20.1 Introduction: Migration in the Second Age of Globalization

Human beings are migratory animals and by migrating across seas and land, they have established their settlements around the globe (Diamond 1992). However, like most other animals, they have also had a sense of territoriality. Yet, rights of territoriality were flexibly exercised until the rise of modern, so-called rational-bureaucratic states.2

How then should migrants be treated? The simplest answer is that migrants are human beings and should enjoy the same rights as any other human being. However, this answer runs up against the modern state system, under which states treat their own citizens and citizens of other states differently. This differential treatment becomes glaring in the case of so-called illegal, but also many legal, immigrants. In criminal jurisprudence, the cardinal principle is that a person is to be innocent until he is proved otherwise. It is generally the responsibility of the prosecuting authorities to prove the guilt of the person charged with a crime. With immigrants, an opposite principle is generally followed: they are considered guilty until they can prove that they are legal residents in the host country. The problem becomes even more complicated when people become refugees and/or stateless. Not all refugees are stateless, but many of them refuse to return to the jurisdiction of states of which they are citizens and many states refuse to take back persons who claim to be citizens of those states.

Morality concerns a human being’s behaviour with regard to other beings and to things outside him/herself as far as they impinge on the fortunes of other beings, especially human beings. Hence, morality necessarily has to assume certain basic propositions about how the lives of human beings are affected by socioeconomic and political institutions and changes in them.

The liberal theory of justice takes inequality to be a fact. It seeks to design policies without trying to alter a given social and political arrangement that reproduces and often aggravates structures of inequality worldwide. Applied to migrants, policies arising out of that minimalist view of morality only address how illegal immigrants can be treated more humanely, or how the grosser forms of discrimination against minority communities constituted by immigrants can be ended.

This chapter challenges the minimalist perspective on morality, as applied to migrants. It also challenges the view that dramatic socioeconomic inequality will always be with us and that the goal of sensible policy can only be the provision of primary goods and alleviation of poverty in micro contexts. Such a frame of policymaking neglects the macro-structures and policies that reproduce and exacerbate inequality and poverty. Gross international inequality and poverty are the root causes of streams of illegal migrants and refusal to treat those causes can only yield ad hoc solutions, which leave the migrants in a disadvantaged position. In most ethical, legal and economic literature related to migrants, there is also an inadequate appreciation of the asymmetries of resources, information and power that prevail as between the migrants and the authorities who sit in judgment over them. Most of those designated as illegal immigrants do not possess enough information relating to their own economic or legal situation. On the other side, the authorities of the country to which they have migrated

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2 See, for example, the description of exchanges between agriculturists and pastoralists, and of transhumant migrations in pre-colonial Senegambia, in Curtin (1975: chap. 1).
are often woefully ignorant of the home background of the migrants, and demand documentation unavailable to inhabitants of many developing countries.

Three changes in the international politico-economic order appear to underlie the aggravation of inequality internationally and within countries. These are: 1) the turn against the state as a provider of social services and insurer of a long-term strategy for improving the technological and economic capability of developing countries, from the late 1970’s; 2) the placing of finance as the sovereign governor of the fates of most market economies; and, 3) the collapse of the Soviet bloc. The signing of the World Trade Organization agreement sealed the first change and connected with the financial liberalization that swept over more and more countries from the early 1980’s. The effects of these changes have been the disabling of the state as the regulator of economic institutions and as the provider of social security for the disadvantaged section of population. They have also meant an endemic deficiency of effective demand in practically all developing countries, and the rise of levels of unemployment worldwide.

Before they gave up their model of socialism, the Eastern European states took complete responsibility for education, health and access to work for the population. The total abdication by the state of that responsibility has created an enormous movement of population within and out of those states. The movement often takes the form of trafficking of women.3 The social democratic Western European states have also reduced the social protection of the sick, the elderly and the unemployed. On the other side, divergent movements in the growth of the working age population (themselves partly the product of unequal access to health care and education in the rich and the poor countries) have produced new tensions in the policies related to labour and immigrants, especially in the richer countries. While international capital movements are not only permitted but, falsely glamorized as the harbinger of innovation and greater efficiency, richer states are introducing increasingly draconian regulations to control immigration and deny basic human rights to so-called ‘illegal immigrants’. A proper ethical framework for informing policymaking at the national and international levels needs to address these contradictions and tensions if it is to be a step towards ensuring fuller freedom for all human beings.

In the wake of increased global terrorist attacks, the security approach to migration has found greater favour with policymakers. There are three basic objections to this approach. First, it is likely to have only temporary impact, while increasing the cost of surveillance and protection of the borders. Secondly, the measures taken by the authorities in some countries, such as the US and UK, have violated the constitution and laws of those countries and abridged the freedom of their own citizens: the courts in these nations have often thrown the cases out on these grounds. Finally, they usurp and deny many of these migrants’ basic human rights, with little redress from any higher authority. These states effectively practice terrorism against immigrants, especially against those who are stigmatized as ‘illegal immigrants’, although they might have lived in the host country for many years, often doing menial jobs that the natives, very often descendants of earlier immigrants, refuse to perform.

The search for an alternative paradigm must start with the recognition that the increased inequality between incomes of different countries contributes to a surge of migration from developing and transitional economies. A more decent international order, with the promise of what the ILO calls ‘decent work’ for most people in most countries, would minimize the need for migration and the eruption of irrational anger expressing itself as terrorism. The restoration of the IMF to its original function of minimizing turbulence in the balance of payments between countries, removing most WTO provisions that damage both agriculture and industry in developing countries, scrutiny of all money transfers at both the point of origin and the point of deposit to prevent haemorrhage similar to what Russia suffered throughout the 1990’s, and what sub-Saharan Africa and Latin America have suffered for the last 30 years or more, and restoring the necessary public provisioning by the state, are some necessary items to create an adequate policy to guide the global polity of the future.

20.2 Internal Migration: The Roles of the State and the Market

We will deal briefly with internal migration before moving on to the treatment of international migrants. Migration within the borders of a given state is probably a larger stream than migration across international borders. In the People’s Republic of China alone, estimates of actual and potential numbers of migrants range from 150 million to 500 million per-

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3 For an analysis of the reasons for the growth of trafficking of women in different parts of the world, see Banerjee 2003; Facio 2003; and Poulin 2003.