Citizens, Residents, and Aliens in a Changing World: Political Membership in the Global Era*

BY SEYLA BENHABIB

OUR contemporary condition is marked by the emergence of new forms of identity/difference politics around the globe. As globalization proceeds at a dizzying rate, as a material global civilization encompasses the earth from Hong Kong to Lima, from Pretoria to Helsinki, world-wide integration in economics, technology, communication, information, armament, and tourism is accompanied by the collective and cultural disintegration of older political entities, and in particular of the nation-state (Benhabib, 1997a). India and Turkey, which are among the oldest democracies of the Third World, are in the throes of struggles that call into question the very concept of a secular, representative democracy. Need one mention in this context ethnic wars, cleansings, and massacres in the former Yugoslavia; the Russian

destruction of Chechnya; the simmering nationality conflicts between Azerbaijan and Armenia, Macedonia and Greece, and the continuing tribal massacres in central African states like Rwanda, Uganda, and the Congo. Indicative of a social dynamic that we have hardly begun to understand, global integration is proceeding alongside with socio-cultural disintegration, and the resurgence of ethnic, nationalistic, religious, and linguistic separatism (Barber, 1995; Ignatieff, 1994; Friedman, 1996; Mendes and Soares, 1996).

With globalization and fragmentation proceeding apace, human rights and sovereignty claims come into increasing conflict with each other (Heiberg, ed., 1994). On the one hand, a world-wide consciousness about universal principles of human rights is growing; on the other, particularistic identities of nationality, ethnicity, religion, race, and language (by which one is said to belong to a sovereign people) are asserted with increasing ferocity. Globalization, far from creating a "cosmopolitical order," a condition of perpetual peace among peoples governed by the principles of a republican constitution (Kant [1795], 1963), has brought to a head conflicts between human rights and the claim to self-determination of sovereign collectivities. Because sovereignty means the right of a collectivity to define itself by asserting power over a bounded territory, declarations of sovereignty, more often than not, create distinctions between "us" and "them," those who belong to the sovereign people and those who do not.

Historically, there rarely is a convergence between the identity of those over whom power is asserted because they are residents of a bounded territory and the identity of the sovereign people in the name of whom such power is exercised. In this context, Hannah Arendt's astute observations, although formulated *principally with respect* to the difficulties of protecting human rights in the inter-War period in Europe, are more perspicacious than ever:

> From the beginning the paradox involved in the declaration of inalienable human rights was that it reckoned with an "abstract" human being who seemed to exist nowhere...

The whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to insure them (Arendt [1951], 1979, 291).

The citizenship and naturalization claims of foreigners, denizens, and residents within the borders of a polity, as well as the laws, norms and rules governing such procedures are pivotal social practices through which the normative perplexities of human rights and sovereignty can be most acutely observed. Sovereignty entails the right of a people to control its borders as well as defining the procedures for admitting "aliens" into its territory and society; yet in a liberal-democratic polity, such sovereignty claims must always be constrained by human rights, which individuals are entitled to, not in virtue of being citizens or members of a polity, but insofar as they are human beings *simpliciter*. Universal human rights transcend the rights of citizens and extend to all persons considered as moral beings. What kinds of immigration, naturalization, and citizenship practices then would be compatible with the commitments of liberal democracies to human rights? Can claims to sovereign self-determination be reconciled with the just and fair treatment of aliens and others in our midst?

In contemporary debates around these issues two approaches dominate: the radical univeralist argument for open borders and the civic republican perspective of "thick conceptions of citizenship." Radical universalists argue that, from a moral point of view, national borders are arbitrary and that the only morally consistent universalist position would be one of open borders. Joe Carens, for example, uses the devise of the Rawlsian "veil of ignorance" to think through principles of justice from the standpoint of the refugee, the immigrant, the asylum seeker (Carens, 1995, 229). Are the borders within which we happen to be born, and the documents to which we are entitled, any less arbitrary from a moral point of view than other characteristics like skin color, gender, and genetic make-up with which we are endowed? Carens' answer is

"no." From a moral point of view, the borders that circumscribe our birth and the papers to which we are entitled, are arbitrary because their distribution do not follow any clear criteria of moral desert, achievement, and compensation. Therefore, claims Carens, liberal democracies should practice policies that are as compatible as possible with the vision of a world without borders.

Opposed to Carens' radical universalism are a range of communitarian and civic-republican positions, articulating more or less "thick" conceptions of citizenship, community, and belonging (see Galston, 1991; Sandel, 1996 ; Kessler, 1998). These theories of citizenship, while not precluding or prohibiting immigration, will want to articulate stricter criteria of incorporation and citizenship of foreigners than the universalists. Only those immigrants who come closest to the model of the republican citizen envisaged by these theories will be welcome; others will be spurned (Honig, 1999). Of course, given how contested such thick conceptions of citizenship inevitably are, communitarian theories can easily lend themselves to the justification of illiberal immigration policies and the restricting of the rights of immigrants and aliens.

I would like to defend a position that will steer a middle course between the radical universalism of open border politics on the one hand and sociologically antiquated conceptions of thick republican citizenship on the other. Instead, stressing the constitutive tension between univeralistic human rights claims and democratic sovereignty principles, I will analyze the contemporary practices of political incorporation into liberal democracies. This essay will focus on dilemmas of citizenship and political membership in contemporary Western Europe against the background of these larger theoretical concerns. Current developments in citizenship and incorporation practices within the member states of the European Union in particular are my primary concern. There are a number of compelling historical as well as philosophical reasons for choosing European citizenship and incorporation practices as the focal point for these concerns at the present time.

Insofar as they are liberal democracies, member states of the European Union cannot form a "fortress Europe." No liberal democracy can close its borders to refugees and asylum seekers, migrants and foreign workers. The porousness of borders is a necessary while not sufficient condition of liberal democracies. By the same token, no sovereign liberal democracy can lose its right to define immigration and incorporation policies.

I will distinguish conditions of entry into a country, like the permission to visit, work, study and buy property, from conditions of temporary residency, and both in turn from permanent residency and civil incorporation, the final stage of which is political membership. These are different stages of political incorporation, very often collapsed into one another in theoretical discussions, but analytically distinguishable. At each stage, the rights and claims of foreigners, residents and aliens will be regulated by sovereign polities; but these regulations can be subject to scrutiny, debate, contestation as well as protest by those to whom they apply, their advocates, and national and international human rights groups.

There is no step of this process that can be shielded from scrutiny by interested parties. Democratic sovereignty in immigration and incorporation policy is not an unlimited right. The right to self-assertion of a particular people must be examined and evaluated in the light of the commitment of this very same people to universal human rights. Developments of citizenship and immigration practices within contemporary Europe reflect some of the deepest perplexities faced by all nation-states in the era of globalization.

Dilemmas of Citizenship in the European Union

Since 1989 and the fall of authoritarian communism, the worldwide trend toward material global integration and ethnic and cultural fragmentation have coincided with another set of epochal developments on the continent: the end of the Cold War, the unification of Germany, and the transformation of the European

Union from a monetary and financial organization—a customs union—into a political entity with a European Parliament, a European Council of Ministers, a European Court of Justice, and since January 1999, a European currency—the Euro. But what is Europe? (Benhabib, 1997b)

For some Europe is not a continent, a mere geographical designator, but an ideal, the birthplace of western philosophy and the Enlightenment, of democratic revolutions, and human rights. For others Europe is a fig leaf behind which big finance capital and in particular the German Bundesbank hide in order to dismantle the social-welfare states of the Union. Since the Maastricht treaty and the requirement that national governments cut their annual budget deficits to 3%, member states have forced their own populations to accept fiscal stability over full employment, and to place the shared confidence that international financial markets show in their national economies over the quality of life of these countries. Europe has ceased to be an ideal, for some it has long become an illusion. Tony Judt gives voice to the Euro-pessimist position with the following words: "...we shall wake up one day to find out that far from solving the problems of our continent, the myth of "Europe" has become an impediment to our recognizing them. We shall discover that it has become little more than the politically correct way to paper over local difficulties, as though the mere invocation of the promise of Europe could substitute for solving problems and crises that really affect the place" (Judt, 1996, 140).

Whether as ideal or as illusion, "Europe" is being invoked today to define a new set of boundaries. During the time of the Cold War, the terms "east" and "west" came to designate a geopolitical division of regimes. Whereas once the term "east," or the "orient" would have been reserved for that border that separated Europe from the Ottoman Empire, after 1945 and the division of Germany, the line separating "east" from "west" ran through the heart of Europe, i.e., the city of Berlin. The communist regimes of Europe became oddly enough part of the orient; "eastern Europe" designated differences in types of political regime by

making communism appear as part of "them," the east, as opposed to "us," "the free West." This conversion of geopolitics into physical geography was a political subterfuge through which one rendered the unfamiliar familiar. The term "eastern Europe," which conveniently hid the fact that Prague is to the west of Vienna, rendered communism—the unfamiliar—familiar, by marking it as "oriental," or as "eastern." The revolutions of 1989 showed how illusory it was to mark political, cultural, and historical differences through purportedly neutral geographical designators.

Contemporary Europe is facing the danger that its moral and political boundaries will be redefined via geographical borders. Geography once again will be used to cover the tracks of complex processes of political and moral inclusion and exclusion. Where are Europe's borders after 1989? How can these borders be justified as boundaries? Europe, whether as an ideal or illusion, whom does it include and whom does it exclude? After the Cold War who are Europe's "others"?

According to statistics provided by the Council of Europe, between 1950 and 1992/93 the foreign population in the countries of western Europe grew as follows: while foreigners made up 1.1% of the population in Germany in 1950, in 1992-93 this number rose to 8.6%. During the same period the foreign population of France increased from 4.2% to 6.6%; of Belgium from 4.1% to 9.1%; of Holland from 1.0% to 5.1%: and of Luxembourg from 9.8% to 29.1%. On the whole, the foreign population of Europe increased from 1.3% in 1950 to 4.9% in 1992-93.[1]

The year 1993 marks a turning point in immigration trends in European countries. After the increase in immigration flows during the 1980s and the beginning of the 1990s, a reduction in the number of immigrant entries occurred. The decline in the number of asylum claims during this period was offset by the predominance of flows linked to family reunion and the importance of temporary and highly-skilled workers (SOPEMI, 1998, 15).

Despite peaking at 8.5% of the total population in 1993, the foreign population of Germany stood at 8.9% in 1996. During the

same period, the Netherlands have declined from 5.1% in 1993 to 4.4% in 1996; France has remained steady at about 6.3% and Belgium at about 9.1%. The foreign population in Denmark has increased from 3.6% in 1993 to 4.7 in 1996; in Luxembourg as well there has been an increase in this same period from 31.8% to 34.1%. Among the European Union countries, only Austria has percentages of foreigners among its population lower than Luxembourg but close enough to Germany. The percentage of the foreign population increased slightly from 8.6% in 1993 to 9.0 in 1996 (SOPEMI, 1998, 224).

These figures are not broken down according to different geographical regions and countries of origin. Foreigners from former east European countries are included in these figures along with guest workers from Turkey and refugees from the former Yugoslav countries.[2] A more precise breakdown shows that ethnic Turks and ethnic Kurds are the largest group of foreigners, not only in Germany, but in western Europe in general. In 1993, they numbered 2.7 million. Of that number, 2 million live in Germany and make up 2.5% of the population.[3] The second largest group of foreigners are the members of former Yugoslav states: 1.8 million Croats, Serbians, Bosnian Moslems and, after the war in Kosovo, ethnic Albanians who were driven out by Serb forces, and only a fraction of whom have returned to their old homes. Italians working outside the home country are one and a half million in number; they are followed by the Portuguese, of whom about 900, 000 work and live outside Portugal. Spaniards, who are members of the European Union, and Algerians who are not, each number 600,000.

As European unification proceeds, a two-tiered status of foreignness is developing throughout Europe. There are different rights and privileges accorded to each category of foreigner within member states.

The Treaty of Maastricht makes provisions for a "Union citizenship."[4] Nationals of all countries who are members of the European Union are also citizens of the European Community. What does being a citizen of the Union mean? What privileges and responsibilities, what rights and duties does this entitle one

to? Is citizenship of the union merely a status category, let us say, just as being a member of the Roman Empire was? Does membership in the Union amount to more than possessing a passport that allows one to pass through the right doors at border crossings?[5]

Clearly, Union membership is intended to be more than that. It is not just a passive status but is also intended to designate an active civic identity. Members of the Union states can settle anywhere in the union, take up jobs in their chosen countries, and can vote, as well as stand for office, in local elections and in elections for the Parliament of Europe.

As the process of European monetary and economic integration progresses, whether or not union citizenship should also entail an equivalent package of social rights and benefits, like unemployment compensation, health care and old age pensions, which members of EU states can enjoy wherever they go, is being debated.[6]

The obverse side of membership in the Union is a sharper delineation of the conditions of those who are non-members. The agreements of Schengen and Dublin intend to uniformize practices of granting asylum and refugee status throughout member states (Neuman, 1993).[7] Referred to as "legal harmonization," these agreements have made the granting of refugee and asylum status in the Union increasingly difficult. If an individual seeks refugee and asylum status in a member country, this individual is not permitted to apply in another country of the Union until the first application is resolved. Although this is left unsaid, the presumption is that once such an application has been denied in one member country, it is unlikely to succeed in another. The decision of the European Council of Ministers to erect a Union-wide office to deal with refugee and asylum issues, while creating legal and bureaucratic homogenization and standardization, by the same token, intends to make Europe's borders less porous by disallowing individuals in need multiple venues of aid and rescue.

As union citizenship progresses, as the treatises of Schengen and Dublin convert the borders of Europe into a fortress, in

nearly each member country discrepancies are arising between those who are foreigners and third-country nationals, and those who are foreign nationals but EU members. A two-tiered status of foreignness is thus developing: On the one hand are third-country national foreign residents of European countries, some of whom have been born and raised in these countries and who know of no other homeland; on the other hand are those who may be near to total strangers to the language, customs and history of their host country but who enjoy special status and privilege in virtue of being a national of a state that is an EU member (Klusmeyer, 1993).

Partially in response to the growing pressures created by this situation, Germany on May 7, 1999 reformed its 1913 citizenship law. The German parliament accepted by a two-thirds majority that the principle of *jus sanguinis*, which bases citizenship on inherited birthright, be supplemented by *jus soli*, which bases citizenship on territorial birth, in the acquisition of German citizenship (see Benhabib, 1999b). From January 1, 2000 children born to foreign parents who have resided in the country for eight years acquire the German citizenship without forfeiting other passes they hold. When they reach the age of 23, they must decide for one pass or another. In addition to the *jus soli* regulation, the new law expedites the acquisition of German citizenship by foreigners in that it reduces the transition period from residency to citizenship from fifteen to eight years. The decision of the German parliament is, of course, to be celebrated but we can only understand the significance of this new law when we place it within a larger conceptual and institutional context.

Dilemmas of citizenship in contemporary Europe have implications for recent debates around citizenship in contemporary political philosophy. In recent discussions, particularly under the influence of the liberal-communitarian debate, the concept and practice of citizenship has been analyzed largely from a normative perspective (Galston, 1991; Macedo, 1990; Oldfield, 1990; Kymlicka and Norman, 1995). Usually one aspect—the privileges of political membership—has been in the foreground.[8] This nor-

mative discussion, mostly about the duties of democratic citizenship and participatory democratic theory, has been carried out in a sociological vacuum. Political philosophers have paid little attention to citizenship as a sociological category, as a social practice that inserts us into a complex network of privileges and duties, entitlements, and obligations. Political philosophy and the political sociology of citizenship have gone their separate ways. Privileges of political membership are only one aspect of citizenship. Collective identity and the entitlement to social rights and benefits are others. We need to disaggregate the theory and practice of citizenship into these various dimensions and broaden our focus to include the conditions of citizenship in sociologically complex, decentered, welfare state democracies. Through the unprecedented movement of peoples and goods, capital and information, microbes and communication across borders, individuals no longer enter their societies at birth and exit them at death (Kleger, 1995). With reference to recent patterns of immigration within and outside Europe Rainer Bauboeck has observed:

> On the one hand, immigrants who settle in a destination country for good may still keep the citizenship of the sending society and travel there regularly so that the sending country rightly regards them as having retained strong ties to their origins... Temporary migrants, on the other hand, often find it difficult to return and to reintegrate. Some migrants become permanent residents in destination countries without being accepted as immigrants and without regarding themselves as such; others develop patterns of frequent movement between different countries in none of which they establish themselves permanently... Contemporary migration research should go beyond these narrow national views and conceive of migration as a genuinely transnational phenomenon, not only at the moment of border crossings but also with regard to the resulting social affiliations. International migration transnationalizes both

sending and receiving societies by extending relevant forms
of membership beyond the boundaries of territories and of
citizenship (Bauboeck, 1998, 26; also Cohen, 2000).[9]

Citizenship as Social Practice

Sociologically, the practice and institution of "citizenship" can
be disaggregated into three components: collective identity; priv-
ileges of political membership, and social rights and claims.

Collective Identity. Citizenship implies being a member of a
political entity that has been formed historically, which has cer-
tain linguistic, cultural, ethnic, and religious commonalties, and
which can be distinguished from other such political entities. The
precise form of such an entity, whether it is a multinational
empire or a national republic, a Commonwealth or a Federation,
varies historically. Viewed analytically though the concepts of "cit-
izenship," in the sense of being a member of a political commu-
nity, and "nationality," in the sense of being a member of a
particular linguistic, ethnic, religious, and cultural group are to
be distinguished from each other. Political communities are not
composed of nationally and ethnically homogeneous groups. His-
torically this was just as little the case in the multinational and
multiethnic Hapsburg and Ottoman Empires as it is the case
today in the USA, Canada, Australia, New Zealand.

Privileges of Membership. The oldest meaning of citizenship is
that of the privileges and burdens of self-governance. For the
ancient Greeks the "politos" is the member of the "polis," the one
who can be called to military service as well as jury duty, who must
pay taxes and serve in the Ecclesia in his capacity as member of
his Demei at least one month of the year. The link between the
city and the citizen is retained in the etymology of "civitas" and
"citoyenne" on the one hand and "Buergher" and "Burgh" on the
other.

Citizenship confers upon its holders the right of political par-
ticipation, the right to hold certain offices and perform certain

tasks, and the right to deliberate and decide upon certain questions. Aristotle writes in the Politics:

> The state is a compound made of citizens; and this compels us to consider who should properly be called a citizen and what a citizen really is. The nature of citizenship, like that of the state, is a question which is often disputed: there is no general agreement on a single definition: the man who is a citizen in a democracy is often not one in an oligarchy" (Aristotle 1941, 1274b-1275a).

In making the identity of the citizen dependent upon the type of political regime, Aristotle is emphasizing the contingent nature of this concept. It is not nature but the city and its conventions, the nomoi, that create the citizen. Yet precisely in Aristotle's work, we see how this insight into the socially constituted aspect of citizenship goes hand in hand with an exclusionary vision of the psycho-sexual attributes of citizenship. Even if it is regime types that determine who a citizen is, in Aristotle's view, only some are "by nature fit" to exercise the virtues of citizenship, others are not. Slaves, women, and non-Greeks are not only excluded from the statutory privileges of citizenship but their exclusion is viewed as rational insofar as these individuals do not possess the virtues of mind, body, and character essential to citizenship. This tension between the social constitution of the citizen and the psychosexual "natural" substance that the citizen ought to possess accompanies struggles over the meaning of citizenship down to our own days. Struggles over whether women should have the vote, whether non-White and colonial peoples are capable of self-rule or whether a gay person can hold certain kinds of public office are illustrations of the tension between the social and the naturalistic dimensions of citizenship.

Social Rights and Benefits. The view that citizenship can be understood as a status that entitles one to the possession of a certain bundle of entitlements, benefits as well as obligations, derives from T. H. Marshall (Marshall, 1950). Marshall's catalog of civil,

political, and social rights is based upon the cumulative logic of struggles for the expansion of democracy in the 19th and early part of the 20th centuries. "Civil rights" arise with the birth of the absolutist state and in their earliest and most basic form they entail the rights to the protection of life, liberty, and property, the right to freedom of conscience, and certain associational rights, like those of contract and marriage.

"Political rights" in the narrow sense refer to the rights of self-determination, to hold and to run for office, to enjoy freedom of speech and opinion, the rights to establish political and non-political associations, including a free press and free institutions of science and culture. "Social rights" are last in Marshall's catalogue, because they have been achieved historically through the struggles of the worker's, women's and other social movements of the last two centuries. Social rights involve the right to form trade unions as well as other professional and trade associations; health care rights, unemployment compensation, old age pensions, child care, housing and educational subsidies, etc. These social rights vary widely from one country to another and depend thoroughly upon the social class compromises prevalent in any given welfare-state democracy.

Were we to try to apply Marshall's catalogue to the condition of foreigners in the European Union, we would note an interesting reversal. In all European countries, foreigners possess full protection of their civil rights under the law as well as enjoying most social rights. Non-citizens of EU states enjoy the same protection in the eyes of the law as citizens, their earnings and property are equally protected, and they enjoy freedom of conscience and religion. The extent of their associational rights, however, is limited: since establishing political associations belongs among the core political rights, in most countries, they can only be enjoyed by citizens.

Under the provisions of the social-welfare democracies of European states, most foreigners are entitled to health care benefits, unemployment compensation, old age pensions, childcare and certain educational subsidies. These social benefits are not con-

ferred automatically. They depend upon the length of residence in the host country, the particular kind of wage or service contract. Despite variations among member states, in most EU countries foreigners benefit from some of these social rights while the enjoyment of political membership is either blocked off or made extremely difficult.

In her book, *Limits of Citizenship: Migrants and Postnational Membership in Europe*, Yasemin Soysal introduces the concept of an "incorporation regime" (Soysal, 1994). She thereby suggests that every host country possesses certain legal, economic, and policy regulations according to which the status of being a foreigner in that country is defined. Often, however, the collective status and identity of such groups will simply be seen to be the consequence of cultural traditions and historical developments that these groups presumably have brought with them from their countries of origin. The interaction between the home and the host cultures and traditions is thereby ignored.

For example: the incorporation policy of the former BRD was to integrate guest workers into the juridical system not in virtue of their membership in a particular ethnic group, but rather in the first place through the status as individual persons and in the second place as workers and employees. Claims to civil and social rights would accrue to them as individuals and as workers. It is this status identity that entitled the individual to a particular set of rights and benefits.

By contrast, in the Netherlands the regime of incorporation has proceeded quite differently. The National Advisory Council of Ethnic Minorities which was founded by the Dutch government in 1982, designates Turks, Moroccans, Tunisians, Surinamese, populations of the Antille and Molukken Islands, as well Greeks, Spanish, Portguese and Gypsies as "official minorities" (von Amersfoot, 1982). When an ethnic group attains the status of being an official minority, then the claims of such a group to housing, education, employment, and other forms of social support are also acknowledged. Such official minority groups then acquire the

rights to establish and carry out education in their own languages and to form organizations and associations.

This sociological analysis of citizenship and incorporation regimes suggests a methodological perspective that allows us to conceptualize the collective identity of foreigners to result from the complex interaction between various factors: those social and cultural attributes of immigrant groups that originate in their home country and the juridical, political, social as well as cultural norms and practices of the host country. This then suggests the question: why are certain rights granted to foreigners and others not? Why are certain identity-marking characteristics privileged in certain contexts and not in others? Note the difference between Germany and Holland in their practices of defining the collective and individual status of foreigners. What is the relationship between the singling out of certain criteria as being constitutive of the foreigners' identity, and the history and self-understanding of a particular country? The treatment of the "others" reveals who we are, because in Julia Kristeva's words, "nous sommes étrangers à nous même." "We are strangers to ourselves" (Kristeva, 1991).

Political Participation Rights in Europe Today

The highest privilege of citizenship is the possession of political rights in the strict sense. It is also through the entitlement to and exercise of these rights that one's status as a "citizen," as member of the body politic, will be established. The lines that divide members from strangers, citizens from foreigners, the "we" from the "they" are drawn most sharply around these privileges.

Political theory on these issues lags far behind actual developments. None of the following host countries of the European Union grant foreigners the right of participation in national elections: Denmark, the Netherlands, Sweden, Belgium, France, Austria, Germany, and England.[10] Yet in Denmark as well as Sweden, foreigners can participate in local and regional elections and be candidates for

them. In Norway, Finland, and Holland these rights are granted at the local but not regional levels. In Switzerland, which is not a member of the European Union, the cantons of Neufchatel and Jura grant foreigners these rights as well. Similar attempts in Berlin, Hamburg, and Schleswig-Hollstein, to grant to those foreigners who have resided in Germany for more than five years local election rights, have been declared "unconstitutional" by the German Constitutional Court (Weiler, 1995). What is the link between the status of active citizenship and "national membership"?

The acquisition of citizenship rights proceeds in most countries of the world along three categories: the principle of territory, origin, or consent. The principle of territoriality known as *jus soli* means that a political community has sovereign claims over a territory: persons who live in this territory are considered either as falling under the dominion or authority of this sovereign or are themselves viewed as being part of the sovereign. The first case corresponds to pre-democratic understandings of sovereignty, and defines, as was the case with the Absolutist regimes of Europe, citizens as subjects. Historically, the Ottoman Empire as well as the Hapsburg monarchy and the German Kaiser regime followed this pattern. These old regimes always granted certain protected groups special citizenship rights and privileges, as was the case for example for the "Reichsjuden," the Jews of the Empire, during the period of the Hapsburg Double Monarchy.

The territorial principle of citizenship can also have a democratic variant. The principles of citizenship, introduced by the American and the French Revolutions, follow this variant. According to the democratic understanding of the *jus soli*, each child who is born on the territory of a democratic sovereign is potentially a member of this sovereign and therefore has claims to citizenship (Brubacker, 1992, 45).

The second principle according to which citizenship is granted is that of ethnic origin or belonging, *jus sanguinis*. If one considers France and the USA as prime examples of countries in which citizenship is based on the *jus soli*, the acquisition of German citi-

zenship is seen as paradigm example of *jus sanguinis*. The principle of *jus sanguinis* means that citizenship is attained in virtue of belonging to a people or ethnic group. How is "belonging" to a people or ethnic group to be established? Biological lineage is the simplest and clearest criterion for defining this. The German citizenship law of 23rd July 1913—das Reichs und Staatsbuerger-schaftgesetz—which formed the basis of today's law of citizenship in Germany until it was recently reformed, states that citizenship will be inherited (Klusmeyer, 1993). This law was formulated with the specific political purpose of making it impossible for the large numbers of Jews and Poles who then resided in the Kaiserreich to acquire German citizenship (Wertheimer, 1987). Only a century ago, however, the Prussian Edict of Emancipation of 1812 had granted Jews in Prussia the status of citizenship without taking into account criteria of ethnic belonging (Huber, 1961). During the Reichstag, the German Social Democrats, much like to day's coalition government, sought to reintroduce *jus soli* into German citizenship legislation.

Citizenship and Political Theory

I have examined dilemmas of citizenship in contemporary Europe from the standpoint of normative political philosophy and suggested why these political developments should lead us to rethink our normative categories to bring them more into contact with the new sociological and institutional realities of citizenship in the contemporary world.

A central thesis of my argument is that theories of citizenship have often relied upon obsolete and misleading premises. The first among them is the fiction of a "closed society." Most western political thought proceeded from the assumption of a "closed society" with non-porous borders. In Rawls' crystal-clear formulation:

> The first is that we have assumed that 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 human life. It is also closed, in that entry into it is only by birth and exit from it is only by death... For the moment we leave aside entirely relations with other societies and postpone all questions of justice between peoples until a conception of justice for a well-ordered society is on hand. 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).

In the light of global developments in industry, finance, communication, tourism, information, and armament, it is implausible today to proceed from the Rawlsian assumption, even if this is a counterfactual one, that "a democratic society can be viewed as a complete and a closed social system." A theory of political justice must necessarily be a theory of international justice.[11] Not only the current level of development of a global civil society but more significantly the fact that in democratic societies the right of exit remains a fundamental right of the citizen makes this fiction obsolete.

Furthermore, to be a foreigner does not mean to be beyond the pale of the law. It means to have a specific kind of legal and political identity that includes certain rights and obligations while precluding others. In many European host countries we see the softening of those legal restriction that have previously made it impossible for foreigners to participate in elections and running for office. The restrictions that till now have precluded foreigners from political membership rest, in the final analysis, upon assumptions of who the citizens themselves are and what the virtues of citizenship consist of.

In this respect, neither the principles of *jus sanguinis* nor those of *jus soli* are consistent and plausible enough to justify the theory and practice of democratic citizenship. There is a hiatus between the self-understanding of democracies and the acquisition of citi-

zenship. While democracy is a form of life that rests upon active consent and participation, citizenship is distributed according to passive criteria of belonging, like birth upon a piece of land and socialization in that country or ethnic belonging to a people.

A further assumption that has been greatly misleading in these debates is that of "state-centeredness." In insisting that consent was expressed through participation in the numerous activities of civil society, Locke was right (see Locke, [1690], 1980). Our contemporary societies are even more complex, fragmented and contradictory social structures than those in Locke's time. In such societies, human conduct and interactions assume many and diverse forms. We are more authentically members of a family, of a neighborhood, of a religious community or of a social movement than we are members of a state. While the modern nation-state remains a possible structural expression of democratic self-determination, the complexity of our social lives integrates us into associations that lie above and below the level of the nation state. These associations mediate the manner in which we relate to the state. If we stop viewing the state as the privileged apex of collective identity, but instead, along with Rawls, view it "as a union of unions," then citizenship should also to be understood as a form of collective identity mediated in and through the institutions of civil society. In the European context this means: foreigners' claims to citizenship in a political entity are established not through some hierarchical decision from above, but because individuals show themselves to be worthy of membership in civil society through the exercise of certain abilities and the fulfillment of certain conditions. Civil citizenship should lead to political citizenship (Janoski, 1998).

What are some reasonable conditions through the fulfillment of which transitions from one status of alienage to another can be carried out?[12] Length and nature of residency in a particular country are undoubtedly top among such criteria. Minimal knowledge of the language of the host country as well as some "civil knowledge" about the laws and governmental forms of that

country are others. Criteria such as these can be formulated and applied reasonably.

Increasingly, it is what one does and less who one is, in terms of one's origin, which determines membership and citizenship claims. Applied to the case of contemporary Europe, this means very concretely: if an Italian or a Portuguese national can take up residence in Paris, Hamburg or London and run for office as well as vote in local elections in those countries after about six months, what is the justification for denying similar rights to a Turkish or Croatian national, to a Pakistani or to an Algerian who have resided in these countries, who have participated in the economy and civil society of these countries, who have been members of trade unions and religious groups, school boards and neighborhood associations? The liberal-democratic state is a "union of unions"; while the virtues and abilities that make an individual a good neighbor, a reliable coworker, an honest businessperson may not be immediately transferable to the virtues and abilities required by political citizenship, it is just not the case that there is an ontological divide between them. Hannah Arendt and other thinkers in the civic-republican tradition were wrong in their exaggerated attempt to segregate political from civic identities. Rather, as I have discussed elsewhere, we must focus on those social practices through which the transition from civil to political citizenship can be encouraged and the qualities of mind of an "enlarged mentality" can be cultivated. Such an enlarged mentality allows us to exercise civic imagination in taking the standpoint of the other(s) into account in order to woo their agreement on controversial and divisive norms that affect our lives and interactions. Such an enlarged mentality, which I see as a sine qua non for democratic citizenship, presupposes the virtues of membership and association, the ability to negotiate conflicting perspectives and loyalties, and the ability to distance oneself from one's most deeply held commitments in order to consider them from the hypothetical standpoint of a universalistic morality (Benhabib, 1994). The democratic public sphere in which these

virtues are cultivated is not opposed to global civil society but is an aspect of it.

Immigration and Emigration: Are They Symmetrical?

Let me return to the central philosophical problem concerning the principles of liberal-democratic membership. Are there any justifiable conditions under which a liberal-democratic polity can close its borders to outsiders seeking admission? My short answer is "No, there are none." There are some justifiable restrictions on the quality and quantity of new immigration which nation-states can allow but never a situation when borders would be completely closed. Furthermore, many of these plausibly justifiable restrictions, like limiting the entry of individuals and groups who can be identified as posing a military, security or immunological threat to a country, themselves often permit serious contestation. Think of how the claim that certain individuals pose a "national security threat" can and has been misused throughout history to prevent political dissidents from entering countries and has led to the creation of categories of "unwanted" aliens. The virtues of liberal-democracies do not consist in their capacities to close their borders but in their capacities to hear the claims of those who, for whatever reasons, knock at our doors. Hearing these claims does not mean automatically granting them or recognizing them, but it does mean that the moral claim of the one who is seeking admission imposes a reciprocal duty upon us to examine, individually and singly, each case of those seeking membership in our midst.

There is, in other words, a fundamental human right to exit as well as to seek admission into political community, a right that is grounded in the recognition of the individual as an autonomous person entitled to the exercise of other rights. The fundamental right to human liberty entails the fundamental right to entry and exit. This fundamental right creates a set of reciprocal obligations

and duties like not preventing the exit of those who want to leave or not to completely block off those who want to enter. Any restrictions to be placed upon the rights of exit and entry must be made compatible with, as well as being limited by, this fundamental human right.

This fundamental right of exit and entry is a moral claim and not a legal right, which can be defended by established authority with legal, coercive powers.[13] This right articulates a moral claim in that the recognition of the fundamental human liberty to express allegiance to the political order knowingly and willingly entails the right to exit when such allegiance is not forthcoming. Citizens are not prisoners of their respective states. Only a polity that violates other fundamental human liberties would also be one that limited the freedom of its citizens to exit.

In one of the few contemporary discussions of these issues, Michael Walzer argues that "The fact that individuals can rightly leave their own country, however, doesn't generate a right to enter another (any other). Immigration and emigration are morally asymmetrical" (Walzer, 1983, 40). This is wrong: the asymmetry of these rights cannot be maintained, and this for two reasons. The first ground is a pragmatic consideration that is also morally relevant. In a world where the surface of the earth is already divided into nation-states, or at least into political units that exercise sovereignty over their territory, the right to exit effectively means that one lands up on someone else's territory. There is literally nowhere to go in today's world ; at every stretch of the passage one would be crossing into the sovereign territory of some or other political entity. If this is so, then to acknowledge a human right to exit means at least to acknowledge a human right to entry. This right to entry, as I will argue below, must be distinguished from the claim to membership, but at this stage only the human right to entry is under consideration.

The second reason why this asymmetry breaks down is that the fundamental human right to exit is only meaningful if one can reverse moral perspectives and consider that for some to be able

to go means for others that strangers will come but that we are all potentially strangers in other lands. If we want to argue that we have a right to leave then we are also saying that others have to recognize us potentially as strangers who may want to enter their country. But if we want this claim recognized for ourselves then we also must recognize it for others. It is only the mutual recognition of the reciprocal obligations generated by this right which give it meaning as a moral claim. There is a fundamental human right to exit only if there is also a fundamental human right to entry, to admittance, but not necessarily to membership.

What is the distinction between admittance and membership? All organized political communities have the right to control the criteria of membership, and procedures of inclusion and exclusion. Criteria which need to be fulfilled, qualifications which need to be met, and procedures that need to be followed are usually stipulated by all liberal democracies in granting access to membership and eventually citizenship. Admittance does not create an automatic entitlement to membership but it does entail the moral right to know how and why one can or cannot be a member, whether one will or will not be granted refugee status, permanent residency etc. In articulating these conditions as well, a liberal democratic polity must treat the other, the foreigner and the stranger in accordance with internationally recognized norms of human respect and dignity (cf. Walzer, 1983, 60). The claim of democratic sovereigns to define criteria of political inclusion is not an unconditional right. Democratic sovereignty and human rights considerations must mutually limit and control each other.

Liberal democracies are always under a burden of proof when policing their borders, therefore, to prove that the ways in which they do so do not violate fundamental human rights. A democratic state may wish to examine marriage certificates among citizens and non-citizens for their veracity, but a democratic state which subjects women to gynecological exams in order to test whether or not marriage was consummated, as Margaret Thatcher's England did, is violating fundamental human rights of equal treatment and respect of bodily integrity.

Democratic states that are anxious to maintain certain standards of living among their population are free to regulate their labour markets such as to punish employers employing illegal aliens without proper documentation, at low wages and unjust conditions. But a democratic state cannot push entire categories of peoples away, as Germany since unification has attempted to do, with the argument that immigrants and asylum seekers affect the domestic standards of living negatively. Besides the dubious causal connections established in such assertions, there is also the more fundamental problem of the violation of human rights, be it those of asylum seekers under internationally recognized conventions, or the rights of foreign residents to claim political membership, with which I have dealt in this paper. It is minimally important to acknowledge that economic self-interest grounds can never alone serve as moral trumps, and that liberal democracies must seek to balance economic welfare considerations—if, in fact, it is the case that external immigration is affecting domestic markets as adversely as some argue—with commitment to, and respect for, fundamental human rights.

Sovereignty, Humans Rights and the Nation-State

In his 1923 work, *The Crisis of Parliamentary Democracy*, Carl Schmitt wrote:

> Every actual democracy rests on the principle that not only are equals equal but unequals will not be treated equally. Democracy requires, therefore, first homogeneity and second—if the need arises—elimination or eradication of heterogeneity... Equality is only interesting and valuable politically so long as it has substance, and for that reason the possibility and the risk of inequality.... <that> every adult person, simply as a person, should eo ipso be politically equal to every other person, this is a liberal, not a democratic idea" (Schmitt, [1923], 1985, 9-11).

Schmitt drives a wedge between liberal and democratic conceptions of equality. While he understands liberalism to advocate universal moral equality, he views democracy as only stipulating the equality of all as members of a sovereign people. This argument neglects the specificity of the modern as opposed to ancient projects of democracy.

For the moderns, the moral equality of individuals qua human beings and their equality as citizens, are imbricated in one another. The modern social contract of the nation-state bases its legitimacy on the principle that the consociates of the nation are entitled to equal treatment as right-bearing persons precisely because they are human beings. Citizenship rights rest on this more fundamental moral equality that individuals enjoy as persons. "The Rights of Man" and "The Rights of the Citizen" are coeval for the moderns.

To be sure there are conflicts as well as tensions in these formulations: every national social contract circumscribes the circle of its citizens, thus creating distinctions among those who are signatories of the social contract and those to whom the contract applies but who have no standing as signatories. Modern liberal democracies, established in the wake of the American and French Revolutions, proclaim at one and the same time that the consociates of the sovereign body are to treat one another as rights-bearing individuals in virtue of being human beings. At the same time, these very proclamations, articulated in the name of universal truths of nature, reason, or God, define and delimit boundaries, create exclusions within the sovereign people as well as without. There are "mere auxiliaries to the Republic" within, as Kant called women, children and propertyless servants within, and foreigners and strangers without. This constitutive tension does not arise, as Schmidt assumes, because liberalism and democracy contradict one another. Rather, there is a constitutive dilemma in the attempt of modern nation states to justify their legitimacy through recourse to universalist moral principles of human rights which then get particularistically circumscribed. The tension

between the universalistic scope of the principles that legitimize the social contract of the modern nation, and the claim of this nation to define itself as a closed community, plays itself out in the history of the reforms and revolutions of the last two centuries.

When Hannah Arendt wrote that "the right to have rights" was a fundamental claim as well as an insoluble political problem, she did not mean that aliens, foreigners and residents did not possess any rights (Arendt, [1951], 1979, 296). In certain circumstances, as with Jews in Germany, Greek, and Armenian nationals in the period of the founding of the republic of Turkey (1923), with German refugees in Vichy France, to select but few cases, entire groups of peoples were "denaturalized," or "denationalized" and lost the protection of a sovereign legal body. For Arendt, neither the theoretical nor the institutional solutions to this problem were at hand. Theoretically, she needed to have explored the constitutive tension between national sovereignty and human rights claims further. Institutionally, several arrangements have emerged since the end of World War II that express the learning process of the nations of this world in dealing with the horrors of the past century: the limiting and testing of parliamentarian majorities through constitutional courts, particularly in the domain of human rights issues; the 1951 Convention relating to the Status of Refugees, the creation of the UN High Commissioner on Refugees (UNHCR), the institution of the World Court, and most recently of an International Criminal Court through the treaty of Rome (Robinson 1999). While procedures of constitutional review, which are becoming more prevalent in European political practice through the development of the European Court of Justice, can help protect the fundamental human and civil rights of ethnic, religious, linguistic, sexual and other minorities from the tyranny of the majority, the UN conventions remain non-enforceable humanitarian guidelines. To this day the authority of the World Court of Justice in the Hague is contested, while the United States has refused to sign the Treaty of Rome leading to the establishment of the International Court of Justice. Even

this International Court deals first and foremost with "crimes against humanity." There are still no global courts of justice with the jurisdiction to punish sovereign states for the way they treat refugees, foreigners and aliens. Nor is there a global law enforcement agency that would carry out such injunctions. In this domain, voluntarily self-incurred obligations on the part of nation-states through the signing of treatises remain the norm.

Yet the treatment of aliens, foreigners, and others in our midst is a crucial test case for the moral conscience as well as political reflexivity of liberal democracies. Defining the identity of the sovereign nation is itself a process of fluid, open, and contentious public debate: the lines separating "we" and "you," "us" and "them," more often than not, rest on unexamined prejudices, ancient battles, historical injustices, and sheer administrative fiat. The beginnings of every modern nation-state carry the traces of some violence and injustice. So far Carl Schmitt is right. Nonetheless, modern liberal democracies are self-limiting collectivities which at one and the same time constitute the nation as sovereign all the while proclaiming that the sovereignty of this nation derives its legitimacy from its adherence to fundamental human rights principles. "We, the people," is an inherently fraught formula, containing in its very articulation the constitutive dilemmas of universal respect for human rights and particularistic sovereignty claims (Ackerman, 1991). The rights of foreigners and aliens, whether they be refugees or guest workers, asylum seekers or adventurers, indicate that threshold, that boundary, at the site of which the identity of "we, the people" is defined and renegotiated, bounded and unraveled, circumscribed or rendered fluid.

Notes

[1]Cited by Muenz, "Migrants, Aliens, Citizens. European Migrations and its Consequences," Conference Paper presented for the European Forum, 1995-96 Citizenship Project, 14. After the passage of the new "asylum laws," first on June 26, 1992 and then on July 27, 1993, Germany is controlling its borders and the number of foreigners allowed into the

country much more effectively. See also Council of Europe Publishing, *Recent Demographic Developments* in Europe, 1996: 18, and 31-32.

[2]Next to foreign workers, asylum applicants, and refugees, the third significant category of foreigners in Germany are the "ethnic Germans." They are not native-born Germans, but ethnic Germans who since the thirteenth-century have settled in various central European, Baltic, and formerly Soviet territories. After WWII, millions of this group, referred to as the "Vertriebene" (expellees) and "Aussiedler" (out-settlers), were expelled from the Soviet Union and other central and east European countries. A 1953 statute defines the Aussiedler as "Volkszugeroehige," belonging to the people, and Article 116 (1) of the Basic Law of Germany allows them with the right to resettle in Germany. In the last twenty years some 1,900, 000 expellees from Poland, Romania, and the former Soviet Union have entered Germany. See Kanstroom 1993: 165-167. For an overview of the changing composition of immigrant groups in various European countries, see Messina 1996: 130-154.

[3]The persecution of the Kurdish population in the northern and southeastern regions of Turkey in particular, and the continuing conflict between the Kurdish Communist Party (known in German as the PKK) and the Turkish government, have given rise to a new group of asylum seekers—ethnic Kurds who are officially Turkish citizens but persecuted by a country friendly to Germany and seeking future membership in the European Union. In 1995, 25,000 Turkish citizens are reported to have sought asylum in Germany; they were preceded by thirty-three thousand citizens of the states of former Yugoslavia. The recent capture of the fugitive leader of the PKK (Communist Party of Kurdistan), Abdullah Ocalan, has led to cofrontations in all major European citizens among Kurdish sympathizers and local and international government authorities.

[4]See Article 8 of C. Part Two. "1. Citizenship of the Union is hereby established. Every Person holding the Nationality of a Member State shall be a citizen of the Union." Facsimile reproduction on file with the author.

[5]The institution of citizenship among individuals who do not have a common language, a common public sphere and effective channels of participation is giving rise to a number of very important and compelling contemporary debates in political theory and jurisprudence. Some see European citizenship as a fig leaf to cover the considerable divestment of the democratic powers of sovereign peoples to an anonymous "Eurocracy" sitting in Brussels and Geneva, and still more others warn of the growing "democracy deficit" in the Union. Citizenship without participation looms on the horizon, they argue. Preuss 1995: 267-

281; Balibar 1996 : 355-376, and Lehning and Weale, eds. 1997. See also special section on "Citizenship and Migration," in *Constellations. An International Journal of Critical and Democratic Theory*, 4, No 3 (January 1988).

[6]"Fuer ein Europa der politischen und sozialen Grundrechte." Report of the "Committee of the Wise" under the Directorship of Maria de Lourdes 1996. Other members of this Committee of the "wise" are: Eduardo Garcia de Enterria, Hartmut Kaelble, Louka Katseli, Frederic Pascal, Bengt Westerberg, Shirley Williams. By contrast, Jytte Klausen pleads for a strong differentiation of citizenship rights from redistributive policies in: 1995, 244-67. While in the European Union context the trend is toward the uniformization of such rights and redistributive benefits through the implementation of Union-wide social rights and benefits, for third-country nationals the curtailment of social rights and benefits, which they have hitherto enjoyed, looms in the offing. Klaus sees an inevitable trade-off between the continuance of protective welfare communities on the one hand, globalization and the development of less exclusionary absorption and immigration politics on the other. 1995: 266. The danger in the current context though is that the political voicelessness of third country nationals in the EU will make it all the more likely that their social rights will be curtailed without, however, a corresponding liberalization trade-off in naturalization and immigration policies. See also, Abram de Swaan 1997: 561-575. For a helpful overview of the current state of policy and jurisprudential reasoning in the Union, and Shaw 1997.

[7]The Dublin Convention and the Second Schengen agreement were signed in June 1990. Schengen included initially Belgium, the Netherlands, Luxemburg, France, and Germany. Italy joined the group in December 1990, and Portugal and Spain in June 1991. Both agreements contain rules for determining a "responsible state" which agrees to process an applicant for asylum from a non-EU country. The Schengen Convention attempts to abolish border controls along the common frontiers of the parties and to compensate for the relaxation of borders by more vigilant migration and law enforcement policies at airports. There is also the establishment of a Schengen Information System that will create an electronic database to facilitate controls of criminals and terrorists. See Neuman 1993: 506-07; Kanastroom 1993: 198ff.; Klusmeyer 1993: 98.

[8]Few notable exceptions to this widespread neglect of citizenship issues have been, J. M. Barbalet 1988; Shklar 1991: 386-439. Undoubtedly, conditions of globalization the world over are leading to a renewal of interest in citizenship in political theory as well, see Spinner, 1994.

[9]Although this paper focuses on Europe in general, and Germany in particular, with the introduction of NAFTA similar developments are taking place in the North American Continent. So far, the fact that USA and Canada define themselves as "countries of immigration" has created a situation that is normatively different from that of most European Union Countries that do not consider themselves immigrant societies. The passage of proposition 187 in California, the ensuing battle against the curtailment of the social benefits of non-legal resident aliens, the shameful treatment of Haitian refugees as well as recent administrative irregularities at the INS about adequate background checks of prospective citizens etc. are all events pointing to the growing salience of these issues for the USA. Normatively, the theory and practice of acceptance into the political commonwealth through incorporation into civil society is most clearly practiced in Canada and the United States. The practices of immigration and naturalization in these countries present a clear alternative to the models prevailing on the European continent at the present time. See the remarkable arguments of Owen Fiss to defend some of welfare rights and benefits of legal and illegal resident aliens of the USA on the basis of constitutional jurisprudence. Fiss 1998:4-6.

[10]The United Kingdom does permit voting rights to those who hold Commonwealth citizenship.

[11]Several of Rawls' students, aware of the magnitude of this gap, have expanded the premises of political liberalism into the field of international justice. Cf. O'Neil 1986; Pogge 1992: 42; John Rawls began to address some of these issues in his "Law of Nations," Steven Shute and Susan Hurley, eds., Oxford Amnesty Lectures 1993.

[12]From the standpoint of political philosophy, we are entering the domain of administrative detail which should be better left to legislators and bureaucrats. As Hegel is reported to have quipped about Fichte's political theory, he did not have to be concerned about passports! Yet today the passport has become the symbolic document which represents all the perplexities and inequities of current citizenship regimes and practices in its pages. It is no less worthy of philosophical reflection than the postcard!

Also, criteria of immigration, from length of residency to language requirements, can impact diverse sectors of the foreign population of a particular country very differently. These issues of "differential impact" can, in turn, enable or hinder the acquisition of citizenship rights by different groups. For example, a language proficiency proof of some sort seems to me an eminently reasonable requirement on the part of a host country in granting residency and citizenship permits to foreigners. On

the other hand, this requirement will most likely disadvantage women, who usually, though not in all cases, enter the host country under family unification clauses and who do not participate in the civil society and economy of the public sphere of the host country or do so to a very limited extent. Under these circumstances, language proficiency requirements, which would not be accompanied by subsidized language instruction could be discriminatory against women and the elderly members of the foreign population.

[13]This distinction was brought to my attention by Professor Jürgen Habermas. However, although no authority exists for coercing nation-states to accept refugees and asylum-seekers into their countries, citizens' groups of the concerned countries may themselves litigate against their own government and agencies on the grounds that these may have violated fundamental human rights, the constitution, administrative procedures, etc. In such cases, concerned citizens act as the advocates of the stranger and the foreigner against their own governmental authority. Of course this legal right to "sue" your own state authorities is not equivalent to a coercive right against them, but as recent battles over the treatment of refugees, asylum seekers and immigrants the world-over show us, there is "communicative power" that derives from such actions and that may attain coercive influence.

References

Ackerman, Bruce, *We, the People* (Cambridge, MA: Belknap Press at Harvard, 1991).

Arendt, Hannah, *The Origins of Totalitarianism* (New York: Harcourt, Brace and Jovanovich, 1979 [1951]).

Aristotle, *Politics*, Jowett, Benjamin, trans., in: *Basic Works of Aristotle*, Richard McKeon, ed. (New York: Random House, 1941).

Auslaenderrecht, Die Gesetzestexte des "Deutschen Bundesrechts." Version of September 12, 1996 (Frankfurt: Suhrkamp, 1997).

Barber, Benjamin, *Jihad vs. McWorld. How Globalism and Tribalism are Reshaping the World* (Times Books: New York, 1995).

Benhabib, Seyla, "Strange Multiplicities. The Politics of Identity and Difference in a Global Context," *The Divided Self: Identity and Globalization*, Macalaster College International Program, (Spring 1997a): 27–59.

Benhabib, Seyla, "Wer Sind Wir? Probleme politischer Identitaeten im ausgehenden 20. Jahrhundert," Working Papers in Political Science, Institut fuer Hoehere Studien. No. 42. Vienna. 1997b.

Benhabib, Seyla, *Demokratische Gleichheit und Kulturelle Vielfalt. Die Horkheimer Vorlesungen* (Frankfurt: Fischer, 1999a).

Benhabib, Seyla, "Germany Opens Up," *The Nation*, June 21 1999b: 6.

Benhabib, Seyla, *Situating the Self. Gender, Community and Postmodernism in Contemporary Ethics* (New York and London: Routledge and Polity, 1994).

Balibar, Etienne, "Is European Citizenship Possible?" *Public Culture* 8 (1996): 355-376.

Barbalet, J. M., *Citizenship: Rights, Struggle and Class Inequality* (Minneapolis: University of Minnesota Press, 1988).

Bauboeck, Rainer, "The Crossing and Blurring of Boundaries in International Migration. Challenges for Social and Political Theory," in *Blurred Boundaries: Migration, Ethnicity, Citizenship*, Bauboeck, Rainer and Rundell, John, eds. (Vienna: Ashgate Publications, 1998).

Bauboeck, Rainer, *Transnational Citizenship: Membership and Rights in International Migration* (Cornwall: Edward Elgar, 1994).

Beiner, Ronald, ed., *Theorizing Citizenship* (Albany, NY: SUNY Press, 1995).

Brubacker, Rogers, *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992).

Constellations, *An International Journal of Critical and Democratic Theory* 4, No 3 (January 1998). Special section on Citizenship and Immigration.

Carens, Joe, "Aliens and Citizens: The Case for Open Borders," in: Beiner, Ronald, ed., *Theorizing Citizenship* (Albany, NY: SUNY Press, 1995: 229-255).

Cohen, Jean L., "Changing Paradigms of Citizenship and the Exclusiveness of the Demos," *International Journal of Sociology* Winter 2000. Forthcoming.

Council of Europe Publishing, *Recent Demographic Developments in Europe* (Belgium, 1996).

De Swaan, Abram, "The Receding Prospects for Transnational Social Policy," *Theory and Society. Renewal and Critique in Social Theory* 26:4 (August 1997): 561-575. Special issue on recasting citizenship.

Fiss, Owen, "The Immigrant as Pariah," *Boston Review* 23:5 (October/November 1998): 4-6.

Friedman, Jonathan, *Cultural Identity and Global Process* (London: Sage Publications, 1995).

Galston, William, *Liberal Purposes: Goods, Virtues, and Duties in the Liberal State* (Cambridge, MA: Cambridge University Press, 1991).

Heiberg, Marianne, ed., *Subduing Sovereignty. Sovereignty and the Right to Intervene* (London: Pinter Publishers, 1994).

Honig. Bonnie, *No Place Like Home* (Princeton University Press, Princeton, NJ: forthcoming).

Honig, Bonnie, "Immigrant America? How 'Foreignness' Solves Democracy's Problems," *Social Text* 3 (Fall 1998): 1-27.

Huber, Ernst, R., *Dokumente zur deutschen Verfassungsgeschichte.* Vol. 1. (Stuttgart: Kohlhammer, 1961).

Ignatieff, Michael, *Blood and Belonging. Journeys into the New Nationalism* (New York: Farrar, Strauss and Giroux, 1994).

Janoski, Thomas, *Citizenship and Civil Society* (New York: Cambridge University Press, 1998).

Judt, Tony, *A Grand Illusion? An Essay on Europe* (New York: Hill and Wang, 1996).

Kant, Immanuel, "Perpetual Peace," in: *On History*, Lewis White Beck, trans. (Indianapolis and New York: The Bobbs-Merrill Co., 1963: 85-137).

Kanstroom, Daniel, "Wer Sind Wir Wieder? Laws of Asylum, Immigration, and Citizenship in the Struggle for the Soul of the New Germany," *Yale Journal of International Law* 18: 155 (1993).

Kessler, Charles R., "The Promise of American Citizenship," in: *Immigration and Citizenship in the 21st Century*, Pickus, Noah, M. J., ed. (New York: Rowman and Littlefield Publishers, 1998: 3-41).

Klausen, Jytte, "Social Rights Advocacy and State Building. T. H. Marshall in the Hands of the Reformers," *World Politics* 47 (January 1995): 244-267.

Klusmeyer, Douglas B., "Aliens, Immigrants, and Citizens: The Politics of Inclusion in the Federal Republic of Germany," *Daedalus* 122:3 (1993): 81-114. Summer Issue on "Reconstructing Nations and States."

Kleger, Heinz, "Transnationale Staatsbuergerschaft oder: Laesst sich Staatsbuergerschaft entnationalisieren?" *Archiv fuer Rechts- und Sozialphilosophie* 62 (1995):85-99.

Kristeva, Julia, *Strangers to Ourselves*, Roudiez, Leon S., trans. (New York: Columbia University Press, 1991).

Kymlicka, Will and Norman, Wayne, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory," in: Beiner, Rondal, ed., *Theorizing Citizenship* (Albany, NY: SUNY Press, 1995), pp. 283-323.

Lehning, Percy and Weale, Albert, eds. *Citizenship, Democracy and Justice in the New Europe* (London and New York: Routledge, 1997).

Locke, John, *Second Treatise of Civic Government.* [1690], McPherson, C. B., ed. (Indiana: Hackett, 1980).

Marshall, T. H. *Citizenship and Social Class and Other Essays* (London: Cambridge University Press, 1950).

Mendes, Candido and Soares, Luis E. *Cultural Pluralism, Identity, and Globalization* (Rio de Janeiro. UNESCO/ISSC/EDUCAM publications, 1996).

Messina, Anthony, "The Not So Silent Revolution. Postwar Migration to Western Europe," *World Politics* 49 (October 1996): 130-154.

Muenz, Rainer, "Migrants, Aliens, Citizens. European Migrations and its Consequences," Conference Paper presented for the European Forum, 1995-96 Citizenship Project, European University Institute, Florence.

Neuman, Gerald. L., "Buffer Zones Against Refugees: Dublin, Schengen and the German Asylum Amendment," *Virginia Journal of International Law.* 33:503 (1993): 503-526.

O'Neil, Onora, *Faces of Hunger: An Essay on Poverty, Justice and Development* (New York: George Allen and Unwin, 1986).

Pintasilgo, Maria de Lourdes, "Fuer ein Europa der politischen und sozialen Grundrechte," Report of the "Committee of the Wise". Brussels. Publications of the European Commission (October 1995-February 1996).

Plotke, David, "Immigration and Political Incorporation in the Contemporary United States," Manuscript. 1996.

Pogge, Thomas, "Cosmopolitanism and Sovereignty," *Ethics* 103 (1992).

Preuss, Ulrich, "Problems of a Concept of European Citizenship," *European Law Journal* 1:3 (November 1995): 267-281.

Rawls, John, *Political Liberalism* (New York: Columbia University Press, 1993).

Robinson, Darryl, "Defining 'Crimes Against Humanity' at the Rome Conference," *The American Journal of International Law* (January 1999): 43-57.

Sandel, Michael, *Democracy's Discontent. America in Search of a Public Philosophy* (Cambridge, MA: Belknap Press at Harvard University, 1996).

Schmitt, Carl, *The Crisis of Parliamentary Democracy*, Kennedy, Ellen, trans. (Cambridge, MA: MIT Press, 1985).

Shaw, Joe, "The Many Pasts and Futures of European Citizenship in the European Union," *European Law Review* 22 (1997).

Shklar, Judith, "American Citizenship. The Quest for Inclusion," in *The Tanner Lectures on Human Values, vol. 10* (Cambridge, MA: Harvard University Press, 1991: 386-439).

Spinner, Jeff, *The Boundaries of Citizenship. Race, Ethnicity, and Nationality in the Liberal State* (Baltimore and London: the Johns Hopkins University Press, 1994).

Soysal, Yasemin, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994).

SOPEMI Publications (The OECD Continuous Reporting System for Migration), Paris, 1998.

Van Amersfoort, Hans, *Immigrants and the Formation of Minority Groups: The Dutch Experience* (Cambridge: Cambridge University Press, 1982).

Weiler, J. H., "Does Europe Need a Constitution? Demos, Telos and the German Maastricht Decision," *European Law Journal* 1:3 (November 1995): 219-258.

Walzer, Michael, *Spheres of Justice. A Defense of Pluralism and Equality* (New York: Basic Books, 1983).

Wertheimer, Jack, *Unwelcome Strangers. East European Jews in Imperial Germany* (New York: Oxford University Press, 1987).

Notes on Contributors

Andrew Arato is Dorothy Hart Hirshon Professor of Sociology and Co-Chair of the Committee for the Study of Democracy at the New School University's Graduate Faculty. He is the author of *From Neo-Marxism to Democratic Theory* (1993).

Seyla Benhabib is Professor of Government and Chair of the Committee for the Degree on Social Studies at Harvard University. She is the editor of *Democracy and Difference: Constituting the Boundaries of the Political* (1996).

Robert Dahl is Sterling Professor Emeritus of Political Science at Yale University. His most recent publication is *On Democracy* (1999).

Steven Friedman is Director of the Centre for Policy Studies in Johannesburg, South Africa. He is the author of *The Long Journey: South Africa's Quest for a Negotiated Settlement* (1993).

Evelyne Huber is the Morehead Alumni Professor of Political Science at the University of North Carolina—Chapel Hill.

Eiko Ikegami is Director of the Center for Studies of Social Change and Professor of Sociology at the New School University's Graduate Faculty. Her book *Civility and Aesthetic Publics in Japan* is forthcoming.

Mahmood Mamdani, until recently A. C. Professor of African Studies at the University of Capetown, is now Professor of Anthropology, Political Science, and International Affairs at Columbia University. His most recent book is *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (1996).

Chantal Mouffe is Senior Research Fellow at the Centre for the Study of Democracy at the University of Westminster in London.

Philippe C. Schmitter is Professor of Political and Social Sciences at the European University Institute in Italy.

Steven L. Solnick is Associate Professor of Political Science at Columbia University. He is the author of *Stealing the State: Control and Collapse in Soviet Institutions* and is currently working on a monograph of center-periphery politics in Russia and other large states.

John D. Stephens is Professor of Political Science and Sociology at the University of North Carolina—Chapel Hill.