

## **Membership**

(Chapter 2 of *Spheres of Justice: A Defense of Pluralism and Equality*)

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### **Members and Strangers**

The idea of distributive justice presupposes a bounded world within which distributions takes place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves. That world, as I have already argued, is the political community, whose members distribute power to one another and avoid, if they possibly can, sharing it with anyone else. When we think about distributive justice, we think about independent cities or countries capable of arranging their own patterns of division and exchange, justly or unjustly. We assume an established group and a fixed population, and so we miss the first and most important distributive question: How is that group constituted?

I don't mean, How was it constituted? I am concerned here not with the historical origins of the different groups, but with the decisions they make in the present about their present and future populations. The primary good that we distribute to one another is membership in some human community. And what we do with regard to membership structures all our other distributive choices: it determines with whom we make those choices, from whom we require obedience and collect taxes, to whom we allocate goods and services.

Men and women without membership anywhere are stateless persons. That condition doesn't preclude every sort of distributive relation: markets, for example, are commonly open to all comers. But non-members are vulnerable and unprotected in the marketplace. Although they participate freely in the exchange of goods, they have no part in those goods that are shared. They are cut off from the communal provision of security and welfare. Even those aspects of security and welfare that are, like public health, collectively distributed are not guaranteed to non-members: for they have no guaranteed place in the collectivity and are always liable to expulsion. Statelessness is a condition of infinite danger.

But membership and non-membership are not the only--or, for our purposes, the most important--set of possibilities. It is also possible to be a member of a poor or a rich country, to live in a densely crowded or a largely empty country, to be the subject of an authoritarian regime or the citizen of a democracy. Since human beings are highly mobile, large numbers of men and women regularly attempt to change their residence and their membership, moving from unfavored to favored environments. Affluent and free countries are, like elite universities, besieged by applicants. They have to decide on their own size and character. More precisely, as citizens of such a country, we have to decide: Whom should we admit? Ought we to have open admissions? Can we choose among applicants? What are the appropriate criteria for distributing membership?

The plural pronouns that I have used in asking these questions suggest the conventional answer to them: we who are already members do the choosing, in accordance with our own understanding of what membership means in our community and of what sort of a community we want to have. Membership as a social good is constituted by our understanding; its value is fixed by our work and conversation; and then we are in charge (who else could be in charge?) of its distribution. But we don't distribute it among ourselves; it is already ours. We give it out to strangers. Hence the choice is also governed by our relationships with strangers--not only by our understanding of those relationships but also by the actual contacts, connections, alliances we have established and the effects we have had beyond our borders. But I shall focus first on strangers in the literal sense, men and women whom we meet, so to speak, for the first time. We don't know who they are or what they think, yet we recognize them as men and women. Like us but not of us: when we decide on membership, we have to consider them as well as ourselves.

I won't try to recount here the history of Western ideas about strangers. In a number of ancient languages, Latin among them, strangers and enemies were named by a single word. We have come only slowly, through a long process of trial and error, to distinguish the two and to acknowledge that, in certain circumstances, strangers (but not enemies) might be entitled to our hospitality, assistance, and good will. This acknowledgment can be formalized as the principle of mutual aid, which suggests the duties that we owe, as John Rawls has written, "not only to definite individuals, say to those cooperating together in some social arrangement, but to persons generally."<sup>1</sup> Mutual aid extends across political (and also cultural, religious, and linguistic) frontiers. The philosophical grounds

of the principle are hard to specify (its history provides its practical ground). I doubt that Rawls is right to argue that we can establish it simply by imagining "what a society would be like if this duty were rejected"<sup>2</sup>--for rejection is not an issue within any particular society; the issue arises only among people who don't share, or don't know themselves to share, a common life. People who do share a common life have much stronger duties.

It is the absence of any cooperative arrangements that sets the context for mutual aid: two strangers meet at sea or in the desert or, as in the Good Samaritan story, by the side of the road. What precisely they owe one another is by no means clear, but we commonly say of such cases that positive assistance is required if (1) it is needed or urgently needed by one of the parties; and (2) if the risks and costs of giving it are relatively low for the other party. Given these conditions, I ought to stop and help the injured stranger, wherever I meet him, whatever his membership or my own. This is our morality; conceivably his, too. It is, moreover, an obligation that can be read out in roughly the same form at the collective level. Groups of people ought to help necessitous strangers whom they somehow discover in their midst or on their path. But the limit on risks and costs in these cases is sharply drawn. I need not take the injured stranger into my home, except briefly, and I certainly need not care for him or even associate with him for the rest of my life. My life cannot be shaped and determined by such chance encounters. Governor John Winthrop, arguing against free immigration in the new Puritan commonwealth of Massachusetts, insisted that this right of refusal applies also to collective mutual aid: "As for hospitality, that rule does not bind further than for some present occasion, not for continual residence."<sup>3</sup> Whether Winthrop's view can be defended is a question that I shall come to only gradually. Here I only want to point to mutual aid as a (possible) external principle for the distribution of membership, a principle that doesn't depend upon the prevailing view of membership within a particular society. The force of the principle is uncertain, in part because of its own vagueness, in part because it sometimes comes up against the internal force of social meanings, and these meanings can be specified, and are specified, through the decision-making processes of the political community.

We might opt for a world without particular meanings and without political communities: where no one was a member or where everyone "belonged" to a single global state. These are the two forms of simple equality with regard to membership. If all human beings were strangers to one another, if all our meetings were like meetings at sea or in the desert or by the side of the road, then there would be no membership to distribute. Admissions policy would never be an issue. Where and how we lived, and with whom we lived, would depend upon our individual desires and then upon our partnerships and affairs. Justice would be nothing more than non-coercion, good faith, and Good Samaritanism--a matter entirely of external principles. If, by contrast, all human beings were members of a global state, membership would already have been distributed, equally; and there would be nothing more to do. The first of these arrangements suggests a kind of global libertarianism; the second, a kind of global socialism. These are the two conditions under which the distribution of membership would never arise. Either there would be no such status to distribute, or it would simply come (to everyone) with birth. But neither of these arrangements is likely to be realized in the foreseeable future; and there are impressive arguments, which I will come to later, against both of them. In any case, so long as members and strangers are, as they are at present, two distinct groups, admissions decisions have to be made, men and women taken in or refused. Given the indeterminate requirements of mutual aid, these decisions are not constrained by any widely accepted standard. That's why the admissions policies of countries are rarely criticized, except in terms suggesting that the only relevant criteria are those of charity, not justice. It is certainly possible that a deeper criticism would lead one to deny the member/stranger distinction. But I shall try, nevertheless, to defend that distinction and then to describe the internal and the external principles that govern the distribution of membership.

The argument will require a careful review of both immigration and naturalization policy. But it is worth noting first, briefly, that there are certain similarities between strangers in political space (immigrants) and descendants in time (children). People enter a country by being born to parents already there as well as, and more often than, by crossing the frontier. Both these processes can be controlled. In the first case, however, unless we practice a selective infanticide, we will be dealing with unborn and hence unknown individuals. Subsidies for large families and programs of birth control determine only the size of the population--not the characteristics of its inhabitants. We might, of course, award the right to give birth differentially to different groups of parents, establishing ethnic quotas (like country-of-origin quotas in immigration policy) or class or intelligence quotas, or allowing right-to-give-birth certificates to be traded on the market. These are ways of regulating who has children and of shaping the character of the future population. They are, however, indirect and inefficient ways, even with regard to ethnicity, unless the state also regulates intermarriage and assimilation. Even well short of that, the policy would require very high, and surely unacceptable, levels of coercion: the dominance of political power over kinship and love. So the major public

policy issue is the size of the population only--its growth, stability, or decline. To how many people do we distribute membership? The larger and philosophically more interesting questions--To what sorts of people?, and To what particular people?--are most clearly confronted when we turn to the problems involved in admitting or excluding strangers.

### **Analogies: Neighborhoods, Clubs, and Families**

Admissions policies are shaped partly by arguments about economic and political conditions in the host country, partly by arguments about the character and "destiny" of the host country, and partly by arguments about the character of countries (political communities) in general. The last of these is the most important, in theory at least; for our understanding of countries in general will determine whether particular countries have the right they conventionally claim: to distribute membership for (their own) particular reasons. But few of us have any direct experience of what a country is or of what it means to be a member. We often have strong feelings about our country, but we have only dim perceptions of it. As a political community (rather than a place), it is, after all, invisible; we actually see only its symbols, offices, and representatives. I suspect that we understand it best when we compare it to other, smaller associations whose compass we can more easily grasp. For we are all members of formal and informal groups of many different sorts; we know their workings intimately. And all these groups have, and necessarily have, admissions policies. Even if we have never served as state officials, even if we have never emigrated from one country to another, we have all had the experience of accepting or rejecting strangers, and we have all had the experience of being accepted or rejected. I want to draw upon this experience. My argument will be worked through a series of rough comparisons, in the course of which the special meaning of political membership will, I think, become increasingly apparent.

Consider, then, three possible analogues for the political community: we can think of countries as neighborhoods, clubs, or families. The list is obviously not exhaustive, but it will serve to illuminate certain key features of admission and exclusion. Schools, bureaucracies, and companies, though they have some of the characteristics of clubs, distribute social and economic status as well as membership; I will take them up separately. Many domestic associations are parasitic for their memberships, relying on the procedures of other associations; unions depend upon the hiring policies of companies; parent-teacher organizations depend upon the openness of neighborhoods or upon the selectiveness of private schools. Political parties are generally like clubs; religious congregations are often designed to resemble families. What should countries be like?

The neighborhood is an enormously complex human association, but we have a certain understanding of what it is like--an understanding at least partially reflected (though also increasingly challenged) in contemporary American law. It is an association without an organized or legally enforceable admissions policy. Strangers can be welcomed or not welcomed; they cannot be admitted or excluded. Of course, being welcomed or not welcomed is sometimes effectively the same thing as being admitted or excluded, but the distinction is theoretically important. In principle, individuals and families move into a neighborhood for reasons of their own; they choose but are not chosen. Or, rather, in the absence of legal controls, the market controls their movements. Whether they move is determined not only by their own choice but also by their ability to find a job and a place to live (or, in a society different from our own, to find a factory commune or a cooperative apartment house ready to take them in). Ideally, the market works independently of the existing composition of the neighborhood. The state upholds this independence by refusing to enforce restrictive covenants and by acting to prevent or minimize discrimination in employment. There are no institutional arrangements capable of maintaining "ethnic purity"--though zoning laws

sometimes maintain class segregation.<sup>4\*\*</sup> With reference to any formal criteria, the neighborhood is a random association, "not a selection, but rather a specimen of life as a whole. . . . By the very indifference of space," as Bernard Bosanquet has written, "we are liable to the direct impact of all possible factors."<sup>6</sup>

It was a common argument in classical political economy that national territory should be as "indifferent" as local space. The same writers who defended free trade in the nineteenth century also defended unrestricted immigration. They argued for perfect freedom of contract, without any political restraint. International society, they thought, should take shape as a world of neighborhoods, with individuals moving freely about, seeking private advancement. In their view, as Henry Sidgwick reported it in the 1890S, the only business of state officials is "to maintain order

over [a] particular territory. . . but not in any way to determine who is to inhabit this territory, or to restrict the enjoyment of its natural advantages to any particular portion of the human race."7 Natural advantages (like markets) are open to all comers, within the limits of private property rights; and if they are used up or devalued by overcrowding, people presumably will move on, into the jurisdiction of new sets of officials.

Sidgwick thought that this is possibly the "ideal of the future," but he offered three arguments against a world of neighborhoods in the present. First of all, such a world would not allow for patriotic sentiment, and so the "casual aggregates" that would probably result from the free movement of individuals would "lack internal cohesion." Neighbors would be strangers to one another. Second, free movement might interfere with efforts "to raise the standard of living among the poorer classes" of a particular country, since such efforts could not be undertaken with equal energy and success everywhere in the world. And, third, the promotion of moral and intellectual culture and the efficient working of political institutions might be "defeated" by the continual creation of heterogeneous populations.8 Sidgwick presented these three arguments as a series of utilitarian considerations that weigh against the benefits of labor mobility and contractual freedom. But they seem to me to have a rather different character. The last two arguments draw their force from the first, but only if the first is conceived in non-utilitarian terms. It is only if patriotic sentiment has some moral basis, only if communal cohesion makes for obligations and shared meanings, only if there are members as well as strangers, that state officials would have any reason to worry especially about the welfare of their own people (and of all their own people) and the success of their own culture and politics. For it is at least dubious that the average standard of living of the poorer classes throughout the world would decline under conditions of perfect labor mobility. Nor is there firm evidence that culture cannot thrive in cosmopolitan environments, nor that it is impossible to govern casual aggregations of people. As for the last of these, political theorists long ago discovered that certain sorts of regimes--namely, authoritarian regimes--thrive in the absence of communal cohesion. That perfect mobility makes for authoritarianism might suggest a utilitarian argument against mobility; but such an argument would work only if individual men and women, free to come and go, expressed a desire for some other form of government. And that they might not do.

Perfect labor mobility, however, is probably a mirage, for it is almost certain to be resisted at the local level. Human beings, as I have said, move about a great deal, but not because they love to move. They are, most of them, inclined to stay where they are unless their life is very difficult there. They experience a tension between love of place and the discomforts of a particular place. While some of them leave their homes and become foreigners in new lands, others stay where they are and resent the foreigners in their own land. Hence, if states ever become large neighborhoods, it is likely that neighborhoods will become little states. Their members will organize to defend the local politics and culture against strangers. Historically, neighborhoods have turned into closed or parochial communities (leaving aside cases of legal coercion) whenever the state was open: in the cosmopolitan cities of multinational empires, for example, where state officials don't foster any particular identity but permit different groups to build their own institutional structures (as in ancient Alexandria), or in the receiving centers of mass immigration movements (early twentieth century New York) where the country is an open but also an alien world--or, alternatively, a world full of aliens. The case is similar where the state doesn't exist at all or in areas where it doesn't function. Where welfare monies are raised and spent locally, for example, as in a seventeenth-century English parish, the local people will seek to exclude newcomers who are likely welfare recipients. It is only the nationalization of welfare (or the nationalization of culture and politics) that opens the neighborhood communities to whoever chooses to come in.

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\*\*The use of zoning laws to bar from neighborhoods (boroughs, villages, towns,) certain sorts of people--namely, those who don't live in conventional families--is a new feature of our political history, and I shall not try to comment on it here. 5

Neighborhoods can be open only if countries are at least potentially closed. Only if the state makes a selection among would-be members and guarantees the loyalty, security, and welfare of the individuals it selects, can local communities take shape as "indifferent" associations, determined solely by personal preference and market capacity. Since individual choice is most dependent upon local mobility, this would seem to be the preferred arrangement in a society like our own. The politics and the culture of a modern democracy probably require the kind of largeness, and also the kind of boundedness, that states provide. I don't mean to deny the value of sectional cultures and ethnic communities; I mean only to suggest the rigidities that would be forced upon both in the

absence of inclusive and protective states. To tear down the walls of the state is not, as Sidgwick worriedly suggested, to create a world without walls, but rather to create a thousand petty fortresses.

The fortresses, too, could be torn down: all that is necessary is a global state sufficiently powerful to overwhelm the local communities. Then the result would be the world of the political economists, as Sidgwick described it--a world of radically deracinated men and women. Neighborhoods might maintain some cohesive culture for a generation or two on a voluntary basis, but people would move in, people would move out; soon the cohesion would be gone. The distinctiveness of culture and groups depends upon closure and, without it, cannot be conceived as a stable feature of human life. If this distinctiveness is a value, as most people (though some of them are global pluralists, and others only local loyalists) seem to believe, then closure must be permitted somewhere. At some level of political organization, something like the sovereign state must take shape and claim the authority to make its own admissions policy, to control and sometimes restrain the flow of immigrants.

But this right to control immigration does not include or entail the right to control emigration. The political community can shape its own population in the one way, not in the other: this is a distinction that gets reiterated in different forms throughout the account of membership. The restraint of entry serves to defend the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life. But the restraint of exit replaces commitment with coercion. So far as the coerced members are concerned, there is no longer a community worth defending. A state can, perhaps, banish individual citizens or expel aliens living within its borders (if there is some place ready to receive them). Except in times of national emergency, when everyone is bound to work for the survival of the community, states cannot prevent such people from getting up and leaving. The fact that individuals can rightly leave their own country, however, doesn't generate a right to enter another (any other). Immigration and emigration are morally asymmetrical.<sup>9</sup> Here the appropriate analogy is with the club, for it is a feature of clubs in domestic society--as I have just suggested it is of states in international society--that they can regulate admissions but cannot bar withdrawals

Like clubs, countries have admissions committees. In the United States, Congress functions as such a committee, though it rarely makes individual selections. Instead, it establishes general qualifications, categories for admission and exclusion, and numerical quotas (limits). Then admissible individuals are taken in, with varying degrees of administrative discretion, mostly on a first-come, first-served basis. This procedure seems eminently defensible, though that does not mean that any particular set of qualifications and categories ought to be defended. To say that states have a right to act in certain areas is not to say that anything they do in those areas is right. One can argue about particular admissions standards by appealing, for example, to the condition and character of the host country and to the shared understandings of those who are already members. Such arguments have to be judged morally and politically as well as factually. The claim of American advocates of restricted immigration (in 1920, say) that they were defending a homogeneous white and Protestant country, can plausibly be called unjust as well as inaccurate: as if non-white and non-Protestant citizens were invisible men and women, who didn't have to be counted in the national census! <sup>10</sup> Earlier Americans, seeking the benefits of economic and geographic expansion, had created a pluralist society; and the moral realities of that society ought to have guided the legislators of the 1920s. If we follow the logic of the club analogy, however, we have to say that the earlier decision might have been different, and the United States might have taken shape as a homogeneous community, an Anglo-Saxon nation-state (assuming what happened in any case: the virtual extermination of the Indians who, understanding correctly the dangers of invasion, struggled as best they could to keep foreigners out of their native lands). Decisions of this sort are subject to constraint, but what the constraints are I am not yet ready to say. It is important first to insist that the distribution of membership in American society, and in any ongoing society, is a matter of political decision. The labor market may be given free rein, as it was for many decades in the United States, but that does not happen by an act of nature or of God; it depends upon choices that are ultimately political. What kind of community do the citizens want to create? With what other men and women do they want to share and exchange social goods?

These are exactly the questions that club members answer when they make membership decisions, though usually with reference to a less extensive community and to a more limited range of social goods. In clubs, only the founders choose themselves (or one another); all other members have been chosen by those who were members before them. Individuals may be able to give good reasons why they should be selected, but no one on the outside has a right to be inside. The members decide freely on their future associates, and the decisions they make are authoritative and final. Only when clubs split into factions and fight over property can the state intervene and make its own decision about who the members are. When states split, however, no legal appeal is possible; there is no

superior body. Hence, we might imagine states as perfect clubs, with sovereign power over their own selection processes.\*\*\*

But if this description is accurate in regard to the law, it is not an accurate account of the moral life of contemporary political communities. Clearly, citizens often believe themselves morally bound to open the doors of their country--not to anyone who wants to come in, perhaps, but to a particular group of outsiders, recognized as national or ethnic "relatives." In this sense, states are like families rather than clubs, for it is a feature of families that their members are morally connected to people they have not chosen, who live outside the household. In time of trouble, the household is also a refuge. Sometimes, under the auspices of the state, we take in fellow citizens to whom we are not related, as English country families took in London children during the blitz; but our more spontaneous beneficence is directed at our own kith and kin. The state recognizes what we can call the "kinship principle" when it gives priority in immigration to the relatives of citizens. That is current policy in the United States, and it seems especially appropriate in a political community largely formed by the admission of immigrants. It is a way of acknowledging that labor mobility has a social price: since laborers are men and women with families, one cannot admit them for the sake of their labor without accepting some commitment to their aged parents, say, or to their sickly brothers and sisters.

In communities differently formed, where the state represents a nation largely in place, another sort of commitment commonly develops, along lines determined by the principle of nationality. In time of trouble, the State is a refuge for members of the nation, whether or not they are residents and citizens. Perhaps the border of the political community was drawn years ago so as to leave their villages and towns on the wrong side; perhaps they are the children or grandchildren of emigrants. They have no legal membership rights, but if they are persecuted in the land where they live, they look to their homeland not only with hope but also with expectation. I am inclined to say that such expectations are legitimate. Greeks driven from Turkey, Turks from Greece, after the wars and revolutions of the early twentieth century, had to be taken in by the states that bore their collective names. What else are such states for? They don't only preside over a piece of territory and a random collection of inhabitants; they are also the political expression of a common life and (most often) of a national "family" that is never entirely enclosed within their legal boundaries. After the Second World War, millions of Germans, expelled by Poland and Czechoslovakia, were received and cared for by the two Germanies. Even if these states had been free of all responsibility in the expulsions, they would still have had a special obligation to the refugees. Most states recognize obligations of this sort in practice; some do in law.

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\*\*\*Winthrop made the point clearly: "If we here be a corporation established by free consent, if the place of our habitation be our own, then no man hath right to come into us . . . without our consent."<sup>11</sup> I will come back to the question of "place" later (page 43).

### **Territory**

We might, then, think of countries as national clubs or families. But countries are also territorial states. Although clubs and families own property, they neither require nor (except in feudal systems) possess jurisdiction over territory. Leaving children aside, they do not control the physical location of their members. The state does control physical location--if only for the sake of clubs and families and the individual men and women who make them up; and with this control there come certain obligations. We can best examine these if we consider once again the asymmetry of immigration and emigration.

The nationality principle has one significant limit, commonly accepted in theory, if not always in practice. Though the recognition of national affinity is a reason for permitting immigration, nonrecognition is not a reason for

expulsion. This is a major issue in the modern world, for many newly independent states find themselves in control of territory into which alien groups have been admitted under the auspices of the old imperial regime. Sometimes these people are forced to leave, the victims of a popular hostility that the new government cannot restrain. More often the government itself fosters such hostility, and takes positive action to drive out the "alien elements," invoking when it does so some version of the club or the family analogy. Here, however, neither analogy applies: for though no "alien" has a right to be a member of a club or a family, it is possible, I think, to describe a kind of territorial or locational right.

Hobbes made the argument in classical form when he listed those rights that are given up and those that are retained when the social contract is signed. The retained rights include self-defense and then "the use of fire, water, free air, *and place to live in*, and. . .all things necessary for life." (italics mine).<sup>12</sup> The right is not, indeed, to a particular place, but it is enforceable against the state, which exists to protect it; the state's claim to territorial jurisdiction derives ultimately from this individual right to place. Hence the right has a collective as well as an individual form, and these two can come into conflict. But it can't be said that the first always or necessarily supercedes the second, for the first came into existence for the sake of the second. The state owes something to its inhabitants simply, without reference to their collective or national identity. And the first place to which the inhabitants are entitled is surely the place where they and their families have lived and made a life. The attachments and expectations they have formed argue against a forced transfer to another country. If they can't have this particular piece of land (or house or apartment), then some other must be found for them within the same general "place." Initially, at least, the sphere of membership is given: the men and women who determine what membership means, and who shape the admissions policies of the political community, are simply the men and women who are already there. New states and governments must make their peace with the old inhabitants of the land they rule. And countries are likely to take shape as closed territories dominated, perhaps, by particular nations (clubs or families), but always including aliens of one sort or another--whose expulsion would be unjust.

This common arrangement raises one important possibility: that many of the inhabitants of a particular country won't be allowed full membership (citizenship) because of their nationality. I will consider that possibility, and argue for its rejection, when I turn to the specific problems of naturalization. But one might avoid such problems entirely, at least at the level of the state, by opting for a radically different arrangement. Consider once again the neighborhood analogy: perhaps we should deny to national states, as we deny to churches and political parties, the collective right of territorial jurisdiction. Perhaps we should insist upon open countries and permit closure only in non-territorial groups. Open neighborhoods together with closed clubs and families: that is the structure of domestic society. Why can't it, why shouldn't it be extended to the global society?

An extension of this sort was actually proposed by the Austrian socialist writer Otto Bauer, with reference to the old multinational empires of Central and Eastern Europe. Bauer would have organized nations into autonomous corporations permitted to tax their members for educational and cultural purposes, but denied any territorial dominion. Individuals would be free to move about in political space, within the empire, carrying their national memberships with them, much as individuals move about today in liberal and secular states, carrying their religious memberships and partisan affiliations. Like churches and parties, the corporations could admit or reject new members in accordance with whatever standards their old members thought appropriate.<sup>13</sup>

The major difficulty here is that all the national communities that Bauer wanted to preserve came into existence, and were sustained over the centuries, on the basis of geographical coexistence. It isn't any misunderstanding of their histories that leads nations newly freed from imperial rule to seek a firm territorial status. Nations look for countries because in some deep sense they already have countries: the link between people and land is a crucial feature of national identity. Their leaders understand, moreover, that because so many critical issues (including issues of distributive justice, such as welfare, education, and so on) can best be resolved within geographical units, the focus of political life can never be established elsewhere. "Autonomous" corporations will always be adjuncts, and probably parasitic adjuncts, of territorial states; and to give up the state is to give up any effective self-determination. That's why borders, and the movements of individuals and groups across borders, are bitterly disputed as soon as imperial rule recedes and nations begin the process of "liberation." And, once again, to reverse this process or to repress its effects would require massive coercion on a global scale. There is no easy way to avoid the country (and the proliferation of countries) as we currently know it. Hence the theory of justice must allow for the territorial state, specifying the rights of its inhabitants and recognizing the collective right of admission and refusal.

The argument cannot stop here, however, for the control of territory opens the state to the claim of necessity. Territory is a social good in a double sense. It is living space, earth and water, mineral resources and potential wealth, a resource for the destitute and the hungry. And it is protected living space, with borders and police, a resource for the persecuted and the stateless. These two resources are different, and we might conclude differently with regard to the kinds of claim that can be made on each. But the issue at stake should first be put in general terms. Can a political community exclude destitute and hungry, persecuted and stateless--in a word, necessitous--men and women simply because they are foreigners? Are citizens bound to take in strangers? Let us assume that the citizens have no formal obligations; they are bound by nothing more stringent than the principle of mutual aid. The principle must be applied, however, not to individuals directly but to the citizens as a group, for immigration is a matter of political decision. Individuals participate in the decision making, if the state is democratic; but they decide not for themselves but for the community generally. And this fact has moral implications. It replaces immediacy with distance and the personal expense of time and energy with impersonal bureaucratic costs. Despite John Winthrop's claim, mutual aid is more coercive for political communities than it is for individuals because a wide range of benevolent actions is open to the community which will only marginally affect its present members considered as a body or even, with possible exceptions, one by one or family by family or club by club. (But benevolence will, perhaps, affect the children or grandchildren or great-grandchildren of the present members--in ways not easy to measure or even to make out. I'm not sure to what extent considerations of this sort can be used to narrow the range of required actions.) These actions probably include the admission of strangers, for admission to a country does not entail the kinds of intimacy that could hardly be avoided in the case of clubs and families. Might not admission, then, be morally imperative, at least for these strangers, who have no other place to go?

Some such argument, turning mutual aid into a more stringent charge on communities than it can ever be on individuals, probably underlies the common claim that exclusion rights depend upon the territorial extent and the population density of particular countries. Thus, Sidgwick wrote that he "cannot concede to a state possessing large tracts of unoccupied land an absolute right of excluding alien elements."<sup>14</sup> Perhaps, in his view, the citizens can make some selection among necessitous strangers, but they cannot refuse entirely to take strangers in so long as their state has (a great deal of) available space. A much stronger argument might be made from the other side, so to speak, if we consider the necessitous strangers not as objects of beneficent action but as desperate men and women, capable of acting on their own behalf. In *Leviathan*, Hobbes argued that such people, if they cannot earn a living in their own countries, have a right to move into "countries not sufficiently inhabited: where nevertheless they are not to exterminate those they find there, but constrain them to inhabit closer together and not range a great deal of ground to snatch what they find."<sup>15</sup> Here the "Samaritans" are not themselves active but acted upon and (as we shall see in a moment) charged only with nonresistance.

#### "White Australia" and the Claim of Necessity

The Hobbesian argument is clearly a defense of European colonization--and also of the subsequent "constraint" of native hunters and gatherers. But it has a wider application. Sidgwick, writing in 1891, probably had in mind the states the colonists had created: the United States, where agitation for the exclusion of immigrants had been at least a sporadic feature of political life all through the nineteenth century; and Australia, then just beginning the great debate over immigration that culminated in the "White Australia" policy. Years later, an Australian minister of immigration defended that policy in terms that should by now be familiar: "We seek to create a homogeneous nation. Can anyone reasonably object to that? Is not this the elementary right of every government, to decide the composition of the nation? It is just the same prerogative as the head of a family exercises as to who is to live in his own house."<sup>16</sup> But the Australian "family" held a vast territory of which it occupied (and I shall assume, without further factual reference, still occupies) only a small part. The right of white Australians to the great empty spaces of the subcontinent rested on nothing more than the claim they had staked, and enforced against the aboriginal population, before anyone else. That does not seem a right that one would readily defend in the face of necessitous men and women, clamoring for entry. If, driven by famine in the densely populated lands of Southeast Asia, thousands of people were to fight their way into an Australia otherwise closed to them, I doubt that we would want to charge the invaders with aggression. Hobbes's charge might make more sense: "Seeing every man, not only by Right, but also by necessity of Nature, is supposed to endeavor all he can, to obtain that which is necessary for his conservation; he that shall oppose himself against it, for things superfluous, is guilty of the war that thereupon is to follow."<sup>17</sup>



But Hobbes's conception of "things superfluous" is extraordinarily wide. He meant, superfluous to life itself, to the bare requirements of physical survival. The argument is more plausible, I think, if we adopt a more narrow conception, shaped to the needs of particular historical communities. We must consider "ways of life" just as, in the case of individuals, we must consider "life plans." Now let us suppose that the great majority of Australians could maintain their present way of life, subject only to marginal shifts, given a successful invasion of the sort I have imagined. Some individuals would be more drastically affected, for they have come to "need" hundreds or even thousands of empty miles for the life they have chosen. But such needs cannot be given moral priority over the claims of necessitous strangers. Space on that scale is a luxury, as time on that scale is a luxury in more conventional Good Samaritan arguments; and it is subject to a kind of moral encroachment. Assuming, then, that there actually is superfluous land, the claim of necessity would force a political community like that of White Australia to confront a radical choice. Its members could yield land for the sake of homogeneity, or they could give up homogeneity (agree to the creation of a multiracial society) for the sake of the land. And those would be their only choices. White Australia could survive only as Little Australia.

I have put the argument in these forceful terms in order to suggest that the collective version of mutual aid might require a limited and complex redistribution of membership and/or territory. Farther than this we cannot go. We cannot describe the littleness of Little Australia without attending to the concrete meaning of "things superfluous." To argue, for example, that living space should be distributed in equal amounts to every inhabitant of the globe would be to allow the individual version of the right to a place in the world to override the collective version. Indeed, it would deny that national clubs and families can ever acquire a firm title to a particular piece of territory. A high birthrate in a neighboring land would immediately annul the title and require territorial redistribution.

The same difficulty arises with regard to wealth and resources. These, too, can be superfluous, far beyond what the inhabitants of a particular state require for a decent life (even as they themselves define the meaning of a decent life). Are those inhabitants morally bound to admit immigrants from poorer countries for as long as superfluous resources exist? Or are they bound even longer than that, beyond the limits of mutual aid, until a policy of open admissions ceases to attract and benefit the poorest people in the world? Sidgwick seems to have opted for the first of these possibilities; he proposed a primitive and parochial version of Rawls's difference principle: immigration can be restricted as soon as failure to do so would "interfere materially. . . with the efforts of the government to maintain an adequately high standard of life among the members of the community generally--especially the poorer classes."<sup>18</sup> But the community might well decide to cut off immigration even before that, if it were willing to export (some of) its superfluous wealth. Its members would face a choice similar to that of the Australians: they could share their wealth with necessitous strangers outside their country or with necessitous strangers inside their country. But just how much of their wealth do they have to share? Once again, there must be some limit, short (and probably considerably short) of simple equality, else communal wealth would be subject to indefinite drainage. The very phrase "communal wealth" would lose its meaning if all resources and all products were globally common. Or, rather, there would be only one community, a world state, whose redistributive processes would tend over time to annul the historical particularity of the national clubs and families.

If we stop short of simple equality, there will continue to be many communities, with different histories, ways of life, climates, political structures, and economies. Some places in the world will still be more desirable than others, either to individual men and women with particular tastes and aspirations, or more generally. Some places will still be uncomfortable for at least some of their inhabitants. Hence immigration will remain an issue even after the claims of distributive justice have been met on a global scale--assuming, still, that global society is and ought to be pluralist in form and that the claims are fixed by some version of collective mutual aid. The different communities will still have to make admissions decisions and will still have a right to make them. If we cannot guarantee the full extent of the territorial or material base on which a group of people build a common life, we can still say that the common life, at least, is their own and that their comrades and associates are theirs to recognize or choose.

### Refugees

There is, however, one group of needy outsiders whose claims cannot be met by yielding territory or exporting wealth; they can be met only by taking people in. This is the group of refugees whose need is for membership itself, a non-exportable good. The liberty that makes certain countries possible homes for men and women whose politics or religion isn't tolerated where they live is also non-exportable: at least we have found no way of exporting it. These goods can be shared only within the protected space of a particular state. At the same time, admitting

refugees doesn't necessarily decrease the amount of liberty the members enjoy within that space. The victims of political or religious persecution, then, make the most forceful claim for admission. If you don't take me in, they say, I shall be killed, persecuted, brutally oppressed by the rulers of my own country. What can we reply?

Toward some refugees, we may well have obligations of the same sort that we have toward fellow nationals. This is obviously the case with regard to any group of people whom we have helped turn into refugees. The injury we have done them makes for an affinity between us: thus Vietnamese refugees had, in a moral sense, been effectively Americanized even before they arrived on these shores. But we can also be bound to help men and women persecuted or oppressed by someone else--if they are persecuted or oppressed because they are like us. Ideological as well as ethnic affinity can generate bonds across political lines, especially, for example, when we claim to embody certain principles in our communal life and encourage men and women elsewhere to defend those principles. In a liberal state, affinities of this latter sort may be highly attenuated and still morally coercive. Nineteenth-century political refugees in England were generally not English liberals. They were heretics and oppositionists of all sorts, at war with the autocracies of Central and Eastern Europe. It was chiefly because of their enemies that the English recognized in them a kind of kin. Or, consider the thousands of men and women who fled Hungary after the failed revolution of 1956. It is hard to deny them a similar recognition, given the structure of the Cold War, the character of Western propaganda, the sympathy already expressed with East European "freedom fighters." These refugees probably had to be taken in by countries like Britain and the United States. The repression of political comrades, like the persecution of co-religionists, seems to generate an obligation to help, at least to provide a refuge for the most exposed and endangered people. Perhaps every victim of authoritarianism and bigotry is the moral comrade of a liberal citizen: that is an argument I would like to make. But that would press affinity too hard, and it is many cases unnecessary. So long as the number of victims is small, mutual aid will generate similar practical results; and when the number increases, and we are forced to choose among the victims, we will look, rightfully, for some more direct connection with our own way of life.

If, on the other hand, there is no connection at all with particular victims, antipathy rather than affinity, there can't be a requirement to choose them over other people equally in need. \*\*\*\* Britain and the United States could hardly have been required, for example, to offer refuge to Stalinists fleeing Hungary in 1956, had the revolution triumphed. Once again, communities must have boundaries; and however these are determined with regard to territory and resources, they depend with regard to population on a sense of relatedness and mutuality. Refugees must appeal to that sense. One wishes them success; but in particular cases, with reference to a particular state, they may well have no right to be successful.

Since ideological (far more than ethnic) affinity is a matter of mutual recognition, there is a lot of room here for political choice--and thus, for exclusion as well as admission. Hence it might be said that my argument doesn't reach to the desperation of the refugee. Nor does it suggest any way of dealing with the vast numbers of refugees generated by twentieth-century politics. On the one hand, everyone must have a place to live, and a place where

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\*\*\*\*Compare Bruce Ackerman's claim that "the *only* reason for restricting immigration is to protect the ongoing process of liberal conversation itself" (the italics are Ackerman's).<sup>19</sup> People publicly committed to the destruction of "liberal conversation" can rightfully be excluded--or perhaps Ackerman would say that they can be excluded only if their numbers or the strength of their commitment poses a real threat. In any case, the principle stated in this way applies only to liberal states, But surely other sorts of political communities also have a right to protect their members' shared sense of what they are about.

a reasonably secure life is possible. On the other hand, this is not a right that can be enforced against particular host states. (The right can't be enforced in practice until there is an international authority capable of enforcing it; and were there such an authority, it would certainly do better to intervene against the states whose brutal policies had driven their own citizens into exile, and so enable them all to go home.) The cruelty of this dilemma is mitigated to some degree by the principle of asylum. Any refugee who has actually made his escape, who is not seeking but has found at least a temporary refuge, can claim asylum--a right recognized today, for example, in British law; and then he cannot be deported so long as the only available country to which he might be sent "is one to which he is unwilling to go owing to well-founded fear of being persecuted for reasons of race, religion, nationality, . . . or political

opinion."<sup>20</sup> Though he is a stranger, and newly come, the rule against expulsion applies to him as if he had already made a life where he is: for there is no other place where he can make a life.

But this principle was designed for the sake of individuals, considered one by one, where their numbers are so small that they cannot have any significant impact upon the character of the political community. What happens when the numbers are not small? Consider the case of the millions of Russians captured or enslaved by the Nazis in the Second World War and overrun by Allied armies in the final offensives of the war. All these people were returned, many of them forcibly returned, to the Soviet Union, where they were immediately shot or sent on to die in labor camps.<sup>21</sup> Those of them who foresaw their fate pleaded for asylum in the West, but for expedient reasons (having to do with war and diplomacy, not with nationality and the problems of assimilation), asylum was denied them. Surely, they should not have been forcibly returned--not once it was known that they would be murdered; and that means that the Western allies should have been ready to take them in, negotiating among themselves, I suppose, about appropriate numbers. There was no other choice: at the extreme, the claim of asylum is virtually undeniable. I assume that there are in fact limits on our collective liability, but I don't know how to specify them.

This last example suggests that the moral conduct of liberal and humane states can be determined by the immoral conduct of authoritarian and brutal states. But if that is true, why stop with asylum? Why be concerned only with men and women actually on our territory who ask to remain, and not with men and women oppressed in their own countries who ask to come in? Why mark off the lucky or the aggressive, who have somehow managed to make their way across our borders, from all the others? Once again, I don't have an adequate answer to these questions. We seem bound to grant asylum for two reasons: because its denial would require us to use force against helpless and desperate people, and because the numbers likely to be involved, except in unusual cases, are small and the people easily absorbed (so we would be using force for "things superfluous"). But if we offered a refuge to everyone in the world who could plausibly say that he needed it, we might be overwhelmed. The call "Give me . . . your huddled masses yearning to breathe free" is generous and noble; actually to take in large numbers of refugees is often morally necessary; but the right to restrain the flow remains a feature of communal self-determination. The principle of mutual aid can only modify and not transform admissions policies rooted in a particular community's understanding of itself.

### **Alienage and Naturalization**

The members of a political community have a collective right to shape the resident population--a right subject always to the double control that I have described: the meaning of membership to the current members and the principle of mutual aid. Given these two, particular countries at particular times are likely to include among their residents men and women who are in different ways alien. These people may be members in their turn of minority or pariah groups, or they may be refugees or immigrants newly arrived. Let us assume that they are rightfully where they are. Can they claim citizenship and political rights within the community where they now live? Does citizenship go with residence? In fact, there is a second admissions process, called "naturalization," and the criteria appropriate to this second process must still be determined. I should stress that what is at stake here is citizenship and not (except in the legal sense of the term) nationality. The national club or family is a community different from the state, for reasons I have already sketched. Hence it is possible, say, for an Algerian immigrant to France to become a French citizen (a French "national") without becoming a Frenchman. But if he is not a Frenchman, but only a resident in France, has he any right to French citizenship?

One might insist, as I shall ultimately do, that the same standards apply to naturalization as to immigration, that every immigrant and every resident is a citizen, too--or, at least, a potential citizen. That is why territorial admission is so serious a matter. The members must be prepared to accept, as their own equals in a world of shared obligations, the men and women they admit; the immigrants must be prepared to share the obligations. But things can be differently arranged. Often the state controls naturalization strictly, immigration only loosely. Immigrants become resident aliens and, except by special dispensation, nothing more. Why are they admitted? To free the citizens from hard and unpleasant work. Then the state is like a family with live-in servants.

That is not an attractive image, for a family with live-in servants is--inevitably, I think--a little tyranny. The principles that rule in the household are those of kinship and love. They establish the underlying pattern of mutuality and obligation, of authority and obedience. The servants have no proper place in that pattern, but they have to be assimilated to it. Thus, in the pre-modern literature on family life, servants are commonly described as children of a special sort: children, because they are subject to command; of a special sort, because they are not allowed to

grow up. Parental authority is asserted outside its sphere, over adult men and women who are not, and can never be, full members of the family. When this assertion is no longer possible, when servants come to be seen as hired workers, the great household begins its slow decline. The pattern of living-in is gradually reversed; erstwhile servants seek households of their own.

### The Athenian Metics

It is not possible to trace a similar history at the level of the political community. Live-in servants have not disappeared from the modern world. As "guest workers" they play an important role in its most advanced economies. But before considering the status of guest workers, I want to turn to an older example and consider the status of resident aliens (metics) in ancient Athens. The Athenian polis was almost literally a family with live-in servants. Citizenship was an inheritance passed on from parents to children (and only passed on if both parents were citizens: after 450 B.C., Athens lived by the law of double endogamy). Hence a great deal of the city's work was done by residents who could not hope to become citizens. Some of these people were slaves; but I shall not focus on them, since the injustice of slavery is not disputed these days, at least not openly. The case of the metics is harder and more interesting.

"We throw open our city to the world," said Pericles in his Funeral Oration, "and never exclude foreigners from any opportunity." So the metics came willingly to Athens, drawn by economic opportunity, perhaps also by the city's "air of freedom." Most of them never rose above the rank of laborer or "mechanic," but some prospered: in fourth-century Athens, metics were represented among the wealthiest merchants. Athenian freedom, however, they shared only in its negative forms. Though they were required to join in the defense of the city, they had no political rights at all; nor did their descendants. Nor did they share in the most basic of welfare rights: "Foreigners were excluded from the distribution of corn."<sup>22</sup> As usual, these exclusions both expressed and enforced the low standing of the metics in Athenian society. In the surviving literature, metics are commonly treated with contempt--though a few favorable references in the plays of Aristophanes suggest the existence of alternative views.<sup>23</sup> Aristotle, though himself a metic, provides the classic defense of exclusion, apparently responding to critics who argued that co-residence and shared labor were a sufficient basis for political membership. "A citizen does not become such," he wrote, "merely by inhabiting a place." Labor, even necessary labor, is no better as a criterion: "you must not posit as citizens all those [human beings] without whom you could not have a city."<sup>24</sup> Citizenship required a certain "excellence" that was not available to everyone. I doubt that Aristotle really believed this excellence to be transmitted by birth. For him, the existence of members and non-members as hereditary castes was probably a matter of convenience. Someone had to do the hard work of the city, and it was best if the workers were clearly marked out and taught their place from birth. Labor itself, the everyday necessity of economic life, put the excellence of citizenship beyond their reach. Ideally, the band of citizens was an aristocracy of the leisured (in fact, it included "mechanics" just as the metics included men of leisure); and its members were aristocrats because they were leisured, not because of birth and blood or any inner gift. Politics took most of their time, though Aristotle would not have said that they ruled over slaves and aliens. Rather, they took turns ruling one another. The others were simply their passive subjects, the "material condition" of their excellence, with whom they had no political relations at all.

In Aristotle's view, slaves and aliens lived in the realm of necessity; their fate was determined by the conditions of economic life. Citizens, by contrast, lived in the realm of choice; their fate was determined in the political arena by their own collective decisions. But the distinction is a false one. In fact, citizens made all sorts of decisions that were authoritative for the slaves and aliens in their midst--decisions having to do with war, public expenditure, the improvement of trade, the distribution of corn, and so on. Economic conditions were subject to political control, though the extent of that control was always frighteningly limited. Hence slaves and aliens were indeed ruled; their lives were shaped politically as well as economically. They, too, stood within the arena, simply by virtue of being inhabitants of the protected space of the city-state; but they had no voice there. They could not hold public office or attend the assembly or serve on a jury; they had no officers or political organizations of their own and were never consulted about impending decisions. If we take them to be, despite Aristotle, men and women capable of rational deliberation, then we have to say that they were the subjects of a band of citizen-tyrants, governed without consent. Indeed, this seems to have been at least the implicit view of other Greek writers. Thus Isocrates's critique of oligarchy: when some citizens monopolize political power, they become "tyrants" and turn their fellows into "metics."<sup>25</sup> If that's true, then the actual metics must always have lived with tyranny.

But Isocrates would not have made that last point; nor do we have any record of metics who made it. Slavery was a much debated issue in ancient Athens, but "no vestige survives of any controversy over the *metoikia*."<sup>26</sup> Some of the sophists may have had their doubts, but the ideology that distinguished metics from citizens seems to have been widely accepted among metics and citizens alike. The dominance of birth and blood over political membership was part of the common understanding of the age. Athenian metics were themselves hereditary citizens of the cities from which they had come; and though this status offered them no practical protection, it helped, perhaps, to balance their low standing in the city where they lived and worked. They, too, if they were Greeks, were of citizen blood; and their relation with the Athenians could plausibly be described (as it was described by Lycias, another metic, and more ready than Aristotle to acknowledge his status) in contractual terms: good behavior in exchange for fair treatment.<sup>27</sup>

This view hardly applies, however, to the children of the first metic generation; no contractualist argument can justify the creation of a caste of resident aliens. The only justification of the *metoika* is the conception of citizenship as something that the Athenians literally could not distribute given what they thought it was. All they could offer to aliens was fair treatment, and that was all the aliens could think to ask of them. There is considerable evidence for this view, but there is evidence against it, too. Individual metics were occasionally enfranchised, though perhaps corruptly. Metics played a part in the restoration of democracy in 403 B.C. after the government of the Thirty Tyrants; and they were eventually rewarded, despite strong opposition, with a grant of citizenship.<sup>28</sup> Aristotle made it an argument against large cities that "resident aliens readily assume a share in the exercise of political rights" - which suggests that there was no conceptual barrier to the extension of citizenship.<sup>29</sup> In any case, there is certainly no such barrier in contemporary democratic communities, and it is time now to consider our own metics. The question that apparently gave the Greeks no trouble is both practically and theoretically troubling today. Can states run their economies with live-in servants, guest workers, excluded from the company of citizens?

### Guest Workers

I will not attempt a full description of the experience of contemporary guest workers. Laws and practices differ from one European country to another and are constantly changing; the situation is complex and unstable. All that is necessary here is a schematic sketch (based chiefly on the legal situation in the early 1970s) designed to highlight those features of the experience that are morally and politically controversial.<sup>30</sup>

Consider, then, a country like Switzerland or Sweden or West Germany, a capitalist democracy and welfare state, with strong trade unions and a fairly affluent population. The managers of the economy find it increasingly difficult to attract workers to a set of jobs that have come to be regarded as exhausting, dangerous, and degrading. But these jobs are also socially necessary; someone must be found to do them. Domestically, there are only two alternatives, neither of them palatable. The constraints imposed on the labor market by the unions and the welfare state might be broken, and then the most vulnerable segment of the local working class driven to accept jobs hitherto thought undesirable. But this would require a difficult and dangerous political campaign. Or, the wages and working conditions of the undesirable jobs might be dramatically improved so as to attract workers even within the constraints of the local market. But this would raise costs throughout the economy and, what is probably more important, challenge the existing social hierarchy. Rather than adopt either of these drastic measures, the economic managers, with the help of their government, shift the jobs from the domestic to the international labor market, making them available to workers in poorer countries who find them less undesirable. The government opens recruiting offices in a number of economically backward countries and draws up regulations to govern the admission of guest workers.

It is crucial that the workers who are admitted should be "guests," not immigrants seeking a new home and a new citizenship. For if the workers came as future citizens, they would join the domestic labor force, temporarily occupying its lower ranks, but benefiting from its unions and welfare programs and in time reproducing the original dilemma. Moreover, as they advanced, they would come into direct competition with local workers, some of whom they would outdo. Hence the regulations that govern their admission are designed to bar them from the protection of citizenship. They are brought in for a fixed time period, on contract to a particular employer; if they lose their jobs, they have to leave; they have to leave in any case when their visas expire. They are either prevented or discouraged from bringing dependents along with them, and they are housed in barracks, segregated by sex, on the outskirts of the cities where they work. Mostly they are young men or women in their twenties or thirties; finished with education, not yet infirm, they are a minor drain on local welfare services (unemployment insurance is not available to them since they are not permitted to be unemployed in the countries to which they have come).

Neither citizens nor potential citizens, they have no political rights. The civil liberties of speech, assembly, association--otherwise strongly defended--are commonly denied to them, sometimes explicitly by state officials, sometimes implicitly by the threat of dismissal and deportation.

Gradually, as it becomes clear that foreign workers are a long-term requirement of the local economy, these conditions are somewhat mitigated. For certain jobs, workers are given longer visas, allowed to bring in their families, and admitted to many of the benefits of the welfare state. But their position remains precarious. Residence is tied to employment, and the authorities make it a rule that any guest worker who cannot support himself and his family without repeated recourse to state welfare programs, can be deported. In time of recession, many of the guests are forced to leave. In good times, however, the number who choose to come, and who find ways to remain, is high; soon some 10 percent to 15 percent of the industrial labor force is made up of foreigners. Frightened by this influx, various cities and towns establish residence quotas for guest workers (defending their neighborhoods against an open state). Bound to their jobs, the guests are in any case narrowly restricted in choosing a place to live.

Their existence is harsh and their wages low by European standards, less so by their own standards. What is most difficult is their homelessness: they work long and hard in a foreign country where they are not encouraged to settle down, where they are always strangers. For those workers who come alone, life in the great European cities is like a self-imposed prison term. They are deprived of normal social, sexual, and cultural activities (of political activity, too, if that is possible in their home country) for a fixed period of time. During that time, they live narrowly, saving money and sending it home. Money is the only return that the host countries make to their guests; and though much of it is exported rather than spent locally, the workers are still very cheaply had. The costs of raising and educating them where they work, and of paying them what the domestic labor market requires, would be much higher than the amounts remitted to their home countries. So the relation of guests and hosts seems to be a bargain all around: for the harshness of the working days and years is temporary, and the money sent home counts there in a way it could never count in a European city.

But what are we to make of the host country as a political community? Defenders of the guest-worker system claim that the country is now a neighborhood economically, but politically still a club Or a family. As a place to live, it is open to anyone who can find work; as a forum or assembly, as a nation or a people, it is closed except to those who meet the requirements set by the present members. The system is a perfect synthesis of labor mobility and patriotic solidarity. But this account somehow misses what is actually going on. The state-as-neighborhood, an "indifferent" association governed only by the laws of the market, and the state-as-club-or-family, with authority relations and police, do not simply coexist, like two distinct moments in historical or abstract time. The market for guest workers, while free from the particular political constraints of the domestic labor market, is not free from all political constraints. State power plays a crucial role in its creation and then in the enforcement of its rules. Without the denial of political rights and civil liberties and the ever-present threat of deportation, the system would not work. Hence guest workers can't be described merely in terms of their mobility, as men and women free to come and go. While they are guests, they are also subjects. They are ruled, like the Athenian metics, by a band of citizen-tyrants.

But don't they agree to be ruled? Isn't the contractualist argument effective here, with men and women who actually come in on contracts and stay only for so many months or years? Certainly they come knowing roughly what to expect, and they often come back knowing exactly what to expect. But this kind of consent, given at a single moment in time, while it is sufficient to legitimize market transactions, is not sufficient for democratic politics. Political power is precisely the ability to make decisions over periods of time, to change the rules, to cope with emergencies; it can't be exercised democratically without the ongoing consent of its subjects. And its subjects include every man and woman who lives within the territory over which those decisions are enforced. The whole point of calling guest workers "guests," however, is to suggest that they don't (really) live where they work. Though they are treated like indentured servants, they are not in fact indentured. They can quit their jobs, buy train or airline tickets, and go home; they are citizens elsewhere. If they come voluntarily, to work and not to settle, and if they can leave whenever they want, why should they be granted political rights while they stay? Ongoing consent, it might be argued, is required only from permanent residents. Aside from the explicit provisions of their contracts, guest workers have no more rights than tourists have.

In the usual sense of the word, however, guest workers are not "guests," and they certainly are not tourists. They are workers, above all; and they come (and generally stay for as long as they are allowed) because they need the

work, not because they expect to enjoy the visit. They are not on vacation; they do not spend their days as they please. State officials are not polite and helpful, giving directions to the museums, enforcing the traffic and currency laws. These guests experience the state as a pervasive and frightening power that shapes their lives and regulates their every move--and never asks for their opinion. Departure is only a formal option; deportation, a continuous practical threat. As a group, they constitute a disenfranchised class. They are typically an exploited or oppressed class as well, and they are exploited or oppressed at least in part because they are disenfranchised, incapable of organizing effectively for self-defense. Their material condition is unlikely to be improved except by altering their political status. Indeed, the purpose of their status is to prevent them from improving their condition; for if they could do that, they would soon be like domestic workers, unwilling to take on hard and degrading work or accept low rates of pay.

And yet the company of citizens from which they are excluded is not an endogamous company. Compared with Athens, every European country is radically heterogeneous in character, and they all have naturalization procedures in place. Guest workers, then, are excluded from the company of men and women that includes other people exactly like themselves. They are locked into an inferior position that is also an anomalous position; they are outcasts in a society that has no caste norms, metics in a society where metics have no comprehensible, protected, and dignified place. That is why the government of guest workers looks very much like tyranny: it is the exercise of power outside its sphere, over men and women who resemble citizens in every respect that counts in the host country, but are nevertheless barred from citizenship.

The relevant principle here is not mutual aid but political justice. The guests don't need citizenship--at least not in the same sense in which they might be said to need their jobs. Nor are they injured, helpless, destitute; they are able-bodied and earning money. Nor are they standing, even figuratively, by the side of the road; they are living among the citizens. They do socially necessary work, and they are deeply enmeshed in the legal system of the country to which they have come. Participants in economy and law, they ought to be able to regard themselves as potential or future participants in politics as well. And they must be possessed of those basic civil liberties whose exercise is so much preparation for voting and office holding. They must be set on the road to citizenship. They may choose not to become citizens, to return home or stay on as resident aliens. Many--perhaps most--will choose to return because of their emotional ties to their national family and their native land. But unless they have that choice, their other choices cannot be taken as so many signs of their acquiescence to the economy and law of the countries where they work. And if they do have that choice, the local economy and law are likely to look different: a firmer recognition of the guests' civil liberties and some enhancement of their opportunities for collective bargaining would be difficult to avoid once they were seen as potential citizens.

I should add that something of the same sort might be obtained in another way. The host countries might undertake to negotiate formal treaties with the home countries, setting out in authoritative form a list of "guest rights" --the same rights, roughly, that the workers might win for themselves as union members and political activists. The treaty could include a proviso stipulating its periodic renegotiation, so that the list of rights could be adapted to changing social and economic conditions. Then, even when they were not living at home, the original citizenship of the guests would work for them (as it never worked for the Athenian metics); and they would, in some sense, be represented in local decision making. In one way or another, they ought to be able to enjoy the protection of citizenship or potential citizenship.

Leaving aside such international arrangements, the principle of political justice is this: that the processes of self-determination through which a democratic state shapes its internal life, must be open, and equally open, to all those men and women who live within its territory, work in the local economy, and are subject to local law.\*\*\*\*\* Hence, second admissions (naturalization) depend on first admissions (immigration) and are subject only to certain constraints of time and qualification,

never to the ultimate constraint of closure. When second admissions are closed, the political community collapses into a world of members and strangers, with no political boundaries between the two, where the strangers are subjects of the members. Among themselves, perhaps, the members are equal; but it is not their equality but their tyranny that determines the character of the state. Political justice is a bar to permanent alienage--either for particular individuals or for a class of changing individuals. At least, this is true in a democracy. In an oligarchy, as Isocrates wrote, even the citizens are really resident aliens, and so the issue of political rights doesn't arise in the same way. But as soon as some residents are citizens in fact, all must be so. No democratic state can tolerate the

establishment of a fixed status between citizen and foreigner (though there can be stages in the transition from one of these political identities to the other). Men and women are either subject to the state's authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does. Democratic citizens, then, have a choice: if they want to bring in new workers, they must be prepared to enlarge their own membership; if they are unwilling to accept new members, they must find ways within the limits of the domestic labor market to get socially necessary work done. And those are their only choices. Their right to choose derives from the existence in this particular territory of a community of citizens; and it is not compatible with the destruction of the community or its transformation into yet another local tyranny.

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\*\*\*\*\*It has been suggested to me that this argument doesn't plausibly apply to privileged guests: technical advisors, visiting professors, and so on. I concede the point, though I'm not sure just how to describe the category "guest workers" so as to exclude these others. But the others are not very important, and it is in the nature of their privileged positions that they are able to call upon the protection of their home states if they ever need it. They enjoy a kind of extra-territoriality.

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### **Membership and Justice**

The distribution of membership is not pervasively subject to the constraints of justice. Across a considerable range of the decisions that are made, states are simply free to take in strangers (or not)-much as they are free, leaving aside the claims of the needy, to share their wealth with foreign friends, to honor the achievements of foreign artists, scholars, and scientists, to choose their trading partners, and to enter into collective security arrangements with foreign states. But the right to choose an admissions policy is more basic than any of these, for it is not merely a matter of acting in the world, exercising sovereignty, and pursuing national interests. At stake here is the shape of the community that acts in the world, exercises sovereignty, and so on. Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life.<sup>31</sup>

But self-determination in the sphere of membership is not absolute. It is a right exercised, most often, by national clubs or families, but it is held in principle by territorial states. Hence it is subject both to internal decisions by the members themselves (all the members, including those who hold membership simply by right of place) and to the external principle of mutual aid. Immigration, then, is both a matter of political choice and moral constraint. Naturalization, by contrast, is entirely constrained: every new immigrant, every refugee taken in, every resident and worker must be offered the opportunities of citizenship. If the community is so radically divided that a single citizenship is impossible, then its territory must be divided, too, before the rights of admission and exclusion can be exercised. For these rights are to be exercised only by the community as a whole (even if, in practice, some national majority dominates the decision making) and only with regard to foreigners, not by some members with regard to others. No community can be half-metic, half-citizen and claim that its admissions policies are acts of self-determination or that its politics is democratic.

The determination of aliens and guests by an exclusive band of citizens (or of slaves by masters, or women by men, or blacks by whites, or conquered peoples by their conquerors) is not communal freedom but oppression. The citizens are free, of course, to set up a club, make membership as exclusive as they like, write a constitution, and govern one another. But they can't claim territorial jurisdiction and rule over the people with whom they share the territory. To do this is to act outside their sphere, beyond their rights. It is a form of tyranny. Indeed, the rule of citizens over non-citizens, of members over strangers, is probably the most common form of tyranny in human history. I won't say much more than this about the special problems of non-citizens and strangers: henceforth, whether I am talking about the distribution of security and welfare or about hard work or power itself, I shall assume that all the eligible men and women hold a single political status. This assumption doesn't exclude other sorts of inequality further down the road, but it does exclude the piling up of inequalities that is characteristic of divided societies. The denial of membership is always the first of a long train of abuses. There is no way to break the train, so we must deny the rightfulness of the denial. The theory of distributive justice begins, then, with an account of membership rights. It must vindicate at one and the same time the (limited) right of closure, without which there could be no communities at all, and the political inclusiveness of the existing communities. For it is only as members somewhere that men and women can hope to share in all the other social goods--security, wealth, honor, office, and power--that communal life makes possible.



## Notes

### Chapter 2

1. John Rawls, *A Theory of Justice* (Cambridge, Mass., 1971), p. 115. For a useful discussion of mutual aid as a possible right, see Theodore M. Benditt, *Rights* (Totowa, N. J., 1982), chap. 5.
2. Rawls, *Theory of Justice* [1], p. 339.
3. John Winthrop, in *Puritan Political Ideas: 1558-1794*, ed. Edmund S. Morgan (Indianapolis, 1965), p. 146.
4. On zoning, see Robert H. Nelson, *Zoning and Property Rights: An Analysis of the American System of Land Use Regulation* (Cambridge, Mass., 1977), pp. 120-21.
5. See the U.S. Supreme Court's decision in *Village of Belle Terre v. Boraas* (October term, 1973).
6. Bernard Bosanquet, *The Philosophical Theory of the State* (London, 1958), p. 286.
7. Henry Sidgwick, *Elements of Politics* (London, 1881), pp. 295-96.
8. *Ibid.*, p. 296.
9. Cf. Maurice Cranston, on the common understanding of the right to move, in *What Are Human Rights?* (New York, 1973), p. 32.
10. See John Higham's account of these debates, *Strangers in the Land* (New York, 1968).
11. Winthrop, *Puritan Political Ideas* [3], p. 145.
12. Thomas Hobbes, *The Elements of Law*, ed. Ferdinand Tönnies (2nd ed., New York, 19~), p. 88, (part I, chap. 17, para. 2).
13. Bauer made his argument in *Die Nationalitätenfrage und die Sozialdemokratie* (1907); parts of it are excerpted in *Austro-Marxism*, ed. Tom Bottomore and Patrick Goode (Oxford, England, 1978), pp. 102-25.
14. Sidgwick, *Elements of Politics* [7], p. 295. Cf. John Stuart Mill's letter to Henry George on Chinese immigration to America, quoted in Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley, 1971), p. 103.
15. Thomas Hobbes, *Leviathan*, part II, chap. 30.
16. Quoted in H. I. London, *Non-White Immigration and the "White Australia" Policy* (New York, 1970), p. 98.
17. Hobbes, *Leviathan*, part I, chap. 15.
18. Sidgwick, *Elements of Politics* [7], pp. 296-97.
19. Bruce Ackerman, *Social Justice in the Liberal State* (New Haven, 1980), p. 95.
20. E. C. S. Wade, and G. Godfrey Phillips, *Constitutional and Administrative Law*, 9th ed., revised by A. W. Bradley (London, 1977), p. 424.
21. For the whole ugly story, see Nikolai Tolstoy, *The Secret Betrayal: 1944-1947* (New York, 1977).
22. Victor Ehrenberg, *The People of Aristophanes* (New York 1962), p. 153; I have drawn on the entire discussion of foreigners in fifth-century Athens, pp. 147-64.

23. David Whitehead, *The Ideology of the Athenian Metic*, Cambridge Philological Society supplementary volume no. 4 (1977), p. 41.
24. Aristotle, *The Politics* 1275a and 1278a; I have used the translation of Eric Havelock in *The Liberal Temper in Greek Politics* (New Haven, 1957), pp. 367-69.
25. Isocrates, quoted in Whitehead, *Athenian Metic* [23], pp. 51-52.
26. Whitehead, *Athenian Metic* [23], p. 174.
27. *Ibid.*, pp. 57-58.
28. *Ibid.*, pp. 154ft.
29. Aristotle, *The Politics* 1326b, trans. Ernest Barker (Oxford, 1948), p. 343.
30. In my account of guest workers, I rely chiefly on Stephen Castles and Godula Kosack, *Migrant Workers and Class Structure in Western Europe* (Oxford, England, 1973); and also on Cheryl Bernard, "Migrant Workers and European Democracy," *Political Science Quarterly* 92 (Summer 1979): 277-99, and John Berger, *A Seventh Man* (New York, 1975). 31. I have taken the term "communities of character" from Otto Bauer (see *Austro-Marxism* [13], p. 107).