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The Problem of Defining Borders in Western Democracies

By Katharine Betts¹

What are National Borders?

This question is another way of asking: "what is a state?". In Weber's definition it is "an organization which successfully upholds a claim to binding rule-making over a territory, by virtue of commanding a monopoly of the legitimate use of force."² A working definition of a nation state (the particular kind of state that has developed over the last couple of hundred years) could run like this: a nation state is a state comprising both a group of people and a territory. The people have some sense of belonging to each other and are governed by a unified political system which defends the territorial borders and decides who is and who is not a member of the national political community. The sense of belonging may be based on real or imagined ethnic links or on shared political ideals.

Because a modern nation is both a set of people and a territory, we have two kinds of national borders: the territorial borders defining the physical domain of a state, and the social or political borders defining its members. But, while the nation state is both a territorial organization and a membership organization,³ territory and membership do not always coincide completely. At any one time some people who are members may be outside the territorial borders (indeed some may be born outside them) while others who are not members may be inside the territorial borders, as temporary migrants, tourists, permanent (but unnaturalized) migrants, or as illegals.

Some writers claim that the nation state is a thing of the past. European nations developed out of feudal empires and scattered peasant societies in response to the demands of industry and the need for communication between different groups and regions, as well as the political will of nation-builders determined to create a common culture and a common sense of identity which submerged parochial feelings.⁴ Later on, nations developed in other areas in response to colonialism. But the argument is now put that these days are gone. The time when nations shaped the economic, cultural and political institutions which structure the lives of their members is past. Today we have global capitalism shaping our economic circumstances while culture is

pulled between a homogenized Hollywood product at one pole and scraps of ethnic groups at the other. Squeezed between the two forces of transnational capital and parochial fragmentation, the nation has lost most of its economic and cultural functions.⁵ In this "post-national"⁶ or "postmodern"⁷ view the nation state is now no more than a hollow shell.⁸

There is force in the argument that the economic and cultural powers of nation states are now more limited than they were. But their political role is still crucial and their economic functions have not all been shed. This is why the two sets of borders are important.

The basic political institution for providing internal and external security is the state. It also manages access to scarce resources. The state claims jurisdiction over the natural and built environment within its territory, provides or fails to provide for public safety and the rule of law, and mediates the production and distribution of wealth. Potent though they be, transnational corporations do not subsidize schools and hospitals, nor do they pay old-age pensions. The nation state is our most powerful political institution: it is the only effective means through which we can work to protect the local environment from human folly and to preserve a social structure that supports the rights of citizens.

Political institutions do still matter. For example, some authors who are keen to pronounce the nation state obsolete also argue strongly that Australia should protect people's rights. Racism and sexism must be eliminated. The needs of groups that have suffered discrimination and marginalization must be met. The principle of cultural self-determination must be upheld. Labor-market segmentation must be overcome. Above all, "the history of white racism and genocide against the Aborigines must become a central theme of education and public debate."⁹ What institution is to protect these rights and implement these policies? The answer is unclear. They simply tell us that strategies "must be based on an attempt to redefine the basis of social organization, and to move away from a political emphasis on the nation-state."¹⁰

"When we brush the postmodernists'

obscurantist camouflage aside and look at the stage again, the nation state is still necessary..."

Naive utopians of the "wouldn't it be nice" school of thought¹¹ may imagine that if there were no more nations there would be no more force. They are dangerously unhelpful, but at least they give lip-service to humane ideals. Some of the postmodern anti-nationalists do not. They delight in proclaiming the death of the author,¹² and of the subject,¹³ and of truth¹⁴ and of meaning. They have rediscovered Nietzsche and de Sade, and substituted the "limit experience" for humanism.¹⁵ For them the Enlightenment has retired from the stage,¹⁶ drawing nations and their jurisdictions with it.

But, as postmodernists amuse themselves in their playful fashion with nihilistic enthusiasms, there is a danger that some nations will implode. As states lose their monopoly over the legitimate use of force, a "free market" in violence gathers pace. In the face of demographic and other pressures, anarchy may be gaining a broader sway. (Kaplan documents this threat in "The Coming Anarchy".¹⁷) Utopian and postmodern anti-nationalists are not playing a "knowledge game"¹⁸ that has much relevance to the victims of the breakdown of central authority in Afghanistan, Angola, Haiti, Iraq, Mozambique, Burma, Sudan, Zaire, Rwanda, Burundi, Georgia, Liberia, and Tajikistan.¹⁹

When we brush the postmodernists' obscurantist camouflage aside and look at the stage again, the nation state is still necessary²⁰ and, where it survives in a reasonably civilized form, it is grappling with real problems. These are modern problems which, as the utopians' appeals for rights and justice demonstrate, come straight from the Enlightenment.

Territorial jurisdictions cover all of the surface of the Earth which can be inhabited. The world is now filled up with states that are relatively strong.²¹ The modern state claims to rule throughout its territory, and movement across its borders engages its vital interests.²² Brubaker points out that the state could be tempted to make its task of government easier by expelling unwanted people — the malcontents, the poor and the sick — beyond its borders. But it cannot do this easily because the world is now filled up with territorial states, each butting up to the next with no buffer areas of "nonstate, semistate, pseudostate" zones.²³ As the expulsion of the ethnic Chinese from Vietnam in the late 1970s and the Mariel boatlift in 1980 show, this fact has not always deterred states from expulsions. Nevertheless, states that wish to live with their neighbors in an orderly way and that want to trade and to facilitate legitimate travel cannot behave in this fashion.²⁴

Official expulsions and dumping of unwanted people disrupt international relations but, as we also

know, much independent movement of individuals and families occurs, irrespective of whether it is encouraged by countries of origin or not. Conditions between nations are unequal. Some states have more resources at their disposal than others, and some are more stressed by poverty, population growth and internal political conflict. The division is most marked between the Western developed nations and the under-developed nations of the Third World. Today many inhabitants of poor nations see a personal solution to their problems in migration to the West, to Europe, North America, or Australia. This is especially true for the better-off members of developing countries, the people who have the means to travel.

The question of who should belong to which territory and to which polity is acquiring a new sharpness that it lacked in 1900 when there were still fewer than two billion people on Earth. As numbers grow towards ten, eleven, or twelve billion by the end of the next century this question will become even more acute.

Citizenship as a Principle of Membership

Nations are defined by their political and territorial borders. Quite apart from the risk of civil unrest, these definitions are facing new challenges, challenges which stem not from disorder and disregard for the law but from the very same sources as the law itself. It is these challenges rather than the anarchy which Kaplan describes which concern this paper.

While this paper is focussed on the political borders that establish membership, the questions of political and territorial borders are, as we will see, closely linked. In Western democracies the community of members within the social borders are known as citizens. There are other kinds of members of other kinds of states. Peasants, serfs and vassals are members of feudal kingdoms while dictatorships and empires contain subjects, slaves and indentured servants. But democracies have citizens. Citizens are members who have certain rights and who participate in the government of the polity to which they belong. This means that when we are talking about the political borders defining membership of Western democracies, we are talking about citizenship.

Despite this, most of the scholarly writing about citizenship concentrates on citizenship as a status embodying universalistic rights (civil, political and social) rather than as a status signifying membership of a polity.²⁵ Authors consider the claims that members may make and neglect the parallel question of who may claim to be a member. While such a focus limits this work, the work is nonetheless useful. From it we can see that, as citizenship develops, rights and duties are set down in written rules and procedures. These rules and procedures are held to apply to all citizens regardless of their personal attributes or connections. Citizens should not be denied a fair trial because of their race, or be

barred from voting because of their sex, or be given a position to which they were not entitled because they were a friend of a government official. Once citizenship is fully developed, the rule of law is meant to replace the politics of privilege and patronage.

The abstract noun *universalism* describes the rights that flow to individuals from the impartial rule of laws and written procedures, while giving or withholding favors on the basis of an applicants' personal qualities, be it their ethnic background, gender or family connections, is *particularism*. The development of citizenship is a process by which particularistic principles are gradually replaced by universalistic ones for an ever-widening proportion of the national population.²⁶ At the turn of the century the circle was growing to encompass first all adult men and then all adult women, and now we are talking of children's rights. Some philosophers try to extend the idea of universal rights to animals and areas of wilderness.

At the level of rhetoric, universalism is showing a universalizing trend. This tendency is such that many statements about rights (including international declarations issued by the United Nations and statements made by church groups) try to offer rights to people who are not members of democracies and to people who are stateless.²⁷ The universalizing language of citizenship is now being applied beyond national borders. Thus it has been argued that Australia's "humanitarian values and international stances on human rights demand" that we welcome boat people fleeing poverty and homelessness, irrespective of their refugee status,²⁸ or that "in Catholic social teaching ... there is no warrant for a doctrine of absolute rights to borders ... Australians belong to one human family or 'global village,' and as such have mutual obligations to promote participation and development rights of all people around the world, irrespective of national boundaries,"²⁹ or that there is a "right to asylum, the right to settle in a new country."³⁰

"Universalist rights only exist because a community of citizens observes mutual obligations."

To live in a safe world where every human being, indeed every living creature, got a fair chance would indeed be paradise. But rights cannot subsist on good intentions alone. Universalistic rights only exist because a community of citizens observes mutual obligations. Some of these obligations do not necessarily feel onerous. To protect civil rights, members of a community must refrain from taking the law into their own hands. To protect political rights they should avoid terrorizing voters or stacking ballot boxes. But, if social rights are to be protected, citizens must pay the taxes which support the community and avoid making

fraudulent claims on the common pool of resources. They must do this if public goods are to be funded and welfare benefits paid to people who meet established criteria of need.

Social rights to the human dignity provided by a decent standard of living are expensive. But civil and political rights can be costly too. Most of us may, at this moment, have little desire to terrorize our neighbors but we must still pay for the law enforcement that controls the few who are moved in this way. And, the more we economize on social rights, the more we may have to pay to protect civil and political rights. (As we have seen, in some areas the will to protect civil and political rights has fractured and the price to secure them cannot be paid. In such circumstances random violence and systematic murder become commonplace.)

The Dilemma of the Liberal Democracies

Democracies, polities made up of citizens, are based on a network of rights and obligations which apply in a non-discriminatory way to all members. They do not work in a particularistic fashion. But here we have the dilemma. Like other states, democracies consist of a bounded community of members. And these boundaries, or borders, depend on accidents of birth, and on whether outsiders can persuade immigration and naturalization authorities to allow them to become insiders. Biological chance or migration politics determine who is recruited into the national citizenship club: universalism on the inside is regulated by particularism on the outside. (Indeed in Australia's case this often seems a good old-fashioned particularism where money and nepotism are actually written into the immigration rules.) There has been no universalistic right to immigrate. Governments decide who may or may not come in.³¹

The American scholar, Peter Schuck, is one of the few to have analyzed the contradiction between the principles governing the claims that citizens can make and the principles governing who may claim to be a citizen. He writes that prior to the 1980s the courts in the United States had been content to accept the decisions of Congress and the bureaucracy over immigration decisions. The Constitution stopped "at the water's edge" or, as one Supreme Court judgement put it, "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."³² This uncovers the heart of the liberal democracies' dilemma. When it comes to boundary maintenance they do not, and cannot, practice what they preach.

Without boundaries and control over new members the people who nominally constitute a polity will feel less commitment to each other. People who feel that the network of rights and obligations that they have established is being turned into a commons will

withdraw from the implicit contract that they had formerly made with fellow members. They may even demand more rights, in order to obtain a maximum share of a diminishing set of public goods, while observing fewer duties and obligations. For example, Gary Freeman argues that welfare policies in Europe are becoming "Americanized" in the face of immigration. Social rights depend on boundary maintenance because they involve the redistribution of resources to members. A continuing inflow of new members erodes support for social policies, and politics take an ugly turn in which welfare is seen as something paid for by "us" for "them".³³

Democracies pride themselves on the universalistic rights which they offer to their members but they cannot practice what they preach when it comes to maintaining their membership and territorial borders. It is this that Robert Birrell has called the dilemma of the liberal democracies.³⁴

"A continuing inflow of new members erodes support for social policies, and politics takes an ugly turn..."

Universalism is a social product. Biology may help program us to care for our near kin, but complex social arrangements are required if we are to set up institutions which enable us to care for fellow members of our community, people who are personally unknown to us. The modern nation state is such a set of institutions and it and they depend on borders.

When we talk of rights it is easy for us to think only of ethics and the moral principles that we want these rights to promote. We may forget that the rights depend, not on abstract notions alone, but on the willingness of a set of individuals to meet obligations to the group to which they belong. If the group ceases to exist because its boundaries have dissolved, the obligations will not be met and the rights will dissolve too. We will be fortunate if such a dissolution stops with a middle class tax revolt and the affluent few growing accustomed to beggars in the street. It is easy to forget that the decent standards of the welfare state, its internal universalism, depend on external particularism.

"Can a just and compassionate community survive without the administrative authority to select from potential immigrants?"

Citizenship is based on universalistic principles while exclusion cannot find a logical basis within these

universalistic principles. Exclusion is particularistic. The potential for conflict between internal universalism and external particularism has grown in the West over the last two hundred years as universalistic principles expanded within national communities. But this potential conflict has only recently become obvious. When the new applicant for membership was beyond the water's edge it was easy to ignore the contradiction between the two sets of standards. But nowadays many applicants have landed and the contradiction has been brought home to us on shore with a rush.

On-shore Migration: Particularism and Universalism Meet

Western democracies, including Australia, are experiencing pressure from foreigners, most already on-shore, who use local legal procedures to argue their case to stay on. This pressure has developed because universalistic rights embodied in the concept of citizenship have been extended, often by default, to allow foreigners to use domestic legal procedures to put their case to immigrate.

We can see this development in Australia. In the late 1970s and early 1980s changes in administrative law were introduced to help protect the rights of Australian citizens, and permanent residents, who had been unjustly treated by government departments. But, before long, the new procedures were being used by foreign visitors who had been refused permanent visas but who wanted to stay on. The fact that they were already on Australian soil gave them access to the courts, and the new administrative law meant that this access was of use to them. During the 1980s increasing numbers of disappointed applicants appealed to the law and found that they were likely to receive a judgement that was in their favor and against the Department of Immigration.³⁵ Once outsiders can cross the territorial border they can gain access to the courts (or other review tribunals) and are in a position to attempt to cross the membership border.

This is the form that the dilemma of the liberal democracies has taken for us. Can a just and compassionate community survive without the administrative authority to select from potential immigrants, excluding some (or all) according to its own interests? But can a community remain just and compassionate if it practices exclusion with no right of appeal?

Governments traditionally deny that there is any "right to immigrate" and assert that the control of entry is a matter of national sovereignty: for example the first of the nine immigration principles that the Minister, Michael MacKellar, announced in parliament in June 1978 was this:

It is fundamental to national sovereignty that the Australian Government alone should determine who will be admitted to Australia. No person

*other than an Australian citizen, or a constituent member of the Australian community, has a basic right to enter Australia.*³⁶

But circumstances have changed. We are now in a second wave of post-war migration and official denials of a “right to immigrate” may have less substance now.

There have been two waves of post-war migration to the more-developed countries, one from just after the war to 1974, the other from 1974 to the present. The first wave was dominated by pull factors and often involved movement from poorer Western nations (in Eastern and Southern Europe) to more affluent ones. In 1974 the oil shock and world recession led many migrant receiving nations to reassess their policies. For most of them, 1974 marked the end of immigration dominated by a need for workers, or for people to augment the demographic make-up of a country. But migration did not stop; rather a second wave developed which is more often driven by supply than by demand.³⁷

The new immigrants often come from new source countries. As Moslems and Africans move into Western Europe, Latin Americans into the United States, and Asians into Australia, the second wave of immigrants are more visible than the first. They are also likely to be (or be perceived to be) more distant in cultural terms from the receiving countries than the people who came before.

Immigration driven by push factors is, of its nature, harder to control than immigration based on pull factors originating within the host country. But the shift in emphasis from pull to push is compounded by changes in other factors. These may be called “intervening variables,” variables affecting the facility with which people can move.³⁸ They include personal networks. Most people have always preferred to move to areas where there were friends and relatives to ease the adjustment. But personal networks are now being augmented by the communications revolution (telephones, television, movies and radio) and by the revolution in transportation.

“...rational argument cannot change the circumstances in which internal universalism depends on external particularism.”

The communications revolution also means that people’s knowledge about the West has grown and, with the transport revolution, the relative cost of travel has dropped enormously while its convenience has increased. At the same time, Western societies are eager to encourage tourists and overseas students. All of these factors combine to convert the winding pathways of personal networks into broad highways.³⁹ But, while many features of the second wave seem new, ideas

about rights present the most striking difference between the migration of the 1950s and that of the 1990s. The rights revolution can provide an additional lane to this highway. This revolution is not simply a question of increased sensitivity to individual rights. It does not just flow from our troubled consciences and their insistent demands, but from the fact that the demands are being made on shore and that the default position is that would-be migrants have a right to make these demands.

During the second wave, growing numbers of people anxious to join, or at least reside in, Western countries found their way to places where they wished to live and then applied for “on-shore” migration. If they were unsuccessful many appealed to the law. Most democracies have allowed foreigners to do this; to close the courts to foreigners seems harsh and arbitrary to citizens long accustomed to the protection afforded by their own civil rights. How could a people accustomed to justice use unjust methods to protect their borders?

To prevent this we have to change the default position and openly acknowledge that we run two sets of standards. As it is, on-shore applicants can appeal against decisions to exclude them, extend their time of residence, and possibly remain indefinitely,⁴⁰ as indeed the current wave of Chinese students and other asylum-seekers have done.⁴¹ True, the problem is less pressing at this moment in Australia than it is in the United States and Western Europe but, as our recent experience shows, the potential is there for it to grow.

Conclusion

Schuck argues that citizenship's first purpose is to provide a way of answering the question of who is a member of a particular community and who is not. It provides a way of defining membership for nations which need an answer to the question of “who belongs?” which is based not on “divine revelation or settled tradition or...some immanent, organic social principle” but on rational argument.⁴²

But rational argument cannot change the circumstances in which internal universalism depends on external particularism. This is an irresolvable problem. We are of course confronted by many such problems. Before the long economic boom of the post-war years political ideology sensitized us to the existence of irresolvable problems. Affluence seemed to render such problems obsolete. The tougher political ideologies of the past were abandoned and, for most educated people, were replaced by a rather incoherent set of ideas that we can call *liberal cosmopolitanism*.. Treat others decently and they will repay your kindness. There are plenty of resources for all. And, if difficulties seem to persist, we probably have a communication problem.⁴³ These ideas provide an unhelpful guide to effective policies for settling disputes within national borders and they are a hopelessly inadequate basis for immigration policy.

In fact the problem of on-shore migration is being

tackled in different countries and in different ways. The liberal democracies are trying to find workable policies to protect their membership borders. These policies include more stringent efforts to protect their territorial borders from bogus “temporary” movement as well as attempts to deny foreigners some of the civil rights accorded to citizens when foreigners attempt to use these rights to sue for residence.⁴⁴

Pragmatic responses to difficult circumstances are being developed. But a naive belief that rights can be drawn on as some indefinite moral resource irrespective of a common commitment to honor obligations makes the task difficult. Walzer tells us that: “To tear down the walls of the state is not...to create a world without walls, but rather to create a thousand petty fortresses”.⁴⁵ Such an outcome would not advance the interests of those who had formally lived within the territorial borders of the more secure and affluent nation states. Nor would it help the less privileged. ■

NOTES

¹ I would like to acknowledge the help that Robert Birrell has provided through his contribution to an earlier draft of this paper.

² Quoted in M. Mann (Ed.), *MacMillan Student Encyclopedia of Sociology*, MacMillan, London, 1983, p. 373.

³ R. Brubaker, *Citizenship and Nationhood in France and Germany*, Harvard University Press, Cambridge, MA, 1992, p. 62.

⁴ See D. Schnapper, “Ethnies et nations”, *Cahiers de recherche sociologique*, vol. 20, no. 1993, pp. 164-5.

⁵ Thus for writers like Castles et al. contemporary nationalism is now empty of content. S. Castles, M. Kalantzis, B. Cope and M. Morrissey, *Mistaken Identity*, Pluto Press, Sydney, 1990, pp. 139-141.

⁶ Castles et al., op. cit., p. 106.

⁷ See “Australia as a postmodern archetype”, in A. Milner, *Contemporary Cultural Theory: An Introduction*, Allen and Unwin, Sydney, 1991, pp. 116-117.

⁸ Castles et al. applaud these developments: “...assimilating nationalism is not only a repugnant alternative for its arrogant and insensitive obliteration of real differences in history and experience; it is also an almost impossible alternative given the dual process of world structural-cultural unification and the growing significance of sub-cultural identification and forms of politics”. p. 137 “Human identity must become transnational”. p. 13.

For an author who describes the phenomena in a more critical light see J. Kurth, “The post-modern state”, *The National Interest*, vol. 28, no. Summer, 1992, pp. 26-35.

⁹ Castles et al., op. cit., p. 147.

¹⁰ Castles et al., op. cit., p. 148.

¹¹ Wilton and Bosworth think “it would be nice” if a “rich and relatively safe Australia” could proudly declare that the nation was “little more than a mere geographic expression”. See J. Wilton and R. Bosworth, *Old Worlds and New Australia: The Post-War Migrant Experience*, Penguin, Melbourne, 1984, p. 188.

¹² Roland Barthes, quoted in T. Eagleton, *Literary Theory: An Introduction*, Basil Blackwell, Oxford, 1983, p. 138.

¹³ See E. Graham, J. Doherty and M. Malek, “Introduction: the context and language of postmodernism”, in J. Doherty, E. Graham and M. Malek (Ed.), *Postmodernism and the Social Sciences*, Macmillan, London, 1992, p. 15; M. Foucault, *The Order of Things: An Archaeology of the Human Sciences*, Tavistock, London, 1970, p. 387; and A. B. Seligman, “Towards a reinterpretation of modernity”, in B. S. Turner (Ed.), *Theories of Modernity and Postmodernity*, Sage, London, 1990, p. 119.

¹⁴ See J.-F. Lyotard, “The postmodern condition: a report on knowledge”, in J. Farganis (Ed.), *Readings in Social Theory: The Classic Tradition to Post-Modernism*, McGraw-Hill, New York, 1993, p. 379.

¹⁵ For an outline of Foucault’s anti-humanism and his preoccupation with sado-masochism and death see J. Miller, *The Passion of Michel Foucault*, Flamingo (Harper Collins), London, 1994.

¹⁶ See D. Ashley, “Habermas and ‘the project of modernity’”, in B. S. Turner (Ed.), *Theories of Modernity and Postmodernity*, Sage, London, 1990, pp. 89-90.

¹⁷ See R. Kaplan, “The coming anarchy”, *Atlantic Monthly*, 1994. See also Dan Stein, address to the National War College at Fort McNair in the United States, August 24, 1994. Stein is the executive director of the Federation for American Immigration Reform.

¹⁸ This is Lyotard’s term (derived from Wittgenstein’s concept of language games) for empirical investigation. As the most prominent postmodernist epistemologist Lyotard appears to see all forms of inquiry as language games. He denies that empirically tested ideas have any particular claim to be preferred to others; attempts to argue against this position are denounced as terrorism. See Lyotard op. cit., pp. 377, 380, 375, 383, 384. However, his meaning is hard to discern. In company with other postmodernists, he considers obscurity a virtue. “The real political task today, at least in so far as it is also concerned with the cultural ... is to carry forward the resistance that writing offers to established thought, to what has already been done, to what everyone thinks, to what is well known, to what is widely recognized, to what is ‘readable’, to everything which can change its form and make itself acceptable to opinion in general ... The name most often given to this is ‘postmodernism’” (emphasis added). Lyotard quoted in B. Smart, “Modernity, postmodernity and the present”, in B. S. Turner (Ed.), *Theories of Modernity and Postmodernity*, Sage, London, 1990, p. 24.19.

¹⁹ Stein reports that the United Nations names 17 nations as “potential Somalias” facing collapse; 13, those named in the text, are already in crisis. The other four are Mexico, Egypt, Nigeria and Algeria. Stein, op. cit., p. 8.

²⁰ “Citizenship and nationhood are intensely contested issues in European politics, east and west. They are likely to remain so for the foreseeable future. Those who herald the emerging postnational age are too hasty in condemning the nation-state to the dustbin of history.” Brubaker, op. cit., p. 189. See also P. Brimelow, “Does the Nation-State exist?”, *The Social Contract*, vol. 3, no. 4, 1993, pp. 229-234.

²¹ Brubaker, op. cit., p. 26.

²² Brubacker, op. cit., p.24.

²³ Brubacker, op. cit., p. 26.

²⁴ See Brubacker, op. cit., p. 26. Skeldon's analysis of the Vietnamese exodus to Hong Kong confirms this. With the disintegration of the Soviet Union, Soviet aid to Vietnam ceased. The government then had a strong incentive to integrate its economy with the West, especially the economies of its fast-growing Asian neighbors. While the exodus of discontented people had previously been in the regime's interests the new circumstances of the 1990s were different. "This thinking, although not articulated as explicitly, was surely behind the 'breakthrough' in the agreement of October 1991 between Vietnam, Hong Kong, and the British government, which accepted that all non-refugees should be returned to Vietnam." R. Skeldon, "Hong Kong's response to the Indochinese influx, 1975-93", *The Annals of the American Academy of Political and Social Science*, vol. 534, no. 1994, pp. 91-105, p. 102.

²⁵ Marshall's pioneering work set the tone for this. See T. H. Marshall, *Class, Citizenship and Social Development: Essays by T. H. Marshall*, Greenwood Press, Connecticut, 1964. See also J. M. Barbalet, *Citizenship*, Open University Press, Milton Keynes, 1988 and B. S. Turner, *Citizenship and Capitalism: the Debate over Reformism*, Allen and Unwin, Sydney, 1986. Brubaker is an exception here but he concentrates on citizenship as membership and does not examine the tensions between citizenship as membership and citizenship as a status embodying rights.

²⁶ Turner argues that the growth of universalistic rights spreads out in ever increasing waves to include women, children, embryos, animals, and nature herself See B. Turner, *Citizenship and Capitalism*, op. cit., pp. 91-2, 99-100, 127-30, 135-7.

²⁷ *A Review of Australia's Efforts to Promote and Protect Human Rights* (Joint Committee on Foreign Affairs, Defence and Trade), AGPS, Canberra, 1992, lists 18 UN conventions concerning human rights that Australia has ratified, as a whole or in part. See pp. 15-16.

²⁸ See M. Einfeld, "Detention, Justice and Compassion" in M. Crock (Ed.) *Protection or Punishment*, The Federation Press, Annandale, 1993, pp. 45-46.

²⁹ Australian Catholic Social Justice Council, *I am a Stranger. Will you Welcome Me?* Collins Dove, Melbourne, 1991, p. 42.

³⁰ See Pope John Paul II, quoted in Evidence, Joint Standing Committee on Migration, Inquiry into Detention Practices, 1993, p. 781.

³¹ It can be argued, especially after the Migration Amendment Act of 1989, that this is not now the case. Selection policy is codified in rules and, in principle, arbitrary decision making no longer exists. But, while the rules are now written and, for the most part, written into regulations, they are not universalistic in the way that term is normally used. Selection criteria give people advantages for age, family connections and wealth in a way that we would not tolerate in other areas of policy. Many people who might otherwise satisfy these particularistic criteria are not accepted if targets have already been filled and the criteria are often changed.

³² P. H. Schuck, "Immigration law and the problem of community", in N. Glazer (Ed.), *Clamor at the Gates: The New American Immigration*, Institute for Contemporary Studies Press, San Francisco, 1985, p. 293 and note 16.

³³ G. Freeman, "Migration and the political economy of the welfare state", *The Annals of the American Academy of Political and Social Science*, vol. 485, no. May, 1986, pp. 51-63.

³⁴ See R. Birrell, "Problems of immigration control in liberal democracies: the Australian experience", in G. Freeman and J. Jupp (Ed.), *Nations of Immigrants: Australia, the United States, and International Migration*, Oxford University Press, Melbourne, 1992.

³⁵ See R. Birrell (1992), "Problems of immigration control in liberal democracies: the Australian experience" in G. Freeman and J. Jupp (Eds) *Nations of Immigrants*, Oxford University Press, Melbourne. The Department has changed its name on a number of occasions. For simplicity's sake the name "Department of Immigration" will be used here.

³⁶ Commonwealth Parliamentary Debates: House of Representatives, 7 June 1978, p. 3154.

³⁷ For Europe see S. Castles, *Here for Good: Western Europe's New Ethnic Minorities*, Pluto Press, London, 1984, p. 3. For Australia see K. Betts, *Ideology and Immigration: Australia 1976 to 1987*, Melbourne University Press, Melbourne, 1988, pp. 2-3, 120-121. Though 1965 is a more pivotal year there than 1974, for the USA see L. Bouvier, *Peaceful Invasions: Immigration and Changing America*, Center for Immigration Studies, Washington, pp. 18-19. For Canada see F. Hawkins, *Critical Years in Immigration: Canada and Australia Compared*, McGill-Queen's University Press, 1989, pp. 63-75.

³⁸ See P. Martin "The United States: benign neglect towards immigration", paper presented to the conference "Migration Policies - a Comparative Perspective", European Forum for Migration Studies, Bamberg, Germany, 25 to 28 November, 1993.

³⁹ See P. Martin, "Migration and trade: challenges for the 1990s", unpublished ms, University of California at Davis, February 1994.

⁴⁰ See Martin, 1994, op. cit.

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¹ See R. J. Birrell, "Implications of the November 1993 and January 1994 amnesties: how many will be affected and at what cost?", *People and Place*, vol. 2, no. 1, 1994, pp. 34-41.

⁴² Schuck, op. cit., p. 286.

⁴³ John Higley and his co-authors claim that the serious political ideas of liberalism and socialism were replaced by a rather meagre set of notions which "essentially teach that mere 'fair' treatment of individuals and groups is a major social panacea ...[and that] most persons and groups are inclined towards considerable altruism in bargaining with others". J. Higley, D. Deacon and D. Smart, *Elites in Australia*, Routledge and Kegan Paul, London, 1979, p. 174. See also G. L. Field and J. Higley, *Elitism*, Routledge and Kegan Paul, London, 1980, p. 52; J. Higley, G. L. Field and K. Grøholt, *Elite Structure and Ideology: A Theory with Applications to Norway*, Universitetsforlaget, Oslo and Columbia University Press, New York, 1976, pp. 280, 281-2, 358. They call these ideas "welfare statism". I find their analysis persuasive but prefer the term "liberal cosmopolitanism". K. Betts, *Ideology and Immigration: Australia 1976 to 1987*, Melbourne University Press, Melbourne, 1988, pp. 45-51.

⁴⁴ See G. Freeman, "Can liberal states control unwanted migration?", *The Annals of the American Academy of Political and Social Science*, vol. 534, no. 1994, pp. 17-30.

⁴⁵ M. Walzer, "The distribution of membership", in P. Brown and H. Shue (Ed.), *Boundaries: National Autonomy and Its Limits*, Rowman and Littlefield, Totowa, N. J., 1983, p. 9.