

## CONCLUSION

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# Crossing Borders of States and Border-Crossing of Rights

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Once the most intriguing scholarly question in the field of political science was: what is the state? The usual answer would begin by referring to territory, borders, sovereignty, and a nation. In time the inquiry became more complex, leading to questions along the lines of: What challenges the state? How does it do so, and why? One of the responses to these questions relates to the consequences of the increasing mobility of people crossing the borders of states—both literally and metaphorically. These consequences include but are not limited to people's access to rights and status as border-crossing noncitizens. The central normative and empirical query of this volume is in this contested domain. On the one hand, the contemporary Western nation-state preserves legally its sovereign right to determine who has the right to cross its borders as well as to exercise the political, social, and economic rights within its borders. On the other hand, rising levels of migration and increasing numbers and diversity of noncitizens within the borders of the nation-state challenge the extent to which the state may strike a balance between providing liberal, universally applicable rights and preserving its inherently distinctive identity and sovereignty.

This volume is about *paradoxes* and *limits*. The central paradox addressed by all the authors is that of promoting universal human rights while at the same time maintaining the nation-state's sovereignty and self-determination over decisions concerning the acquisition of citizenship and access to rights within its territory. All the contributions in this volume address the limits of the different concepts and processes put to test by this paradox. The contributions differ, albeit with nuances, in their disciplinary references along

legal (Webber, Galloway), social-political (Schmidtke, Koopmans et al., Kastoryano, Gerdes and Faist, Geddes, Kruse, Böcker and Thränhardt, and Ozcurumez), and theoretical/normative (Carens) lines. The findings of each chapter, however, confirm the centrality and significance of the nation-state across all European and North American cases studied in this volume for all processes and actors involved in governing migration, integration, and citizenship.

### **On Paradoxes: Nation-States and Universal Rights**

In all three parts, the contributors tackle the question of whether (and if so, to what extent) the nation-state has let go its exclusive reign over rights regarding crossing its borders in general and the border-crossing rights of noncitizens in particular. A central issue of consensus among all contributors is that the nation-state is alive and well with respect to defending, sustaining, and expanding its own interpretation of inclusion and exclusion.

The chapters in the first part, “The Normative Debate on the ‘Liberal Paradox’: Of States, Rights, and Social Closure,” focus on the theoretical debates on borders, territoriality, and rights of noncitizens. Informed by political theory, Carens contests the idea that immigration per se engenders a “liberal paradox”—a tension between “the ideal of universal human rights and the ideal of democratic self-determination.” He suggests that such a paradox is similar to the “democratic paradox” on legitimacy, which is certainly not alien to any democratic polity that aims to balance the will of the people and independent standards of morality. Carens concludes, however, that increased levels of immigration present us with different dimensions of this paradox in relation to rights concerning membership to the polity. In a similar vein, Galloway, Webber, and Schmidtke address the normative overtones of this paradox with diverse empirical references. Galloway examines the domestic legal decision-making process, mainly the role of the courts, to analyze evidence from the justice system in addressing disputes over the rights and status of noncitizens. He shows that courts exercise differentiated treatment toward noncitizens in upholding the rule of law in the name of the nation-state. Webber supports these claims through his research on the treatment of asylum seekers in Australia. The main policy actor in Webber’s case is the executive authority that uses both the post–September 11 discourse of securitization and the rule of law to solidify the primacy of national sovereignty in the domain of asylum policy. Likewise, Schmidtke analyzes the elite and media discourses during the 1990s and 2000s in Germany to investigate the role of the borders in determining the parameters of social inclusion and exclusion in debates over the latest changes in citizenship law in

Germany. He also concludes that borders are becoming even more relevant in terms of defining states' territory and of delineating limits of belonging to a community.

The contributions under the second part, "Limits of Governing Migration and Citizenship," affirm the centrality of the nation-state mainly by focusing on the domestic transformation of citizenship and immigration regimes through an examination of a wide array of actors and debates. Geddes and Faist trace the episodes of reform initiatives and their subsequent content in German citizenship law to also conclude that, though the terms have changed to a debate between "liberal democrats and statist communitarians," the nation-state is alive and well as it is reflected in all parliamentary debates and official documents. Kruse concurs with a detailed analysis of the debates on the transformation of German immigration law that the debate in Germany remains one about the German national identity and nation-state among political parties across the political spectrum. From another standpoint, Böcker and Thränhardt compare Dutch and German naturalization and citizenship regimes to conclude that, notwithstanding differences with respect to policies about and consequences of naturalization in these countries, these cases resemble each other closely in terms of highlighting national identity and belonging for integration. Kastoryano observes a variety of discourses of "transnational nationalism" voiced by groups to raise demands and to mobilize in Western nation-states. She claims that diaspora groups affirm their cohesion only by reference to distinctiveness of the identity of their country of origin. Hence, while it transcends the borders of one nation-state while it raises demands for an expansion of rights, such transnationalism reaffirms the imagined borders of another.

The chapters in the third part, "Toward a Postnational Constellation? Politics and Policy Formation in Europe," examine the relative significance of the European and national-level policy regimes, debates, and actors. Geddes is intrigued by the "bounded space" created and re-created in the European Union in relation to borders, territory, territoriality, and international immigration. His conclusion after studying the European migration regime is that the emerging regime is "profoundly territorial" with respect to its organizational and institutional dynamics. Koopmans et al. examine the postnational, transnational, and supranational claims on immigration and integration from a cross-national comparative perspective for the period from the 1990s to the early 2000s. They conclude that while the "postnational" and "supranational" levels become increasingly relevant for immigration policy and politics, the national level still remains the central locus for integration policy. Ozcurumez analyzes the relevance of openings at the European level by focusing on nationally organized collective action by immigrants in France and

Germany as they aim to participate in European-level policy process. She concludes that the national level remains central for participation strategies of main stakeholders in an emerging European immigration regime for immigration-related claims. The general findings of this volume point to mounting evidence for the nation-state's almost exclusive hold on sovereignty in an environment of regional and global pressures for expansion of rights of noncitizens while governing migration.

### **On Limits of Citizenship Regimes, Equality, and Supranational Participation**

The contributions recapitulate how the nation-state remains relevant and perhaps even central in determining, drawing, and preserving its own boundaries of territory and belonging along three dimensions: citizenship regimes, equality of rights, and levels for policy process. First, in terms of *limits* of citizenship regimes, all contributions, to one degree or another, agree that citizenship regimes undergo a historic transformation mainly with respect to acquisition of citizenship increasingly through the territorially based *ius soli* rather than the blood-based *ius sanguinis*. However, nation-states *do* restrict the potential expansionary implications of such change by facilitating acquisition of citizenship—although generally through constraining dual citizenship or introducing challenging integration schemes. By doing so, states assert their control over membership rules and access to rights. Moreover, any international-level institutional arrangement for transnational membership is at best in its incipient stages. The underdeveloped nature of these arrangements only reinforces the nation-state's grasp and affirms the lack of any credible alternative to the nation-state's centrality in governing migration and creating and sustaining membership to a polity.

Second, in terms of the *limits* of equality across citizens and noncitizens, all contributions suggest that nation-states struggle with the idea of granting political, social, and economic rights to noncitizens against a background of protracted opposition against immigration. The nation-state, according to these authors, still upholds the prerequisites of national democracy and the contours of its welfare state confined mainly to its citizens. At the same time, in the face of nationalistic mobilization of citizens voicing security concerns, the nation-state continues to take action in constraining the rights of noncitizens. Accordingly, applying the principle of equality of rights for all residents in a community remains at the discretion of the states.

Third, in terms of the *limits* of levels of policy process, most contributions support the argument that Europeanization of immigration regimes *does*

matter for European cases with respect to moving the debates and actors beyond the nation-state. At the same time, they endorse the view that the European level is neither the most noteworthy catalyst behind transformation of citizenship and immigration regimes nor the most pertinent level for policy process as of yet. Therefore, the conclusion remains that as states engage in determining the boundaries of rights, the parameters of social closure rest within their own mainly domestic realm of power while they are continuously contested by regional as well as global dynamics.

### **Before the End**

The increasing mobility of people for business, family, economic, political, social, and a multitude of other reasons is an incontestable reality. The modern nation-state faces a strategic, moral, and political dilemma when encountering rights of noncitizens: whether to uphold the fundamental principles of liberal democracy so as to protect individuals' rights and ensure equality, or to preserve its territorial and national unity, security, and economic competitiveness. The contributions to this volume individually and collectively challenge the commonplace assertion that governing migration becomes global as transnational cooperation proceeds. On the contrary, the contributors insist on the centrality of the nation-state vis-à-vis a major challenge to its centuries-old reign over self-determination and territoriality: granting rights and membership to noncitizens. The volume raises deeper questions for further research on how attempts at resolving the paradox unfold and proliferate, and how the challenges to testing the boundaries of states, rights, and social closure remain ever more contested across time and space.