogue with the existing population in order mutually to fashion an evolving national identity.²⁰ More recently, however, Miller has identified what he believes to be two good reasons justifying the right of liberal-democratic states to limit immigration. He begins by rejecting the idea that migration is a fundamental human right, an argument which it behoves us to scrutinize before proceeding further. Miller rejects the idea of migration as a human right by suggesting that ‘decent states’ are able to secure for their citizens both basic rights and also an adequate range of options that makes their autonomy meaningful (here, Miller is influenced by the Oxford philosopher Joseph Raz’s *The Morality of Freedom* (Raz 1993)). According to Miller, citizens of such decent states do not need the opportunity to migrate in order to make adequate use of their autonomy and to enjoy an adequate range of opportunities; citizens of non-decent states may become refugees.

Miller’s invented sociological category of ‘decent state’ is however wildly over-optimistic. Some states may offer basic rights but not adequate options, while many others will provide neither to at least some citizen groups. Further, the judgment by citizens of the rich countries that citizens of much poorer countries enjoy an ‘adequate’ range of options and thus may be deprived of the freedom to migrate, smacks of hypocrisy and paternalism. As for the fate of those condemned to be born into non-decent states, the category of refugee is wildly inadequate, since many citizens of non-decent states suffer neglect rather than the state persecution which limits the category of refugee in international law.

Indeed, it is symptomatic of Miller’s discussion, as of others tending to reject cosmopolitanism in favour of the moral claims of nationalities and states, that the question of the right to migrate is discussed under the rubric of justice rather than freedom. If would-be immigrants can be shown to have no claim of justice upon ‘us’, then their claim can be legitimately rejected. Even some moral cosmopolitans have rejected the idea of a right to global migration on the grounds that it is not an effective

¹⁹ For a comparable argument about the problems involved in the idea of ‘balancing’ security and liberty, see Waldron 2003.

²⁰ Miller 1995: 129. In an intervening collection of papers on citizenship and national identity, immigration appears only six times in the index, and again the conclusion is that ‘immigration need not pose problems, provided only that the immigrants take on the essential elements of national character’ (Miller 2000: 30).

way to conduce to greater global justice, since obligations of justice to the global poor are owed to all the poor rather than a small self-selected group of would-be migrants.²¹

It may be conceded that global migration will not establish global justice, though its economic impact in reducing poverty is non-negligible (Holzmann and Münz 2004). But it must be reciprocally conceded by the liberal nationalists that the claims of existing patterns of settlement to justice are themselves extremely dubious. (Why is it fair that I should benefit from American citizenship, but a child born in Argentina in the same year as me should not, simply because my great-grandparents were allowed into the United States from eastern Poland in 1890 and hers were not?) Attempting to establish the baseline justice of the existing dispensation, on the basis of which the claims of migrants may be assessed, will at best result in stalemate.

Freedom, however, provides an alternative argument to that of justice. Just as capitalism need not be defended on the grounds of wealth-production but may rather be defended in terms of the sheer freedom to act and transact, so the right to migrate may be defended in terms of the sheer freedom to pursue better opportunities for oneself, irrespective of the fact that most will not be able to do so (my freedom to apply to Cambridge was not compromised by the fact that most of my peers were not in a position to do so). For those outside the bounds of effective national justice in the ‘West’, but forced to suffer the claims of a hostile or ineffective state, the freedom to try to better themselves is at least *prima facie* elemental and not hostage to the restrictions of an ever-deferred chimera of global justice.

This brings us to resume consideration of Miller’s argument. Rejecting a general right to migrate as noted above, Miller does accept that everyone has the right to emigrate and join at least some other society, but holds that this does not entail a right to join the society of their choice. States are entitled to choose their members, but they do not have the full prerogatives of a club, because the benefits of being citizens of desirable states are substantial and are monopolized by a limited number of states already (so that others cannot just go and start their own clubs). Therefore states may and should strike a ‘balance’ between their own important interests, and the interests of immigrants who desire access to such states, who have a ‘*claim ... -- if nothing else...a strong desire to enter*’ (Miller, forthcoming, pp.9-10, italics original). Two state interests in particular may be justifiably used to limit immigration: the interest in ‘preserving [their public] culture’ (p.10), and the interest in determining population size in relation to a chosen way of managing its ecological impact. According to Miller, striking a legitimate balance between these competing interests must exclude what he considers to be morally and socially insignificant or insulting features of potential migrants as criteria for admission or rejection. He argues that while the state interest in limiting immigration may override the interest of potential non-refugee migrants in gaining admission, it may not do so in morally irrelevant or insulting ways – such as by deciding on admission on the basis of sex, race, or hair colour.²²

²¹ See for example Pogge 1997.

²² Compare the argument in Bauböck 1997: 23 which also appeals to the monopoly of control over crucial life chances by states, and argues that ‘Die Beschränkung von Einwanderung bedarf guter demokratischer Gründe’ (‘the restriction of immigration requires good democratic grounds’, my translation). But Bauböck is sceptical of the relevance of some of the grounds commonly adduced here, such as national security, the protection of cultural identity, and the stabilisation of the welfare state, though he does hold a system of social citizenship rights to be a strong reason in this domain.

Miller nowhere establishes the respective weight of the interests that he would balance. The reader is not told why she should assume that the interest of some people in preserving their public culture is at least as weighty as the interest of others in the freedom and opportunity for a better life through migration. *Prima facie*, one might think that the individual interest in public culture – which may affect the goodness of one's life, by shaping the culture which shapes the options open to one – is outweighed by the individual interest in having a wider range of such options, in enjoying human security for what options that one does have, perhaps even (given the flaw in his argument about 'decent states') in having an adequate range of such options altogether.

There is also a serious flaw in Miller's conception of what it would be to strike a balance between competing individual and aggregate interests at all. In bracketing sex, race, and hair colour as his examples of features which should be ignored in immigration decisions, Miller seems to be relying on the liberal intuition that states should treat their citizens fairly, and that sex, race and hair colour are irrelevant to the moral standing or claims of individual citizens. But his own argument is that decisions about immigrants are not like decisions about the treatment of existing individual citizens. In considering the claims of immigrants, states (Miller holds) can rightly override the claims of individual immigrants in favour of general state interests and decisions about the welfare and lifestyle of existing citizens. Yet general state interests are precisely considered at the aggregate level at which sex ratios, for example, are far from irrelevant for matters of 'real significance' to the society.

So sex cannot be ruled out of court as a basis for immigration decisions consistently with the overall tenor and basis of Miller's argument. For indeed the sex of would-be immigrants might be held to be of great and 'real significance' to a society suffering from badly skewed sex ratios. If societies can decide for themselves how to balance the environment against population increases, why cannot they decide that to prioritize the improvement of adverse sex ratios by admitting immigrants of a certain sex? For those unsympathetic to the idea of a society mitigating its own flawed policies about birth (such as China's one-child policy which resulted due to public attitudes in a surplus of boys), consider a society such as the USSR after WWII which might have wished to mitigate the adverse sex-ratio caused by the war. If one is going to privilege general interests about the aggregate composition of a society, one cannot then hold that factors which affect that aggregate composition are *a priori* irrelevant to those interests, even if they arise from features of individuals which are morally arbitrary. Sex is a good example of the sort of demographic factor that will in the aggregate have serious implications for the general interest and welfare of a society.

What about race? Race is logically different from sex, since it has implications for general welfare only on views of that welfare and of the moral significance of race which liberals rightly reject as noxious. But national culture has often in the past been invoked as a proxy for views of race and ethnic identity which now strike us as invidious. Consider for example that 'shared culture' was invoked in the United States as grounds for blocking Chinese and Japanese immigration in the 1920s, and again in the 1950s to justify maintaining a system of national quotas which heavily favoured immigration from north western Europe (the UK, Germany and Ireland in particular) over south eastern Europe and the rest of the world (Konvitz 1953: 1-16). And race was blended with an appeal to cultural ideals and to ecological-population considerations in a mixture which

might give a liberal nationalist pause, in the U.S. House of Representatives Committee on Immigration and Naturalization report on what became the 1924 permanent quota law:

With the full recognition of the material progress which we owe to the races from southern and eastern Europe, we are conscious that the continued arrival of great numbers tends to upset our balance of population, to depress our standard of living, and to unduly charge our institutions for the care of the socially inadequate. [new paragraph] If immigration [sic] from southern and eastern Europe may enter the United States on a basis of substantial equality with that admitted from the older sources of supply, it is clear that if any appreciable number of immigrants are to be allowed to land upon our shores the balance of racial preponderance must in time pass to those elements of the population who reproduce more rapidly on a lower standard of living than those possessing other ideals...²³

While no liberal nationalist would contemplate racism in their defence of national public culture, the fact remains that culture has in the past served as a potent surrogate for race. If public culture is admitted as a legitimate interest to be weighed in the ‘balance’ against the interests of immigrants, the danger that invidious and collectivist considerations will sneak into the scales under its wing cannot be discounted.

In sum, Miller’s idea of a ‘balance’ between the interests of nation-states and the interests of immigrants is misleading, in that it facilitates the pitting of aggregate interests against the individual right not to be discriminated against. It becomes fatuous to protect the procedural rights of immigrants not to be turned away on trivial grounds such as hair colour, while allowing their more fundamental interests in liberty, opportunity, and human security to be overridden by state interests that may be far less important. The idea that immigration policy is ‘balancing’ the interests of states and those of would-be immigrants by refusing to consider hair colour as a criterion, is a curious notion of what it would be to balance an interest, and of the weight of the interests which immigrants have.

This is not to defend the making of immigration decisions on the basis of discriminatory criteria. Such criteria should be excluded, but they should be excluded as a rights-based trump or ‘filter’ because they offend values of democratic procedure, not as part of an exercise in balancing aggregate interests where their weight is only implausibly absolute.²⁴ The values of democratic procedure, like the value of inclusion, are elements

²³ Report to accompany H.R. 7995, 68th Cong., 13-14, as quoted in Konvitz 1953, p.11. This is a recurrent theme in debates about immigrants: the issue is framed not in terms of welfare or culture per se, but in terms of welfare for current citizens/residents on the basis of a certain set of cultural choices about lifestyle and reproduction. Migrants’ very willingness to tolerate a lower standard of living, and their different choices about reproduction, are held against them. Compare Max Weber’s similar strictures on Polish immigrants to East Prussia, in his Inaugural Lecture in Freiburg in 1895 (Weber 1994).

²⁴ Contrast with Miller the similar but more persuasive argument put forward by Bauböck 1997, who argues that democratic principles require the rejection of discrimination on the basis of, say, skin colour or religion, as the criterion for immigrant selection (p.22), arguing that since private clubs can no longer so discriminate, allowing states which monopolise crucial life goods to do so is even less justified (pp.22-23). But his examples escape the trap of Miller’s discussion of sex (on which see the present text, below), since skin colour is indeed socially irrelevant, while treating religion as barred grounds for discrimination would seem to suggest a rather sceptical approach to some claims at least about public culture. And most importantly, he imposes this rejection of discrimination as part of a set of ‘filters’ of normative principles, which he contrasts with an unstructured set of normative considerations which then have somehow to be reconciled or balanced (though he does not use the term ‘balance’) (p.21).

of democracy which are independent of the claim that the collectivity must control immigration through majority decision or the concern for public culture, concerns which I have shown to be flawed as bases for state limits on immigration. In considering the claims of nationality or culture versus the claims of immigration, we must take care to compare only like with like, true individual values rather than aggregate considerations masquerading as individual interests. A truly liberal nationalism would concern itself exclusively with the interests of individuals, and would not automatically assume that the interests of those already within the scope of the nation outweigh the interests of those outside it. As Friedrich von Hayek tartly asserted, ‘It is still loyalty to such particular groups as those of occupation or class as well as those of clan, nation, race or religion which is the greatest obstacle to the universal application of rules of just conduct’ (1982 [1976]: 149, 148).

Conclusion

I have argued that we have reason to be sceptical about the claims that either sovereignty, democracy, or nationalism provides fundamental reasons for state concerns to limit immigration. Once we see the state concern with immigration as less noble and fundamental, but rather the creature of circumstance and advantage that it is, we may be freed to consider among other things the real costs of the policies that are currently used to try to limit immigration. In other words, if such policies are not deontologically required by the very nature of our values, we must begin to count their consequential costs.

Those costs include the arbitrariness of the attempt to control flows which remain fundamentally beyond control, arbitrariness which severely damages the human security of migrant workers and inhibits their choices and opportunities. Enforcement and deportation are relatively haphazard and chancy events, and that they are often identified concomitant to other offences. The mass questioning of Arab men in the United States after September 11, 2001, for example, led to a large number of deportations on the grounds of minor immigration violations which would not have been discovered otherwise. Such an arbitrary regime increases the insecurity under which illegal migrants live, making them vulnerable to the politically motivated occasional crackdown, or the vengeful fellow employee. Such ‘unwritten rules’ of when deportation is actually likely to occur (a term I borrow from Alena Ledeneva’s analysis of Russian politics today (Ledeneva 2001)) are not consonant with the spirit of the rule of law, although they may comply with its letter.

Costs also arise from policies which are counterproductive. For example, if restrictions are tightened, migrants will tend to stay longer on their first trip abroad, or to settle permanently rather than seasonally, contrary to the preferences they would have had had they been more confident of their ability to return.²⁵ In sum, once the soberness of a consequentialist approach is admitted, one may well find that a remark by Steven Friedman is true beyond its original South African context: ‘current forms of control [of

²⁵ See the discussion of two studies of migration between Mexico and the United States in the context of NAFTA in Tamas 2004: 46-7.

migration, in South Africa] are a greater threat to human rights and democracy than the presence of immigrants'.²⁶

There are many other ethical and philosophical issues in the management of global migration, such as the particular vulnerability of women and girls (Bjerén 1997), or the issue of medical migration and the brain drain of workers in whom source countries have invested great human and social capital. It is hoped that this chapter, which has sought to remind the reader that migration is an ineradicable part of the human condition and to assess the claims and policies of states in that light (and also in the light of the history of ideas), may be of some indirect use in assessing and responding to these challenges. Global public policy must address a world of states which claim the absolute right to control migration, while acknowledging that migration is inevitable and that hardly any state will ever be able to control it completely. Policy reforms predicated on and addressing the world of states need to take state perspectives on their rights to control migration seriously, to be sure. But they are also well advised to consider such claims against the backdrop of constant and unceasing human migration both before and since modern states arose to assert such claims. The focus should therefore be on the pragmatic, since the theoretical claims are likely to be inflated. But this in turn puts severe pressure on what can and should be considered to be realistic or practical, since such judgments are themselves a function of economic and political perceptions, ideas, and mobilizations. There is no very secure ethical standpoint from which to survey the world of global migration, yet it is our world and we must endeavour to make all, whether migrants or not, at least reasonably at home in it.²⁷

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²⁶ Crush 1998: 3, quoting from a remark in Friedman's paper, 'Migration Policy, Human Rights and the Constitution', Briefing Paper to Green Paper Task Team on International Migration, p.7.

²⁷ I thank Rainer Bauböck, Seyla Benhabib, Martin Baldwin Edwards, Emile Perreau-Saussine, Jo Shaw, Richard Tuck, and Aristide Zolberg for suggestions relating to this paper. Special thanks go to David Miller for generously sharing unpublished work, and to Kristof Tamas for detailed comments on this and on earlier versions, which were presented at the 2nd Stockholm Workshop on Global Migration Regimes in June 2004 and the 'Migrants, Nations and Citizenship' conference at CRASSH (Centre for Research in the Arts, Social Sciences and Humanities), Cambridge University, in July 2004.

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