Borders, Boundaries, and Citizenship

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Democratic Citizenship and the Crisis of Territoriality

Modern liberal democracies owe their stability and relative success to the coming together of two ideals which originate in distinct historical periods: the ideals of *self-governance* and *territorially circumscribed nation-state.* Self-governance defines freedom as the rule of law among a community of equals who are citizens of the polis and who have the right to rule and to be ruled. This ideal emerges in 5th-century Athens and is revived throughout history in episodes such as the experience of self-governing city-states in the Renaissance, the Paris commune of 1871, the anarchist and socialist communes of the Russian Revolution, and the Spanish Civil War.

The ideal of the territorially circumscribed nation-state, by contrast, conceives of the citizen first and foremost as the subject of *state-administration*, or more positively, as *the subject of rights and entitlements*. Originating with the transition from feudalism to the absolutist state, this experiment with good governance in a self-regulating civil society has been the defining conception of the social contract in the works of Thomas Hobbes and John Locke.

Since the 17th century, democracy and the consolidation of the modern nation-state have marched together, at times contradicting and at times supplementing each other. The democratic struggles of propertyless males, artisans, farmers, and workers to win suffrage gave way in the early 20th century to the struggle of women, and non-Christian and non-White colonial peoples to be included within the boundaries of the demos. Along with the formal expansion of citizenship rights came the enrichment of the scope of rights from civil to political to social (Marshall 1950). In this process, the ideal of self-governance was increasingly interpreted as the formal equality of citizens who now sought to realize the *equal value of their liberty* in terms of an equivalent schedule of rights and entitlements. The civic-republican ideal of self-governance, the exercise of freedom among equals in a public space, is connected—and I would argue necessarily—to the liberal ideal of citizenship as the practice and enjoyment of rights and benefits. Modern democracies seek to integrate these republican and liberal ideals into the practices of "private" and "public" autonomy. The private autonomy of citizens presupposes the exercise and enjoyment of liberty through a rights-framework which underwrites the equal value of their liberty; public autonomy is realized through the institutions of democratic self-governance in increasingly complex societies.

This relatively successful synthesis of republican and liberal-democratic ideals, or of public and private autonomy, is today in crisis. The crisis is not the crisis of democracy in the first place but rather the crisis of the territorially circumscribed nation-state formation.

It has now become commonplace in normative political thought as well as in the social sciences to foretell "the end of the nation-state" and "the demise of Westphalian conceptions of sovereignty." Yet contemporary developments are much more complicated than these phrases suggest, for even in the face of the collapse of traditional conceptions of state-sovereignty, monopoly over territory is exercised through immigration and citizenship policies. All pleas to develop "post-Wetsphalian" conceptions of sovereignty (Buchanan 2000; 2001) are empty, therefore, if they do not also address the normative regulation of peoples' movement across territorial boundaries.

From a normative point of view, transnational migrations bring to the fore the constitutive dilemma at the heart of liberal democracies: between sovereign self-determination claims on the one hand and adherence to universal human rights principles on the other. I argue that practices of political membership may best be illuminated through an *internal reconstruction and critique* of these dual commitments (See Benhabib 2004).

The UN estimates that in 1910 roughly 33 million individuals lived in countries other than their own as migrants; by the year 2000 that number had reached 175 million. During this same period (1910–2000), the population of the world has grown threefold, from 1.6 to 5.3 billion. Migrations, by contrast, increased almost six-fold over the course of these 90 years. Strikingly, more than half of the increase of migrants from 1910 to 2000 occurred in the last three decades of the 20th century, between 1965 and 2000. In this period, 75 million people undertook cross-border movements to settle in countries other than that of their origin (*UN International Migration Report 2002*).

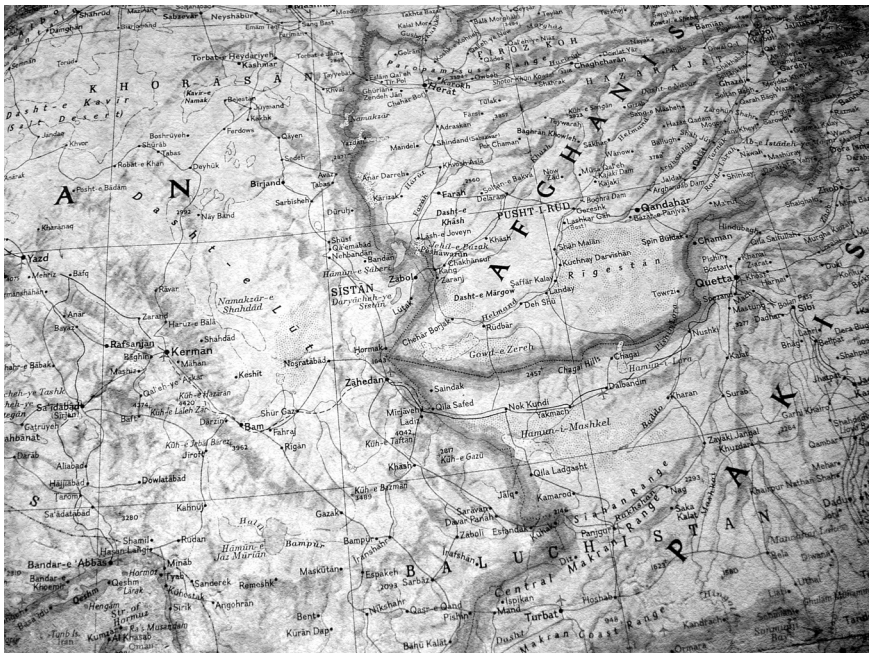
While migratory movements in the latter half of the 20th century have accelerated, the plight of refugees has also grown. There are almost 20 million refugees, asylum seekers, and "internally displaced persons" in the world. The resource-rich countries of Europe and the northern hemisphere face a growing number of migrants, but it is mostly nations such as Chad, Pakistan, and Ingushetia that are home to hundreds of thousands of refugees fleeing from wars in the neighbouring countries of Central African Republican, Afghanistan, and Chechnya, respectively (Reiff 2003).

To ascertain such trends one need not commit

https://doi.org/10.1017/S1049096505050328 Published online by Cambridge University Press

to exaggerated claims about the end of the state system. The irony of current political developments is that while state sovereignty in economic, military, and technological domains has been greatly eroded, it is nonetheless vigorously asserted; national borders, while more porous, still keep out aliens and intruders. The old political structures may have waned but the new political forms of globalization are not yet in sight. We are like travellers navigating an unknown terrain with the help of old maps, drawn at a different time and in response to different needs. While the terrain we are travelling on, the world-society of states, has changed, our normative map has not. The growing normative incongruities between international human rights norms, particularly as they pertain to the "rights of others"—immigrants, refugees, and asylum seekers—and continuing assertions of territorial sovereignty are the novel features of this new landscape.

Since the 1948 Universal Declaration of Human Rights, an international human rights regime has emerged. I understand an "international human rights regime" to mean the development of interrelated and overlapping global and regional regimes that encompass human rights treaties as well as customary and international soft law. Yet states' sovereignty to disregard treaties, to abide by or not implement them, goes unchecked.



Nations such as Pakistan are home to hundreds of thousands of refugees fleeing from wars in neighbouring countries.

The Universal Declaration of Human Rights recognizes a limited right to freedom of movement across boundaries: it recognizes the right to emigrate—that is, the right to leave a country—but not a right to immigrate—the right to enter a country (Article 13). Article 14 anchors the right to enjoy asylum under certain circumstances, while Article 15 proclaims that everyone has "the right to a nationality." The second half of Article 15 stipulates that "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality" (www.unhchr.ch/udhr/lang/eng.htm).

The Universal Declaration is silent on states' *obligations* to grant entry to immigrants, to uphold the right of asylum, and to permit citizenship to alien residents and denizens. These rights have no specific addressees and they do not appear to anchor *specific* obligations of compliance on the part of second and third parties. Despite the cross-border character of these rights, the Declaration upholds the sovereignty of individual states. Thus a series of internal contradictions between universal human rights and territorial sovereignty are built right into the logic of the most comprehensive international law document in the world.

The Geneva Convention of 1951 Relating to the Status of Refugees, and its Protocol, added in 1967, are the second most important international legal documents governing cross-border movements. Nevertheless, neither the existence of these documents nor the creation of the United Nations High Commissioner on Refugees have altered the fact that this Convention and its Protocol are binding on signatory states alone and can be brazenly disregarded by non-signatories and, occasionally, even by signatory states themselves.

In contemporary political philosophy two lines of thinking have emerged in response to these questions: the "law of peoples" model defended by John Rawls (1999) and the model of cosmopolitan citizenship centered around a new law of nations, as suggested by Juergen Habermas (1998; 2004). The Rawlsian law of peoples makes tolerance for regimes with different understandings of the moral and religious good its cornerstone and compromises universal human rights claims for the sake of achieving international stability, whereas Habermas envisages the expansion of such universalistic claims in ever-widening networks of solidarity. Rawls takes the nation-state framework for granted;[1] Habermas seeks to transcend it along the model of the constitutionalization of international law. Both, however, have said relatively little about the dilemmas of democratic citizenship in a post-Wetsphalian world. Yet one of the most pressing contemporary questions is access to citizenship rights, or the attainment of political membership rights by non-members.

The crises of the nation-state, along with globalization and the rise of multicultural movements, have shifted the lines between citizens and residents, nationals and foreigners. Citizenship rights today must be resituated in a transnational context. How can private and public autonomy be reconfigured? How can we do justice both to the republican ideal of self-governance and the liberal ideal of the equal value of liberty?

There is not only a tension, but often an outright contradiction between human rights declarations and states' sovereign claims to control their borders and to monitor the quality and quantity of admittees. There are no easy solutions to the dilemmas posed by these dual commitments. I will not call for the end of the state system nor for world-citizenship. Rather, following the Kantian tradition of cosmopolitan federalism (Cf. Kant [1795]1994; Benhabib 2004, ch. 1; 2001). I will underscore the significance of membership within bounded communities and defend the need for "democratic attachments" that need not be directed toward existing nation-state structures alone. Quite to the contrary: as the institution of citizenship is disaggregated and state sovereignty comes under increasing stress, sub-national as well as supra-national spaces for democratic attachments and agency are emerging in the contemporary world, and they need to be advanced with, rather than in lieu of, existing polities. It is important to respect the claims of diverse democratic communities, including their distinctive cultural, legal, and constitutional self-understandings, while strengthening their commitments to emerging norms of cosmopolitical justice.

https://doi.org/10.1017/S1049096505050328 Published online by Cambridge University Press

Disaggregation of Citizenship within the European Union

The concept of citizenship in the modern state can be analytically divided into three components: the collective identity of citizens along the lines of shared language, religion, ethnicity, common history, and memories; the privileges of political membership in the sense of access to the rights of public autonomy; and the entitlement to social rights and privileges. We are witnessing today an "unbundling" of these components. One can have political membership rights without sharing the common identity of the majority; one can have access to social rights and benefits without sharing in self-governance and without being a national.

Within the European Union, in which this disaggregation effect has proceeded most intensively (See Benhabib 2002a; 2002b), the privileges of political membership now accrue to all citizens of member countries of the Union who may be residing in territories other than those of their nationality. It is no longer nationality of origin but EU citizenship which entitles one to these rights. Citizens of the EU can vote and stand for office in local elections in their host countries; they can also participate in elections to the European Parliament. If they are long-term residents in their respective foreign countries, on the whole they are also entitled to an equivalent package of social rights and benefits.

The condition of EU's third-country nationals, whose countries of origin do not belong to the EU, is of course different. While European Union citizenship makes it possible for all EU citizens to vote, run for, and hold office in local as well as Union-wide elections, this is not the case for third-country nationals. Their entitlement to political rights remains attached to their national and cultural origins. Yet in this respect as well changes are visible throughout the EU: in Denmark, Sweden, Finland, and the Netherlands, third-country nationals can participate in local and regional elections; in Ireland these rights are granted at the local but not the regional level. In the United Kingdom, Commonwealth citizens can vote in national elections as well. In Spain and Portugal, reciprocity rights to vote in local elections are granted to certain third-country nationals (mainly those from South America).

The most important conclusion to be drawn from these developments is that the entitlement to rights is no longer dependent upon the status of citizenship; legal resident aliens have been incorporated into civil and social rights regimes, as well as being protected by supra- and sub-national legislations. The condition of undocumented aliens, as well as of refugees and asylum seekers, however, remains in that murky domain between legality and illegality. In some cases, children of refugees and asylees can attend school; on the whole, asylees and refugees are entitled to certain forms of medical care. Undocumented migrants, by contrast, are cut off from rights and benefits and mostly live and work in clandestine ways. The conflict between *sovereignty* and *hospitality* has weakened in intensity but has by no means been eliminated. The EU is caught among contradictory currents which move it toward norms of cosmopolitan justice in the treatment of those who are *within* its boundaries, while leading it to act in accordance with outmoded Westphalian conceptions of unbridled sovereignty toward those who are on the *outside*. The negotiation between insider and outsider status has become tense and almost warlike.

The decline of the unitary model of citizenship should suggest neither that its hold upon our political imagination nor that its normative force in guiding our institutions have grown obsolete. It does mean that we must be ready to imagine forms of political agency and subjectivity which anticipate new modalities of political citizenship. In the era of cosmopolitan norms, new forms of political agency have emerged that challenge the distinctions between citizens and long-term residents, insiders and outsiders.

Reconfigurations of Citizenship and Sovereignty

Democratic sovereignty is based on three regulative ideals: public autonomy, that is, that the people are the author as well as the subject of the laws; the ideal of a unified demos; and a self-enclosed and autonomous territory over which the demos governs. While territorial and economic self-sufficiency have been undermined by general developments in the world society of states, the ideal of the unified demos has become fractured through the increasing multiculturalism of the demos and growing transnationalism of national societies. The unity of the demos ought to be understood not as if it were a harmonious given, but rather as a process of self-constitution through more or less conscious struggles of inclusion and exclusion.

The core of democratic self-governance is the ideal of *public autonomy*. How can democratic voice and public autonomy be reconfigured? Can democratic representation be organized along lines going beyond the nation-state configuration? The new reconfigurations of national democracies are giving rise to sub-national as well as trans-national modes of citizenship. Within the European Union in particular, there is a return to *citizenship in the city* as well as the *transnational institutions* of the EU. "Flexible citizenship," particularly in the case of Central American and South Asian countries, is another such attempt to multiply the voice and the sites for the exercise of democratic citizenship (Ong 1999). As a result of these developments, "alien suffrage" is increasingly practiced at the municipal and regional levels. In the Netherlands for example, all foreign residents who are third-country nationals, that is citizens of countries which are not EU members, obtain the right to vote and to organize political parties after five years of residency. What all these models have in common though is that they retain the principle of territorial membership for undergirding representation. Whether it is residency in cities such as Amsterdam, London, or Frankfurt, or dual citizenship between Mexico, El Salvador, the Dominican Republic, and the U.S., the model of democratic representation is dependent upon access to, residency upon, and eventual membership within a circumscribed territory.

Representation can run along many lines besides territorial residency. Yet there is a crucial link between democratic self-governance and territorial representation (See also Warren and Castiglione 2004). Precisely because democracies enact laws that are supposed to bind those who legitimately authorize them, the scope of democratic legitimacy cannot extend beyond the demos which has circumscribed itself as a people upon a given territory. Democratic laws require closure precisely because democratic representation must be accountable to a specific people. Imperial legislation, by contrast, was issued from a center and was binding as far as the power of that center to control its periphery extended. Empires have frontiers; democracies have boundaries.

There are also current developments, however, which point precisely toward the uncoupling of democratic voice and territorial representation. Ironically, along with the spread of cosmopolitan norms, we are witnessing a shrinking of the effectiveness of popular sovereignty and the emergence of sovereignty beyond the boundaries set by the rule of law. Vis-à-vis peoples' cross-border movements, the state remains sovereign, albeit in much reduced fashion. Vis-à-vis the movement of capital and commodities, information, and technology across borders, by contrast, the state today is more hostage than sovereign.

In her analysis of economic globalization processes in Southeast Asia, Aihwa Ong recounts the creation of "multinational zones of sovereignty" in the form of growth triangles (GTs). The three GTs formed by linking neighboring countries are Indonesia-Malaysia-Singapore (Sijori), Indonesia-Malaysia-Thailand, and Brunei-Indonesia-Malaysia-Philippines. Transnational corpora-

https://doi.org/10.1017/S1049096505050328 Published online by Cambridge University Press

tions such as Nike, Reebok, and the Gap employ millions of women who work 12 hours a day and make less than $2 a day. Ong observes that these

> "growth triangles are zones of special sovereignty that are arranged through a multinational network of smart partnerships and that exploit the cheap labor that exists within the orbit of a global hub such as Singapore. It appears that GT workers are less subject to the rules of their home country and more to the rules of companies and to the competitive conditions set by other growth triangles in the region." (Ong 1999, 222)

Whether it is the growth triangles of Southeast Asia or the *maquilladoras* of Central America (See Emcke 2004), this form of economic globalization results in the disaggregation of states' sovereignty with their own complicity. There is an uncoupling of *jurisdiction and territory* in that the state transfers its own powers of jurisdiction, whether in full knowledge or by unintended consequence, to non-statal private and corporate bodies. The losers in this process are the citizens from whom state protection is withdrawn, or, more likely, who never had strong state protection in the first place, and who thus become dependent upon the power and mercy of transnational corporations and other forms of venture capitalists.

Despite the great variation across countries with respect to the interactions of the global economy and states, one generalization can be safely made: economic globalization is leading to a fundamental transformation of legal institutions and of the paradigm of the rule of law. Increasingly, globalization is engendering a body of law which is self-generating and self-regulating but which does not originate through the legislative or deliberative activity of national legislators (See Teubner 1997). Global law is transterritorial law, whose limits as set by "'invisible colleges,' 'invisible markets and branches,' 'invisible professional communities,' invisible social networks'" (8).

Law without a State? Or race to the bottom by states which have to cut back on welfare benefits and relax labor and environmental regulations to attract global capital? (See Scheuerman 2004) Surely, these are not the only alternatives with which globalization processes confront us. It is important to emphasize that sovereign states are players with considerable power in this process: they themselves often nurture and guide the very transformations which appear to curtail or limit their own powers.

Whether it be through the changing patterns of transnational migrations; through the emergence of growth triangles and new global forms of law without a state in the fluid global marketplace; or through the pressure to adapt state bureaucracies to the new capitalism, an epochal change is underway in which aspects of state sovereignty are being dismantled chip by chip. State jurisdiction and territoriality are uncoupled as new agents of jurisdiction in the form of multinational corporations emerge. In some cases, the state disburses its own jurisdiction to private agencies in order to escape the control of popular legislators—a process we have become painfully familiar with through the Bush Administration's policy of "rendition," that is, of transporting to undisclosed foreign countries illegal enemy aliens and maybe even of prisoners of war.

Thus we are caught in cross-currents which on the one hand extend the domain of citizenship by weakening the divisions between long-term residents and national citizens; on the other hand, popular democratic control, whether it be by citizens and residents, over non-statal institutions which increasingly assume state-like functions, is decreasing. The disaggregation of citizenship and the disaggregation of sovereignty are part and parcel of the same landscape but have distinctive normative logics. Whereas disaggregated sovereignty means the escape of public power from the purview of the public autonomy of citizens, the disaggregation of citizenship means the extension of public autonomy to those who did not formerly possess it.

To assert popular sovereignty in an era of the twilight of state sovereignty means multiplying sites of citizenship at the sub-national, national, and transnational levels. This will take various forms. Extending the vote to long-term residents at city and state levels has become necessary because the traditional coupling of voting rights with nationality is no longer convincing. Democratic legitimacy requires that all those whose interests are affected by collective decisions in which they have a stake—as workers, parents, residents—also have a say in these decisions. Long-term residency in a city, region, or state government makes one a stakeholder. Modern states regulated the circle of stakeholders through the category of nationality, but in view of the developments recounted, this is no longer plausible and functions more as a mechanism of exclusion than inclusion.

Multiplying sites of citizenship at the sub-state levels, though, is hardly an adequate measure to cope with many of the world's problems, ranging from security and arms control to combating poverty and disease, economic cooperation, ecological concerns, regulating the flow of electronic commerce and communication, etc. Advocates of multinational and transnational sites of citizenship distinguish between transnational governance and transnational government (Held 2004). This distinction is intended to highlight the need for structures of cooperation and collective action coordination which go beyond the more familiar ones of inter-statal organizations based upon treaty obligations such as NATO, GATT, etc. and toward more closely integrated and more permanent institutions for addressing the world's problems. They require the partial delegation of certain forms of state sovereignty. Yet structures of transnational governance must remain accountable to peoples who have their own governments. Democratic government must remain accountable to the citizens and residents whom they represent. A world state is rejected but a possible reconfiguration of state boundaries in the form of ever larger configurations of cooperation and popular sovereignty is possible.

Along with structures of transnational governance, which will remain accountable to democratically organized peoples, sites of citizenship can also be multiplied by instituting a world peoples' assembly in the United Nations to accompany the states which are represented. As fanciful as this may seem, it is not impossible to imagine a world-wide election of peoples' representatives to the UN, in addition to state-run delegations.

Finally, it is important to note that the world already has organizations of transnational cooperation that are marked by lack of transparency and of cosmopolitan values. The IMF, the World Bank, and the summit meetings of G-7 and G-8 are incipient structures of transnational governance without democratic accountability. If one applies the principle of democratic legitimacy to their functioning, it is clear that these organizations serve more the interest of donor countries than those whose livelihood and stakes in many parts of the world they affect. Here too there is a democratic deficit which must bridged.

This sketchy vision of cosmopolitan federalism is not based upon a hostility toward the nation-state; quite to the contrary. Only within a framework of sub- and transnational modes of cooperation, representation, and collaboration is it possible to protect the fundamental values of liberal and republican liberty, that is of private and public autonomy. The nation-state is the home of the modern citizen. The reconfiguration of citizenship beyond nation-state boundaries is necessitated by developments which themselves undermine the nation-state, even if they are blindly promoted by it as well. The innocuous term for these developments is globalization; the more ominous epithet is that of "empire." Cosmopolitan federalism is a project which attempts to rein in the forces of globalization while resisting the spread of empire and strengthening the democratic citizen.

https://doi.org/10.1017/S1049096505050328 Published online by Cambridge University Press

Note

1. See Rawls's astonishing comment: "a democratic society, like any political society, is to be viewed as a *complete and closed social system*. It is complete in that it is self-sufficient and has a place for all the main purposes of life. It is also closed . . . in that entry into it is only by birth and exit from it is only by death. . . . Thus, we are not seen as joining society at the age of reason, as we might join an association, but as being born into a society where we will lead a complete life." (Rawls 1993, 41. My emphasis.) Even if Rawls uses the model of a "complete and closed social system" as a *counterfactual* step in a thought experiment, designed to justify the principles of political liberalism, this initial step of abstraction has significant consequences for the rest of his argumentation.

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https://doi.org/10.1017/S1049096505050328 Published online by Cambridge University Press