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Seyla Benhabib
Yale University

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Just Membership in a Global Community

Seyla Benhabib

*A*t the dawn of a new century the transnational movement of peoples has emerged as a major political issue of our times. Whether initiated by economic migrants from the poorer regions of the world trying to reach the shores of resource-rich democracies in the North and the West, or undertaken by asylum and refuge seekers escaping persecution, civil wars, and natural disasters, or caused by “displaced persons” fleeing ethnic conflict and state-inflicted violence in their own societies, such movements have presented the worldwide state system with unprecedented challenges.

Here are some numbers. It is estimated that whereas in 1910 roughly 33 million individuals lived as migrants in countries other than their own, by the year 2000 that number had reached 175 million. Strikingly, more than half of the increase of migrants from 1910 to 2000 occurred in the last three decades of the twentieth century, between 1965 and 2000. In this period, 75 million people undertook cross-border movements to settle in countries other than that of their origin.¹

While migratory movements in the latter half of the twentieth century 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 growing numbers 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 Central African Republic, Afghanistan, and Chechnya.

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Since September 11, 2001, the discourse on immigration has also been increasingly criminalized. Non-members seeking entrance into countries other than their own, for any of the above-named reasons, are increasingly considered as “threats” and potential “criminals.” This is most strikingly reflected in the fact that the Immigration and Naturalization Service of one of the oldest immigrant countries of the world, namely the U.S.A., has now become incorporated into the Department of (so-called) Homeland Security.

Given the salience of these developments, it is surprising that the cross-border movements of peoples, and the philosophical as well as policy problems suggested by them, have been the object of such scant attention in contemporary political thought.² In my recent book, *The Rights of Others*,³ I intended to fill this lacuna by focusing on *political membership*. By this term I meant the “principles and practices for incorporating aliens and strangers, immigrants and newcomers, refugees and asylum seekers into existing polities.” The principal category through which membership has been regulated in the modern world, namely national citizenship, has been disaggregated or unbundled into diverse elements, and state sovereignty has been frayed. Consequently, “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.”⁴

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. There is not only a tension but often an outright contradiction between human rights declarations and the sovereign claims of states to control their borders as well as to monitor the “quality” and quantity of those admitted. There are no easy solutions to the dilemmas posed by these dual commitments. As the institution of citizenship is disaggregated and state sovereignty comes under increasing stress, sub-national as well as supra-national spaces for democratic attachments and agency are emerging in the contemporary world, and they need to be advanced with, rather than in lieu of, existing polities.

In this essay, I begin by exploring the origins of the institution of citizenship, then consider the “disaggregation” of citizenship within the European Union and in some other countries of the world, and finally I return to recent developments within the United States concerning

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immigration and conclude with philosophical reflections upon “just membership.”

I. Citizenship in Western Political Thought

The concept of citizenship is one of the cornerstones of Western political thought. In Greek thought the terms *polis*, *politeia*, *politike*, and *politikon* are all derived from the same root. Their Latin cognate is *civitas*, from which is derived “*citoyenne*” in French and “citizen” in English. In German, we encounter the term *burgh*, meaning fortress or town, and the derivation of *burgher*, as in *Staatsburger*,⁵ the German term for citizen. In Turkish the word for citizen, *Vatandas*, derives from the term *Vatan* (which may be Arabic in origin) and which means “homeland.”

This brief etymology serves to remind us that citizenship means first and foremost membership in a bounded community. What such membership entails is itself dependent upon the nature of the political community. As Aristotle noted, a citizen in a democracy is not the same as a citizen in an aristocracy: in a democracy all can vote, without qualifications of descent and property, while in an aristocracy only some can.⁶ Throughout the history of the West, citizenship has excluded certain groups of individuals, whether they be women, non-propertied and laboring males, or non-Christian and non-white peoples. These human beings have been barred from citizenship on the grounds that they did not possess the necessary attributes for citizenship, which were often understood in conventional terms such as lack of property or income. More often, though, they were regarded in much more essentializing terms as lacking the requisite capacities of intellect and emotion.⁷

With the advent of political modernity through the American and French Revolutions, citizenship was extended to ever larger numbers of human beings. It was also enriched through the growth of rights and entitlements that accrued to this status.⁸

Modern citizenship still means membership in a bounded political community, which can be a nation-state, a multinational state, or a commonwealth structure. The political regime of territorially bounded sovereignty, exercised through formal-rational administrative procedures and dependent upon the democratic will of a more or less culturally homogeneous group of people, can only function by defining, circumscribing, and controlling citizenship. Ideal-typically, the citizen is the individual who has membership rights to reside within a territory, who is subject to the state’s administrative jurisdiction, and who

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is also, at least in principle, a member of the democratic sovereignty in whose name laws are issued and administration is exercised. Following Max Weber, we may say that this *unity of residency, administrative subjection, political participation, and cultural membership* constitutes the “ideal typical” model of citizenship in the modern nation-state of the West.⁹ The influence of this model, whether or not it adequately corresponds to local conditions, extends far beyond the West. Modernizing nations in Africa, the Middle East, and Asia, which entered the process of state formation at later points than their West European counterparts, copied this structure when they came into existence as well.

What is the status of citizenship today, in a world of increasingly deterritorialized politics? How is citizenship being reconfigured under contemporary conditions? How have globalization and the weakening of the functions of the state in controlling and protecting its economy, culture, and boundaries against the forces of globalization affected the theory and practice of citizenship? How has globalization contributed to the reconfiguration of multiculturalism? Which are the most salient conflicts around cultural identities in today’s world?

II. Globalization and New Forms of Political Conflict

Recalling Vaclav Havel’s words may give us some insights into these questions. In a graduation address to Harvard undergraduates more than a decade ago, Havel said, “This civilization is immensely fresh, young, new and fragile... . In essence, this new, single epidermis of world civilization merely covers or conceals the immense variety of cultures, of peoples, of religious worlds, of historical traditions and historically formed attitudes, all of which in a sense lie ‘beneath’ it.” The spread of globalization is accompanied by new forms of resistance and struggle, along with demands for “the right to worship...ancient Gods and obey ancient divine injunctions.” The new global civilization has to understand itself “as a multicultural and multipolar one.”¹⁰

As Havel notes, our contemporary condition is marked by the emergence of new forms of identity politics around the globe. Such identity politics, driven by the attachments of nationality, ethnicity, religion, gender, “race,” and language, are particularly widespread in the following domains: (1) At the thresholds and borders of new nation-states, which have emerged out of the disintegration of communist regimes in the territories of the older Soviet Union and Eastern and Central Europe; (2) In Africa, where the nation-state, a fragile insti-

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tution with roots barely half a century old, is crumbling in Rwanda, Uganda, the Congo, and the Ivory Coast; (3) In the Middle East, where as a result of the Gulf and Iraq Wars and the continuing Israeli-Palestinian conflict, nation-state boundaries, which were haphazardly drawn by the occupying powers at the end of the First World War after the fall of the Ottoman Empire, seem more problematic than ever; (4) In failed states such as Afghanistan, where prior to U.S. intervention, an armed group such as the Taliban could take state power, while leaving some areas of the country to the authority of warlords; (5) Compared to these kinds of identity politics which emerged through institutional failures affecting states' capacities, the most prevalent form of identity politics in Western democracies since the late 1960s has been struggles for multicultural inclusion, and in some cases, for the multicultural diversification of citizenship concepts.

The worldwide women's and Gay and Lesbian movements, the Quebecois aspirations in Canada, the Basque separatist movement in Spain, and the ethnic pride movements in the U.S.A. are some of the best known "struggles for recognition," to use Charles Taylor's famous term.¹¹ Reflecting a social dynamic that we have hardly begun to comprehend, globalization has thus proceeded alongside socio-cultural disintegration, the resurgence of various separatisms, and international terrorism.

The impact of these developments upon the institution of citizenship has been "the disaggregation of citizenship." Ideally, citizenship had bundled together *residency, administrative subjection, democratic participation, and cultural membership*. What we are seeing today is that the unity of residency, administrative subjection, cultural identity, and democratic participation—in short, the modernist and unitary conception of citizenship—is being deeply challenged. Nationality and residency status are uncoupled, in that increasing numbers of individuals reside in countries where they are not nationals. Furthermore, residency is accompanied by entitlement to extensive social rights; in some cases, even political participation rights are granted on the basis of residency and not citizenship.

These developments have taken place against the background created by the rise of an international human rights regime. By an "international human rights regime," I mean 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.¹² Such examples would include the U.N. treaty bodies under the

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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 of 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.

The establishment of the European Union (EU) 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 also encompasses states that are not EU members, 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.

While these treaties are binding on signatory states alone, they have set into motion certain developments within global civil society. In the words of Anne-Marie Slaughter, "International law today is undergoing profound changes that will make it far more effective than it has been in the past. By definition international law is a body of rules that regulates relations among states, not individuals. Yet over the course of the 21st century, it will increasingly confer rights and responsibilities directly on individuals."¹³

Against this general background let me analyze the disaggregation of citizenship effect more closely.

III. Disaggregation of Citizenship: The Case of the European Union

The view that citizenship is a status that confers entitlements (that is, benefits as well as obligations) derives from T.H. Marshall.¹⁴ Marshall's catalogue of civil, political, and social rights is based upon the cumulative logic of struggles for expanding 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 commerce and marriage.

"Political rights" in the narrow sense refer to the rights of self-determination, to hold and run for office, and to establish political and non-

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political associations, including a free press and free institutions of science and culture.

“Social rights” are last in Marshall’s catalogue. They were achieved historically through the struggles of workers, women, and other social movements of the last two centuries. Social rights entail the right to form trade unions as well as other professional and trade associations, health care rights, unemployment compensation, old age pensions, childcare, housing, and educational subsidies. These social rights vary widely across countries and depend on the social class compromises prevalent in any given welfare-state democracy. Their inclusion in any internationally agreed upon catalogue of universal human rights—beyond the mere right to employment and a decent standard of living—is a bone of contention among different countries with varying economic outlooks.

The disaggregation effect is most advanced in today’s world in the contemporary European Union, in which the rights of citizens of the 25 member countries are sharply delineated from those of third-country nationals, within a patchwork of local, national, and supranational rights regimes. These so-called “third-country nationals” include about three million Turks, scattered across Germany, the Netherlands, France, Sweden, Denmark and the U.K.; close to two million members from the federation of former Yugoslav states living throughout EU countries; about 820,000 Algerians; 516,000 Moroccans; 200,000 Tunisians, mainly in France; and 689,000 migrants from India, 547,000 from the West Indies, and 406,000 from Pakistan, mainly in the U.K., some of whom have Commonwealth citizenship.

According to the Treaty Establishing a Constitution for Europe (2003, which was not ratified by member states, and was rejected through Dutch and French referenda in 2005) and following upon the earlier Treaty of Maastricht (1992), “Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.”¹⁵ Nationals of all 25 countries who are members of the European Union (the U.K., France, Germany, Italy, Austria, Denmark, Belgium, the Netherlands, Sweden, Finland, Ireland, Greece, Portugal, Spain, Luxembourg, Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Estonia, Lithuania, Latvia, Malta, and Cyprus) are also citizens of the European Union. What does being a citizen of the Union mean? What privileges and responsibilities, what rights and duties does this entitle? Is citizenship in the Union merely a status category, as was membership in the Roman

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Empire?¹⁶ Does membership in the EU amount to more than possessing a passport that allows one to pass through the right doors at border crossings?¹⁷

Clearly, Union membership is intended to be more than that. Not just a passive status, it is expected to involve an active civic identity. Citizens of EU states can settle anywhere in the Union, take jobs in their chosen countries, and vote as well as stand for office in local elections and in elections for the Parliament of Europe. They have the right to enjoy consular and diplomatic representation in the territory of a third country in which the member state whose nationals they are may not be represented. They have the right to petition the European Parliament and to apply to the European Ombudsman.¹⁸ As European monetary and economic integration progresses, EU members are debating whether Union citizenship should entail an equivalent package of social rights and benefits, such as unemployment compensation, health care, and old age pensions, which members of EU states can enjoy in whichever EU country they take up residency.

The unitary model of citizenship that combined continuous residency in a given territory with a shared national identity, the enjoyment of political rights, and subjection to a common administrative jurisdiction, is coming apart. One can have one set of rights but not another. One can have political rights, such as local and EU level participation and voting rights, without being a national, as is the case for EU citizens. More commonly, though, as a "guest worker" one has social rights and benefits without either sharing in the same collective identity or having the privileges of political membership. But this latter claim also needs modification. In countries such as the Netherlands, Denmark, and Sweden, "third-country nationals" are also granted some political participation and voting rights. In the U.K., Commonwealth members can vote in local elections.

A two-tiered status of foreignness has evolved: on the one hand, there are third-country national foreign residents of European countries, some of whom were born and raised in these countries and know no other homeland; on the other hand are those who may be almost total strangers to the language, customs, and history of their host country but who enjoy special status and privileges in virtue of being a national of an EU member state.¹⁹

The obverse side of membership in the EU is a sharper delineation of the conditions of those who are nonmembers. The agreements of Schengen and Dublin were intended to make the practices of granting

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asylum and refugee status more uniform throughout member states.²⁰ Referred to as “legal harmonization” in the early 1990s, these agreements had the paradoxical effect of making such status in the Union increasingly difficult.²¹ Although the European Council of Ministers reiterates its adherence to the 1951 Geneva Convention on Refugees and Asylum Seekers and its Protocol of 1967, the EU seeks enhanced cooperation with sender countries in controlling the readmission and return of their nationals who reach EU territory illegally. Cooperative efforts with sender lands to enhance border controls, intercept illegal immigrants, and create asylum systems have increased. Since in many cases individuals seeking asylum and refuge are escaping the oppressive, illegal, and even murderous regimes of their own countries, enhanced cooperation with these governments can only have disastrous effects upon their lives. A very serious danger posed by these developments is the undermining of the individual rights-based system of the Geneva Convention and of the moral as well as constitutional obligations of individual states toward refugees and asylum seekers, which were based on their own past histories of collaboration or resistance to fascism and totalitarianism.²²

IV. Citizenship in Non-European Contexts

Can this “disaggregation of citizenship” model be generalized across regions and countries? Despite being the largest immigrant nation in the world, the American conception of citizenship has remained remarkably unitary at the level of granting political rights, by making “naturalization” a precondition for political voice. Unlike in some countries of the EU, there are no voting rights for legal residents within the U.S.A. at either the local or the statewide levels. This practice is usually defended by the argument that since the granting of citizenship to legal migrants is fairly open, transparent, and speedy, it is not unfair to make the acquisition of citizenship a precondition for political voice.²³

This argument, however, does not attend to the facts on the ground. There are at present an estimated twelve million, in official language, “illegal migrants” in the U.S. I prefer to call them “undocumented migrants.” Many of these individuals are active and contributing members of society. Many serve in the national labor force, working on farms and in hospitals, hotels, and sanitation services. Others send their children to school and are active on community and school

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boards. These individuals, who service hospitals as nurses or orderlies, are themselves scared to become sick and dependent on hospital facilities. Not having one's papers in order in our society is a form of civil death. The status of an illegal migrant is one denuded of political voice and the protection of civil laws.

More poignantly, on April 4, 2003, U.S. newspapers reported the case of Lance Corporal Jose Gutierrez, aged 27, who died in a tank battle outside Umm Qasr in Iraq on March 21, 2003. Corporal Gutierrez was an illegal immigrant from Guatemala, an orphan who had reached the United States through clandestine means and who joined the Marines in California. His case is by no means unusual: over a dozen legal and illegal immigrants, mainly from Mexico and Central America, who were members of the U.S. Armed Forces stationed in Iraq, have lost their lives since March 2003. It is estimated that about 37,000 immigrants serve in the U.S. Armed Forces, making up about 3% of the population on active duty. Their sad stories compelled both conservative and liberal lawmakers to hastily pass bills granting these slain soldiers, and in some cases their spouses and children, posthumous citizenship. Others suggested that immigrants who join the Armed Forces be granted citizenship immediately, while still others advocated the reduction of the current waiting period for the granting of citizenship to those in the military from three to two years.

This is by no means the first time that immigrants have served in the U.S. army. With the abolition of universal conscription, however, joining the army has become a venue for upward mobility for large numbers of low-income legal and illegal migrants. We thus have the disturbing case of individuals dying for a country that denies them voting rights if they are legal permanent residents waiting to become "naturalized"; and if they are illegal migrants, as was the case with Corporal Gutierrez, they do not even have the right to obtain a license or open a bank account.

The causes of migrant "illegality" can vary from bureaucratic mishaps and mistakes to desperate attempts to escape home countries via smugglers, known as "coyotes," because of circumstances there. The status of illegality should not stamp the *other* as an alien. Clearly, a democratic adjustment of the practices of legal incorporation is needed in order to normalize the status of illegal immigrants.

While illegal migrant status means civil death and political silencing, the lack of a political voice for legal permanent residents means their effective disenfranchisement. An increasing number of individu-

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als wish to retain dual citizenship or to live in one country on a long-term basis while not abdicating their original nationality. Making the exercise of democratic voice dependent upon one's nationality status alone, as the United States laws do, flies in the face of the complex interdependence of the lives of peoples across borders and territories.

The immigration bill that failed to pass the Senate in spring 2007 (S. 1348), "A bill to provide for comprehensive immigration reform and for other purposes," was a double-edged sword. While it promised amnesty to millions of undocumented workers, the attainment of which entailed a number of onerous logistical and financial loopholes, it also changed the meaning of immigration in ways that have not been noted. President Bush's proposal for a guest worker program obliges these individuals to leave the U.S. after their contracts are up, without the possibility of ever acquiring permanent residency or, eventually, citizenship status. This bill proposes to make into U.S. law the creation of a permanent global underclass that services the U.S. economy but can never have access to the benefits of a democratic voice and U.S. citizenship. This is a radical reversal of the self-understanding of this country as a "nation of immigrants," and this shift in policy reflects the paranoid politics of the post-9/11 world in which the "foreigner" and the "immigrant" are not viewed as a potential partners with whom we must share a moral and political space, but as "threats," as "enemy aliens." (Given the heated race for the 2008 Presidential elections in the U.S.A., this bill has now been tabled till some indefinite date, and certainly till after the elections.)

While the United States has remained impervious to many calls to facilitate dual citizenship and is making it increasingly difficult for guest workers to attain American citizenship, countries like Mexico and the Dominican Republic permit their large diasporic populations to retain certain citizenship rights at home, such as voting in local and national elections, continuing to own property, and, in the cases of the Dominican Republic and Colombia, even running for and holding office. Increasing numbers of Israeli citizens also hold dual citizenship, either with the U.S.A. or with other countries of origin. Throughout Southeast Asia, India, and Latin America, "flexible citizenship," which permits the disaggregation of aspects of citizenship by giving individuals multiple residency, property, and political participation rights, is emerging as the norm.²⁴

Nevertheless, there is a paradox that affects most of these developments and which is inherent in the logic of modern statehood and

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citizenship. It is captured by Hannah Arendt with the phrase “the right to have rights.”

V. Hannah Arendt and the Paradox of The Right to Have Rights

In *The Origins of Totalitarianism*, Hannah Arendt wrote:

Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to a community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion... . *We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation.*²⁵

The first use of the term *right* in the phrase “the right to have rights” does not show the same discursive structure as its second use. In the first mention, the identity of the other(s) to whom the claim to be recognized as a rights-bearing person is addressed remains open and indeterminate.²⁶ Note that for Arendt such recognition is first and foremost a recognition of “membership,” the recognition that one “belongs” to some organized human community. One’s status as a rights-bearing person is contingent upon the recognition of one’s membership. Who is to give or withhold such recognition? Who are the addressees of the claim that one “should be acknowledged as a member?” Arendt’s answer is clear: humanity itself. And yet she adds, “It is not clear that this is possible.”²⁷ The asymmetry between the first and second uses of the term *right* derives from the absence in the first case of a specific juridico-civil community of consociates who stand in a relation of reciprocal duty to one another. What would this duty be?: the duty to recognize one as a member, as one who is protected by the legal-political authorities and treated as a person entitled to the enjoyment of rights.

In Arendt’s view, the right to have rights transcends the contingencies of birth, which differentiate and divide us from one another. The

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right to have rights can only be realized in a political community in which we are not judged by the characteristics that define us at birth, but through our actions and opinions, by what we do and say and think. "Our political life," writes Arendt, "rests on the assumption that we can produce equality through organization, because man can act and change and build a common world, together with his equals and only with his equals...We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights."²⁸

To sharpen the issue, Arendt was just as skeptical about the ideals of world government as she was about the possibility of nation-state systems ever to achieve justice and equality for all. World government would destroy the space for politics by not allowing individuals to define shared public spaces in common. The nation-state system, on the other hand, always carries within itself the seeds of exclusionary injustice at home and aggression abroad.

While Arendt offers us only paradoxes, albeit fruitful ones that show new paths to thinking, we are by no means at a point where we have resolved them. But the sharp contrasts which she drew between human rights and citizens' rights have been mitigated through the evolution of cosmopolitan norms and the disaggregation of citizenship. National membership is no longer the sole guarantor of access to rights and entitlements. Increasingly, the world legal community is recognizing a *human right to membership*, which means the obligation of states to naturalize long-term residents and not to denationalize or deny citizenship to others.²⁹

Just membership in the new global civil society entails recognizing the moral claim of refugees and asylum seekers 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 alien ought not to denude one of fundamental rights. Furthermore, *just* membership also means 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 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

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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. ●

Notes

1. U.N. *International Migration Report 2002*.
2. For early statements, see Michael Walzer, *Spheres of Justice. A Defense of Pluralism and Equality* (New York: Basic Books, 1983); Rainer Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Aldershot, U.K.: Edward Elgar, 1994); Joe Carens, "Aliens and Citizens: The Case for Open Borders," in *Theorizing Citizenship*, ed. Ronald Beiner (Albany, N.Y.: SUNY Press, 1995), pp. 229–255; Cf. more recently, Philip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000).
3. Seyla Benhabib, *The Rights of Others: Aliens, Citizens and Residents*. The John Robert Seeley Memorial Lectures. (Cambridge: Cambridge University Press, 2004). All references in parentheses are to page numbers in this edition.
4. *Ibid.*, p. 2.
5. The French term *bourgeois*, as both Jean-Jacques Rousseau and the young Karl Marx have reminded us, originally meant town dweller; hence, claimed Rousseau, *bourgeois* and *citoyenne* were confused, since the free town dweller was also considered the citizen. As Rousseau went on to note, however, the term *bourgeois* transformed its meaning and acquired the identity of private entrepreneur, exchanging in the commodity market, when (in the course of the development of Western modernity) state and civil society, which comprised the market as well, became clearly distinguished from one another. See Karl Marx, "On the Jewish Question" in Karl Marx and Frederick Engels, *Collected Works. Marx and Engels, 1843–44*, vol. 3 (New York, 1976); and Jean-Jacques Rousseau, "On the Social Contract, with Geneva Manuscript and Political Economy," trans. by Judith R. Masters (New York, 1978).
6. Aristotle, *The Politics*, ed. Stephen Everson (New York: Cambridge University Press, 1988).
7. For treatments of this issue, see Susan Moller Okin, *Women in Western Political Thought* (Princeton, N.J.: Princeton University Press, 1992); Genevieve Lloyd, *The Man of Reason* (Minneapolis: University of Minnesota Press, 1984); and Jean Bethke Elshtain, *Public Man, Private Woman* (Princeton, N.J.: Princeton University Press, 1993).
8. See T.H. Marshall, *Citizenship and Social Class and Other Essays* (Cambridge: Cambridge University Press, 1950).
9. See Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, eds. Guenther Roth and Claus Wittich (Berkeley and Los Angeles: University of California Press, 1978 [1956]), pp. 901–926.
10. Vaclav Havel, "A Conscience Slumbers in Us All." Commencement speech at Harvard University, June 8, 1995. CTK National News Wire.
11. Charles Taylor, "Multiculturalism and The Struggles for Recognition," ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1994).

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12. For a fuller elaboration of the arguments presented here, see Seyla Benhabib, *The Rights of Others: Aliens, Citizens and Residents* (New York and London: Cambridge University Press, 2004), "Introduction."

13. Anne-Marie Slaughter, "Leading Through Law," *The Wilson Quarterly* (Autumn 2003): 42–43.

14. T.H. Marshall, "Citizenship and Social Class," in *Citizenship and Social Class and Other Essays*, p. 44 ff. There is a teleologism in Marshall's account that reflects his social democratic hopes and biases. The acquisition of rights by different human groups was never as smooth as suggested by Marshall. Women, blacks, colonials, and many other peoples were not part of the "social contract" that Marshall saw being extended to the British working classes through the advancement of capitalism. See Benhabib, *The Rights of Others*, pp. 172–73.

15. See Article 1–10 of "Treaty Establishing a Constitution for Europe" online at http://europa.eu.int/constitution/en/1stoc1_en.htm; originally, "Treaty of Maastricht," 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 and also available at <http://europa.eu.int/en/record/mt/title2.html>. A more extensive discussion of these issues appears in my book, *The Claims of Culture: Equality and Diversity in the Global Era*, 2002a, chap. 6.

16. By referring to Roman citizenship in this context, I am recalling some of the civic republican criticisms of the extension of Roman *civitas* to provincial elites and those who served in the military. As Rome conquered more peoples and territories, Roman citizenship lost its hereditary character and became more territorial. With the rise of the empire, the franchise lost its significance. From Machiavelli to the young Hegel and to Edward Gibbon, the extension of Roman *civitas* and the decline of the republic were seen to go hand in hand. Contemporary historian Michael Mann argues that the invention of extensive territorial citizenship also gave Rome an edge over other entities such as Carthage. See Mann, *Sources of Social Power*, 2 Vols. (Cambridge: Cambridge University Press, 1986), p. 254.

I do not mean to take a position on this extremely complex historical matter, but to signal that the *topos* of the transition from republic to empire and the decline of active citizenship are present in the memory of many contemporary European observers as they reflect on the transformations brought about by the European Union. I wish to thank Willem Maas for his extremely helpful observations and suggestions on this matter.

17. See Willem Maas for an analysis of the origins of European citizenship rights as developing through border-crossing and residency privileges for workers from southern Europe (Greece, Italy, Spain, and Portugal) who worked in the coal and steel industries of northern European industrialized countries. See Willem Maas, *Creating European Citizens*. Europe Today Series (New Jersey: Rowman and Littlefield Publishers, 2007).

18. See Article I-10.2 of the "Treaty Establishing a Constitution for Europe," online at http://europa.eu.int/constitution/en/1stoc1_en.htm.

19. More recently, the European Council has undertaken to expand to "third-country nationals" a bundle of rights, including cross-border mobility and employment, which are more equivalent to those of European Union citizens. See the European Commission's Directive 109, which came into force in February 2004, and extends the concept of "civic citizenship" to third-country nationals. According to this directive, third-country nation-

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als can acquire the status of “long-term residency” after five years in their host countries, and it is recommended that they be entitled to a “bundle of rights and duties” commensurate with those of citizens and across national borders. European Council, “Council Directive Concerning the Status of Third-Country Nationals who are Long-term Residents,” 2003/109/EC, *Official Journal* L 016, 23/01/2004 pp. 44–53. Available online at <http://europa.eu.int/eurlex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:NOT>.

20. See Gerald L. Neuman, “Buffer Zones Against Refugees: Dublin, Schengen, and the Germany Asylum Amendment,” *Virginia Journal of International Law* 33 (1993): 503–526. The Dublin Convention and the Second Schengen agreement were signed in June 1990. Both agreements contain rules for determining a “responsible state,” which agrees to process an applicant for asylum from a non-EU country.

21. Hania Zlotnik observes that, “the total number of applications lodged in European countries fell by 37 per cent between 1989–93 and 1994–98.” Hania Zlotnik, “Past Trends in International Migration and their Implications for Future Prospects,” in *International Migration into the Twenty-First Century: Essays in Honor of Reginald Appleyard*, ed. M.A. Siddique (Boston, Mass.: Edward Elgar Publishers, 2001), pp. 227–262. Here p. 236.

22. In 1999–2000, the ruling SPD-Green Coalition in Germany compromised the rather generous and liberal Law of Asylum of the German Constitution to assure the cooperation of the conservative CDU and CSU in passing an immigration bill in Parliament. Similar compromises have been urged by the Blair government in Britain. The British Government has been planning to deport asylum seekers to new “Regional Processing Areas” (RPAs) and “Transit Processing Centers” (TPCs). While the former are to be located in the region of the refugee crisis, the latter are supposed to be close to the external borders of the EU. The Presidency of the Thessaloniki EU Summit decided *not* to place proposals for Transit Processing Centers on its agenda, but the merits of Regional Processing Areas or Protection Zones, which are supported by the British and Danish governments in particular, are to be explored further. As Gregor Noll observes, “It is no exaggeration to state that it could very well mean the end of the 1951 Refugee Convention. Essentially, the British, Danish and other supportive governments are intentionally and proactively seeking to create a permanent state of exception in the international refugee regime.” See “Visions of the Exceptional,” 27 June 2003. Online at www.open-Democracy.net.

23. See the exchange between Motomura and Tichenor. Hiroshi Motomura, “Alienage Classification in a Nation of Immigrants: Three Models of ‘Permanent’ Residence”; and Daniel J. Tichenor, “Membership and American Social Contracts: A Response to Hiroshi Motomura,” in *Immigration and Citizenship in the 21st Century*, ed. Noah M.J. Pickus (New York: Rowman & Littlefield, 1998). For a comprehensive treatment of the evolution of American citizenship and voting rights, see Rogers Smith, *Civic Ideals. Conflicting Visions of Citizenship in US History* (New Haven, Conn.: Yale University Press, 1999).

24. Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* (Durham, N.C.: Duke University Press, 1999).

25. Arendt, Hannah, *The Origins of Totalitarianism* (New York: Harcourt Inc., 1968 [1951]), p. 177. My emphasis.

26. In this essay, I do not address the question of how such rights claims may be justified and on which philosophical grounds we can defend “human rights.” I have undertaken

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this attempt in my American Philosophical Association Presidential Address, "Another Universalism: On the Unity and Diversity of Human Rights," *Proceedings and Addresses of the American Philosophical Association* (November 2007). Thanks to the student commentators, Desirée Weber and Carly Martin, at the Macalester Conference for bringing this issue to my attention.

27. Arendt, pp. 296–297.

28. *Ibid.*, p. 301.

29. For a more extensive treatment of the "human right to membership," see Benhabib, *The Rights of Others*, p. 140 ff.