

CONTROL OF IMMIGRATION AND EXCLUSION

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The external dimension is largely ignored in the discussion of social exclusion, except to the extent that controls at the frontier may contribute to discriminatory practices within countries. But immigration controls are the most important and powerful instrument of exclusion and inclusion in the contemporary world. Their effects are more fundamental and more all pervasive than any process of exclusion confined within state frontiers. Keeping people out of countries maintains, and even increases, the enormous differences between rich and poor and makes intractable problems of establishing a just global order.

Also little notice has been devoted to Scottish dimension of immigration (although some literature exists – see Maan 1992). This has more justification - immigration policy has been decided at the UK level. Although asylum cases are heard in Scotland and there is a Scottish Council for Refugees to provide advice and support to asylum seekers, UK guidelines are followed in the treatment of these cases. However, just as German Länder have made their voices heard on immigration and asylum policy, a Scottish debate may emerge as a result either of the exercise of financial responsibilities of the Scottish Parliament or of the different pattern of immigration into Scotland from the rest of the United Kingdom.¹ In the longer term, if Scotland moves to independence, the debate on immigration policy would become the same as for other European states. It would raise fundamental questions about citizenship and the political order.

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¹ *A different pattern already exists but it is one which does not encourage a Scottish debate. According to the 1991 census, there were only 62,600 non white residents in Scotland (1.3% of the population) as compared with 2,910,900 in England or 6.2% of the population.*

In the European policy debate and in public opinion, EU states are often assumed to be passive receivers of immigrants. This is not so – states have often facilitated the emigration of their nationals. The UK did so in the late 1940s and 1950s through helping to finance emigration to the 'old Commonwealth' (Paul 1997, Chapter 2). States have an interest in international exchange and often provide incentives to migration, and in certain circumstances actively recruit labour (Joppke 1999). Nonetheless, immigration is often represented as an 'unnatural' phenomenon, as somehow disrupting the natural balance of societies. However, specific issues, concerning for example the financial and social support given to asylum seekers, can give rise to a general consideration of the proper bases of immigration policy. This article is devoted to these general issues, first, by outlining the present situation, second by describing the mechanisms for immigration control, third by considering arguments against and for control, fourth by outlining the reasons why immigrants are regarded as a threat. The conclusion is that the terms of the debate on immigration should be changed, although the possibility of this happening is not good.

OUTLINE OF THE PRESENT SITUATION

The frontiers of states, along with other controls, have served and still serve as filters to exclude non-citizens from state territory. Most non-citizens are allowed to cross frontiers as temporary visitors and some non-citizens are allowed to reside in the territory of rich states with relative ease, if they come from other rich states or to study or bring economic benefits through professional or technical expertise, trade or investment. Greater obstacles are usually placed in their way if they come to work.

Refugees are regarded as a special category and, in principle, are treated differently. States have entered into obligations under the 1951 Geneva Convention and the New York Protocol to that Convention of 1967 to give them safe haven. This worked well enough when refugees arriving in western Europe were mainly those from the Communist bloc countries but much less so when large numbers of asylum seekers commenced arriving from the poorer countries of 'the South'. European states, including the UK, have restricted, as far as they can, these obligations. The EU is developing some state-like characteristics in that the external frontier of the Union is a filter for entrants to the territory of the Union as well as the frontiers of individual states. Since fixed frontier controls have been abolished at the so-called internal frontiers of the EU (excepting the UK and Ireland), the controls at the external frontier are assuming greater practical importance.

Scottish Affairs

States retain, as a general rule, the absolute right to determine who is allowed access to citizenship and to residence on the territory of the state. The important exception in contemporary Europe is that citizens (but not yet legal residents who are non-EU citizens) of EU member states have the unqualified right to entry and to establishment in other member states. Together with the desire to identify ordinary people with the EU, this has given rise to the notion of European citizenship. Citizens of all member states enjoy the same or reciprocal rights in economic and social matters and, since the Treaty of Maastricht, they have limited political rights in other member states. This is not citizenship as it is generally understood because the states retain exclusive rights of deciding who is a citizen and on what criteria, but it is the embryo of either a common citizenship or of complete mutual recognition of citizenship rights.

The underlying motive behind systematic control of entry of persons is that states have sought clearly defined memberships as well as clearly defined territories. The criteria for citizenship sometimes change radically, as do criteria for deciding which residents are, for most practical purposes, treated as citizens. The old notion of a British subject (still present in the British Nationality Act of 1948), which embraced all those resident in British overseas possessions and in Commonwealth countries (about 800 million people in 1948), was radically altered by a series of acts from 1961 to 1981 (Dummett, Nicols 1990, Spencer 1997). A restrictive notion of British citizenship was introduced, to prevent immigration from the 'new' Commonwealth countries, in which the basic criterion for entry to the UK and access to citizenship was the closeness of the connection with the United Kingdom.

Incidents, such as the rapid passage of legislation in 1967 to withdraw the unrestricted right of entry to British passport holders (200,000 East African Asians), caused justified charges of racial discrimination. But it is doubtful whether an imperial citizenship could have been maintained after the end of Empire. The change in German citizenship law has also been controversial - the purely ethnic (*jus sanguinis*) basis of the claim to citizenship has been dropped. After a tentative first move in 1991, to allow the possibility of access to citizenship of children born of foreign parents living in Germany, a second law passed in 1999 provided a more comprehensive basis for the naturalisation of foreigners and children of immigrants. Again, it is doubtful whether Germany could maintain the ethnic basis of German citizenship with 7-8 million (about 10% of the population with estimates of 12-17% in the near future) resident foreigners in the country (Münz, Ulrich 1998).

One reason for the large increase in the number of foreign residents in Germany in the 1990s was the influx of asylum seekers, which gave urgency to the search for common European solutions. Aspects of both asylum and immigration policy are now, in the Treaty of Amsterdam, included in the first pillar of the EU. This means that rules in these areas are subject to Community procedures. Objections made by states can be over-ridden, after the first five years after ratification, by a majority of the member states. The EU states have already agreed to a common visa policy, and the outline of a common asylum policy, and have undertaken to move towards a common immigration policy. Those EU member state signatories to the Schengen agreements (now integrated into the EU framework) have put in place common or co-ordinated measures of immigration control.¹ The frontiers of individual states in Europe are no longer the only frontiers to be taken into account. However, the basis of this framework for a common European immigration policy is the restriction, as far as practical, of immigrants and asylum seekers into all countries of the European Union (Papademetriou 1996). The major states of Europe have moved in this direction (Papademetriou, Hamilton 1996) with the UK taking the most restrictive line, falling below European norms on matters such as family reunion (Layton Henry 1994, Joppke 1999, p.269)

THE MECHANISMS OF EXCLUSION

In recent years, a certain de-localisation or a de-territorialisation of European frontier controls has taken place. There are now several lines of defence against unwanted immigrants from poor countries. The first line of defence is the issuing of visas in consulates. The second is carriers' liability legislation (the requirement that transportation companies are responsible for verifying that the passengers are properly documented - if not the transport companies have to take the individuals back from whence they came and may also be liable to financial penalties). The third is frontier controls – examination of documents and questioning by immigration officials at ports of entry.² The

¹ *The Home Secretary, announced on 12 March 1999, that Britain wished to join the Schengen arrangements with the important exception of maintaining frontier controls.*

² *The UK, and Ireland, continue to maintain systematic checks on all entrants to the country, unlike the other EU states which abolished frontier controls in 1996 on frontiers between them. In 1997 the UK turned away 28,000 persons at the frontiers. Immigration officers have the discretionary right to do this and reasons need not be given.*

Scottish Affairs

fourth is internal controls – immigration status is checked before access is granted to health, education and social services. Immigration officials also visit sites where the presence of illegal immigrants is suspected. In most European countries all individuals, whether citizens or not, may be required to produce proof of identity when requested to do so by law enforcement officials. Britain has not yet adopted this last measure.

The closing of a frontier is now done in different ways to the past. The French government closed the frontier with Algeria, during the 1991-99 emergency involving massacres by Islamist groups, by the simple expedient of closing the visa issuing consulates there. Transportation companies would not carry passengers without visas. Algerians could arrive in France and demand political asylum but they almost always did so by travelling through Morocco and Spain thus falling foul of the 'first safe haven' principle of the Dublin Convention on Asylum - namely that asylum seekers must apply to the first country which is designated safe. EU countries also try to form cordon sanitaire around themselves to prevent unwanted immigrants and asylum seekers reaching their territory. The Euromed partnership sponsored by the EU, and involving more than 20 countries on the shores of the Mediterranean, contains an attempt to link technical and financial assistance and access to the European market to co-operation in the field of immigration control. More effective is the insistence by the EU that the candidates for EU membership impose frontier controls, which meet Schengen standards, at their eastern frontiers. Immigrants from the fragile economies and societies further to the east in Europe, as well as migrants from Asia who attempt to reach the EU by land, are stopped before they get near the external frontier of the EU.

The effectiveness of this panoply of barriers erected to prevent immigrants coming in is uncertain. One of the reasons why the UK retains controls vis-à-vis the other EU countries is that it believes that the controls in the other countries are less effective than the British. Estimates of the numbers of clandestine immigrants vary enormously or, as in the case of the UK, no attempt is made to estimate them. In France, a 1998 offer by the government to consider sympathetically the applications of undocumented immigrants for residence papers produced about 140,000 applicants, about half the ministry of the Interior believed to be in the country. In Italy and Spain undocumented workers from the southern shores of the Mediterranean are very common in seasonal employment.

No one knows how many undocumented immigrants are in the EU and what proportion are transients and what permanent residents. Frontier controls, in their various forms, do not stop people getting in. The objective of stopping immigration is easy to proclaim, much less easy to put into effect. The most

influential exponent of zero immigration in France, the former minister of the Interior Charles Pasqua, admitted in 1998 that border controls were ineffective; he also said that realities should be recognised and illegal immigrants already in the country should have their position regularised. In all cases where there are strong incentives to migrate (whether economic, political or resulting from natural catastrophes), government efforts to stem the entry of migrants are only partially successful.

ARGUMENTS AGAINST THE EXISTING SITUATION

The broad economic effect of strict immigration control is to preserve global inequalities and indeed to increase them. These are on a vast and potentially catastrophic scale. Poverty and social exclusion are certainly problems in the rich countries but the great majority of poor people in the world live in poor countries. Also the majority of the world's population live in poor countries, with income levels of less than \$550 per head per annum. If one takes a broad measure, the countries of the so-called South have 18% of the wealth and 80% of population. The gap between rich and poor countries has been progressively getting wider.

The facts about the differences in life chances between the rich and the poor neighbours are scarcely ever disputed, although there are problems with international comparisons in that average incomes in poor countries are well below incomes necessary for survival in rich countries. Nonetheless the expectation of life in poor countries can be less than half that of rich countries. Educational standards, job opportunities, housing, diet all show radically different levels. International frontiers therefore exclude the poor from gaining the benefits of membership of rich societies on a scale much greater both in terms of numbers of individuals involved and the scale of the differences than any exclusion which takes place within rich societies.

The main economic argument against control of immigration is that by severely limiting the mobility, on a global scale, of one factor of production, labour, the allocation of resources is sub-optimal and economic welfare held at lower level than would otherwise be the case. The very limited and marginal current attempts through aid to redistribute wealth between rich and poor regions of the world become irrelevant: aid has been falling over the last two decades (the 0.7% of GDP target of 1970 has never been remotely approached: the USA is currently at 0.08%). The general standard of living would rise and this would help with one of the world's intractable problems, that of population growth since effective birth control correlates closely with income level. A second flanking economic argument is that studies of the

Scottish Affairs

impact of immigration on specific advanced economies show that its overall impact is positive and the usual economic argument against immigration – immigrants directly compete with the indigenous work force and drive down wages – has little evidence to support it. This argument is more often made in the United States (for example Borjas 1990) but a careful study of the British economy suggests the same result, with benefits to be gained by a more liberal immigration policy (Findlay 1994).

The economic arguments can be supported by two main political arguments. The first is that freedom of movement would expand the domain of liberty. The liberty to roam, enjoyed by the better off in the richer countries, would be generally shared. Freedom of movement would have significant benefits in that it would make tyrannical and oppressive regimes virtually impossible. With many possible destinations, people subject to such regimes would have no hesitation in leaving their jurisdiction. The right to leave countries (along with the right to return to one's own country) is generally recognised and contained in the UN Human Rights covenants. The right to enter countries would be a radical expansion of the domain of liberty.

The second political argument is that it would assist good race relations within countries. The contention of successive UK governments is that an exclusionary immigration policy regime assists good relations (Money 1999, Chapter 4). This is broadly in line with the French High Council on Integration, although there are different British and French views on the integration of immigrants (Favell 1998). It is a view discreetly shared by some immigrants. The counter argument is that a tight immigration policy involves limiting the granting of visitor visas, obstructing family reunion, enquiring into the motives of marriages, treating asylum seekers as criminals, paying particular attention to people of non-white appearance at ports of entry. All this creates the impression that some residents and citizens are less equal than others and must be treated with suspicion.

Sarah Spencer has powerfully argued that an exclusionary policy is inconsistent with good race relations (Spencer 1994). If one excludes non-white people on the grounds of their colour, people of similar colour within the country are also likely to suffer discrimination. The negative effects of an exclusionary regime at the frontier are bound to undermine the non-discrimination measures enacted within the country. Sarah Spencer does not draw the conclusion that there should be an abolition of frontier controls but that there should be transparent and fully explained criteria for allowing people to take up residence. Since discrimination by race, gender and religion is against UK domestic law, such discrimination would be unlawful, either as a direct or indirect effect, of immigration regulations. The kind of

discrimination which underlay the Immigration Acts of 1961, 1968 and 1971, as well as the discriminatory practices which are alleged to be built into the discretionary practice of UK immigration controls, would be unlawful.

THE BASIS OF RESISTANCE TO FREE MOVEMENT

Very few people argue in favour of open frontiers as a desirable or even possible option. A general right to enter other peoples' country is generally regarded as unthinkable. It is useful to ask the most straightforward and basic question - why? The response is that people do not want too many foreigners in their country. They regard it as the democratic right of people to limit immigration as much as they like. Public opinion poll evidence shows that people in EU countries systematically overestimate the proportion of foreigners in the country (an indication that they think that there are already too many). Also a widespread view is that free movement is not practical because there would be a rush from the poor countries into the rich ones. These countries would have to bear very high costs on social, health and educational services, placing unacceptable burdens on the public purse which would jeopardise economic activity.

In the absence of a detailed enquiry, it is difficult to be certain what views are held on immigration by elites and by educated people in the EU, including the UK. It seems very likely that prudent, 'liberal' and pragmatic views prevail. At the level of principle, the prudential considerations are least defensible but politically understandable. They crystallised between 1958 Notting Hill riots and the 1963 Smethwick by-election when a racist conservative overturned a large Labour majority. The prudential consideration is that even a slightly open door to non-white immigration would cause a hostile reaction by 'ordinary people', with very serious electoral consequences.

Behind this tactical position, there is a body of respectable liberal theory which supports restricted, although not necessarily zero, immigration. This has broadly two aspects. The first is that the security, protections, services and benefits provided by the modern state cannot be organised without clearly delimited territories and a restricted membership. These services and benefits are provided within given territories to people who reside there and are accorded rights of access to these services. They are financed by taxation which can be imposed on individuals by the state because they are either residents on the territory or, in the case of companies, are closely associated with it. Democratic accountability for the nature and extent of these services and benefits can only be ensured by the territorial state with a restricted membership. This means excluding outsiders.

Scottish Affairs

The traditional liberal argument of John Stuart Mill is widespread among most European elites - free institutions are next to impossible without a genuine sense of community and a sense of a shared identity. Individuals must have a sense of belonging, a sense of a common destiny in order to support a set of democratic procedures. Beliefs in the legitimacy of states and the disposition to tolerate both governments and oppositions of differing views depend on broader loyalties to the whole community. An understanding of the political rules of the game as well as a willingness to abide by those rules is based on broad social solidarities. This is why 'communitarians', such as Michael Walzer, have argued that political communities have a right to determine their own membership otherwise they could not be 'communities of character'. The acts of inclusion and exclusion, he argues, are at the core of political independence because they are the basis of historically stable communities and a sense of obligation of people to one another (Walzer 1983).

This does not imply that there is a particular limit to the capacity of constitutional democracies to accept immigration, the so-called 'threshold of tolerance'. The important point for liberals is that immigrants should be integrated fully into the host society. Refusal to grant them full citizenship, Michael Walzer argues, means that a country's immigration policy is not consistent with the principle of self determination and that its politics are not democratic. However, the way in which national identities are conceived plays a crucial role in whether a society is willing to accept immigrants. These identities can be relatively open or relatively closed to immigrants. The Americans are at one end of a spectrum, construing their national identity as a nation of immigrants, and the Japanese, with a purely ethnic definition of the nation, at the other end. The British identity changed from being an imperial identity at the end of the Second World War to being a UK identity by the time of the 1962 Immigration Act. The history of UK immigration and nationality acts in the last four decades shows a relentless drive to admit as few non-white immigrants as possible. It throws serious doubt on the British perception of themselves as a tolerant people (Holmes 1991, Cohen 1994).

PERCEPTION OF THREATS

The largest obstacle to receiving more immigrants in the European Union countries is the perception of immigrants as a threat. This threat is usually couched in emotive political language, treating the arrival of immigrants as a 'flood' or an 'invasion', even when the numbers involved are relatively small. This language was adopted by influential right wing leaders such as Margaret Thatcher and Valéry Giscard d'Estaing in the 1980s (Layton Henry 1992).

Variations between EU countries existed, depending on cultural and historical factors, but there was a general perception of 'a new xenophobia' appearing in the 1980s (Baumgartl, Favell 1995, Miles, Thränhardt 1995).

The assertion that immigration is a threat to the security and stability of our societies has several elements. The first has a basis in fact for small minorities of immigrants. They have provided a base for those committed to violent political action to exercise pressure on governments either of the host or other countries. There are many examples of this, Moluccans, Palestinians, Lebanese, Iranians, Kurds and Algerians. There have been atrocious incidents such as the massacre of the Israeli athletes at the 1972 Munich Olympics and the 1996 bombings of the Paris metro. The violence of these groups is marginal by comparison with the total number of violent deaths in the EU but it makes a huge impact on public opinion.

The second threat to the security of societies is criminal - fears and fantasies are mixed with hard realities in the criminality associated with immigrant groups. The fear of invasion by foreign mafias - east European, Turkish, Asian, African and South American - is exaggerated. Nonetheless the involvement of organised groups from these regions in drug trafficking is well documented. East European groups have been involved in large-scale theft, racketeering and prostitution. The presence of compatriots of these criminals in the countries of the European Union has provided a base of support for their activities. The other element of the criminal threat is the alleged high level of crime in areas where there are high concentrations of immigrants. Drug use, violence and theft are widely associated with immigrant communities, although poverty, unemployment and urban decay are probably more significant in explaining different levels of crime.

The third threat associated with the use of the word 'invasion' of immigrants is that they are undermining our civilisation. This is an image of people whose identity and way of life is undermined by aliens who have other customs and values. Incidents occur involving immigrant groups which cause reactions in the host communities along the lines that these people are irremediably foreign to us. Islamophobia is the most evident current strand of this way of reacting. It represents a fear of being overwhelmed by numbers, partly as a result of new arrivals and partly because of differences in fertility. Even those who do not share this way of thinking are fearful of it because it is at the basis of violent, racist, anti-immigrant feeling. People in the police and security establishments often consider that the effective limitation of racist, extremist groups is linked to the rigorous limitation of immigration.

CONCLUSION

Social exclusion within rich countries may provoke the greater indignation, but the exclusion of outsiders has by far the greater effects. However, strict control of immigration is deeply embedded in current notions of the state and in expectations of the benefits which the state should provide. Also, resisting the intrusion of large numbers of non-indigenous people seems a persistent feature of human territoriality. The belief that immigrants are a threat to the security and culture of societies is a major obstacle to change in immigration control. For these reasons a 'borderless world' seems utopian and little serious thought has been given to the consequences of abolishing all controls on the freedom of movement.

To enlarge the scope of political debate, we need the benefit of a great utopian imagining of a world in which there was free movement of people. This intellectual and imaginative effort is notably lacking because it seems unrealistic and unattractive. Instead we find in the debate on immigration piecemeal criticisms of aspects of the existing order by people outraged by the treatment of specific individuals or groups of immigrants and refugees. Allegations of racist and discriminatory behaviour abound in criticisms of immigration officials. Arguments deployed in favour of immigrants threatened by expulsion are very often based on appeals to universal standards of human rights but specific alternatives to the existing restrictive immigration regimes are now rare.

Any movement towards a more transparent and defensible immigration regime has not been helped by the themes which have dominated the UK policy debate since the 1960s. The more positive approach to immigrants and refugees, called for by Sarah Spencer (1994), has not yet happened, as the recent White Paper (Home Office 1998) and legislation on immigration and asylum before the UK parliament shows. The European dimension of immigration policy was barely recognised and issues of global justice ignored. Only practical pressures, such as the need for new immigrants, and more imaginative intellectual effort will change the nature of the debate. It is hard to be optimistic.

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October 1999