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Hearing: Challenge to Europe: The Growing Migration Crisis
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Chairman Rohrabacher, Ranking Member Meeks, Members of the Subcommittee: It isn't often that a political philosopher is invited to speak to a congressional committee, and I am honored by your invitation. I have been asked to talk about the migration crisis in Europe from the perspective of political philosophy, and I want to do that by making three points. First, I want to say just a bit about what political philosophy has to contribute to our understanding of this sort of issue. Second, I want to sketch out some of the elements of the tradition of classical political philosophy that are relevant to the question, as well as some recent applications of that tradition. Third, and on the basis of my sketch, I also want to suggest what the nature of the migration crisis is beyond its obvious and compelling humanitarian dimension, and why it is one that we cannot responsibly ignore. My view of the matter is informed by principles that can be somewhat peremptorily stated in three theses: first, government exists and legitimately exercises its authority over a territory and its people in order to secure and promote their common good; second, that good includes institutions and laws, but also a culture made up of habits, sentiments, and values shared by the people that provide indispensable support for those laws and institutions; and third, the people and their government have a legitimate interest in who enters their territory, in prudently regulating immigration, and in effecting the assimilation of immigrants into their own culture and institutions. Indeed, governments have an obligation to do these things, one that certainly requires a careful balance of generosity and the just regard for the well-being of their own communities.

1. Political Philosophy and Practical (Political) Reasoning

Much of what we need to know about the migration crisis is simply empirical: how many persons are involved? Where are they from? Why are they migrating? What do they hope to receive? What might they contribute? What material capacities do the receiving countries have to receive them and what are the limits of those material capacities? Philosophy has little to say about these questions. Rather, political philosophy is the business of understanding what principles or reasons should guide our political conduct and shape our institutions and laws. What are the starting points for our thinking about our actions as persons and communities? Our starting points are the actual goods that direct all of our practical reasoning. Political philosophy must also be attentive to truths about how human beings characteristically behave, that is, about the stable aspects of human nature. This sort of practical reasoning must here be deployed particularly in the deliberation of European governments and the people they represent in determining how many migrants to accept and on what conditions. It also involves evaluation of the claims of migrants themselves to freely cross borders and remain in host countries, and correlatively, the right of those countries to deny entry. Do people have a right to move freely across national boundaries and are there legitimate limitations on such a right? This leads back to more abstract questions about the reasons governments can be said to legitimately exist in the first place and what their legitimate powers are with respect to the persons who may wish to enter their national territory.

These rather abstract observations point out two crucial facts about political communities: they do claim to exercise authority (and not just force), and such claims generally assume jurisdiction that is territorial. Political philosophy has had rather little to say about some of these questions, e.g., what justifies the coming into being of particular states in particular places and what principled connections exist between territorial jurisdictions and cultural identities existing among the persons who inhabit such territories? Recent political philosophy in particular has tended towards the construction of highly abstract accounts of the sorts of principles that should regulate the distribution of wealth and resources and the character of public debate about individual rights and constitutional structures. The more elemental questions about states and their identity, however, have not been adequately developed.

2. Political Authority, the Common Good, and Borders

My second point, however, is to suggest that the tradition of classical western political philosophy can help here. I will state a few theses fairly dogmatically: first, human beings are such that they cannot achieve their full and integrated development alone. At a minimum we need the love and care of parents, but beyond that, the most distinctive forms of human happiness or flourishing require us to cooperate with one another at different levels. Throughout history persons have associated with one another in families, clans or other groups based on extended familial relationships, and, ultimately, political community. Political communities are, as Aristotle first noted, distinctive in two crucial respects: first, they have a kind of completeness, that is, they encompass all the other human associations and provide within themselves all of the goods needed for integral human flourishing. Second, genuinely political communities are communities of reason.[1] This does not mean they are "rationalistic" in a narrow sense; it means rather that they are communities in which public decisions are made by processes of rational deliberation among the people themselves and their elected representatives and not simply on the basis of kinship. Genuine *political* community thus transcends (without destroying) family and tribal identity because those sub-political groups cannot provide all that we need and because they do not operate in themselves on the basis of reason.

Second, complete political communities thus provide a context for individuals and groups to pursue their own development; this context includes especially legal systems that authoritatively coordinate the actions and interactions of persons and groups. Political communities are required by and justified by the common good of the people who constitute them. By common good I mean first, the integral development and flourishing of all of the persons who live in the community, and second, the whole ensemble of conditions that facilitate that development.[2] It is these things that justify, but also limit the exercise of political authority. The common good in this sense is not and cannot be opposed to the goods of the persons who make up the community. Its commonness is not that of a kind of super-individual over and against the natural persons who make up the community; rather, it is a good that is common because it is a good *for all of those persons*. Aristotle distinguished between true political systems and those he regarded as corrupt precisely by reference to whether they served the common good of the community or only the good of the ruler or ruling class.[3] This distinction has ever since been the ground of distinguishing between free or constitutional government and tyranny and was expressed

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[1] Aristotle *Nicomachean Ethics*, bk. 1, ch. 1, at 1094a25-b10; *Politics*, bk. 1, ch. 2, at 1252b30-1253a18.

[2] See John Finnis, *Natural Law and Natural Rights*, 2d ed. (Oxford: Oxford University Press, 2011), 147-56.

[3] Aristotle *Politics*, bk. 3, ch. 7, at 1279a22-b11. See also Plato *Laws* 712d-715b, 875a-d; Xenophon *Hiero* 11.1; Cicero *Republic* 1.25, 33, 3.31; Thomas Aquinas, *On Kingship*, 1.2-3; *Summa theologiae*, 1-2, 95.4c, 96.4c, 105.1c.

memorably in our Declaration of Independence's affirmation that "Governments are instituted among men" in order "to secure" the "unalienable rights" of "life, liberty, and the pursuit of happiness" by men who were "self-evident[ly] . . . created equal."[4] The common good of the community, therefore, is the end and purpose of political institutions and those institutions themselves (and all that supports and animates them) are a common good of the people.

Third, among the conditions required for individual persons and groups to thrive are the availability of resources, which first come to us from the earth itself: the land is the first and ultimate source of food, clothing, shelter, and every other good useful for human life. The earth and its resources belong originally to no one in particular: no part of it is *naturally* the property of any particular person. Human beings, however, must appropriate and use things in order to live and develop, so some scheme of distribution must be adopted. Again, Aristotle was the first philosopher to see that this distribution was crucially conditioned by human nature itself: we tend not to take the best care of things we do not own; when too many people are in charge of the maintenance of something, confusion and neglect often follow; and when one useful good is given to many, quarrelling and conflict are often the result. For all these reasons the private ownership of property makes the most sense, provided that ownership is exercised with a view to the common good.[5] I believe that this explanation of private property is also the sound reason for the existence of different territorial political communities.[6] Governments and their constituents together are analogous to property owners in the sense that they represent a determinate agency responsible for the maintenance of the necessary conditions in a recognized territory (jurisdiction) justified by the directedness of that agency and those conditions to the common good of the people. Public order, the security of persons—both individuals and groups—and their property and freedom, are essential elements of the common good and are best protected by particular governments with clear jurisdiction. Territorial boundaries are essential (certainly in the modern world) to the effective jurisdiction of governments in their making and enforcing of the laws that protect and promote the common good of the community. They are also essential to assigning and evaluating accountability for the maintenance of the common good, for knowing whom to blame when the people's business is poorly done or not done at all.

3. Political Culture and the Nature of the Migration Crisis

My third point expands and connects these theses to the present European migration crisis. The common good is more than simply laws and institutions. Indeed, for Aristotle the laws follow a city's constitutional order or regime (*politeia*), which Aristotle defined both as the order of its ruling offices, but also as its "way of life."[7] It is the regime that determines the kind of laws[8] a city has as well as what

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[4] Declaration of Independence (4 July 1776), ¶2. Cf. Abraham Lincoln, First Inaugural Address (4 March 1861), in *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953) 4: 269 with the Gettysburg Address (19 November 1864) in ibid., 7: 21 ("government of the people, by the people, and for the people") with discussion in Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), 9-27.

[5] See Aristotle *Politics*, bk. 2, ch. 5; Thomas Aquinas, *Summa theologiae*, 2-2, 66.2c.

[6] See the brief but important discussion in John Finnis, "Law, Universality, and Social Identity," in Finnis, *Intention and Identity* (Oxford: Oxford University Press, 2011), 120; and "Cosmopolis, Nation States and Families," in ibid., 125; and "Migration Rights," in Finnis, *Human Rights and Common Good* (Oxford: Oxford University Press, 2011), 120. A similar suggestion was made by John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 38-39.

[7] Aristotle *Politics*, bk. 3, ch. 6, at 1278b8-10; book 4, ch. 10, at 1295a40-b1.

we might call its ethos or, in a more contemporary idiom, its "culture."[9] Modern states are, of course, far larger and more internally complex than the city-states of Aristotle's day. Nevertheless, the basic point endures: a political community is more than simply its laws and administrative structures. It includes a common culture, among the elements of which are, for example, a common language (at least one) and shared sentiments of attachment and common membership. We often associate these things with a reality that transcends laws and institutions both immediately and over time often referred to as the "nation." Where laws and institutions are simply constructed, nations are not; they develop over time and not according to any predetermined plan.[10] It is to the nation that patriotism attaches, and while patriotism may be related to laws and institutions, it includes many other sentiments and is directed to (integrally) the way of life of *this* people in *this* place and expresses a gratitude for the fact that so much of one's own access to the goods that allow us to flourish are conditioned by their instantiation in and protection by *this* community.

Such sentiments are an indispensable support for the maintenance of legal and political institutions and make possible the sacrifices that are necessary for the preservation of any political community over time. This is especially the case with respect to modern democracies, which tend to be large and which often encompass considerable diversity of ethnicities, religious faiths, and even moral views in their populations, in addition to the social mobility and dynamism characteristic of modern economies.[11] The role of shared practices, values, and sentiments in the maintenance of stable political communities that really do promote the common good of their citizens was known to Plato and Aristotle at the very beginning of the tradition. Aristotle, in particular, elaborated a notion of political friendship, based on a fundamental agreement or like-mindedness (*homonoia*) about the purpose, structure, and practices of the political system.[12] In the nineteenth century Alexis de Tocqueville famously made the habits and mores of the people central to his account of how democratic political institutions were maintained in the US.[13] This link between the endurance of democratic institutions and political culture, including some sense of national identity, has been frequently repeated by contemporary political theorists as well on the basis of both philosophical principles and empirical data.[14] The willingness of citizens not only to defend one another through military service, but also to consent in the sort of redistributive taxation common to contemporary welfare states assumes a sense of common membership and shared

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[8] Aristotle *Politics*, bk. 4, ch. 1, at 1289a13-15.

[9] See Leo Strauss, Natural Right and History (Chicago: University of Chicago Press, 1953), 136-37; Stephen G. Salkever, *Finding the Mean: Theory and Practice in Aristotelian Political Philosophy* (Princeton, NJ: Princeton University Press, 1990), 81-88.

[10] See Maritain, *Man and the State*, 4-9.

[11] For a fairly moderate statement of this view see David Miller, *On Nationality* (Oxford: Oxford University Press, 1995).

[12] See especially Aristotle *Nicomachean Ethics*, bk. 8, ch. 9, and bk. 9, ch. 6; as well as Plato *Laws* 627e-628a, 693b, 694b, 701d, 738d-e, 759b, 771d-e, and especially 793b-d..

[13] Alexis de Tocqueville, *Democracy in America* (1830-35), trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 274-302, 407-410. In his emphasis on habits and mores, Tocqueville was likely influenced by Jean-Jacques Rousseau, who held that the mores, customs, and opinions of citizens were more important than any of the laws: see *On the Social Contract* (1791), bk. 3, ch. 12.

[14] Consider, e.g., Pierre Manent, *A World Beyond Politics? A Defense of the Nation-State*, trans. Marc LePain (Princeton, NJ: Princeton University Press, 2006), 51-69; *Democracy Without Nations?*, trans. Paul Seaton (Wilmington, DE: ISI Books, 2007); and Larry Diamond, *The Spirit of Democracy* (New York: Times Books, 2008), 153-68.

values and sentiments. Without these things the maintenance of communities and their institutions would require the application of coercive force on a far greater scale than we associate with free societies.[15]

Similarly among these supports for free government are more generic (or universal), but nevertheless dearly bought, values like the Rule of Law, a widespread commitment to the equal treatment of persons who live in the state of ordered liberty made possible by a system of laws that are typically prospective and not retroactive, possible to comply with, clearly promulgated, coherent with one another, stable enough to allow one to plan one's own actions legally, and administered consistently by officials who are accountable for their action or inaction.[16] This too is a crucial element of the common good as is an atmosphere in which the legal and natural rights of persons are acknowledged and protected by law, and in which political debate and competition are grounded in rational argument and carried out according to habits of civility and mutual forbearance, informed by the sort of civic or political friendship mentioned above.[17] Such practices are possible where the relationship of citizens is informed by an ethic of reciprocity born of a sense of membership, a kind of political trust, and the recognition not only of a common past, but commitment to a common future for *this* people.

It should go without saying that the sort of political culture I have attempted to describe is not racial. Racial and ethnic diversity do not in themselves pose problems for stable political communities where the elements of the common good I have described exist and are accepted. There is also no reason why regular, orderly immigration into a political community is inconsistent with its common good. What is important is that newcomers are properly assimilated, that they come to share the values and sentiments of the community that are necessary to support its laws and institutions, as well as the more generic values like the rule of law, the protection of human rights, and the practice of orderly and rational self-government. This process is itself an aspect of the common good of a community and is therefore accordingly an appropriate matter for regulation by the legitimate governing authority. Among the reasonable tasks of such an authority is the distribution of membership in the community and the establishment of reasonable conditions for membership as well as specific decisions about when and to whom membership is granted.[18]

The common good of a political community *is* challenged, if not threatened, by the sudden and disorderly influx of large numbers of foreigners, and so the very common good that justifies political authority itself also justifies—I would say requires—governments' concern about who enters their territory and, even more importantly, about the assimilation of immigrants into the community. Both the need to protect public order and the need to assimilate justify concern about the number of immigrants into a country and their character. A large group of immigrants who come predominantly from a distinct region with its own culture that is significantly different from that of their country of destination presents an obvious challenge that no government could responsibly ignore. Indeed, there may be particularly urgent concerns if the immigrant group contains large numbers of persons who are

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[15] See the discussion in Joseph Raz, "Multiculturalism," *Ratio Juris* 11 (1998): 202, and Finnis, "Law, Universality, and Social Identity," 114-19.

[16] See Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1969), ch. 2.

[17] For a powerful statement of the point with specific application to the question of immigration see Thomas Jefferson, *Notes on the State of Virginia*, in *The Life and Selected Writings of Thomas Jefferson*, ed. Adrienne Koch and William Peden (New York: The Modern Library, 1993), 204.

[18] See Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), ch. 2.

from places where genuinely *political* community has not emerged and where social life is still dominated by family and tribal loyalties or who are reasonably believed to hold views that are inconsistent with democratic political institutions and the protection of basic human rights, especially the equal legal rights of women and religious freedom. Large numbers hastily or heedlessly admitted can not only strain a country's material infrastructure of social support, but its legal system, and larger political culture. Moreover, it could set in motion changes the full import of which may not be immediately apparent, but which could lead to various forms of social and political instability later.

The collision we witness today in Europe of immense numbers of immigrants from a distinct civilization with the demographic collapse of Western European countries, countries with birthrates well below replacement, cannot but have far-reaching consequences not only for the internal politics of those countries, but also for the neighboring countries of central and eastern Europe, and, at some stage, for the United States as well, since we cannot now know what kind political pressures may eventually be brought to bear on those countries' governments relative to the character and future of the Western alliance.