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Regulating Immigration in a Global Age: A New Policy Landscape

By SASKIA SASSEN

ABSTRACT: This article argues that transformations in the state and the interstate system, particularly those brought on by globalization, have produced new constraints and opportunities in the handling of immigration. This becomes evident through a critical examination of three key features of current immigration policy in the United States and, to variable degrees, also in other highly developed countries. These three features are the handling of immigration as (1) a process autonomous from other processes and policy domains; (2) a unilateral, sovereign matter; and (3) operating in a context where the state is a given, untouched by the massive domestic and international transformations that are increasingly reconfiguring states and the interstate system. The author argues that immigration policymaking needs to recognize interaction effects, develop multilateral approaches, and factor in the changed character of unilateral sovereign authority.

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IMMIGRATION policy is deeply embedded in the question of state sovereignty and the interstate system. The state itself has been transformed by the growth of a global economic system and other transnational processes. These have brought on conditions that bear on the state's regulatory role and its autonomy. As a result, it is no longer sufficient simply to assert the sovereign role of the state in immigration policy design and implementation; it is necessary to examine also the transformation of the state itself and what that can entail for migration policy and the regulation of migration flows and settlement. A similar argument can be made with respect to the interstate system.

The major implication for immigration policy is that these developments have had an impact on the sovereignty of the state and its capacity for unilateral action. The reality of economic globalization has forced states to learn how to be more multilateral. This is most clearly evident in the activities of the World Trade Organization (WTO) and in the handling of global financial crises. Both the impact on the state's sovereignty and the state's participation in the new global economic system have transformed the state itself, have affected the power of different agencies within it, and have furthered the internationalization of the interstate system through a proliferation of bi- and multilateral agreements. Yet immigration policy in most of the highly developed countries has not been marked by major innovations as we have seen in other policy realms.

Here I examine three of the key features of the immigration policy framework in the highly developed countries in light of these transformations in the state and the interstate system, particularly those brought on by globalization. These three key features are (1) the handling of immigration as if it were a process autonomous from other processes and policy domains; (2) the handling of immigration as a unilateral sovereign matter; and (3) taking the state as a given, untouched by the massive domestic and international transformations within which the state operates.

This is, clearly, a somewhat stylized account of the major features of immigration policy. It abstracts and, in so doing, leaves out multiple details. But it gets close to the heart of the matter. Let me address each of these features by noting their growing incompatibility with the broader transformation under way and what needs to be done.

MORE RECOGNITION OF INTERACTION EFFECTS

Elsewhere (1988, 1999b) I have argued strenuously that international migrations are not autonomous processes and, further, that some of the actors in the international migration story are not usually recognized as such. Among these actors are, for instance, (1) multinational corporations, through their role in internationalizing production, with the associated displacement effects on local small-scale producers and the establishment of

linkages between the capital-receiving and capital-sending countries involved; (2) governments, through their military operations, with the associated displacements of people and ensuing flows of refugees and migrants; (3) International Monetary Fund austerity measures, through their role in mobilizing the poor into a desperate search for survival strategies that include migration, whether domestic or international, as one option; and (4) most recently, free-trade agreements, through their strengthening of cross-border flows of capital, services, and information, which include as one key component the cross-border circulation of professional workers.

A key issue in the case of immigration policy is the absence of any recognition that immigration may often be one of the trade-offs in these processes. There are a whole range of trade-offs, positive and negative, in all of these flows—in direct foreign investment, in offshore manufacturing, in International Monetary Fund austerity measures, in free-trade agreements. Frequently, these trade-offs are recognized and formalized into the policy framework. But immigration is never seen as one of the trade-offs—it simply is not on the map. Immigration policy continues to be characterized by its formal isolation from other major policy arenas. But is it possible to handle immigration as an autonomous event? Migrations are embedded in larger dynamics, and they often are initiated through the actions of key actors in receiving countries, whether governments or corporations. If an

immigration flow is initiated partly as a result of a receiving country's policies in other, nonimmigration domains, would not immigration policy gain from recognizing such interaction effects? What is gained by not recognizing interaction effects?

Factoring in interaction effects is complicated, certainly much more complicated than pretending that immigration is simply the result of poverty and the acts of individual emigrants. One version of such a recognition of interaction effects is to attach immigration impact statements to policies that involve overseas actions likely to have significant impacts on local people and local forms of livelihood. A major example of this is, of course, the introduction by U.S. agribusiness of large-scale commercial crops for export into a region in another country where small holders were the local norm. The displacement of small holders and their subsequent transformation into a supply of wage labor for large-scale commercial agriculture sets the stage for labor migrations. This is a pattern that we have seen repeat itself in many parts of the world, including the Caribbean and Mexico, two important source countries for immigrants to the United States. (See, for example, Zolberg 1990 on military actions and refugees.)

While the concept of immigration impact statements might seem impractical and resemble an academic exercise, it is worth noting its evolution. More than ten years ago, when I first wrote about this (1988), such a concept was simply not conceivable even as a subject for

discussion. By 1992, the debate around the North American Free Trade Agreement (NAFTA) regularly included evaluations of the immigration impact, particularly Mexican migration to the United States. In an important and pathbreaking research report by the immigration office in the U.S. Department of Labor, we can find one of the first formal recognitions of the impact of U.S. activities overseas on the formation of migration flows (U.S. Department of Labor 1989). Minor as they may seem, these two cases represent an important opening in the wall of autonomy built around immigration policy. When we look close to the ground, we can see that the politics of immigration are opening up to the recognition of interaction effects.

Economic globalization brings with it an additional set of factors for immigration policy. It intensifies, multiplies, and diversifies these interaction effects. If we accept, as I have argued, that immigration flows are partly embedded in these larger dynamics, then we may eventually confront the necessity of a radical rethinking of what it means to govern and regulate immigration flows. Such a radical policy rethinking has been worked out with respect to trade through the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and the creation of the WTO. Such a policy rethinking is also becoming evident regarding military operations, with the growing weight of international cooperation, U.N. consent, and multilateral interventions. And it is being done for telecommunications policy and

other areas that require compatible standards around the world.

What is important to emphasize here is that many of these areas are extremely complex, that the policy reformulation could not have been foreseen even a decade ago, and, perhaps most important, that the actual changes in each of these domains forced the policy changes. From where I look at the immigration reality—which is the freedom of the scholar rather than the day-to-day constraints of immigration policymakers and analysts—the changes brought about by the growing interdependencies in the world will sooner or later force an equally significant policy reformulation for immigration.

What is now experienced as a crisis in the state's control over its borders may well be the sign that we need to redraw the map within which we confront the difficult question of how to regulate and govern immigration flows in an increasingly interdependent world. Taking seriously the evidence about immigration produced by vast numbers of scholars and researchers all over the world could actually help because it tends to show us that these flows are bounded in time and space and are conditioned on other processes; they are not mass invasions or indiscriminate flows from poverty to wealth.

MORE MULTILATERALISM AT THE REGIONAL LEVEL

As for the second feature of the immigration policy framework, unilateral sovereign action, globalization has had a particular type of

impact in forcing states to learn to be more multilateral in other domains. First, the increase in international economic activity has brought with it an increase in multilateral economic agreements. Global trade requires convergence in manufacturing and operational standards; global markets in finance require transparency and international standards for accounting and financial reporting (see, for example, various chapters in Olds et al. 1999 and Smith, Solinger, and Topik 1999).

A second important issue is the declining effectiveness and clout of unilateral state action. Because a growing number of processes are today cutting across borders and even becoming transnational, governments are increasingly at a disadvantage in addressing some of today's major issues unilaterally (Ruggie 1993). This is not the end of national states; rather, it means that the "exclusivity and scope of their competence" (Rosenau 1992) have changed—that there is a narrowing range within which the state's authority and legitimacy may exclude other actors from involvement in international issues. The other actors can be other states or nonstate actors; for example, nongovernmental organizations have a growing role in economic development and environmental policy.

A third issue is the shrinking of the range of cross-border policy arenas that can be examined from the exclusive confines of the interstate system narrowly defined. We are seeing a growing institutionalization and formalization of systems of

governance, especially for global finance and business, which are not state centered (Dezalay and Garth 1996; Sassen 1996). Emerging is a supranational, often semi-privatized framework that does not fit comfortably in older forms of the interstate system. This does not signal the end of the interstate system as an important space for cross-border processes. Rather, the interstate system is no longer the only major institutionalized space for cross-border activities. A growing number of cross-border economic activities can now take place without involving governments (Sassen 1996; Bonilla et al. 1998). This has forced the interstate community to include nonstate actors in international negotiations or international responses, and it has forced this community to be more international in its approach rather than confining itself to being simply a collection of national interests.

Reality has forced new conditions and new practices on the interstate system. This contributes to internationalizing the interstate system and may well set an important precedent for handling other policy issues, including immigration, in a more multilateral manner.

The increasing tension between the growing pressures toward multilateralism and internationalism, on the one hand, and the ongoing insistence on unilateral action when it comes to immigration issues, on the other, have been partly resolved, in my analysis, through the growth of *de facto*, rather than *de jure*, bi- and multilateralism in the handling of specific aspects of international migrations (Sassen 1999a).

This is most evident and advanced in the case of Western Europe where the necessity of multilateral approaches to immigration has been forced onto governments by the requirements of formalizing an economic union. It is also evident in the negotiations between the European Union (EU) and the Central European countries to institute measures aimed at ensuring that asylum seekers stay in the country of first asylum in Central Europe and not move on to the EU, as well as measures aimed at streamlining the apprehension and return of unauthorized immigrants in Central Europe to prevent them from going on to the EU. These are all conditions that require multilateral action, no matter the rhetoric on unilateral sovereign powers.

Where the effort toward the formation of transnational economic spaces has gone the furthest and been most formalized, it has become clear that existing frameworks for immigration policy are problematic (Papademetriou and Hamilton 1996). Current immigration policy in developed countries is increasingly at odds with other major policy frameworks in the international system and with the growth of global economic integration. There are, one could say, two major epistemic communities: one concerning the flow of capital and information; the other, immigration. Both of these "communities" are international, and each enjoys widespread consensus in the community of states.

There are strategic sites in today's global economy where it becomes clear that the existence of two very different regimes for the circulation

of capital and the circulation of immigrants poses problems that cannot be solved through the old rules of the game, where the facts of transnationalization weigh in on the state's decisions regarding immigration. The EU and the national governments of member states have found the juxtaposition of the divergent regimes for immigration flows and for other types of flows rather difficult to handle. To deepen its integration by implementing open borders, the EU has been forced to address the fact that it will have to accept the cross-border mobility of non-EU-origin residents. The EU experience in this regard shows us with great clarity the moment when states need to confront the contradictions in their design of formal policy frameworks (Hollifield 1992).

The other major regional systems in the world are far from that moment and may never reach it because they are far simpler than the EU. Yet they contain less formalized versions of the juxtaposition of border-free economies and border controls to keep immigrants out. NAFTA is one such instance, as are, in a more diffuse way, various initiatives for greater economic integration in the Western Hemisphere. A recent proposal to check trucks at the border between Mexico and the United States as part of drug-trade policing, with an immigration control component, ran into enormous complaints from parties connected to Mexico-U.S. trade, who argued that it would have disastrous consequences for free trade in the region. This illustrates at a micro-level the tension between these two different regimes

for cross-border flows. (See also Castro 1999.)

A CHANGED STATE IN A CHANGED ENVIRONMENT

As for the third feature of the immigration framework, taking the state as a given, a number of transformations signal that the state itself may well have changed in some of its characteristics and that it is subject to judicial scrutiny to an extent not known before. To keep on formulating immigration policy as if the state were the same, a sort of background factor, may not be the most enlightened or effective way to proceed. Further, to make expanded police action a key part of new immigration measures and to exempt those actions from judicial review at a time when judicial review and individual rights have also strengthened is a formula for expanding litigation against the state rather than making the state more effective in its attempt to regulate immigration (Sassen 1999b).

The state has been altered in several of its key features. There are the changed international environments within which states operate today, as discussed previously, and there is the transfer of state functions to supranational organizations, to the private corporate sector through privatization and deregulation, and to the citizenry through the expansion of judicial review and administrative law (Aman 1998; Rosenau 1997).

There is an incipient unbundling of the exclusive authority of the state over its territory. Further, some components of sovereignty have been relocated to supranational entities,

most importantly the EU and the WTO. There is no doubt that some of the intellectual technology that governments have and that allow them to control their subjects and their territory has now shifted to nonstate institutions. This is illustrated by the new privatized transnational regimes for cross-border business and the growing power of the logic of the global capital market over national economic policy (Sassen 1996).

This is well illustrated in the new special regimes for the circulation of service workers within the framework of the General Agreement on Trade in Services (GATS) and NAFTA. These regimes have been uncoupled from any notion of migration, even though they represent in fact a version of temporary labor migration. Whether in NAFTA or in GATS, these are regimes for labor mobility that are in good part under the oversight of supranational entities such as the WTO that are, in practice, quite autonomous from governments. We can see here the elements of a privatization of certain aspects of the regulation of cross-border labor mobility. It becomes part of the larger institutional reshuffling of some of the components of sovereign power over entry and can be seen as an extension of the general set of processes whereby state sovereignty is partly being decentered onto other non- or quasi-governmental entities for the governance of the global economy.

In some ways, this can be seen as yet another instance of the privatization of that which is profitable and manageable. The privatization of

what were once public sector firms is clearly a growing trend in a growing number of countries. But we are also seeing the privatizing of what was once government policy in several emergent cross-border legal and regulatory regimes for international business, notably the rapid growth of international commercial arbitration and the growing importance of credit rating agencies. In addition, we can, as I have argued elsewhere, see NAFTA and GATS as containing a venue for the privatizing of components of immigration policy that are characterized by high-value added (that is, persons with high levels of education and/or capital), manageability (they are likely to be temporary migrants and working in leading sectors of the economy and hence visible and subject to effective regulation), and benefits (given the new ideology of free trade and investment). At the limit, governments might be left with the supervision of what might be represented as the difficult and low-value-added components of immigration: poor, low-wage workers; refugees; and dependents. This can clearly have a strong impact on what comes to be seen as the category "immigrant," with the attendant policy and broader political implications.

The invocation of international covenants, particularly human rights instruments, to make national policy signals yet another type of relocation of government functions: a relocation of some components of the legitimation process out of the national state and into international agreements. This is a move away from statism—the absolute right of

states to represent their people in international law and international relations—toward a conceptual and operational opening for the emergence of other subjects and actors in international law (Soysal 1994; Jacobson 1996; Franck 1992). The international human rights regime has been a key mechanism for making subjects out of those hitherto invisible in international law: first-nation people, immigrants and refugees, women. This has brought about a growing number of instances where one sector of the state is in disagreement with another. It is perhaps most evident in the strategic role that the judiciary has assumed in the highly developed countries when it comes to defending the rights of immigrants, refugees, and asylum seekers.¹

Finally, the growth of administrative law and the judicialization of politics also represent a move away from statism, but on the domestic level. When it comes to immigration, the courts have been used both in Western Europe and in the United States to contest decisions taken by the legislatures. The strengthening of police authority in the regulation of immigration is not going to escape litigation. It is an aspect of immigration policy that does not sit comfortably in the context of individual rights and civil society, which are such important features in these countries.

The state itself has been transformed by this combination of developments. This is partly because the state under the rule of law is one of the key institutional arenas for the implementation of these new domestic and new international regimes—

whether the global rights of capital or the human rights of all individuals regardless of nationality. And it is partly because the state has incorporated the objective of furthering a global economy, as is evident in the ascendance of certain government agencies—for example, in the U.S. Treasury—and the decline of others, such as those linked to the social fund.

Economic globalization and the human rights regime have altered the terrain within which international relations between states take place, and they have contributed to the formation or strengthening of an international civic arena, from the world of international business to that of international nongovernmental organizations. Immigration today increasingly intersects with these new worlds and is partly embedded in them, in turn partly escaping sovereign state control. These are transformations in the making as we speak. My reading is that they matter. It is easy to argue the opposite: the state is still absolute; all of these are minor wrinkles. But it may well be the case that the transformations mark the beginning of a new era. Scholarship on mentalities has shown how difficult it is for people to recognize systemic change in their contemporary conditions. Seeing continuity is much simpler and often more reassuring.

CONCLUSION: ACTING ON THE NEW POLICY LANDSCAPE

Crucial to the possibility of innovative thinking on the immigration front is the need to get over the sense

of an immigration control crisis, which prevails today in many of the highly developed countries—even though many scholars disagree on the existence of a crisis. One of the questions raised by these developments concerns the nature of the control by the state in regulating immigration. The question is not so much about the effectiveness of a state's control of its borders—we know it is never absolute. It is, rather, about the substantive nature of this control given the new economic regime, international human rights agreements, the extension of various social and political rights to resident immigrants over the past twenty years, the multiplication of political actors involved with the immigration question, and so forth (Hollifield 1992; Weil 1998). While a national state may have the power to write the text of an immigration policy, it is likely to be dealing with a complex, deeply embedded, and transnational process that it can only partly address or regulate through immigration policy as conventionally understood.

The fact that today there are a growing number of constraints on the state's capacity to handle the immigration reality should not be seen as a control crisis. The type of analysis developed in this article opens up the immigration policy question beyond the familiar range of the border and the individual as the sites for control. It signals that international migrations are partly embedded in conditions produced by economic internationalization both in sending and in receiving areas. We need a more comprehensive evaluation of what the arenas are and who

the actors are in the world of immigration today.

The perception of crisis is in some ways unwarranted, even though states have less control than they would like because immigration is caught in a grid of other dynamics. When we look at the characteristics of immigrations over time and across the world, it is clear that they are highly patterned flows, embedded in other dynamics that contain equilibrating mechanisms; that they have a duration (many immigrations have lasted for twenty years and then come to an end); and that there is more return migration than we generally realize (for example, Soviet engineers and intellectuals who went back to Moscow from Israel; Mexicans who returned after becoming legal U.S. residents through the 1986 Immigration Reform and Control Act amnesty program, feeling that now they could move repeatedly between the two countries). We also know, from earlier historical periods when there were no controls, that most people did not leave poorer areas to go to richer ones, even though there were plenty of such differences in Europe within somewhat reasonable travel distances. Finally, we know, from a diversity of types of evidence, that most people do not want to emigrate to a foreign country and that many who have emigrated would rather be circular migrants than permanent immigrants. (For a full discussion of these various aspects, see Sassen 1999b).

A key issue is whether national states have the capacity to pursue a broader international agenda, one that goes beyond the furthering of

economic globalization and that addresses questions of equity and mechanisms for a better distribution of resources, allowing more people in poor countries to make a living. The past two decades show us, first, that international cooperation and multinational agreements are on the rise. About 100 major treaties and agreements on the environment have gone into effect since 1972, though not all remain in force. According to the WTO, there are currently 76 free-trade agreements in place. There is now also more multilateral collaboration on crime; most recently, the Financial Action Task Force has been formed to confront new types of crime in the realm of finance made possible by digitalization. The complexity of the task is enormous since different countries have very different traditions in terms of surveillance and permissibility (for example, with respect to bribery). The WTO, the EU, and even such bodies as the Financial Action Task Force confront enormously complex policy issues that require innovation. Clearly, multilateral approaches to cross-border issues are growing.

Second, while the international role of the state in the global economic arena has to a large extent focused on furthering deregulation, strengthening markets, and pushing for privatization, most states contain agencies and interests that go in other directions. For instance, the participation of national states in the global environmental arena has frequently led to the signing of multilateral agreements that aim at supporting measures to protect the

environment. That is not to say that they are effective, but they do create a framework that legitimates both the international pursuit of a common good and the role of national states in that pursuit (Ruggie 1993). They represent a countervailing force to the fact that the role of the state in the international economic arena seems to be largely confined to pursuing the goal of maximizing the profitability of certain economic sectors and actors, not even all sectors and actors, in its own economy.

Third, it is important to recognize that the state participated in the implementation of the new global economic order. Global capital has made claims on national states, and these have responded through the production of new forms of legality. The new geography of global economic processes, the strategic territories for economic globalization, had to be produced both in terms of the practices of corporate actors and the requisite infrastructure and in terms of the work of the state in producing or legitimating new legal regimes. Representations that characterize the national state as simply losing significance fail to capture this very important dimension. I view deregulation not simply as a loss of control by the state but also as a crucial mechanism with which to negotiate the juxtaposition of the interstate consensus to pursue globalization and the fact that national legal systems remain the major or crucial instantiation through which guarantees of contract and property rights are enforced. Can national states also participate in the implementation of other cross-border frame-

works to govern other cross-border dynamics, such as those concerning development and immigration?

The actual participation of more and more states in multilateral negotiations and the growth of international regimes with various levels of formalization to handle economic, environmental, and even military issues set the stage for more multilateralism in the handling of international migrations. Exploring such options today is a more reasonable proposition than 10 years ago, because it has the potential of harmonizing the handling of migration with the handling of other cross-border flows. Indeed, the tenor of the times has already pressured states into more bi- and multilateral collaboration than the formal rhetoric of statism signals. Aman (1998) notes, in his work on the impact of globalization on administrative law, that it is in the interest of the state to play an increasingly active role at the global level. The participation of national states in new international legal regimes of this sort may contribute to the development of transnational frameworks aiming at promoting greater equity.

I am arguing for a new role for the state in immigration policy: more international and more multilateral, including the participation of nonstate actors. At the heart of this type of multilateralism I see the necessity for sending and receiving countries to work together in the handling of international migration flows; the fact that some countries are both receiving and sending migrants also calls for more collaboration on the part of the various

parties involved. This architecture of multilateralism would be centered on regions and on the major cross-border migration flows that they contain.

Further, in the longer term, it is more likely that stronger legal regimes will develop on a global basis if the global issues involved have a national regulatory counterpart (Aman 1998). In the case of immigration policy, this means a far broader range of innovations in terms of both the new international environments within which states operate and the new domestic environments within which issues relating to individual rights and civil society have become stronger.

Given the ineffectiveness of much immigration policy and given the undesirability of expanding police methods to control immigration, how much can be lost by innovating in immigration policy? There has been an enormous amount of policy innovation when it comes to the economy and even the environment and international military frameworks. We need to explore and realize the policy options and constraints that emerge from the actual features of international migrations and from the new global and domestic landscape for policymaking.

Note

1. At the limit, this means that the state is no longer the only site for sovereignty and the normativity that comes with it and, further, that the state is no longer the exclusive subject for international law. Other actors, from nongovernmental organizations and minority populations to supranational organizations, are increasingly emerging as subjects of inter-

national law and actors in international relations (Sassen 1996).

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