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Book Review

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BOOK REVIEW

INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES: By Guy S. Goodwin-Gill. Oxford: Clarendon Press, 1978, Pp. 324.

Every day hundreds of persons are refused entry, differentially treated upon admission, or expelled from countries of which they are not nationals. These state actions may be based upon considerations of race, national security, the ability of the person seeking entry or continued residence to contribute needed professional or craft skills, or upon a virtually unlimited array of other, often unstated, policy considerations. Yet, the authority of states to deal with foreigners in accordance with such policies has seldom been questioned. Indeed, it has been the premise of many, among them Wolff, Vattel, and O'Connell, that the power to exclude foreigners from its territory is within the reserved realm of a state's domestic jurisdiction. Some commentators would hold that such power, being an inherent attribute of statehood, may be wielded with unfettered discretion. What has been, and remains, the most widely espoused position as to the power of nations in matters of immigration was stated by Justice Gray:

It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to its self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.¹

In *International Law and the Movement of Persons between States*, Guy S. Goodwin-Gill presents a contrary thesis: The broad power of states to deal with aliens within their territories is confined and limited by rules and standards of international law as expressed in the actual practice of states, treaties, and general principles. The author's purpose in this valuable (but general) work is to advance a more detailed description of discretionary powers and to determine the rules, standards, and limits pertaining to such discretion. Mr. Goodwin-Gill accomplishes his purpose through the voluminous use of illustration. Indeed, his presentation is so convincing at times, that one is tempted to forget that he is advancing a minority viewpoint. Perhaps the state actions, cases and documents cited are the harbingers of some future

¹ *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892) at 659.

enlightenment. But for the present they are only isolated instances, hopeful glimmers in the arbitrary void of state appreciation of immigration matters.

In surveying the principles, rules and practices of states, the author relies heavily upon the legal systems of the United States, the United Kingdom, France, the Federal Republic of Germany and the European Communities for purposes of illustration. Thus, those seeking somewhat detailed information as to these five legal regimes as well as those seeking an overview of limits upon the discretionary power of government to influence the movement of peoples between states will find this book of value. Copious footnotes and a selected bibliography make the work a springboard for further study. However, those seeking detailed information as to the practices of other countries will find the book ill-suited to their purpose. Unfortunately, the recent emigration attempts by Soviet Jews are not mentioned. Discussion of this contemporary issue would have provided a contrast to the encouraging developments in the nations surveyed. Thus a more balanced picture of state practices might have been presented.

United States immigration statutes and regulations are cited by Mr. Goodwin-Gill as an example of self-imposed practices as a limitation on a state's discretion regarding matters of entry and exclusion. These references are appropriate inasmuch as rights of appeal and review of the discretion exercised by immigration judges confine and structure this country's inherent power more than that of any other state in the world. Thus an alien who has been excluded from the United States must be given a fair hearing in which he bears the burden of proving his right to entry. And, once an alien has actually been admitted to the country even briefly, he can be forced to leave only after expulsion proceedings in which the government carries the burden of proof. In matters of national security, an area of sovereign appreciation which the author describes as the "outermost edge" at which limits operate, the United States still allows review in cases of clear abuse of discretion.

The author recognizes a second limitation upon sovereign discretion in immigration matters: the treaty. The European Economic Community (EEC) is offered as an example of a legal regime circumscribed by multilateral treaty provisions. Under these provisions, formal admission and residency requirements are essentially simple identity checks, grounds for exclusion and expulsion are limited, and social security and certain procedural rights are insured. Multilateral treaties are relatively rare, however, according to the author. Bilateral

treaties of commerce and establishment are far more commonplace than regional accords, although these are narrower in scope. Such bilateral treaties have proven effective in limiting the exercise of sovereign power by recognizing emerging legal concepts such as a "right to family unity," for example. Thus it is being increasingly recognized by treaty that a person admitted to a country in order to settle should be entitled to have his immediate family join him.

Rules of international law have also had some small impact on the broad powers of States to exclude or expel aliens. For instance, recognized principles include prohibitions upon racial discrimination by a state; the return of refugees to another state which would persecute them, and the refusal by a state to admit its own nationals. The author illustrates that rules of international law are perhaps the least effective among the three above-mentioned limitations through the example of the United Kingdom. Through the concept of patriality and by "recognizing a continued responsibility to those in various parts of the world who remain entitled to United Kingdom citizenship" that state participates in *de facto* discrimination in contravention of not only the European Convention on Human Rights, but also the principle of non-discrimination.

The author misses an opportunity to make this concise, well-documented work outstanding by failing to ponder the reasons why states impose, implement, observe or ignore discretionary limitations. The reader is justified in asking why the author views rules of international law as the least effective means of limiting sovereign discretion. Had the author analyzed these concerns he might have distilled the factors which motivate governments to allow free movement of peoples. Such analysis would provide a thought-provoking theme which would unify the book's survey technique.

Limits on discretion are explored in Mr. Goodwin-Gill's exposition as promised, but only as to large western countries having well-established legal regimes. Because restraints exercised by small and newly emerging nations are not considered, the reader is left to wonder about the extent to which these more refined limitations have been implemented throughout the world.

In general, *International Law and the Movement of Peoples Between States* is a well-organized, basic work which adequately describes current practices in matters of immigration and is worth reading.

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