CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

INTRODUCTION

This book examines the boundaries of political community by focusing on political membership. By *political membership*, I mean the principles and practices for incorporating aliens and strangers, immigrants and newcomers, refugees and asylum seekers, into existing polities. Political boundaries define some as members, others as aliens. Membership, in turn, is meaningful only when accompanied by rituals of entry, access, belonging, and privilege. The modern nation-state system has regulated membership in terms of one principal category: national citizenship. We have entered an era when state sovereignty has been frayed and the institution of national citizenship has been disaggregated or unbundled into diverse elements. New modalities of membership have emerged, with the result that the boundaries of the political community, as defined by the nation-state system, are no longer adequate to regulate membership.

Political membership has rarely been considered an important aspect of domestic or international justice. Along with the "invisibility" of state boundaries, the practices and institutions regulating access to and exit from political membership have also been invisible and not subject to theoretical scrutiny and analysis. I want to argue that transnational migrations, and the constitutional as well as policy issues suggested by the movement of peoples across state borders, are central

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

to interstate relations and therefore to a normative theory of global justice.

Recent attempts to develop theories of international and global justice have been curiously silent on the matter of migration (see Pogge 1992; Buchanan 2000; Beitz [1979] 1999 and 2000). Despite their criticism of state-centric assumptions, these theorists have not questioned the fundamental cornerstone of state centrism, which is the policing and protecting of state boundaries against foreigners and intruders, refugees and asylum seekers. The control of migration – of immigration as well as emigration – is crucial to state sovereignty. All pleas to develop "post-Westphalian" conceptions of sovereignty (Buchanan 2000 and 2001) are ineffective if they do not also address the normative regulation of peoples' movement across territorial boundaries. From a philosophical 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 will argue that practices of political membership are best illuminated through an *internal reconstruction* of these dual commitments.

There is not only a tension, but often an outright contradiction, between human rights declarations and states' sovereign claims to control their borders as well as 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, I will underscore the significance of membership within

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

bounded communities and defend the need for "democratic attachments" that may not be directed toward existing nation-state structures alone. Quite to the contrary: as the institution of citizenship is disaggregated (see ch. 4) and state sovereignty comes under increasing stress, subnational as well as supranational spaces for democratic attachments and agency are emerging in the contemporary world, and they ought 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.

My position differs from recent neo-Kantian theories of international justice which give precedence to matters of distribution of resources and rights over questions of membership. I argue that a cosmopolitan theory of justice cannot be restricted to schemes of *just distribution* on a global scale, but must also incorporate a vision of *just membership*. Such just membership entails: recognizing the moral claim of refugees and asylees to *first admittance*; a regime of *porous* borders for immigrants; an injunction against denationalization and the loss of citizenship rights; and the vindication of the right of every human being "to have rights," that is, to be a *legal person*, entitled to certain inalienable rights, regardless of the status of their political membership. The status of alienage ought not to denude one of fundamental rights. Furthermore, just membership also entails the right to citizenship on the part of the alien who has fulfilled certain conditions. Permanent alienage is not only incompatible with a liberal-democratic understanding of human community; it is also a violation of fundamental human

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

rights. The right to political membership must be accommodated by practices that are non-discriminatory in scope, transparent in formulation and execution, and justiciable when violated by states and other state-like organs. The doctrine of state sovereignty, which has so far shielded naturalization, citizenship, and denationalization decisions from scrutiny by international as well as constitutional courts, must be challenged.

Crisis of territoriality

Questions of political boundaries and membership have become particularly salient because the Westphalian model of state sovereignty is in crisis for many reasons.[1] The "Westphalian model" presupposes that there is a dominant and unified political authority whose jurisdiction over a clearly marked piece of territory is supreme. This model's efficacy and normative relevance are being challenged by the rise of a global economy through the formation of free markets in capital, finance, and labor; the increasing internationalization of armament, communication, and information technologies; the emergence of international and transnational cultural networks and electronic spheres; and the growth of sub- and transnational political actors. Globalization draws the administrative-material functions of the state into increasingly volatile contexts that far exceed any one state's capacities to influence decisions and outcomes. The nation-state is too small to deal with the economic, ecological, immunological,

[1] Stephen Krasner (1999) has expressed skepticism about the historical dominance of this model, but I believe that its normative force in ordering interstate relations is not equally in question.

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

and informational problems created by the new environment; yet it is too large to accommodate the aspirations of identity-driven social and regionalist movements. Under these conditions, *territoriality* has become an anachronistic delimitation of material functions and cultural identities; yet, even in the face of the collapse of traditional concepts of sovereignty, monopoly over territory is exercised through immigration and citizenship policies.

It is estimated that, whereas 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 is estimated to have grown from 1.6 to 5.3 billion, that is three-fold (Zlotnik 2001, 227). Migrations, by contrast, increased almost sixfold over the course of these ninety years. Strikingly, more than half of the increase of migrants from 1910 to 2000 occurred in the last three and a half decades of the twentieth century, between 1965 and 2000. In this period 75 million people undertook crossborder movements to settle in countries other than that of their origin (United Nations, Department of Economic and Social Affairs 2002).

While migratory movements in the latter half of the twentieth 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 in the southern hemisphere, such as Chad, Pakistan, and Ingushetia, that are home to hundreds of thousands of refugees fleeing wars in the neighboring countries of the

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

Central African Republic, Afghanistan, and Chechnya (Rieff 2003).

As one thoughtful student of worldwide immigration trends has observed, "Over the past one hundred years, international migration has often been at the center stage of major events that reshaped the world. The twentieth century began with a decade in which transatlantic migration reached unprecedented levels and it has closed with one in which migration from developing to developed countries and from Eastern bloc countries to the West has been at a high" (Zlotnik 2001, 257).

To acknowledge such trends need not commit one 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, and national borders, while more porous, are still there to 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 travelers 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 traveling on, the world society of states, has changed, our normative map has not. I do not pretend to have a new map to replace the old one, but I do hope to contribute to a better understanding of the salient fault-lines of the unknown territory which we are traversing. The growing normative incongruities between international human rights norms, particularly as they pertain to the "rights of others" – immigrants, refugees, and asylum

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

seekers – and assertions of territorial sovereignty are the novel features of this new landscape.

An international human rights regime

The period since the Universal Declaration of Human Rights of 1948 has witnessed the emergence of international human rights norms. Crossborder movements of peoples, and particularly those of refugees and asylees, are now subject to an international human rights regime.[2] By an international human rights regime, I understand a set of interrelated and overlapping global and regional regimes that encompass human rights treaties as well as customary international law or international "soft law" (an expression used to describe international agreements which are not treaties and therefore are not covered by the Vienna Convention on the Law of Treaties) (Neuman, 2003).

[2] Examples would include the UN treaty bodies under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child (Neuman 2003). The establishment of the European Union has been accompanied by a Charter of Fundamental Rights and by the formation of a European Court of Justice. The European Convention for the Protection of Human Rights and Fundamental Freedoms, which encompasses states that are not EU members as well, permits the claims of citizens of adhering states to be heard by a European Court of Human Rights. Parallel developments can be seen on the American continent through the establishment of the Inter-American System for the Protection of Human Rights and the Inter-American Court of Human Rights (Jacobson 1997, 75).

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

We are witnessing this development in at least three interrelated areas.

Crimes against humanity, genocide, and war crimes

The concept of *crimes against humanity*, first articulated by the Allied powers in the Nuremberg trials of Nazi war criminals, stipulates that there are certain norms in accordance with which state officials as well as private individuals are to treat one another, even, and precisely, under conditions of extreme hostility and war. Ethnic cleansing, mass executions, rape, and cruel and unusual punishment of the enemy, such as dismemberment, which occur under conditions of a "widespread or systematic attack," are proscribed, and all can constitute sufficient grounds for the indictment and prosecution of individuals who are responsible for these actions, even if they are or were state officials, or subordinates who acted under orders. The refrain of the soldier and the bureaucrat – "I was only doing my duty" – is no longer an acceptable ground for abrogating the rights of humanity in the person of the other – even when, and especially when, the other is your enemy.

The continuing rearticulation of these categories in international law, and in particular their extension from situations of international armed conflict to civil wars within a country and to the actions of governments against their own people, has in turn encouraged the emergence of the concept of "humanitarian interventions."[3]

[3] During the Nuremberg trials, "crimes against humanity" was used to refer to crimes committed during international armed conflicts. (United Nations 1945, Art. 6 [c]; see Ratner and Abrams [1997] 2002, 26–45;

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

Humanitarian interventions

The theory and practice of humanitarian interventions, which the USA and its NATO allies appealed to in order to justify their actions against ethnic cleansing and continuing crimes against the civilian population in Bosnia and Kosovo, suggest that, when a sovereign nation-state egregiously violates the basic human rights of a segment of its population

Schabas 2001, 6–7). Immediately after the Nuremberg trials, genocide was also included as a crime against humanity but was left distinct, due its own jurisdictional status which was codified in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (1948). *Genocide* is the knowing and willful destruction of the way of life and existence of a collectivity whether through acts of total war, racial extinction, or ethnic cleansing. It is the supreme crime against humanity, in that it aims at the destruction of human variety, of the many and diverse ways of being human. Genocide not only eliminates individuals who may belong to this or another group; it aims at the extinction of their way of life – the intent requirement (Ratner and Abrams [1997] 2002, 35–36).

War crimes, by contrast, as defined in the Statute of the International Criminal Tribunal for the Former Yugoslavia (United Nations 1993), initially only applied to *international conflicts*. With the Statute of the International Criminal Tribunal for Rwanda (United Nations 1994), recognition was extended to *internal armed conflict* as well. "War crimes" now refer to international as well as internal conflicts that involve the mistreatment or abuse of civilians and non-combatants as well as one's enemy in combat (Ratner and Abrams [1997] 2002, 80–110; Schabas 2001, 40–53). Thus, in a significant development since World War II, crimes against humanity, genocide, and war crimes have all been extended to apply not only to atrocities that take place in international conflict situations, but also to events *within* the borders of a sovereign country and that may be perpetrated by officials of that country and/or by its citizens during peacetime. I wish to thank Melvin Rogers for his special assistance in clarifying these concepts and developments in international law.

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
0521831342 - The Rights of Others: Aliens, Residents, and Citizens
Seyla Benhabib
Excerpt
More information

on account of their religion, race, ethnicity, language, and culture, there is a *generalized moral obligation* to end actions such as genocide and crimes against humanity (Buchanan 2001). In such cases human rights norms trump state sovereignty claims. No matter how controversial in interpretation and application they may be, humanitarian interventions are based on the growing consensus that the sovereignty of the state to dispose over the life, liberty, and property of its citizens or residents is neither unconditional nor unlimited (Doyle 2001). State sovereignty is no longer the ultimate arbiter of the fate of citizens or residents. The exercise of state sovereignty even within domestic borders is increasingly subject to internationally recognized norms which prohibit genocide, ethnocide, mass expulsions, enslavement, rape, and forced labor.

Transnational migration

The third area in which international human rights norms are creating binding guidelines upon the will of sovereign nation-states is that of international migration. *Humanitarian interventions* deal with the treatment by nation-states of their citizens or residents; *crimes against humanity* and *war crimes* concern relations among enemies or opponents in nationally bounded as well as extra-territorial settings. *Transnational migrations*, by contrast, pertain to the rights of individuals, not insofar as they are considered members of concrete bounded communities but insofar as they are human beings *simpliciter*, when they come into contact with, seek entry into, or want to become members of territorially bounded communities.

© Cambridge University Press www.cambridge.org