# CONTENTS

# 1

# Panoptica

> There was of course no way of knowing whether you were being watched at any given moment.
>
> —GEORGE ORWELL, *NINETEEN EIGHTY-FOUR*

> 'Don't look at him!' he snapped, without noticing how odd it was to speak to free men in this way.
>
> —FRANZ KAFKA, *THE TRIAL*

> Borders have guards and guards have guns.
>
> —JOSEPH CARENS, 'ALIENS AND CITIZENS'

## A Modern Panopticon

Immigration controls are restrictions on individual freedom. In debates about immigration, however, freedom is rarely mentioned. When it is raised it is usually indirectly, and the contending parties typically divide into those who question the wisdom or the morality of limiting the movement of would-be immigrants and others who think such restrictions warranted. The language of freedom does not make much of an appearance, perhaps because the liberty of foreigners or aliens does not really interest most people. Those who favour immigration commonly express a concern for the welfare of outsiders; others, who would rather such people did not

immigrate, appeal to the welfare of natives and the integrity of the nation as the things that really matter. Freedom is never itself the issue.

The point of this book is to put freedom at the centre of the immigration question. At stake are the liberty of citizens and other residents of the free society, and therefore the free society itself. To put it simply, immigration controls are controls on people, and it is not possible to control some people without controlling others. More to the point, it is not possible to control outsiders (aliens, foreigners, would-be immigrants) without controlling insiders as well. Immigration controls are not merely border controls but controls on the freedom of the population residing within those borders. The purpose of this work is to show why this must be so, and to explain why it is significant. The conclusion it defends is that if we value freedom—as we should—we ought to be wary of immigration control.

This conclusion is unlikely to be a popular one. Even within the academy, which is on the whole sympathetic to freedom of movement, few find the idea of much more open immigration either attractive or plausible. Among the general population in modern liberal democracies, most think immigration should be limited, and significant numbers argue that it should be substantially reduced. To advocate a reduction, let alone the removal, of immigration controls in such circumstances would therefore seem to many a slightly quixotic, if not entirely preposterous, endeavour. Nonetheless, I think it is important to make the case. This work is not so much a defence of 'open borders' as an invitation to think through the implications of immigration control, even if it nonetheless recognizes that scepticism about immigration control has largely been expressed by advocates of open borders.[1] In the end, what I hope to show is that we have very good reason to take the idea of more open immigration seriously by bringing its detractors to acknowledge the heavy price we must pay to keep our borders controlled.

That price, I should say at the outset, is not an economic one. While economic considerations are not unimportant (and will be addressed in due course), the point here is not to advance the economic case for freedom of movement. It is rather to explore the relationship between open immigration and the free society. This is, in the end, an essay on the nature of a free society.

If there is a passage anywhere that captures the spirit of the argument that will unfold in these pages it is the funeral oration delivered by Pericles in Thucydides's *History of the Peloponnesian War*, reminding his fellow Athenians of what it means to live in a free society. There he said:

> The freedom which we enjoy in our government extends also to our ordinary life. There, far from exercising a jealous surveillance over each other, we do not feel called upon to be angry with our neighbour for doing what he likes, or even to indulge in those injurious looks which cannot fail to be offensive, although they inflict no positive penalty. But all this *ease* in our private relations does not make us lawless as citizens.[2]

It is true, Pericles boasts, that 'the magnitude of our city draws the produce of the world into our harbour, so that to the Athenian the fruits of other countries are as familiar a luxury as those of his own'. But this is also possible because: 'We throw open our city to the world, and never by alien acts exclude foreigners from any opportunity of learning or observing, although the eyes of an enemy may occasionally profit by our liberality; trusting less in system and policy than to the native spirit of our citizens.'[3]

To draw inspiration from this passage is not to hold up the slave-dependent polis of ancient Athens as a model for modern society, or to buy uncritically into Pericles's rosy portrait of his city. Indeed, the historical Pericles was himself hardly an advocate of equality for immigrants and had been the architect of a system of restrictions on the rights and freedoms of non-Athenians. Plutarch recounts that upon being chosen once again by the Athenians to lead them as a general, Pericles asked that the law 'concerning base-born children, which he himself had formerly caused to be made, might be suspended; so that the name and race of his family might not, for want of a lawful heir to succeed, be wholly lost and extinguished.' That law, which Pericles had introduced in 451 BCE, provided that from then onward only children born of parents both of whom were Athenian could acquire citizenship.[4] Still, this does not change the fact that the Athens of the day stood in plain contrast to the outlook of Sparta, whose practice of *xenēlasia* (the arbitrary and deliberately violent expulsion of foreigners or immigrants) was criticized by Pericles as inconsistent with the Greek way of thinking.[5]

The funeral oration resonates with the thesis of this book because it offers a reflection on what it means for a society to be free. The freedom to be prized is in some ways a very ordinary thing, consisting in not being hindered or obstructed in the pursuit of our everyday ends, or watched as we go about our business, or prevented from associating with others from whom we can profit or to whom we wish to show our liberality. It means being able to live as we please under laws that recognize the freedom of all to go about their own business, and able to relate to one another not under the terms set by a system or policy but simply as people of the city. *It is to be at ease*. By

implication, at least on this reading of Pericles, living freely means living in a society that is open to the world—from which others are not excluded—and not waking each day in trepidation of the risks that openness might bring.

In restricting the movement of people today we have been too little aware of what it means for the way we live. We have trained our focus on the immigrant and have dwelt on the perceived dangers of bringing foreigners into the state, but have not given much attention to what it means to create a society that tries to close itself off (if only to a degree) from the outside world. Even advocates of open borders have given relatively little consideration to this matter. Joseph Carens famously opened his defence of freedom of movement with the observation that 'borders have guards and guards have guns'.[6] His point was that violence is threatened or inflicted upon would-be immigrants, and that the power of the state when exercised to keep out 'ordinary, peaceful people seeking only the opportunity to build secure, decent lives for themselves and their families',[7] is a brutal and frightening thing. The presumption behind this observation, however, is that the guards sit at the border and that they and their guns face outwards. The truth of the matter is very different: the guns face *inwards* more often than they face out, and the guards are to be found not merely well within the boundaries of the state but in every part of society.[8] As we have tried to erect a fortress, so have we managed to build a prison. We have become used to living under surveillance, just as we are also getting used to monitoring each other in a panopticon[9] of the people. Whether or not we fully realize it, we are no longer at ease, and rely upon a policy and a system that threatens rather than secures our freedom. For some, it might mean living in fear, even as for others it means becoming complicit in a system of policing that contributes to this outcome.

The point of immigration controls is not simply to prevent entry into a state's territory, or to limit the numbers that come in, but to determine who may enter—and to restrict what people who enter may do. Few countries wish to reduce the volume of cross-border traffic, if only because most want to encourage tourism or to attract business.[10] In 2013, 69.8 million people entered the US as visitors, while more than 30 million entered the UK.[11] If citizens and residents are included, the numbers crossing American and British borders are even greater. While concerted efforts are indeed made to prevent people entering countries undetected by government authorities, the greater concern of governments is what those coming across the border do once 'inside'. Their worry is that they will seek employment, or enrol in a school or university to study, or try to reside for an indeterminate period of time, or marry, or set up businesses, or engage in any number of

otherwise legal activities.[12] The problem is that visitors arriving in such large numbers cannot easily be monitored, and if they seek to work or remain for longer than permitted there is little authorities can do to keep track of their behaviour. This problem is exacerbated by the fact that citizens and residents are all too ready to cooperate with outsiders by hiring them, teaching them, buying their wares, and generally helping them to stay—either because they wish to take advantage of cheaper or more skilled labour some visitors can provide, or because they want to swell the ranks of their own groups with people of similar background, or because they have something to sell, or because they like their new-found friends, or because they fall in love. If visitors are to be kept from breaching the conditions of entry, it becomes necessary to monitor the behaviour of citizens and residents. For the restrictions under which visitors operate are largely restrictions on how they may cooperate with citizens and residents. If citizens and residents were disinclined to associate or cooperate with outsiders, the problem would never arise. Yet the propensity to truck and barter, and to collaborate in various (questionable as well as innocent) ways, is a deep feature of our nature, and foreigners will rarely find themselves welcome nowhere.

The only feasible way of monitoring and controlling would-be immigrants is to monitor and control the local population. It will be necessary to forbid among consenting adults not only capitalist acts, but also socialist, Christian, and more generally human ones—if one of those adults is a foreigner. Those in breach of laws forbidding such acts must be penalized—in the case of foreigners (and all too often, as we shall see, citizens) usually by deportation and the denial of any liberty to re-enter the country in the future—or punished, by fines, the rescinding of rights and privileges, or imprisonment.[13] Yet it is not just sins of commission that will attract the ire of the authorities. Citizens and residents will be expected to be vigilant in ensuring that they do not cooperate or associate inadvertently with foreigners—and to keep records to demonstrate that commitment. Employers will have to monitor their employees, teachers their students, international carriers their passengers, parents their nannies, doctors their patients, and Transportation Security Administration agents their fellow citizens. One nation under surveillance, its liberty diminished through unrelenting vigilance.

Now of course it remains to be established that the condition I am describing is one that should be cause for concern, let alone alarm. Every society places some restrictions on the freedom of its citizens and its residents, as well as on the movement and conduct of visitors. The question, it will be argued, is not whether there are restrictions in place but what

limitations on freedom are warranted. And that is indeed the issue. The point of this book is to say that the loss of freedom is more significant than has been appreciated, and that the restrictions that make for that loss are not warranted. The gains, if they are in fact gains, are negligible, but the price is high. Immigration controls, more than many other instruments of governance, encourage the regulation of private and commercial life, the monitoring of social institutions—from schools and universities to professional organizations—and, at worst, the militarization of parts of society. So deeply can they intrude into the relations among people that make for civil life that they have the capacity to compromise a society's legal institutions as well as inflict serious harm on private citizens, their families and their communities. Unchecked, they encourage the replacement of the rule of law by regulations, of politics by police.

## The Apotheosis of Nationality

This brings us to a larger thesis that lies at the heart of this work. From the perspective of freedom, the root of the problem is a certain way of thinking about society, and the relationship between society and its inhabitants. Among political theorists, no less than among the rulers, civil servants, activists, and commentators who make up the political elite, society is imagined to be made up of *members*. That is to say, it is imagined that a society is some kind of unit comprised largely of people who *belong* together in some way, and whose belonging entitles them to determine who may or may not become a part of that unit, or indeed even enter the geographical space or territory it occupies. (The ambiguity in meaning of the word 'belong' ought not to go unremarked. People may wish to belong with others in their countries, but often states hold that their citizens belong to them whether or not those citizens wish it.[14]) The world is divided into territorial units occupied by members who have the right collectively to determine the participation or involvement in, and the membership, the character, and the future of, their particular units.

Yet the world was not always so divided,[15] and even today, societies are not made up entirely of members. They are made up of people: individuals, groups, and communities who pursue various ends or goals or purposes, most of which are independent of, or have no bearing upon, membership of their society. Some societies, such as Qatar, are made up predominantly of non-members: expatriates who have come to work to earn enough to make the move to a new place worthwhile. Others, like Singapore, have large

expatriate populations living as residents for as long as their visas permit. The countries of the European Union are filled with non-citizens who have the right to reside in their chosen places because of their European identities, though business enterprises, universities, football clubs, orchestras, churches, and even state bureaucracies, all depend on and draw upon skilled people from all over the world. Even the numerous armies of the United States are sprinkled with soldiers, sailors, and airmen who are not American citizens and who, should they be killed in combat, would die not for their country but for their employer. In many parts of the world, there are entire peoples who remain unaware of their membership of the society that claims them: indigenous people in South America and large parts of Asia who have no idea of, or interest in, their citizen statuses.

In spite of these facts, philosophers and political leaders alike think of the world as (rightly) divided into territorial units that are (rightly) controlled by their members. Thus, Michael Walzer begins his reflections on justice by positing membership as the first issue any society must address,[16] while John Rawls, in describing the ideal society, asserts that it would be one in which immigration would have no place—for in an ideal world, why would anyone move?[17] In looking for employees, players, audiences, buyers, sellers, advisors, friends, lovers or computer gamers, people do not ask first, or even at all, about membership. Why then should political organization, and philosophical reflection on political society, begin with the premise that membership—political membership—is what matters, and matters above all else?

The thought running through this book is that membership is an ideal that is not only overrated but also dangerous from the perspective of freedom. It is at odds with the idea of people living together freely, for it subordinates that freedom to an altogether different ideal—one that elevates conformity and control over other, freer, ways of being. In the end, if we are to live freely, we must be able to relate to one another not as members but as humans. The point of immigration control is to separate us into members and interlopers, dividing us into groups of those whose legitimate place in a territory is beyond question and others who enjoy what entitlements they have as a matter of sufferance, and at the pleasure of the established residents. This is a bad thing not only for those whose status is uncertain but also for those who enjoy the benefits of membership, for in the end they too will have to sacrifice a portion of their freedom—even as they are led to regard as less than their equals those outsiders they are taught to see differently. Learning to be free means learning to live with

others as equals, for without equality, freedom is nothing more than an advantage of power.

The general thesis of this book, then, is that immigration controls endanger freedom, for they threaten the freedom of residents and would-be immigrants alike. Immigration controls do so by transforming society into one in which control, and therefore the limiting of freedom, becomes necessary in order to preserve very different ideals. Those ideals, in the end, serve not so much human purposes as the ends or goals of a very different construction: an abstract entity whose interests will occlude and eventually subordinate the interests of the people it pretends to protect. That entity is the nation state. This work, in the end, also offers a critique of the ideal of nationality.

## The Structure of the Book

This work is divided into two parts. The first, comprising chapters 1 to 4, elaborates and refines the book's thesis by considering the nature of immigration, putting the case for being wary of immigration controls. Accordingly, chapter 2 begins with an account of the nature of *immigration*, and of what it might mean for borders to be open. Chapter 3 then presents an account of the ways in which attempts to *control* immigration pose a threat to the free society by increasing the extent to which individuals, groups, and communities are subject to surveillance, restriction, and sanction by the state, by its agents, and eventually, by each other. Chapter 4 turns to consider how this development undermines the institutions of a free society by looking at what it means for *equality* and the rule of law. The enforcement of immigration controls invariably requires the extension of arbitrary power, but also has a more deeply corrupting effect on social and political institutions generally, as must any policy whose purpose is to determine the shape and character of society as a whole. The elite will come to tyrannize over the majority until it brings the majority to tyrannize over itself.

The second part of the book asks whether this price is worth paying, for there are, after all, many advocates of immigration controls who think that such restrictions on freedom have important benefits. There are three main arguments that deserve serious examination: that immigration controls are economically beneficial, that they are necessary to preserve cultural integrity, and that they are warranted in the name of political self-determination. Chapter 5 takes up the arguments from *economy*, chapter 6 those from *culture*, and chapter 7 considers the political case for immigration controls in the name of the self-determination of the *state*. The purpose of each of these

chapters is to show that the case for controls is without merit, for neither economics, nor culture, nor politics provide reasons for limiting the freedom of anyone, and certainly not of our fellow residents and citizens.

The conclusion of this book in chapter 8 brings us back to the fundamental moral and philosophical concerns that have prompted its writing. What, it asks, is a free society? And how do people in a free society relate to one another? The answer it offers is that such a society is one in which the spirit of liberality is at work, for the people are not dominated by a system but at ease in their relations with their fellows. Such a society, it concludes, can only be an open society. What this book offers then, along with a critique of nationality, is a theory of *freedom*.

# INDEX