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Introduction: Migration and Globalization Symposium

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Introduction:
Migration and Globalization

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Under the law, human beings often have considerably less freedom to move permanently across national borders than goods and capital. This is ironic, perhaps, but it is no coincidence. As globalization takes hold in some domains, nation-states resist it in others, notably in the control of migration. This situation sets the stage for the papers in this issue, a symposium issue on the theme of migration and globalization. Overall, the authors speak to two main themes: first, the increasing need for a more global approach to migration issues and, second, directions for the development of a research agenda on migration, globalization, and the nation-state that will foster dialogue among scholars and policymakers in these fields.

The topic of migration and globalization provides a vehicle for examining several important issues with wide-ranging implications beyond migration itself. First, it affords a window on the ways various global forces have precipitated migration (including refugees) around the world. It also provides numerous case studies on the interrelationship of domestic law and the globalization of markets, politics, and law beyond our borders. In this regard, we focus particularly on the United States. The topic also leads authors to consider new theories of the State. These broad issues are not new to readers of the Indiana Journal of Global Legal Studies, since our first volume year was dedicated to the theme of the globalization of law, politics, and markets. In many respects, the present symposium issue continues the discussion undertaken in Volume 1.

The papers offered here were first presented at a symposium entitled “Global Migration and the Future of the Nation-State” at the Law School of Indiana University-Bloomington on April 8, 1994. This issue reflects the organization of the conference, consisting of four plenary sessions. In each

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session, a position paper was followed by commentaries, an arrangement that is retained here.

Part I sets the stage for the volume as a whole. Jeffrey Passel and Michael Fix provide a historical overview of U.S. immigration patterns since the nineteenth century, as well as a report on current trends as revealed in the 1990 U.S. Census. Their data situate the United States in the global migration context. In analyzing the impact of immigration to the United States (virtually all of which is in six states), they point out that current rates of immigration are higher than ever before. Almost one half of immigrants in the United States have been here less than a decade. Moreover, the new immigrants come from parts of the world—especially Latin American and Asian countries—which have not produced much U.S. immigration in the past. Yet, compared to other periods in U.S. history, the overall share of the population that was foreign born in 1990 was only eight percent. This is considerably lower than the 1890-1920 period, when the U.S. immigrant population was nearly fifteen percent. Passel and Fix also assess some of the political and cultural implications of the new immigration.

In her comment, Carol Greenhouse develops the theme of the new immigration and its cultural implications. In her review of current ethnographic studies of new immigrant and ethnic groups in the United States, Greenhouse concentrates on specific areas of cultural tension: public anxiety over the limits of diversity in relation to the functions of the nation-state; racism, xenophobia, and ethnic solidarity; and the need for new public institutions to maintain dialogues across ethnic communities.

Dennis Conway's comment on Passel and Fix focuses on the transnational aspects of migration, arguing for recognition of a new multicultural society in the United States, and the durability of the ties between immigrants and their home countries. From Conway's perspective, the process of immigration is a dynamic one, one that permanently links the sending and receiving countries in ways that can transform both. In his view, these relationships are an asset. Conway calls for a broader understanding of immigration that recognizes this concept.

In Part II, the lead paper by Jost Delbrück develops a model of the Open Republic as a new basis for the modern State. Delbrück reviews prevailing theories of citizenship and the nation-state and emphasizes that increasing migration worldwide creates the need for new ways of conceptualizing the nation-state. In his view, the classical notion of a State being defined by a permanent population is no longer appropriate or useful.
The concept of the Open Republic can provide a means of accepting and assimilating citizens of different ethnic, religious, or cultural backgrounds, with equal rights for all.

In their comments, Ken Karst and David Williams accept the goals of Delbrück’s Open Republic, but, from different perspectives, critique republican theory and its implications for the United States. Karst fears that the ideals of the Open Republic will spawn opposition by citizens’ groups who think of themselves as “true Americans.” He concludes that much work remains to be done in the United States if the ideal of the Open Republic is to be fully realized. David Williams critiques current neorepublican notions from a U.S. perspective, arguing that republican theory, though situated somewhere between ethnonationalism and interest group liberalism, is inherently unstable.

The third set of papers concentrates more specifically on domestic law, U.S. immigration law in particular. John Scanlan examines past and current immigration law from the vantage point of global migration trends and different theoretical constructions of the State. He argues that despite substantial changes in law that have increased the global mobility of capital and goods, people’s movements across national borders are considerably more restricted and problematic. In his view, globalization is likely to have only marginal effects on U.S. immigration law and policy. It is the nature of the nation-state to protect its borders, and to pursue self-interested immigration policies.

In her comment, Kitty Calavita also takes a historical perspective on U.S. immigration law to account for what she notes is the persistent gap between the stated intent of immigration policies and their actual effects. Although there have been repeated attempts to restrict the flow of immigration in the course of U.S. history, Calavita notes that these have tended to have little impact. She explains this effect by examining contradictions between employer-worker interests, the politics of the economy, and the gap between the law in the books and the law in action.

The fourth set of papers takes a broadly historical and political view of migration. Aristide Zolberg’s lead paper assesses the profound world changes, including accelerating globalization, that, in his view, make traditional nation-state concepts obsolete. At the same time, he also documents the persistent resistance to new approaches to immigration. He considers international migration as historically contingent, arising from the advent of territorial sovereignty as the dominant form of political
organization. He links the emergence of territorial sovereignty to modernity, and stresses the unfinished work of building a truly global community.

Responding to Zolberg, Jeffrey Hart offers various concepts of globalization and notes that although the global political system is organized mainly on the basis of national sovereignty, the global economy is not. This fact creates the possibility of a mismatch between the political and economic orders, and this mismatch is apparent in the case of international migration and illegal immigration in particular. He focuses on links between pressures for migration and international economic inequalities and calls for more global approaches to migration problems.

In his comment, Guy de Lusignan joins Zolberg’s call for changes in domestic approaches to global migration, concentrating on European and African experiences. World population increases, unemployment, eastern European economies in transition, and income disparities all contribute to what he believes to be a global migration crisis. In de Lusignan’s view, only more efficient trade and aid policies can help to stabilize migration in the future.

As the contributions to the symposium make clear, migration involves particular challenges to domestic, international, and global law. In other respects, though, migration is one among many domains in which the future of the nation-state is called into question, if only because the line between international and domestic law becomes increasingly blurred. Other domains include the environment, trade, and communications; each of these necessitates multilateral approaches to problem-solving. In each of these areas, the question of how to assess domestic law and proposals for reform is increasingly complicated by global markets, greater political interdependence, and increasing pressures for harmonization. These complexities do not affect every area of the law equally, but migration is without doubt paradigmatic of the ways these pressures gather force and significance. In each of the articles in this issue, the theme is the possible connections between a global perspective on domestic law and both opportunities for and obstacles to significant reform.