52

The Emerging Migration State[1]

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In response to a plea from high-tech businesses that German industry was at a competitive disadvantage because of its lack of access to foreign computer and software engineers, the German government in May 2000 launched a new "green card" program, designed to recruit up to 20,000 highly skilled workers, from outside the European Union. To garner support for the initiative and to head off criticism from those who cling to the myth that Germany is not a country of immigration (*Deutschland ist kein Einwan-derungsland*), Chancellor Gerhard Schröder asserted that "We [Germans] must make sure that in these times of globalization we don't suffer from a lack of cosmopolitanism.... There's a huge amount of international competition for the best people, and Germany would be making a big mistake if it didn't take part." This statement reflects a sea-change in Germany's foreigner policy (*Ausländerpolitik*), which is on the verge of becoming a legal immigration policy (*Einwanderungspolitik*). Together with the change in German nationality law – adopted by the Red-Green government in 1999 and which for the first time injected an element of birthplace citizenship (*jus soli*) into German law – the new green card program is pushing Germany in a decidedly liberal direction. Yet, at the same time that the green card policy was announced, the Schröder government declared that foreign high-tech workers would not be allowed to bring their families with them. After criticism from human rights groups and gentle reminders from experts about the difficulty of preventing "guest workers" from settling, the government quickly revised its policy to allow for the possibility of settlement and family reunification.

This recent episode in German immigration history illustrates well the dilemma that modern states must face in dealing with "globalization"[2] and

rising levels of international migration. States are trapped in a "liberal paradox" (Hollifield, 1992a). Since the end of World War II, international economic forces (trade, investment, and migration) have been pushing states towards greater openness, while the international state system and powerful (domestic) political forces push states towards greater closure. This is a liberal paradox because it highlights some of the contradictions inherent in liberalism, which is the quintessentially modern political and economic philosophy and a defining feature of globalization.

Since the eighteenth century, when Adam Smith laid down the precepts of economic liberalism in his treatise on *The Wealth of Nations*, the ideology of free trade has come to dominate international relations. With Britain's rise to power – which reached its zenith in the Victorian era of the late nineteenth century – and America's dominance of the post-World War II international system, it has become increasingly difficult to refute Smith's argument that laissez-faire economics and free trade are the best ways to enhance the wealth, power, and security of the nation-state. The debacle of World War I and its aftermath of isolationism, intense nationalism, protectionism, and depression only served to reinforce this lesson. After 1945, the victorious Western democracies, led by Britain and the United States, were determined not to repeat the mistakes of the 1920s and 30s, and they set about constructing a new international order, based on liberal principles of free trade and respect for fundamental human rights (Rosecrance, 1986; Jacobson, 1996).

The problem, however, is that the source of power and authority in international relations continues to revolve around the nation-state. Since the Peace of Westphalia in 1648, the international legal system has been based upon the inviolability of the nation-state. In the Grotian tradition of international law, in order for a state to exist, it must have a territory, a population, and the capacity for self-governance. Once a state has fulfilled these criteria, it may be recognized as independent, and it takes on the legal attribute of sovereignty, which Stephen Krasner (1999) wryly describes as "organized hypocrisy." If a state is sovereign, it has a legal personality and the capacity to enter into relations with other states.

Transnationalism, in the form of trade, cross-border investment, and migration, can challenge the sovereignty and authority of the nation-state. Migration in particular represents a challenge, in the sense that the (unauthorized) movement of individuals across national boundaries can violate the principle of sovereignty, which requires a degree of territorial closure (Hollifield, 1994b; Sassen, 1996; Joppke, 1998a). In every region of the globe – with the partial exception of Western Europe – borders are sacrosanct and they represent a fundamental organizational feature of the international system (Andreas and Snyder, 2000). Unlike trade in goods or international financial flows, migration can change the ethnic composition of societies and disrupt what Rey Koslowski (2000) has aptly described as the "demographic maintenance regime." If too many foreigners reside on the national territory, then it may become difficult for a state to identify its population vis-à-vis other states. The national community may feel threatened, and there may be a social or political backlash against immigration. Finally – and this is most important from the standpoint of political liberalism – the citizenry or the *demos* may be transformed in such a way as to violate the social contract and undermine the legitimacy of the government and the sovereignty of the state itself (Walzer, 1983). Thus, migration can be seen as a threat to national security, and it can lead to conflicts within and between states (Weiner, 1993, 1995; Huntington, 1996). Hence the liberal paradox: the economic logic of liberalism is one of openness, but the political and legal logic is one of closure (Hollifield, 1998). How can states escape from this paradox?

In order to answer this question, we need 1) to review the causes and consequences of international migration in historical perspective, and 2) to look at the ways in which states have tried to regulate it in an era of globalization, but 3) with an eye to understanding the evolution of what I shall call the migration state. In international relations theory, states are defined primarily by their security or military function. The Westphalian state is above all else a garrison state. Realists like Hans Morgenthau (1978) and neo-realists like Kenneth Waltz (1979) view the state as a unitary rational actor, with the overweening responsibility to maximize power, protect its territory and people, and pursue its national interest. However, at least since the beginning of the industrial revolution in Europe, the state has increasingly taken on an economic function. Ensuring material wealth and power has required states to risk greater economic openness and to pursue policies of free trade, giving rise to what Richard Rosecrance (1986) has called the trading state. As a result, states have been partially liberated from their dependence on territory and the military as sources of power. International relations theory has moved away from the narrow realist view of the state, recognizing that in an increasingly interdependent world, power is more diffuse (Keohane and Nye, 1977). In this neoliberal view, states are increasingly linked together by international trade and finance, forcing them to alter their grand strategies and seek new ways to cooperate. Here I shall argue that migration and trade are inextricably linked – two sides of the same coin. Hence the rise of the trading state necessarily entails the rise of the migration state, where considerations of power and interest are driven as much by migration (the movement of people) as they are by commerce and finance.

Causes and Consequences of International Migration

To go back to the German example, we can see clearly how migration has become a driving feature of the international political economy. In the eighteenth and nineteenth centuries, Germany, which only loosely could be defined as a state until it was unified by Bismarck in 1870, was primarily a

country of emigration, with millions of Germans migrating to East Central Europe and to the Americas (Bade, 1992). Not until relatively late in the nineteenth century did the German economy begin to grow at a sufficient rate to absorb its surplus population and excess labor supply. Strong supply-push factors were at work, compelling Germans to go abroad. At the same time there were powerful demand-pull forces, leading German farmers and workers to emigrate to neighboring countries, such as France, Switzerland, and the Low Countries, in search of employment, while many went to Russia or the United States, lured by the promise of cheap land and a new start. In eighteenth century Russia, this migration was organized by the German-born empress, Catherine the Great, who sought to upgrade Russian agriculture and tame the eastern frontier by bringing in skilled German farmers as pioneers who could teach Russian peasants new farming techniques. For centuries, states have been in the business of organizing mass migrations for the purposes of colonization, economic development, and to gain a competitive edge in a globalizing economy. In this respect, Chancellor Schröder's quest for Indian software engineers is but the latest chapter in the long history of globalization and migration.

Once an international market for labor has been created, however, it may be difficult to manage or regulate it. Migration can quickly become self-perpetuating because of chain migration and social networks (Massey, 1987, 1998). Word begins to spread from one family and one village to another about the possibilities for gainful employment – or even striking it rich. At the same time, the individual risks and costs associated with migration are reduced by these kinship networks, which can grow into transnational communities and constitute a form of social capital (Morawska, 1990; Portes, 1996, 1997). As international migration accelerates, states are forced to respond by developing new policies to cope with newcomers and their families (in the host country) or to deal with an exodus and potential return migration (in the sending country). Again, looking at the eighteenth and nineteenth centuries – a period of relatively free migration – many states with open frontiers, like the United States and Russia, were happy to receive immigrants, whereas overpopulated societies, with a growing rural exodus and burgeoning cities, were happy to be rid of masses of unskilled and often illiterate peasants and workers (Thomas, 1973; Bade, 1992; Nugent, 1992).

By the end of the nineteenth and beginning of the twentieth centuries, however, the sending societies in Europe were well into the industrial revolution and entering a demographic transition, with falling birth rates and more stable populations. Nationalism was on the rise (Hobsbawm, 1990), and it was increasingly important, in terms of military security, for states to be able to identify their citizens and to construct new demographic regimes (Koslowski, 2000). The need to regulate national populations, for purposes of taxation and conscription, led to passport and visa systems and the concomitant development of immigration and naturalization policies

(Torpey, 1998). Every individual was expected to have one and only one nationality, and nationality, as a legal institution, would provide the individual with a measure of protection in a hostile and anarchic world of nation-states (Shaw, 1997). Countries of emigration, like Germany, tended to opt for nationality laws based upon *jus sanguinis* (blood, kinship or ethnicity), whereas countries of immigration, like the United States and France, developed a more expansive political citizenship based upon *jus soli* (soil or birthplace). The German nationality law of 1913 had a strong ethnic component, and it was designed specifically to accommodate return migration, whereas birthright citizenship in the United States, as codified in the Fourteenth Amendment to the Constitution, was more inclusive (Brubaker, 1989, 1992; Schuck, 1998). It is important to remember, however, that the Fourteenth Amendment was adopted in the aftermath of the Civil War, and its primary purpose was to grant immediate and automatic citizenship to former slaves (Kettner, 1978). Moreover, American immigration policy in the late nineteenth and early twentieth centuries evolved along racial lines, culminating in the Chinese Exclusion Act of 1882 and the National Origins Quota system, enacted in 1924 (Smith, 1997; King, 2000; Hollifield, 2000c).

Until 1914, international migration was driven primarily by the dynamics of colonization and the push and pull of economic and demographic forces (Hatton and Williamson, 1998), even though many receiving states were struggling to put in place national regulatory schemes to manage the growing international market for labor. Illegal or unauthorized immigration was not recognized as a major policy issue, and there were virtually no provisions for political migration, *i.e.*, refugees and asylum seekers. To a large extent, efforts to regulate international migration would be rendered moot by the outbreak in 1914 of war in Europe, which stopped economic migration in its tracks. However, war and decolonization fostered the rise of intense and virulent forms of nationalism – often with a strong ethnic dimension. War sparked irredentism and the redrawing of national boundaries in Europe, which in turn fostered new kinds of migration. Millions of displaced persons, refugees, and asylum seekers would cross national boundaries in the twentieth century to "escape from violence" (Zolberg, Suhrke and Aguayo, 1989). Thus, World War I marked a crucial turning point in the history of migration and international relations. States would never return to the relatively open migration regimes of the eighteenth and nineteenth centuries when market forces (supply-push and demand-pull) were the dominant forces driving international migration (Thomas, 1973). The twentieth-century world became increasingly closed, and travel would require elaborate documentation. World War I also marked the beginning of the end of imperialism, with struggles for independence and decolonization in Asia and Africa, movements that would eventually result in the displacement of more millions of people.

In the interwar years, the Westphalian system of nation-states hardened and became further institutionalized in the core countries of the Euro-Atlantic

region, and it continued to spread around the globe with the creation of new states (or the reemergence of old ones) in Asia, Africa and the Middle East. Old and new states guarded their sovereignty jealously, and peoples in every region gained a stronger sense of citizenship and national identity. Because of these developments, international migration took on more of a political character, with diaspora and exile politics coming to the fore (Shain, 1989). Henceforth, crossing borders had the potential of being a political as well as an economic act, and states reasserted their authority with a vengeance. The rise of anti-state revolutionary movements, such as anarchism and communism, provoked harsh crackdowns on immigration and the roll-back of civil rights and liberties, in the name of national security and national identity (Reimers, 1998; Smith, 1997; King, 2000).

The interwar period was marked by intense protectionism and nativism (Eichengreen, 1989; King, 2000). States enacted draconian laws to protect their markets and their populations. The international community was not prepared to deal with new forms of political migration. Under international law, states are not required to admit aliens, but if they do, they are obliged to treat them in a humane and civilized manner. This concern for the rights of aliens was clearly enunciated in Articles 22 and 23 of the Covenant of the League of Nations, which created a kind of rudimentary human rights law, aimed at protecting those in former colonies (Shaw, 1997).

The events of the 1930s and 40s in Europe radically changed legal norms governing international migration. The Holocaust and World War II led to the creation of the United Nations and a new body of refugee and human rights law. Although states retained sovereign control over their territory, and the principle of noninterference in the internal affairs of others still holds, the postwar international order created new legal spaces (*i.e.*, rights) for individuals and groups. The 1951 Geneva Convention Relating to the Status of Refugees established the principle of asylum, whereby an individual with a "well-founded fear of persecution," once admitted to the territory of a safe state, cannot be arbitrarily expelled or sent back to the state of his or her nationality. Under international law, the individual is entitled to a legal hearing, but it is important to remember that no state is compelled to admit an asylum seeker (Goodwin-Gill, 1996). If, however, the state is a signatory of the Convention, it cannot legally send an individual back to his or her country of origin if he or she is threatened with persecution and violence. This is the principle of *nonrefoulement*.

The United Nations Charter as well as the Universal Declaration of Human Rights, which was adopted by the U.N. General Assembly in December 1948, reinforced the principle of the rights of individuals "across borders" (Jacobson, 1996). Likewise, as a direct response to the Holocaust and other crimes against humanity, the international community in 1948 adopted and signed the Convention on the Prevention and Punishment of the Crime of Genocide. Alongside these developments in international law, we can see a

growing "rights-based liberalism" in the politics and jurisprudence of the most powerful liberal states in Europe and North America (Cornelius, Martin, and Hollifield, 1994; Joppke, 2001). These liberal developments in international and municipal law feed off of one another, creating new rights (legal spaces) for aliens at both the international and domestic levels.

Why are these legal developments so important, and how can they help states escape from the liberal paradox? Unlike trade and financial flows, which can be promoted and regulated through international institutions like the WTO and the IMF, the movement of individuals across borders requires a qualitatively different set of regulatory regimes – ones based squarely on the notion of civil and human rights. It is almost a truism to point out that individuals, unlike goods, services or capital, have a will of their own and can become subjects of the law and members of the societies in which they reside (Hollifield, 1992a; Weiner, 1995). They also can become citizens of the polity (Koslowski, 2000). The question, of course, is how far states are willing to go in establishing an international regime for the orderly (legal) movement of people (Ghosh, 2000), and to what extent would such a regime rely upon municipal as opposed to international law (Hollifield, 2000a)?

Regulating Migration in an Era of Globalization

The last half of the twentieth century has marked an important new chapter in the history of globalization. With advances in travel and communications technology, migration has accelerated, reaching levels not seen since the end of the nineteenth century. At the beginning of the twenty-first century, roughly 175 million people are living outside of their countries of birth or citizenship.[3] Even though this figure constitutes a mere 2.5 percent of the world's population, the perception is that international migration is rising at an exponential rate and that it is a permanent feature of the global economy. It seems that economic forces compelling people to move are intensifying. With more than half the world's migrant population in the less-developed countries (LDCs), especially those rich in natural resources, like oil or diamonds, the biggest regulatory challenge confronts states like Nigeria, South Africa or the United States, which share land borders with overpopulated and underdeveloped states. Supply-push forces remain strong, while the ease of communication and travel have reinforced migrant networks, making it easier than ever for potential migrants to gather the information they need to make decisions about whether or not to move.

To some extent supply-push forces are constant or rising and have been for many decades. What is variable, however, are demand-pull forces, both in the OECD world and in the wealthier LDCs, many of which suffer from a shortage of skilled and unskilled labor. The oil sheikdoms of the Persian Gulf are perhaps the best examples, but increasingly we have seen labor shortages

in the newly industrialized countries (NICs) of East and Southeast Asia as well (Fields, 1994). Singapore, Malaysia, Hong Kong and Taiwan, for example, have become major importers of cheap labor from other LDCs in Southeast Asia, particularly the Philippines and Thailand. Taiwan also has experienced rising levels of illegal migration from mainland China, which poses a security threat for the island country.

With very few exceptions, however, these LDCs have not evolved elaborate laws or policies for governing migration. Wealthier Third World states have put in place contract or guest worker schemes, negotiated with the sending countries and with no provisions for settlement or family reunification. These types of pure manpower policies leave migrants with few if any rights, making them vulnerable to human rights abuses and arbitrary expulsion. The only protections they have are those afforded by the negotiating power of their home countries, which may choose to protest the treatment of their nationals. But, more often than not, the sending countries are unwilling to provoke a conflict with a receiving state over individual cases of abuse for fear of losing access to remittances, which are one of the largest sources of foreign exchange for many LDCs (Russell, 1986). Hence, economics and demography (forces of supply-push and demand-pull) continue to govern much of international migration in the developing world, and the liberal paradox is less acute because there are fewer legal or institutional constraints on the behavior of states vis-à-vis foreign nationals. Summary deportations and mass expulsions are viable options for controlling immigration in nonliberal states.

In the advanced industrial democracies, immigration has been trending upward for most of the post-World War II period, to the point that well over 40 percent of the world's migrant population resides in Europe and America, where roughly 10 percent of the population is foreign born (IOM, 2000; OECD, 1998). Postwar migration to the core industrial states of Europe and North America has gone through several distinct phases, which make these population movements quite different from the transatlantic migration of the nineteenth century or economic migrations in the Third World today. As pointed out above, the first wave of migration in the aftermath of World War II was intensely political, especially in Europe, where large populations were displaced as a result of the redrawing of national boundaries, irredentism, and ethnic cleansing. Much of the remaining Jewish population in Europe fled to the United States or Israel, whereas the large ethnic German populations in East Central Europe flooded into the newly created Federal Republic of Germany. The partitioning of Germany, the Cold War, and the division of Europe contributed to the exodus of large ethnic populations, seeking refuge in the democratic West. Until the construction of the Berlin Wall in 1961, 12 million German refugees arrived in West Germany.

Once this initial wave of refugee migration had exhausted itself and Europe began to settle into an uneasy peace that split the continent between the superpowers – thus cutting (West) Germany and other industrial states in

Western Europe off from their traditional supplies of surplus labor in Central Europe – new economic forms of migration began to emerge. The massive effort to reconstruct the war-ravaged economies of Western Europe in the 1950s exhausted indigenous supplies of labor, especially in Germany and France. Like the United States, which launched a guest worker (*bracero*) program (1942–1964) during World War II to recruit Mexican agricultural workers (Calavita, 1992), the industrial states of Northwest Europe concluded bilateral agreements with labor-rich countries in Southern Europe and Turkey, that allowed them to recruit millions of guest workers during the 1950s and 60s (Miller and Martin, 1982).

However, from the beginning of the guest worker phase, we could see an important distinction between those European states, like France, which had a legal immigration policy that allowed for the settlement of immigrant workers and their families, and those states, like Germany or Switzerland, which attempted to maintain strict rotation policies with a minimum of settlement and family reunification (Rogers, 1985; Hollifield, 1992a; Cornelius, Martin and Hollifield, 1994). Britain was something of a special case in that its economy was growing at a slower pace and it had continuous access to Irish labor to fill any gaps in the British labor market. Moreover, the struggle to regulate post-colonial migrations began earlier in Britain than in the former imperial powers on the continent (*e.g.,* France and Holland), thus injecting a bias towards restriction into British policy (Layton-Henry, 1992; Joppke, 1998c; Hansen, 2000).

The guest worker phase ended in the United States with the winding down of the *bracero* program in the 1950s, whereas in Europe it continued until the first signs of economic slowdown in 1966. However, the big shift in migration policy in Western Europe came in 1973–74, following the first major oil shock and recession, which rapidly spread around the globe. European governments abruptly suspended all foreign/guest worker recruitment and took steps to encourage foreigners to return home. Policies were put in place to discourage or, wherever possible, prevent settlement and family reunification. The prevailing sentiment was that guest worker migrations were primarily economic in nature and that these workers constituted a kind of economic shock absorber (*Konjunkturpuffer*). They were brought into the labor market during periods of high growth and low unemployment, and they should be sent home during periods of recession (Miller and Martin, 1982; Rogers, 1985; *see also* Castles and Kosack, 1973). Moreover, during the recessions of the 1970s, the hardest hit sectors in the West European economies were heavy industry and manufacturing, both big users of cheap, unskilled foreign labor. In these circumstances of recession and rising unemployment, it seemed logical that guest workers should behave, like all commodities, according to the laws of supply and demand.

The governments of Western Europe had succeeded in creating an international labor market, in response to a high demand for unskilled or semi-skilled

foreign labor. Yet just when this labor migration was no longer needed, powerful supply-push forces and networks came into play to sustain it at high levels, even after the official suspension of recruitment programs in 1973–74. Turkish migration to Germany and North African migration to France continued well into the 1980s, taking the form of family rather than worker migration. What made the family reunification phase of postwar migration possible was the intervention of courts, extending rights of residence to guest workers and their families (Hollifield, 1992a, 2000b). Executive and administrative authorities were hampered by legal/constitutional constraints in their quest to reverse the migration flows. States with universalistic, republican traditions (like the United States, France, and to a lesser extent Germany), along with elements of separation of powers, including a strong and independent judiciary, had much greater difficulty in cutting immigration flows (Weil, 1991; Hollifield, 1994a, 1999b; Joppke, 1998b, 2001). Again, Britain, with its system of parliamentary supremacy, unitary government, and the absence of a universalistic, republican tradition constitutes something of an exception among the industrial democracies – Gary Freeman refers to Britain as the "deviant case" (Freeman, 1994; *see also* Messina, 1996; and Hansen, 2000).

The difficulty of using guest workers for managing labor markets in Western Europe is a perfect illustration of the liberal paradox. Importing labor to sustain high levels of noninflationary growth during the 1950s and 60s was a logical move for states and employers. This move was in keeping with the growing trend towards internationalization of markets for capital, goods, services and labor; and it was encouraged by international economic organizations, particularly the OECD (Hollifield, 1992a). But, as the Swiss novelist Max Frisch pointed out at the time, the European governments had "asked for workers, but human beings came." Unlike goods or capital, migrants (human beings) can and do acquire rights, particularly under the aegis of the laws and constitutions of liberal states, which afford migrants a measure of due process and equal protection. When it became clear that the guests had "come to stay" (Rogers, 1985), the initial reaction of most governments was to stop further recruitment of foreign workers, try to induce those residing in the country to return, and prevent family reunification. When this proved not to be possible, these liberal states had to accept the fact that large numbers of guest workers and their family members would become permanent settlers, leading most governments to redouble their efforts to stop any future immigration.

The settlement of large foreign populations transformed the politics of Western Europe, giving rise to new social movements and political parties demanding a halt to immigration (Betz, 1994; Kitschelt, 1995; Messina, 1996). Public opinion was by and large hostile to immigration, and governments were at a loss how to manage ethnic diversity (Freeman, 1979; Ireland, 1994; Fetzer, 2000; Bleich, 2003). Problems of integration began to dominate the public discourse, amid perceptions that Muslim immigrants in particular posed

a threat to civil society and to the secular (republican) state. The fear was (and is) that dispossessed and disillusioned youth of the second generation would turn to radical Islam, rather than following the conventional, secular, and republican path to assimilation (Kepel, 1988; Kastoryano, 1997). European societies looked increasingly like the United States where older, linear conceptions of assimilation had given way to multiculturalism and an increasingly uneven or segmented incorporation, whereby large segments of the second generation, particularly among the unskilled and uneducated, experienced significant downward mobility (Hollifield, 1997b; Santel and Hollifield, 1998; Portes and Rumbaut, 1996; Alba and Nee, 2003).

In part because of this (perceived) crisis of integration and the threat it posed, pressures for greater control of immigration intensified, not only in Western Europe, but in the United States and Australia as well. However, in the face of these political pressures, it is important to note the pervasive and equally powerful rights-dynamic in the liberal democracies. Rights for minorities and foreigners were deeply embedded in the jurisprudence and the political culture of these societies, helping to blunt the impact of nativist and xenophobic movements. The more draconian laws, like the 1986 and 1995 Pasqua Laws in France, Proposition 187 in California, or the 1996 Illegal Immigration Reform and Immigrant Responsibility Act in the United States, were either struck down by the courts or substantially modified to conform with liberal, constitutional principles (Hollifield, 1997a, 1999b, 2000b; Schuck, 1998; Tichenor, 2002). Even though all states have the right to expel unauthorized migrants, deportation is not a very attractive policy instrument, and it is used sparingly and largely for its symbolic and deterrent effect (Ellermann, 2003). Mass expulsions (like Operation Wetback in the United States in the 1950s) are not politically or legally viable.

In spite of the enormous pressures on the asylum process that were building in the last two decades of the twentieth century, European democracies maintained a relatively strong commitment to the 1951 Convention and the international refugee and human rights regime. In the 1980s and 90s, asylum seeking became the principal avenue for entry into Western Europe, in the absence of full-fledged legal immigration policies and in the face of growing fears that large numbers of asylum seekers would undermine the refugee regime and destabilize European welfare states.

In this atmosphere of crisis, control policies shifted in the 1990s to stepped up external (border) control – Operations Gatekeeper and Hold the Line on the U.S.-Mexican border and the Schengen system in Western Europe to allow states to turn away asylum seekers if they had transited a "safe third country" – internal regulation of labor markets (through employer sanctions and the like), and integrating large, established foreign populations (Brochmann and Hammar, 1999; Cornelius *et al.*, 2004). Controlling borders in Europe required a renewed emphasis on international cooperation, especially among the member states of the European Community (EC). The EC, soon to become

the European Union (EU), was committed to building a border-free Europe, relaxing and eventually eliminating all internal borders in order to complete the internal market. This process of integration was given new impetus by the Single European Act of 1986, which called for the elimination of all barriers to the movement of capital, goods, services and people within the territory of the EC by January 1992, and by the Maastricht Treaty on Economic and Monetary Union (EMU), ratified in 1993, which established a new kind of European citizenship (Caporaso, 2000). Given the desire of member states to stop further immigration, creating a border-free Europe meant reinforcing external borders, building a "ring fence" around the common territory, and moving towards common asylum and visa policies (Hollifield, 1992b; Uçarer, 1997; Guiraudon and Lahav, 2000).

A series of conventions dealing with migration and security issues were drafted to help construct a new European migration regime, including the Schengen Agreement of 1985, whereby EU governments committed themselves to eliminating border checks in exchange for common visa requirements to control the movement of third-country nationals (TCNs). In the same vein, the Dublin Convention of 1990 requires asylum seekers to apply for asylum in the first "safe country" where they arrive. Schengen and Dublin helped to establish buffer states in the formerly communist countries of Central Europe. EU member states could return asylum seekers to these now safe third countries without violating the principle of *nonrefoulement*. The Dublin and Schengen Conventions also were designed to eliminate "asylum shopping" by requiring signatory states to accept the asylum decision of other member states. Thus an asylum seeker is permitted to apply for asylum in only one state, assuming he or she did not transit a safe third country before arriving on the common territory.

Project 1992 together with the Maastricht process launched the most ambitious program of regional integration and economic liberalization in European history. But just as this process was taking off in 1989–90, the strategic situation in Europe was turned upside down, with the end of the Cold War and the collapse of the USSR and its communist satellites in East Central Europe. This change in the international system, which began in the 1980s during the period of *glasnost* under Mikhail Gorbachev, made it easier for individuals wishing to emigrate from the East to leave and seek asylum in the West. The result was a dramatic increase in the number of asylum seekers in Western Europe, not just from Eastern Europe, but from all over the world.

International migration had entered a new phase in the 1980s and 90s, with refugee migration and asylum seeking reaching levels not seen since the period just after World War II. The situation in Europe was further complicated by a resurgence of ethnic nationalism (Brubaker, 1996), by war in the Balkans, and by a dramatic increase in the number of refugees from almost every region of the globe. By the mid-1990s there were more than 16 million refugees in the world, with two thirds of them in Africa and the Middle East.

The U.N. system for managing refugee migration, which had been created during the Cold War primarily to accommodate those fleeing persecution under communist rule, suddenly came under enormous pressure (Teitelbaum, 1984). The United Nations High Commission for Refugees (UNHCR) was transformed virtually overnight into one of the most important international institutions. The UNHCR was thrust into the role of managing the new migration crisis, as the Western democracies struggled to contain a wave of asylum seeking. The claims of the vast majority of those seeking asylum in Western Europe and the United States would be rejected, leading Western governments (and their publics) to the conclusion that most asylum seekers are in fact economic refugees (Fetzer, 2000). By the same token, many human rights advocates feared that genuine refugees would be submerged in a tide of false asylum seeking.

Whatever conclusion one draws from the high rate of rejection of asylum claims, the fact is that refugee migration surged in the last two decades of the twentieth century, creating a new set of dilemmas for liberal states (Teitelbaum, 1980, 1984). A large percentage of those whose asylum claims were refused would remain in the host countries either legally, pending appeal of their cases, or illegally, simply going underground. With most of the European democracies attempting to slow or stop all forms of legal immigration, the number of illegal immigrants, many of whom are individuals who entered the country legally and overstayed their visas, has increased steadily. Closing off avenues for legal immigration in Western Europe led to a surge in illegal migration. But with the perception among Western publics that immigration is raging out of control and with the rise of right-wing and xenophobic political parties and movements, especially in Western Europe, governments are extremely reluctant to create new programs for legal immigration or to expand existing quotas.

Instead, the thrust of policy change in Western Europe and the United States has been in the direction of further restriction. To give a few examples, Germany in 1993 amended its constitution in order to eliminate the blanket right of asylum that was enshrined in Article 16 of the old Basic Law. France in 1995–96 enacted a series of laws (the Pasqua and Debré Laws) that were designed to roll back the rights of foreign residents and make it more difficult for immigrants to naturalize (Brochmann and Hammar, 1999). Also in 1996, the Republican-majority Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act, which curtailed social or welfare rights for all immigrants (legal as well as illegal) and severely limited the due process rights of illegal immigrants and asylum seekers.

Yet, at the same time that the U.S. Congress was acting to limit immigrant rights, it took steps to expand legal immigration, especially for certain categories of highly skilled immigrants. The H-1B program, which gives American businesses the right to recruit foreigners with skills that are in short supply among native workers, was expanded in the 1990s. In France in 1997 and in

Germany in 1999, laws were passed by left-wing governments to liberalize naturalization and citizenship policy (Hollifield, 1999b, 2000b,c). Most European governments recognize that they now preside over multicultural/immigrant societies, and attempts to ostracize settled foreign populations only feed the flames of xenophobia and racism. Moreover, with stagnant or declining populations and a shortage of highly skilled workers, European governments are now turning to new recruitment programs, seeking to emulate some aspects of American and Canadian immigration policy, and make their economies more competitive in a rapidly globalizing world. How can we make sense of these seemingly contradictory trends? Have states found ways of escaping from the liberal paradox, or are they still caught between economic forces that propel them toward greater openness (to maximize material wealth and economic security) and political forces that seek a higher degree of closure (to protect the *demos*, maintain the integrity of the community, and preserve the social contract)? This is already a daunting task – for states to find the appropriate "equilibrium" between openness and closure – but they also face the very real threat of terrorism. The attacks of September 11, 2001 on the United States served as a reminder that the first responsibility of the state is to provide for the security of its territory and population.

The Emerging "Migration State"

International migration is likely to increase in coming decades unless there is some cataclysmic international event, like war or economic depression. Even after the 9/11 terrorist attack on the United States, the liberal democracies have remained relatively open to international migration. Global economic inequalities mean that supply-push forces remain strong, while at the same time demand-pull forces are intensifying (Martin and Widgren, 1996). The growing demand for highly skilled workers, as we have seen in the German case, and the demographic decline in the industrial democracies create economic opportunities for migrants. Transnational networks have become more dense and efficient, linking the sending and receiving societies. These networks help to lower the costs and the risks of migration, making it easier for people to move across borders and over long distances. Moreover, when legal migration is not an option, migrants have increasingly turned to professional smugglers, and a global industry of migrant smuggling – often with the involvement of organized crime – has sprung up, especially in the last decade of the twentieth century. Hardly a week passes without some news of a tragic loss of life associated with migrant smuggling (Kyle and Koslowski, 2001).

But migration, like any type of transnational economic activity (such as trade and foreign investment), cannot and does not take place in a legal or institutional void. As we have seen, states have been and still are deeply involved in organizing and regulating migration, and the extension of

rights to non-nationals has been an extremely important part of the story of international migration in the post-World War II period. For the most part, rights that accrue to migrants come from the legal and constitutional protections guaranteed to all "members" of society (Hollifield 1992a, 1999a). Thus, if an individual migrant is able to establish some claim to residence in the territory of a liberal state, his or her chances of being able to remain and settle will increase. At the same time, developments in international human rights law have helped to solidify the position of individuals vis-à-vis the nation-state, to the point that individuals (and certain groups) have acquired a sort of international legal personality, leading some analysts to speculate that we are entering a post-national era, characterized by "universal person-hood" (Soysal, 1994), the expansion of "rights across borders" (Jacobson, 1995), and even "transnational citizenship" (Bauböck, 1994). Others have argued that migrants have become transnational, because so many no longer reside exclusively within the territory of one state (Glick-Schiller, 1999; Levitt, 2001), opting to shuttle between a place of origin and destination. This line of argument gives priority to agency as a defining feature of contemporary migrations; but it ignores the extent to which state policies have shaped the choices that migrants make (Hollifield, 2000d; Waldinger and Fitzgerald, 2004). The migration state is almost by definition a liberal state inasmuch as it creates a legal and regulatory environment in which migrants can pursue individual strategies of accumulation.

But regulating international migration requires liberal states to be attentive to the (human or civil) rights of the individual. If rights are ignored or trampled upon, then the liberal state risks undermining its own legitimacy and *raison d'être* (Hollifield, 1999a). As international migration and transnationalism increase, pressures build upon liberal states to find new and creative ways to cooperate, to manage flows. The definition of the national interest and *raison d'Etat* have to take this reality into account, as rights become more and more a central feature of domestic and foreign policy. New international regimes will be necessary if states are to risk more openness, and rights-based (international) politics will be the order of the day (Hollifield, 1992b, 1994b, 2000b; Cornelius *et al.*, 2004; Ghosh, 2000).

Some politicians and policymakers, as well as international organizations, continue to hope for market-based/economic solutions to the problem of regulating international migration. It is hoped that trade and foreign direct investment – bringing capital and jobs to people, either through private investment or official development assistance – will substitute for migration, alleviating both supply-push and demand-pull factors (Bhagwati, 1983; Martin and Widgren, 1996). Even though trade can lead to factor-price equalization in the long term, as we have seen in the case of the European Union (Stolper and Samuelson, 1941; Mundell, 1957; Straubhaar, 1988), in the short and medium term exposing LDCs to market forces often results in increased (rather than decreased) migration, as is evident with

NAFTA and the U.S.-Mexican relationship (Martin, 1993; Massey *et al.*, 2002). Likewise, trade in services can stimulate more "high end" migration because these types of products often cannot be produced or sold without the movement of the individuals who make and market them (Bhagwati, 1998; Ghosh, 1997).

In short, the global integration of markets for goods, services and capital entails higher levels of international migration. Therefore, if states want to promote freer trade and investment, they must be prepared to manage higher levels of migration. Many states (like Canada and Germany) are willing, if not eager, to sponsor high-end migration because the numbers are manageable and there is likely to be less political resistance to the importation of highly skilled individuals. However, mass migration of unskilled and less educated workers is likely to meet with greater political resistance, even in situations and in sectors like construction or health care, where there is high demand for this type of labor. In these instances, the tendency is for governments to go back to the old guest worker models in hopes of bringing in just enough temporary workers to fill gaps in the labor market, but with strict contracts between foreign workers and their employers that limit the length of stay and prohibit settlement or family reunification (Miller and Martin, 1982; Hönekopp, 1997). The alternative is illegal immigration and a growing black market for labor – a Hobson's choice.

The nineteenth and twentieth centuries saw the rise of what Richard Rosecrance (1986) has labeled the trading state. The latter half of the twentieth century has given rise to the migration state. In fact, from a strategic, economic and demographic standpoint, trade and migration go hand in hand. Because the wealth, power and stability of the state is now more than ever dependent on its willingness to risk both trade and migration (Lusztig, 1996; Hollifield, 1998), as our German example shows. In launching a modest "green card" program, Germany is clearly seeking to emulate the United States and Canada on the premise that global competitiveness, power, and economic security are closely related to a willingness to accept immigrants. Germans in particular and Europeans in general are (reluctantly) following the American and Canadian examples in order to enhance their material power and wealth. But, in one important respect, Germany and Europe have an advantage over the United States, and Canada or Australia for that matter. Germany is part of a regional economic enterprise (the European Union), which is not only creating a free trade zone, but also a free migration area.

Now more than ever, international security and stability are dependent on the capacity of states to manage migration. It is extremely difficult, if not impossible, for states to manage or control migration either unilaterally or bilaterally. Some type of multilateral/regional regime is required, similar to what the EU has constructed for nationals of the member states. The EU model, as it has evolved from Rome to Maastricht to Amsterdam and beyond, points the way to future migration regimes because it is not based purely on

homo economicus, but incorporates rights for individual migrants and even a rudimentary citizenship, which continues to evolve (Caporaso, 2000). The problem, of course, in this type of regional migration regime is how to deal with third-country nationals (TCNs). As the EU expands and borders are relaxed, the issue of TCNs, immigrants, and ethnic minorities becomes ever more pressing, and new institutions, laws and regulations must be created to deal with them (Geddes, 1994, 2003; Guiraudon, 1998). In the end, the EU, by creating a regional migration regime and a kind of supra-national authority to deal with migration and refugee issues, allows the member states to finesse, if not escape, the liberal paradox (Geddes, 2000, 2003). Playing the good cop/bad cop routine and using symbolic politics and policies to maintain the illusion of border control help governments fend off the forces of closure, at least in the short run (Rudolph, 2003). In the end, however, it is the nature of the liberal state itself and the degree to which openness is institutionalized and (constitutionally) protected from the "majority of the moment" that will determine whether states will continue to risk trade and migration (Hollifield, 2000d).

Regional integration reinforces the trading state and acts as a midwife for the migration state. In the EU, migrants, including TCNs, are gradually acquiring the rights that they need in order to live and work on the territory of the member states (Groenendijk, Guild and Barzilay, 2000; Geddes, 2003; Hollifield, 2000b). Regional integration blurs the lines of territoriality, lessening problems of integration and national identity. The fact that there is an increasing disjuncture between people and place – which in the past might have provoked a crisis of national identity and undermined the legitimacy of the nation-state – is less of a problem when the state is tied to a regional regime, like the EU. This does not mean, of course, that there will be no resistance to freer trade and migration. Protests against globalization and nativist or xenophobic reactions against immigration have been on the rise throughout the OECD world. Nonetheless, regional integration, especially when it has a long history and is deeply institutionalized as it is in Europe, makes it easier for states to risk trade and migration and for governments to construct the kinds of political coalitions that will be necessary to support and institutionalize greater openness.

Not surprisingly, Mexican President Vicente Fox, like his predecessors, is looking to Europe as a model for how to solve problems of regional integration, especially the very delicate political issue of illegal Mexican immigration to the United States. His argument is that freer migration and a more open (normalized) border are logical extensions of the North American Free Trade Agreement (NAFTA). The previous Mexican government, under Ernesto Zedillo, by moving to grant dual nationality to Mexican nationals living north of the border, took a big step towards consolidating and extending the rights of this, the largest migrant population in North America. But the U.S. government is reluctant to move so fast with economic and political integration,

especially after the attack of September 11, 2001, preferring instead to create new guest worker programs or to continue with the current system, which tolerates high levels of unauthorized migration from Mexico (Massey, 2002). Clearly, however, North America is the region that is closest to taking steps towards an EU-style regional migration regime, and the United States is facing the prospect of another legalization. In the long run, it is difficult for liberal states, like the United States, to sustain a large, illegal population. For this reason, amnesties, legalizations, or regularizations have become a common feature of the migration state.

Even though there are large numbers of economic migrants in Asia, this region remains divided into relatively closed and often authoritarian societies, with little prospect of granting rights to migrants and guest workers. The more liberal and democratic states, like Japan, Taiwan and South Korea, are the exceptions; but they have only just begun to grapple with the problem of immigration, on a relatively small scale (Cornelius *et al.*, 2004). In Africa and the Middle East, which have high numbers of migrants and refugees, there is a great deal of instability, and states are fluid with little institutional or legal capacity for dealing with international migration.

In conclusion, we can see that migration is both a cause and a consequence of political and economic change. International migration, like trade, is a fundamental feature of the postwar liberal order. But, as states and societies become more liberal and more open, migration has increased. Will this increase in migration be a virtuous or a vicious cycle? Will it be destabilizing, leading the international system into greater anarchy, disorder and war, or will it lead to greater openness, wealth and human development? Much will depend on how migration is managed by the more powerful liberal states, because they will set the trend for the rest of the globe. To avoid a domestic political backlash against immigration, the rights of migrants must be respected and states must cooperate in building an international migration regime. In this article, I have argued that the first, halting steps towards such a regime have been taken in Europe and that North America is likely to follow. As liberal states come together to manage this extraordinarily complex phenomenon, it may be possible to construct a truly international regime, under the auspices of the United Nations. But I am not sanguine about this possibility because the asymmetry of interests, particularly between the developed and the developing world, is too great to permit states to overcome problems of coordination and cooperation. Even as states become more dependent on trade and migration, they are likely to remain trapped in a liberal paradox for decades to come.

Notes

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2. Here defined simply as increasing levels of international exchange.
3. The trend in international migration has been steadily upward since the end of World War II (IOM, 1996, 2000).

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