

Any Place for Ethnicity? The Liberal State and Immigration

Christian Joppke, *Selecting by Origin: Ethnic Migration in the Liberal State* (Cambridge, Mass.: Harvard University Press, 2005), Pp. xi+330.

Immigration is an odd, not to say anomalous, issue in both liberal moral philosophy and political theory as well as in contemporary politics. To begin with, modern territorial states, particularly liberal democracies, can muster no philosophical principle to justify borders that keep well-intentioned people out. Why those lucky enough to be born in the U.S. or Dutch "original position" should be able to exclude those born in Haiti or Morocco can only be answered on consequentialist, morally unprincipled grounds. Likewise, immigration issues everywhere cut oddly across dominant political cleavages. In Europe and America alike, capitalist employers and poor-people's civil rights organizations unite to advance the free migration of people/labor --against the interests of working people subjected to income-reducing competition, most of all the poor and ethnic minorities themselves.

What might be called the two dimensions of citizenship also seem to be at odds with each other. The vertical dimension --referring to ties of social solidarity, welfarist redistribution, community-- is arguably undermined by liberalization of the horizontal dimension --referring to boundedness, in/out borders, recognition, othering. To work, bonds require boundaries. How then can an existing population decently defend itself against those wishing nothing more than to join it? The most common response to this dilemma has been to insist that "communities of character" or nations have a right to be "themselves" and to select and control both the nature and quantity of any would-be newcomers. We, the people, in many one, are sovereign and in the name of our collectivity decide over this question as well.

Who would make the best fit as a newcomer? Who should participate in the "daily

plebiscites" that Ernst Renan held determine the civic nation? Who may, in short, join us?

Everywhere we see immigration and naturalization laws and politics that insist on some mixture of shared civic values and ethnicity, *demos* and *ethnos* --both of them memories, historically defined and evolving. Most commonly in the 20th century, immigration policies have preferred similarity, ethnic kinsmen, however defined. In other words, a nation's common destiny is somehow linked to its common ancestry. The national origins quota system, which governed U.S. policy until the Civil Rights revolution of the 1960s, was a dilute version of the explicit ethnic-racial immigration policies that characterized numerous other liberal states.

Eagerness and opportunity may be the measure of illegal immigration, but no where do they guide official policy preferences. Official policies today tend to prefer achieved marketable "skills" (broadly defined) and "family ties" (which leads to a chain migration that reproduces those groups who have most recently immigrated). Although these values are not unassailable, they may represent a victory of the neutrality and equality principles over the national principle within liberal democratic states.

Less and less does immigration reproduce historical particularity. Deethnicization of both the immigrant stream and the nation is the inevitable result, despite sometimes strong populist backlashes that cannot always be gagged and recent diasporic transnationalism. For example, nearly everywhere in immigrant-receiving countries, we see ambivalent and ambiguous emphases on the claims of immigrant culture versus the need for host-country integration. Nearly everywhere, liberal countries are becoming more diverse --multicultural-- while the differences among these countries --nationalism-- continues to shrink.

Christian Joppke is a premier analyst of these and related developments. Over the past decade, he has produced a profusion of theoretically sophisticated, analytically astute, and

empirically compelling work in the area as well as being an institutional animateur of considerable proportions. A social scientist who displays a subtle historical sensibility and perceptive reading of law, Joppke's is a progressive rationalist voice in an often overheated and excessively fashion-prone field. He is a rigorous optimist.

In this volume, he examines three paths taken by liberal democracies in dealing with histories of resilient ethnically selective immigration. The first is the movement toward source country universalism that characterizes several colonial "settler societies," particularly the U.S., Canada, and Australia --all of them with strong racist as well as civic histories. The second is the arrival into Europe of the "postcolonial constellations" of the former European empires --with a cool welcome in Britain and France but a patriotically warm one in Spain and Portugal. The last is the "diasporic constellation" focused on the in-gathering of the ethnic (however elastic or "constructed" or volitional) exiles stranded precariously abroad, a "right of return" process virtually over now in Germany but suffocatingly resilient in Israel.

In each instance, Joppke unpacks the justifications, selection mechanisms, and oppositional pressures surrounding ethnic immigration and its presence in states committed to liberal principles. Eschewing the ethnic/civic dichotomy that has long dominated these debates, Joppke develops "nationhood" and "liberal stateness" as the variables that serve to explain how much preference for ethnic immigration a particular liberal democracy will show. These "vectors" are indeed less dichotomous than the ethnic/civic distinction, but perhaps they are also less different than Joppke believes. It would be comforting to believe that liberal stateness is on the march and that deethnicization is the Geist of the times. Such a belief would fit well with images of a pacific global capitalism. Exceptions, such as Eastern Europe immediately after 1990, or Israel since the failure of the Oslo Accords and the post-Zionist moment, would simply be trailing the curve or outliers. The

defeat of fascism and the West's worldwide competition with the Soviet Union surely provided anti-racist impetuses, as Joppke argues, but the history of states remains sanguine.

Until relatively recently, the immigration policies of the U.S. and Australia filtered Europeans by type, blocked Asians altogether, and pulled Anglos, all explicitly and in an effort to replenish themselves at the source. As did the European empires, the new turn of the century American empire and newly united Australia enmeshed themselves in eugenics, Social Darwinism, and fear of Asian inundation. In addition, Australia's identity as a socially-levelled Britain, a land of civic and social ideals, was predicated on keeping itself Anglo-White, a logic that can also explain late 19th century California. More desirable Anglos were recruited through "assisted entry" subsidies while darker Europeans were largely barred until after WW II.

The Allied victory in WW II signalled "the supremacy of human rights everywhere" (FDR), and Joppke stresses an international "epistemic shift," a "rapid normative evolution" (52) that "outlawed [race] as a legitimate ordering principle" (49). In the two decades that followed, foreign policy interests, assisted by indigenous mass movements led the western settler societies, beginning with Canada (1962) and ending with Australia (1973) to abandon race and ethnicity-based immigration policies. Liberal internationalist elites associated with the executive branch led the way, followed by sometimes-resistant legislatures and citizenries. Joppke shows how, by the time the US national-origins quota system was legislated out of existence and official non-discriminatory universalism was introduced in 1965, 2/3 of immigrants already arrived outside the ethnic origins quota system. By 2000, only 1/6 of immigrants were Europeans, half the figure of the 1960s.

In the Australian case, the post-war recruitment of non-Anglo European immigrants served to undermine the exclusion of Asians. Australia's Cold War "good neighbor" foreign policy toward Asia created ties that encouraged interest in settlement, something permitted from 1966 on. By

1973 Australia's transformation was complete: positive discrimination on behalf of Britons was ended and "multiculturalism" became Australia's new nation-building ideology. As in the US, official discourse and policy have marginalized those who would like to see either reduction in numbers or discrimination, mostly against Asians and Latin Americans, in the selection of immigrants (though not so in the case of "refugees," who remain a purely political category).

Still, one might worry more about the meaning of "universalism" or neutrality than Joppke does. What do these terms mean when Mexicans, Filipinos, and Chinese are clamoring at the gates while Europeans and Africans are either uninterested or unable even to apply? If Joppke is correct in arguing that the memories and mobilization of the racist past prevent settler societies from abandoning source country universalism, the situation is rather different elsewhere.

For Europeans, the "aftermath of Empire" (Brubaker) has entailed the arrival of about four million repatriated colonists (often of mixed descent) and a smaller to equal number of colonial natives. Joppke identifies two patterns, Britain and France making up one constellation and Spain and Portugal the other. Britain and France have absorbed former settlers ("patrials") while viewing postcolonial immigration as ethnically/racially unwanted, though sometimes indulged in under labor market pressures). Spain and Portugal, old Empires themselves recently poor and lands of emigration, have instead constructed a "panethnic 'historical and cultural' community" (95) that grants privileged status to all post-colonial immigrants, both patrial and native.

Since 1971 British law has distinguished between Old Commonwealth (patrial, white) and New Commonwealth (colonial, nonwhite) immigrants, welcoming the former while rejecting the latter. At that same time, citizens of all the independent Commonwealth countries lost their right of free entry into the UK, thereby depriving nonwhite former subjects of the Queen of their previous privileged access. This loss was aggravated in 1981, when British law began to distinguish "citizens

of Britain" from the previous category "UK and colonies," which had contained over 600 million people. With a still-poor Ireland available for labor, Britain enjoyed an advantage France lacked and that had led the latter to accept North Africans in large numbers. Matters worsened for Commonwealthers once Britain joined the EEU. Now EC nationals and patrial Commonwealth citizens enjoyed free entry while all other Commonwealth citizens became mere aliens.

French postcolonial immigration policy was, according to Joppke, both selective and neutral ethnically. Largely based on treaties with former colonies, some lands (e.g. Sub-Saharan Africa) fared better than others (such as Algeria). Other than the one million *pieds noirs*, there were few French patrials abroad and no "imperial subject" status to muddy the entry waters. After all, Jacobin Republicanism seeks to purge citizenship of ethnicity or other intermediate identities --a claim Joppke both ridicules and ultimately accepts (105). Nevertheless, throughout the entire post-war period, European immigrants, families as well as laborers, were strongly preferred and advantaged over Maghrebians, in particular. Only under conditions of severe labor shortage in the mid-'70s did the gates to Southeast Europe and non-Algerian Muslim lands open wider (so that there were ultimately three million Maghrebians). Unfortunately, Joppke leaves the story there without addressing recent tumultuous developments. Indeed, neither "Islam" nor "Muslim" even appears in the book's index. Why the French don't treat Algerians the way the Portuguese treat Brazilians and Angolans may require addressing Islam.

Joppke's examination of Spain and Portugal is bolder and more original. These two latecomers to democratic Europe have rediscovered "their historical and cultural links" to Hispanic and Lusophone lands in ways that "have taken on cultural and panethnic contours" and creating "a state-transcending" community that call for privileged treatment in immigration, labor, and citizenship matters (112). These policies will collide with the Europeanization of the immigration

function and certainly annoy the U.S. in "Latin America." Both countries prominently include non-whites and hint at redeeming colonialist injustices inflicted on the South --something they allegedly understand well having recently been part of "the South" themselves. This "comunidad hispánica" of cultural citizens is very different from the "hispanidad" of Francoist Catholic traditionalism. Spanish liberalization thus created a regime oddly similar to the pre-1965 U.S. National Origins system: preference for those of cultural affinity with a proclivity to assimilate. EU counterpressures after 1985 led to cutting back these privileges, and by 2000 European liberalization led to their virtual elimination. Nonetheless, recent amnesties in Spain have disproportionately favored Ibero-Americans, and Latin American states have been insistent on their special Spanish door to Europe. In the end, Joppke himself seems ambivalent about and uncertain as to where all this is headed, in the face of EU pressures especially.

Joppke refers to Portugal as "the 'dominated' fraction of the 'dominant' class" (130; misattributed to Bourdieu, the phrase is Poulantzas') of states and infers from that a multiracialist orientation in immigration matters consistent with luso-tropicalist romanticism. Indeed, already in 1940 Gilberto Freyre wrote about "transnationalism" and "hybridity," presaging much recent palaver. But in 1975 Portugal brusquely cut ties with its former colonies and sought to contain immigration from them while retaining links with a large emigrant diaspora of patrials. Portugal was still a land of substantial emigration, losing 1% of its population per annum, and successive governments were at pains to retain ties to Portuguese abroad. In 2000, there were nearly half as many Portuguese abroad as in the country, and they and their descendants, including colonial natives, can maintain dual nationality, return home into the third generation, and vote in Portuguese elections. Much of what one hears today in regard to Mexico and laws on behalf of its diaspora, seems to have been developed by the Portuguese --including privileged bilateral treaty governance

and the separation of citizenship and nationality. The Luso world and the EU world have become political-cultural antipodes, identity vs. interest, but, unlike as in Spain, across party lines. One result is that Portugal today has the highest proportion of African immigrants in the EU with much less immigrant diversity overall.

The "diasporic constellation," represented here by Jewish return to Israel and German expellee return to (West) Germany, marks the most persistent form of ethnic migration in liberal societies, and provides the most interesting part of Joppke's book. Here homeland states actively pursue the "return" of fellow ethnics stranded and living anxiously among foreign majorities inclined to persecute them. Repatriation or ingathering is, in fact, not considered immigration, so liberal norms of non-discrimination are not deemed violated, or even relevant. Such positive discrimination on behalf of returnees, continued nation-building, is even permitted by the UN Convention on Eliminating Racial Discrimination. In the German case, ethnic ingathering is now effectively over, with both legal and cultural preferences for Germans from abroad, especially former Soviet lands, winding down within a few years of reunification. In the Israeli case, only a small minority of Jewish Israelis, post-Zionists, believes that Israel should simply be simply a state of its citizens with no mandate to gather in and privilege Jews.

Basing himself on a wealth of Israeli sources, Joppke is willing to grasp the nettle -- barehanded, something few Germans (or Americans) do. As long as Jewish nation building is unfinished, as long as the Law of Return is law #1, Israel cannot develop as a liberal or democratic country. For Germany, on the other hand, the Law of Return for members of the titular nation has been of far less moment and smaller scale and has now been virtually phased out. Germany has arrived at a post-Deutschtum moment; Israel has not yet transcended Zionism, its state and nation-building project (key agencies of which, especially the Land Fund, JNF, belong to world Jewry, not

the Israeli state). Coming to Israel is a right of Jews everywhere, a natural right, and Israel is a mere trustee of that right. This zealously guarded exclusivism means that non-Jews can never be equal in Israel and that Israeliness can never be separated from what is ultimately a single-religion ethnicity.

Joppke rightly sees Israel's path to liberal democracy as blocked by this ethnic exclusivism and religious penetration. If not simply an ethnically stratified state --ethnocracy-- Israel is at best an unstable ethnic democracy (Smoooha; Yiftachel). Because the Arab minority is marginalized while the Jewish diaspora is included, Israel as yet has no "demos" for a democracy. Israel can only become a liberal state if it becomes a state of all of its citizens.

Despite their large numbers --12 million ethnic German expellees at the end of WW II-- Joppke insists that German solidarity with the expellees had to be "conjured up" (171), a position at odds with most scholarship in the field. Joppke also insists that "ethnocultural tradition" was not much appreciated, even though it was acknowledged legally that what the expellees were doing was "returning" rather than "immigrating." The Cold War generated socio-ideological battles rather than national conflicts, and West Germany became Europe's first "culturally postnational state" (172) despite backdoor ethnic immigration. The Basic Law (Constitution) mandated achieving the "unity and liberty of Germany," not of Germans, at the same time that early legislation provided displaced coethnics an open door to citizenship.

In both Israel and Germany, ethnicity is defined through a combination of self-declared subjectivity and religious (Israel) or ethno-linguistic (Germany) objectivity. The ultimate core of Israeli identity is Jewishness, and that is a religious matter defined religiously. By contrast, to be eligible for special immigration privileges, a German abroad had to be an expellee as a result of WW II and either a German citizen or of German origin. Expulsion was defined very generously, so the real issue was always Germanness. Generally, a profession of Germanness together with some

objective confirmation, such as language or culture, was enough. Ironically, legal and social pressures for "fairness" over time pushed the process in the direction of "objective" components, at the same time that being an "expellee" was adjudged an inheritable status. Where, early on, loss of German language competence (like Jewish religious competence in the Israeli case) had been taken to be a sign of oppression and the need for repatriation, by the 1990s such incompetence had become a sign of deficient seriousness about one's German identity and a bad omen as to future social integration.

The end of the Soviet Union unleashed a wave of ethnic migrations, and both Israel and Germany confronted dual liberal and restrictive challenges to their immigration and citizenship regimes. Ethnic preference comes at the expense of Palestinians in Israel and Turks in Germany, and these people and their supporters mounted liberal challenges. At the same time, underprivileged segments of the titular nation mounted restrictive challenges, intended to keep out coethnic as well as other would-be immigrants (189). The scope of the liberal challenge in Israel was of the first order: Zionism itself was put into question. But the outcome was slim, as Jewish-ingathering was decisively reaffirmed, largely at the expense of the Palestinian homeland minority. In the German case, the liberal challenge was more modest, addressing only "immigration policy." But it was also far more successful, with German diasporic immigration all but over and a liberalization of citizenship as well as immigration law attaining a consensus.

The post-Zionist call for an end to the Law of Return and the many accoutrements of Jewish privilege peaked in the mid-'90s. It seemed then that peace and a Palestinians state (with its own Law of Return) might be possible. Israel could become a territorial state of all of its citizens with recognized group rights for its Arab and Jewish sectors. Joppke is simply wrong to call post-Zionism "the vision of a small Arab Israeli elite" (195) cool toward both Jews and Palestinians, but

he is certainly correct to argue that the vast majority of Israeli Jews are not ready for non-ethnic Israeliness and that primordialism is growing on the Arab side, too. Legal efforts, by the Supreme Court especially, to cabin and limit Jewish preference to the Law of Return while otherwise adhering to liberal democratic norms of equality, have done more to underscore the dilemma than to resolve it. Add to this the rising power of religious orthodoxy and its insistence on an "objective," restrictive definition of Jewish membership and eligibility, and the stew is thickened further. With ¼ of the million Russian Jewish immigrants of the '90s (and a large percentage of Ethiopians as well) not Jewish by orthodox standards, a peculiar Jewish multiculturalism has been born in Israel.

During roughly the same period, 2½ million "German" migrants to Germany from the FSU unleashed similar liberal and restrictive responses. These two tendencies, liberal anti-Germanomania and restrictive anti-asylee/immigrant sentiment, reenforced each other, especially after reunification. In the course of the '90s ethnic-return migration was stripped of its privileges and was ultimately cut off and folded into an "integrated" and modest universalist immigration reform. Germany was free to become a state of all of its residents, offering permanent residency, naturalization, and jus soli citizenship to non-ethnic-Germans. After a post-national flirtation with multiculturalism and group rights, German liberals by decade's end had settled firmly on an inclusive, integrating civic nationalism.

Despite the predominant deethnicization of the liberal state, some forms of ethnic selection do, and, according to Joppke, will continue to exist in it. Mild, positive ethnic preferences that do not overtly come at the expense of others will persist, especially if deemed remedial or on behalf of minorities or as a matter of repatriation. Israel's Law of Return makes all of these claims, topped off by the claim that "'persecution' is part and parcel of the self-definition of Jews and of the state that represents them" (223). The extravagance of the claim, together with its derogation of non-Jews

takes Israel out of the liberal camp. Negative discrimination, especially racial, is today held insupportable in settler societies (a reason Ethiopian immigration is important to liberal Israelis), and even those post-colonial societies seeking to exclude can only do so through reducing immigration numbers altogether or, like the Iberians, inventing "special ties" to former colonies that appear immune to charges of racism or ethnic slight.

Exclusive and all-encompassing status identities are mostly gone. With the exception of "family," individuals are included as individuals, not as representatives of an ascriptive group. The solidarity of homogenous collective individuals in the nation, the nation as the totality of society, is gone. What James Scott famously and wrongly called the "high modernist state," namely "society as a military parade," is (and was) a phantasm. The real "high modernist state," one that qualifies for the EU, is one that has stable democratic institutions and a functioning market economy. It is not much interested in uniformity or nationalism; it is at most an integument for the individual's exercise of liberty, equality, and property rights. Joppke may overvalue this situation, but there is much to it. Effective human rights are now the measure of, rather than a constraint on, sovereignty. Citizenship is increasingly territorial rather than descent-based, and naturalization increasingly requires only language acquisition and a professed commitment to constitutional democracy. Ethnicity and citizenship are decoupled as never before while dual citizenship is no longer either avoided or disparaged.

Countertendencies are few and generally weak. Oddly, the rise in emigration is reenergizing ethnicity as it deterritorializes politics through the creation of numerous diasporas. Diasporas and expatriate communities are now valuable assets for sending countries to prize, and from Mexico to Turkey to the Philippines, they do. Witness the Mexican state's interest in keeping Mexicans in the US Mexican unto the third generation, at the expense of their integration into the US.

Transnationalism of this sort reethnicizes liberal states, according to Joppke, and needs to be limited. If the Mexican or Turkish or Hungarian states view their emigrants as bearing the national torch abroad, as part of the nation beyond the state's borders, there is a real risk of reethnicizing --and pushing rightward-- both the sending and receiving countries.

Joppke's liberal rationalism and Weberian penchant for categorization lead him to combine consistently well-informed and clear-headed analysis with some combatative, sometimes-merciless criticism across the political and philosophical spectrum: Michael Walzer for his communitarianism, Yasmin Soysal for her transnationalism, Will Kymlicka for his multiculturalism, the undialectical Rogers Smith, the "crypto-Marxist" Louis Hartz, the "ideologically inconspicuous" [sic] Michael Mann, Israeli liberals, German conservatives, American multiculturalists, and EU officials all draw stinging criticism. Joppke is often on the mark, but his certitude seems out of place in a field and in a world where the liberal project is ailing as it is.