

Moral communities across the border: The particularism of law meets the universalism of ethics* †

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ABSTRACT

Much of the moral and political debate about the rights of migrants has concerned their rights once admitted to a state. Although these issues around the rights of migrants once within the destination country are obviously of great importance, in this chapter I want to focus on the border itself and on the border posts and camps that spring up along the world's frontiers. It is here that, in the name of national sovereignty and security, universal moral claims are disregarded and the rights derived from them glaringly ignored.

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1. INTRODUCTION

In his editor's introduction to Seyla Benhabib's essay *Another Cosmopolitanism* and the commentaries on it (BENHABIB 2006), Robert Post highlights the dilemma of reconciling the particularism of law with the universalism of ethics. Law in democratic societies, he explains, depends for its authority and effectiveness on being the outcome of the will of a particular people, and it obtains within a particular territory. This territory may be a single state, or a regional grouping of states such as the European Union (EU), but it has a defined boundary within which it is in force. Ethics, on the other hand, does not draw its authority from the consent of a particular population; rather, it stakes its claims in the name of all humankind, drawing its

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† Original editor's introductory note: "This is the latest available version of this chapter by the late Barbara Hudson. No doubt Barbara intended to make some minor changes following the workshop that was held at the Monash Prato Centre in Italy in May 2013, but we will never know what those changes would have been. The original text is published as originally submitted apart from minimal copy-editing and changes made in compliance with Barbara's handwritten notes that were found on a hard copy of this draft. Barbara's close colleague Susan Uttley-Evans has provided some additional notes of clarification where needed."

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authority from universal concepts, such as the moral equality of all people.

Post sees the development of the human rights conventions and agreements which have proliferated since the Nuremberg Trials as a way of reconciling the authority and enforceability of positive law and the claims entailed in humanity rather than citizenship. ‘Human rights’, he says, ‘aspire to embody universal ethical obligations within the form of law’ (POST 2006, 2). This chapter is concerned with this dilemma, advancing the claims of the *moral community*, by which is meant the community of people towards whom each of us has a moral responsibility. Although this responsibility might vary by degree according to the nature of relationships between persons, it is posited here that this responsibility extends in principle to *all the people of the world* (HUDSON, 2011).

While it can be argued that one may have a greater or perhaps more immediate responsibility towards family members, members of one’s own geographical or political community, or those with whom one has direct involvement in care and protection (for example, in the relationship between doctors and their patients), responsibility to the wider community is never absent. In large part, this responsibility beyond one’s immediate community of associates is recognized at a formal, international level through charters and treaties such as the Universal Declaration of Human Rights (UDHR) and the Geneva conventions on refugee status and on the treatment of prisoners of war and of the wounded and through the development of international law concerning human right abuses, particularly genocide and ‘crimes against humanity’. While the weaknesses and deficiencies in these provisions are well documented, such initiatives do form the core of what is recognized as international, or sometimes ‘cosmopolitan’, law which gives protection to individuals beyond the borders of citizenship and association and regulates relations between nation-states.¹

The tensions between positive law and ethics are evident in relation to migration. Migration policies and processes centre on questions of who can be admitted and who cannot; who can gain citizenship, permanent residency without citizenship, or only temporary visitation rights; who while in the territory is entitled to access services such as health care, employment, housing and welfare payments; and who may be deported and to where – all determinations that exemplify conflicting claims of those seeking admittance in the name of universal moral obligation. While there are pendulum swings in the balances struck between these conflicting claims in different times and locations, in the past 20 or so years there seems to be a clear trend

¹ Original editor’s note: “See Mitsilegas, this volume [Mitsilegas, 2015] for a discussion of the borders of law”.

towards greater emphasis on the claims of territorial law rather than universal ethics.

This chapter discusses ideas and theories of ethics and rights which are relevant to strengthening the moral claims of universal obligation, and it proposes some policy innovations that might support these claims. In contemporary debates, the idea of cosmopolitan law and ethics is usually attributed to Kant's (1795) *Perpetual Peace* essays. He elaborates three principles to prevent conflict in the world: first, that people need their 'republics'; second, that there should be international bodies to regulate relations between nation-states; and third, that there should be a cosmopolitan right of 'hospitality', by which he means the right of the stranger to be received without hostility in another's territory. These essays have received more attention from social, political and ethical theorists in recent years. Social and political writers such as Habermas (1998, 2003), Held (2001) and Benhabib (2004, 2006) have concentrated mainly on the first two principles, while moral philosophers and theorists, notably Bauman (1991, 1993) and Derrida (2000, 2001, 2003), have been mostly concerned with the idea of hospitality to the stranger. Although all three principles are relevant to the issue of the moral community and international borders, my primary interest is in this third principle (Hudson 2011).

Much of the moral and political debate about the rights of migrants has concerned their rights once admitted to a state. For example, Carens (1987), Bauböck (1994) and Benhabib (2004, 2006) argue for citizenship to be more easily available to those who are residents but not nationals so that they may enjoy political and civil rights as well as the right of residence. Another emerging idea is that of 'hereism' or 'presentism' – that these rights should be available to all those present in a territory, even if they are not intending to become citizens or long-term residents (DEMBOUR and KELLY 2011). Although these issues around the rights of migrants once within the destination country are obviously of great importance, in this chapter I want to focus on the border itself and on the border posts and camps that spring up along the world's frontiers. It is here that, in the name of national sovereignty and security, universal moral claims are disregarded, and the rights derived from them glaringly ignored.

2. (WHY) ARE BORDERS NECESSARY?

Our news media, as well as the academic literature, provide compelling evidence that even fundamental rights to life and to freedom from arbitrary arrest are not respected at international borders. It has been persuasively argued that international borders – as supported by the current policies of the most powerful nations and groups of nations – are expensive to maintain; do not achieve the objectives of migration control specified in policy and legislation; and, most importantly for the concerns of this chapter, do not respect the rights or protect the

lives and security of migrants who approach them (HAYTER, 2004, AAS, 2011; BELL, 2012). Whether the rights that should be protected include unconditional freedom of movement is arguable. The UDHR states that all should have the freedom to leave their territory of birth, and it would seem obvious that such a right cannot be exercised without a corresponding right to enter another's territory. Carens (1987, 2010) argues that a right to leave implies a right to enter – in other words, freedom of movement in both directions. However, Moellendorf (2002) claims that freedom to move across countries is implied by the principle of equality of opportunity, which he argues (contra RAWLS, 2001) should be upheld at both the international and the national levels.

Maintaining borders leads to arbitrary detention, leaves people to perish while attempting to cross borders and denies rights to food and shelter at borders; it has been claimed that these derelictions of the duty to uphold universal human rights amount to state crimes (GREWCOCK, 2007). Other writers have argued for borders to become more 'porous' (BENHABIB, 2004), with initial entry and access to citizenship made much easier than is the case at present in the affluent nations. Another argument against immigration controls is that proposed by Unger (2005), among others, who suggests that only if there were freedom of entry into the affluent nations could these states adopt trade and aid policies that were genuinely and significantly beneficial to the poor nations.

It is not difficult, therefore, to argue for the dismantling of international borders and the free movement of peoples within and between nations and regions. The 'no borders' position is, at the very least, an important critique of the present international regime of nation-states and immigration policies (HUDSON, 2007). Moreover, however much present borders may be regarded as inviolable and to be defended, they are in fact artificial: they do not necessarily follow 'natural' boundaries such as major rivers or mountain ranges; they change over time; and they very rarely contain within them people of common ethnicity, common history and common culture (DIENER and HAGEN 2010).

The first proposition of Kant's (1983) *Perpetual Peace* essays, however, is that people need their republics, and his second posits an organization of independent nation-states whose role is to regulate relations between nation-states whose role is to regulate relations between nations and to promote and uphold the *cosmopolitan right* of hospitality of all individuals. Kant advocates this organization of independent states in preference to anything approaching a world government: a world government would concentrate a monopoly of force into one governing body and would need to be so powerful to enforce its rule yet so remote from people's lives

and concerns as to be a tyranny, leaving people without voice or power.² In contemporary writing, this Kantian position has come to be known as *cosmopolitan federalism* and is supported by theorists such as Held (2001), Habermas (2003) and Benhabib (2004, 2006). While at times it may be difficult to tell whether writers actually support the need for the continued existence of single states or merely presuppose their continued existence, some important arguments are made in favour of retaining the model of separate states and, therefore, of borders.

Although Kant's (1983) *Perpetual Peace* essays concern the regulation of encounters between 'strangers' rather than rules within a single state, they are consistent with the principle of his (until recently) more familiar work on law and morality within a community: that the rules adopted should be those that could be agreed to by all reasonable persons.³ Law, for Kant and also for Habermas (1996), while it depends for its enforceability on the institutions and resources of the state, derives its moral authority from being the expression of a democratic will.

It is of course impossible to know how Kant would have regarded modern constitutional monarchy. However, his first principle lays down that the form of government for states should be republican: it should be government by the people, not by autocrats or oligarchs. Benhabib (2006) endorses this argument about the importance of the sovereign state as the forum for the formation and expression of the democratic will and follows Arendt's idea of the state as the context for the 'right to have rights' (see also BENHABIB, 2004). Arendt saw rights as necessarily exercised through citizenship, having witnessed the stripping away of the rights of Jewish people and other 'undesirables' through the progressive removal of the signifiers of citizenship by the Nazi regime in Germany. For Arendt (1968), the person 'naked in their humanity' has no way of exercising their rights and therefore effectively has no rights.⁴

The cosmopolitan federalism advocated by Kant, Habermas, Benhabib and other is, in fact, a federalism of states. Rights are made effective and enforced by states and are only binding on states that are signatories to the relevant agreements. In this regards, even democratic states might adopt supposedly universal rights if they are not called for by the democratic will

² Original editor's note: "See Barker, this volume [Barker, 2015], for proposals on alternative forms of networked governance."

³ Original editor's note: "Developed notably by Habermas (1984, 1987) and other adherents of discursive rationality to the principle that laws and rules should be those that actually are agreed to (HUDSON 2003, TORRESI, chapter 5) [TORRESI, 2015]".

⁴ Original editor's note: "Barbara indicated in her notes that she intended to strengthen the arguments from Arendt."

of their population: exemplary here are the continued use of the death penalty in the United States (US); and the desire in the United Kingdom (UK) to derogate from the European Convention on Human Rights and introduce a 'British Bill of Rights'.

Further, states may not protect the same rights for all their citizens. Even in the most rights-regarding, apparently socially progressive countries, such as those of Western Europe, North America and Australia, gender, sexuality and religious rights have been introduced slowly and patchily; and minority ethnic and cultural groups such as the Roma in the Eastern Europe, North Africans, Afro-Caribbean's, Indonesians and other visible minorities, continue to suffer discrimination and abuse. 'Majoritarian populism' is one of the main difficulties for democracy in protecting minorities: governments are dependent on electoral support to remain in power and are therefore often reluctant to support the rights of unpopular groups or to espouse unpopular causes. This tendency towards majoritarian populism is a principal reason why the idea of separate republics has to be complemented by the idea of the cosmopolitan rights of all individuals.

If the right to have rights is inextricably linked to the idea and possession of citizenship in a nation-state, then clearly those who are stateless, those who are outside the nations of which they are citizens, or those who are citizens of states that are not signatories to human rights treaties and conventions or that may be signatories but do not enforce the rights prescribed are in a perilous condition. It is this lack of protected rights for non-citizens and those whose governments do not afford protection of fundamental rights that the treaties, conventions and agreements were introduced to remedy.

Contemporary writers have developed this idea of a cosmopolitan law, which they argue should be the responsibility of the international institutions to foster and safeguard. The development and ratification by lawyers and politicians of conventions on the treatment of prisoners and civilians during war, the non-refoulement (non- return) of migrants to countries where they might be tortured or put to death, and the introduction of the International Criminal Court (ICC) are examples of the growth of cosmopolitan law, which expresses universal human rights but depends on the separateness of states for their enforcement. Armies and militias breach national sovereignty if they pursue their enemies across the border; killers, rapists, torturers and enslavers risk prosecution if they enter territories where treaties and conventions on human rights violations are respected and their breach may be punished. The particularism of law may indeed limit access to justice for non-citizens, but it can also limit the space in which those perpetrating tyranny, oppression and injustices may operate.

While the border defines and delimits the community *inside*, and thus also establishes the boundaries of its law and its power (that is, sovereignty), it is also thereby the signifier of where the *outside* begins. For those fleeing conflict, persecution or other causes of forced migration, reaching the border is an all-important goal. Refugees and migrants are escaping *from* as well as journeying *towards*. There has been general rejoicing at the dismantling of some borders, which prevented people from leaving their countries of origin, notably the borders between Hungary and Austria, which started the breakup of the Soviet bloc in the 1980s, culminating in the joyful celebrations at the dismantling of the Berlin Wall. But there have also been new and strengthened borders created with the dissolution of the former Union of Soviet Socialist Republics into separate states and the fracturing of former Yugoslavia into independent countries. The 'free world' of the West has been highly critical of states that try to prevent their citizens from leaving, but as more states have stopped keeping their citizens in, new barriers to leaving have been established, notably at the southern and eastern borders of the EU. The UK 'outsources' migration control processes to former colonial territories, such as India and Pakistan; the EU and Australia use boat patrols to prevent people coming across the Mediterranean and the seas dividing Australia from Indonesia and Other East Asian states, respectively.

While some outsourcing takes the form of establishing offices of the destination countries to process applications and is therefore aimed at keeping people from moving to particular countries or regions and while the boat patrols in Australia and the Mediterranean are largely focused near points of entry, some developments clearly prevent leaving rather than entry. Walled enclaves and guarded camps in North Africa where potential migrants can be detained graphically illustrate the way in which leaving, as well as arriving, is now being prevented. Rodier (2006), in a report to the European Parliament, described the arrest of 100 'prospective emigrants' from Senegal, noting the use of the term 'illegal emigration' as well as 'illegal immigration' (HUDSON, 2007).

The 'security wall' constructed along the dividing line between Israel and the West Bank territories is justified by Israel primarily as a defence against terrorist incursions. However, it also makes life within the West Bank more difficult (NEWMAN, 2010). The wall sets in concrete (literally) post-1967 'facts on the ground' by enclosing areas seized during the Arab-Israeli war and occupied by settlements since, and its route takes in many tracts of land that were formerly Palestinian orchards and olive groves. Furthermore, as well as restricting Palestinian entry into Israel, it makes leaving the West Bank territories for anywhere else more

difficult, regardless of whether travel is to access medical treatment, attend educational institutions, or engage in other activities of normal life.

If, with Post (2006), we see human rights – as doctrine and as law – as an attempt to transcribe the ethical ideal of a universal moral community where obligations to those outside our own communities of association are prescribed by a universal ethics, then it can reasonably be argued that states, and their borders, are necessary to provide the organization of authority and legitimacy for fundamental, universal human rights (cosmopolitan law) to be realized. The moral claims of universal ethics are, however, largely ignored and even denied by the present migration policies of the most powerful states. To the extent that borders have become less important and state sovereignty is being diminished by the forces of globalization, this is, as has by now been well documented, only to the advantage of the powerful and affluent, who can move their money, corporations and residences, and sell their skills, wherever they will make the best returns. For the disadvantaged, this liberalization creates more ‘human waste’ (BAUMAN 2004) of those who are unemployed, those whose work cannot provide a living for themselves and their families, or those who are caught up in conflicts for scarce resources or face persecution when areas are riven with inter-communal conflicts resulting from a sense of loss of tradition and authority. From the perspective of morality, borders may be necessary, but the primacy of national sovereignty and the anarchy of powerful corporations and social groups need to be curbed in the interest of fulfilling moral obligations to the powerless, the persecuted and the poor.

3. KEEPING PEOPLE IN THEIR PLACE: THE AGE OF THE CAMP.

Several writers have seen the EU as something of a ‘cosmopolitan laboratory’, where nationality and sovereignty are becoming pooled, or tamed, as Benhabib (2004, 2006) argues (and see BECK, 2006). At the time of writing, this is perhaps less marked, with not only ‘Eurosceptics’ in the UK but also citizens in formerly committed Europhile nations such as France and the Netherlands becoming somewhat disaffected, and public opinion in Germany becoming hostile towards paying what it sees as unreasonable amounts of money to support financially feckless Southern nations, particularly Greece, Cyprus and Italy. These and other recipient countries often seem to see the EU as necessary but as unsympathetic and as the merciless imposer of unsustainable and damaging austerity measures.

As more of the poorer Eastern European nations have joined the Union, there is growing resentment and calls for restrictions against ease of entry for nationals of these countries into the richer Northern and Western member states, and for no access to income

support, health care, education and housing benefits for those who do enter. Any support that exists for rescue measures for the debts of Greece, Spain, Portugal, Cyprus and Ireland is almost wholly expressed in terms of economic risks to the richer countries – unruly disintegration of the Euro currency, falling credit ratings and the increased pressure caused by the immigration of the jobless – and there is little evidence of feelings of responsibility to help fellow members of a moral community.

In Europe, as in the rest of the world, such ease of movement as there is for people between states is within regions; if those most in need of leaving try to cross regional boundaries, they face barriers, destitution, detention and deportation, which have been condemned by the United Nations (UN), human rights organizations and of course academics. Most migration takes place either within countries or between developing countries (O’Neil 2010). Within developing countries, industrialization and urbanization draw people from the countryside to the rapidly growing cities. The shantytowns of the southern hemisphere are full of people seeking a precarious living coming in from rural areas of their own and neighbouring countries, people who are moving from poorer to more affluent parts of their own countries and from poorer to more affluent neighbouring states. Refugees fleeing poverty, conflict, traditional areas cleared for mining, timber and ‘agribusiness’, climate change or natural disasters gather in shantytowns, slums and camps in ever-increasing numbers (DAVIS, 2006).

The tensions between, on the one hand, the idea of the state as a near-homogeneous community of territory, history, ethnicity and culture and, on the other hand, the realities of diversity and difference as borders change, people mix and move, and groups gain and lose power, have always produced conflicts and disparities between actual populations and those who are thought properly to belong to a state. These disparities have led to some of the most grotesque wars and atrocities, prompting responses to protect victims and to try to establish ‘never again’ conditions.

Adelman (1999) identifies three distinct responses to the successive waves of conflict and displacement that occurred during the twentieth century: population exchanges and border adjustments, international humanitarian protection, and regional solutions. The first of these refugee regimes emerged after the First World War in response to the disintegration of the Ottoman Empire, the displacement of people during the war and the redrawing of boundaries after the war. The second regime – international humanitarian aid – was primarily a response to the plight of Jewish and other groups targeted by the Nazi regime and to their consequent displacement after the Second World War. This phase saw the introduction of the Geneva

conventions, which recognized the rights of all people as individuals to protection and relief. The conventions first applied only to those affected by the Nazi regime, but under later protocols they were extended to cover refugees and displaced persons throughout the world. It is this second phase that can, perhaps, be seen as the beginning of a stream of cosmopolitan law, laying down a right of refuge and protection of life for all persons, regardless of statehood.

O'Neil gives three examples of when this humanitarian regime was in evidence in contexts other than that of people who suffered under the German Nazi regime: the flights from the oppressive and murderous regimes in Uganda (1972), in Chile (1973) and in Iran (1979). People fleeing these regimes were, she explains, responded to as persons in humanitarian need, rather than having to satisfy the conditions for refugee status under the UN Refugee Convention (O'NEIL, 2010, p. 44). However, from the 1980s, this response crumbled in the face of ever-increasing flow of forced migration as coups and conflicts, as well as the globalization and modernizing trends described by Davis, Bauman and other, intensified (DAVIS, 2006; BAUMAN 1998, 2004, 2007). The weight of numbers of people needing refuge, and the complexity of events – alongside the growing insecurities of the more affluent and liberal nations over terrorism, pressure on resources, and cultural identity and community cohesion – seem to have all but extinguished the humanitarian international impulse. People may need security and assistance, but they must stay in their place.

At the end of the twentieth century and into the twenty-first, the refugee, the forced migrant, is supposed to stay, if not within their country, certainly within their region. In the contemporary period, the predominant response to those in need of refuge is the camp – official camps and spontaneous, ramshackle camps; tented camps and encampments of huts and other temporary buildings; and camps where people cluster under trees and any shelter they can find, lacking even the most basic facilities. These camps spring up in response to wars, conflicts and disasters of various kinds; some are administered by the UN, some by local and national governments and some by international charities.

The idea of a 'camp' is usually understood as something temporary, but many of the world's camps take on a longer-than-intended or even permanent nature. The UK charity Oxfam reviewed relief operations in Haiti two years after the 2010 earthquake and reported that camps intended as short-term emergency measures were still fully occupied and assuming an air of (semi)permanence (HUDSON, 2012). In 2012, the UN High Commissioner for Refugees (UNHCR) reported that Dadaab, in northeast Kenya, had reached its twenty-first anniversary and had become the world's biggest refugee camp. It was set up following the Somali Civil

War in 1991, designed to hold up to 90,000. However, by 2012, its population had increased to more than 463,000, the numbers being swollen by various periods of turbulence, especially the 2011 famine, drought and violence that devastated Somalia (UNHCR 2012).

Some camps, such as Kibera in Kenya, develop into shanty cities. Kibera started as a refugee camp for Nubians from the Kenyan- Sudanese border who crossed into Kenya during the First World War as their own country was torn apart by violence. Over the years, it has become one of the most densely crowded spaces in the world, with a population of more than one million, its people crowded together mostly in tiny, corrugated iron shelters (KIBERA UK n.d.). Conflicts within Kenya, as well as those pulling people in from outside, affect life in Kibera. In the violence that followed the Kenyan elections in December 2007, for example, many people fled to Kibera, including those from both sides of the conflict (www.Kibera.org.uk). Movements from other conflicts similarly bring opponents together rather than providing them with safety from each other. Tutsis fleeing their Hutu attackers in the Rwandan genocide have found themselves in the same camps as Hutus escaping capture and punishment.

Refugee camps to which Palestinians fled after the wars in 1948 and 1967 have also become permanent shantytowns. In Lebanon, refugees registered with the United Nations Relief and Works Agency (UNRWA) live in 12 official camps. While some Palestinians have moved out of the camps and into towns and cities, others have collected in ‘gatherings’ – unofficial settlements often located near these official camps. The UNRWA cannot provide services in these unofficial camps, even such basic services as the disposal of solid waste, because the agency is not the official occupant of the land. Palestinian refugees in Lebanon are not formally citizens of any state, so not only do they not have the rights of Lebanese, but they also do not have the rights of foreigners who are members of other states but are living and working in Lebanon (UNRWA, 2013).

Palestinians who moved to Jordan after the 1948 war were given Jordanian citizenship in 1954, but those who entered following the 1967 war have not been granted citizenship and so are stateless. With the build-up of tensions in Jordan after the wave of arrivals from 1968, the king declared martial law in September 1970 (often referred to as Black September), and most non-citizen Palestinians left. Many of this second wave of Palestinian refugees fleeing Jordan in 1970 became the occupants of the ‘gatherings’ in Lebanon, swelling the refugee populations there. In Gaza after the 1967 war a similar pattern emerged as that seen in Lebanon, with official camps organized and managed by the UNRWA, and more informal, less well-

organized settlements, which are now indistinguishable from the slums of Gaza City. Now, a new wave of refugees from Syria is threatening the resources and stability of Lebanon and Jordan. The number of refugees entering Jordan has almost doubled the population of that small country, while in Lebanon, as well as in the influx of numbers, stability is threatened because of the already febrile entanglement of Lebanese and Syrian politics and factions.

The political, religious and communal conflicts in volatile areas of the world (such as Africa and the Middle East) are being responded to in similar fashion to natural disasters (such as earthquakes and tsunamis) – by the construction of ‘temporary’ within-region camps. With migration caused by natural disasters, most people want to return to their normal lives, so reconstruction and in place is what they want. Criticism of the operations in Haiti, for example, is not directed at the objectives of keeping populations together and rebuilding their ruined homes, but at the slowness with which this has progressed and sometimes at the over-emphasis on security at the expense of assistance to the people who are affected (HUDSON, 2012).

When flight is prompted by political, inter-communal conflict or civil war, people need to escape. Keeping them within the region too often traps them in the situation – they are *outside* their own country but not properly *inside* any other. Many therefore cluster at the borders in emergency camps or makeshift shelters; if they go as far as the towns and cities of the country whose borders they cross they are most likely to be found living in overcrowded, squalid apartments or sleeping on the streets or on wasteland. Over time, shantytowns develop or sections of cities degenerate into ghettos. Rather than crossing borders into another community, forced migrants gather in places that become, in effect, border zones; people are trapped outside their own country but cannot really arrive anywhere else. Even migrants who are accommodated in camps that have some level of security – with temporary accommodation that provides reasonable shelter and access to sanitation, medical treatment and food aid established and administered by UN organizations or charities such as Médecins Sans Frontières (MSF, 2013) or Oxfam (2013) – are, nonetheless, effectively stateless, removed from the country in which they do have citizenship, but not citizens of the state they have entered.

Agamben’s theorization of ‘the camp’ closely aligns with the gatherings, encampments, slums and shantytowns in which (mainly) forced migrants are found. Those in the camps can only live what he describes as ‘bare life’, an existence outside any rule of law, which can guarantee neither justice nor security, and where, as Agamben defines it, life can be taken with no one being called to account (AGAMBEN, 1998; HUDSON, 2012). Those living in camps after flight across the borders of Syria and of conflict zones in Africa and elsewhere

are dependent for their existence and well-being on donations to charity and on states providing funds to UN agencies. Camp residents face incursions by hostile militias and marauding gangs; women and children – particularly but not exclusively – face rape and sexual trafficking; and local populations may be kindly or hostile.

Bauman (2004) similarly describes the camps and gatherings as ‘lawless spaces’, in many places containing people who find themselves on a journey that may never end, staying in camps indefinitely, like the Palestinians. The UNHCR (2012) report on Dadaab says that the population includes up to 10,000 third-generation refugees who were born in the camp. Referring to the camps that sprang up in Kenya during the troubles of 1991-1992, Bauman (2004) points out that they appear on no maps, and no state acknowledges responsibility for their inhabitants.

For those who manage to escape their region and reach Europe, Australia or the US, what awaits them is not the protection of a law-governed, rights-respecting state, but detention, destitution, disbelief and humiliation (O’NEIL, 2010). Those wishing to cross into the UK, gathered in the infamous ‘jungle’ outside Calais, those who reach the shores of Malta, Greece or southern Italy, or those trying to cross the border between Mexico and the US must exist, as Agamben describes, while trying to evade the attention of police and border officials. And if they venture into the towns, they face hostility from local populations. They live ‘bare lives’ on both sides of the border.

4. COSMOPOLITAN ETHICS: THE MORAL COMMUNITY BEYOND THE BORDER.

While borders between countries within a region of the world may have become more porous, such porosity is variable with time and placed. For example, not all EU countries are members of the Schengen area, which allows for movement without passport controls; and borders between neighbouring countries in Africa, South America and the Middle East may be strengthened in times of instability or conflict and loosened in times of peaceful cooperation. The continued existence of borders does, however, mean that state sovereignty remains the main organizing principle underpinning world affairs. There are what may be regarded as institutions of an embryonic cosmopolitan federalism, such as the UN Security Council, the ICC, the UNHCR, the UNRWA, and the body of ‘cosmopolitan law’, but they operate through member states, and charitable organizations must operate through permissions and cooperation of the countries in which they are located. Relief agencies in Syria are not allowed, according to the Syrian government, to provide services within opposition-held areas, so attempting to

take in medical supplies or other necessities is difficult and dangerous.

Kant's (1983) third principle – that of a cosmopolitan right of hospitality to the stranger – is as important as the other two; and without it, sovereign states individually and acting together can deny safety and well-being to those in need. This principle of hospitality is therefore at the heart of contemporary formulations of cosmopolitan ethics (BAUMAN, 1993; DERRIDA, 2000; APPIAH, 2006). It is this ethical principle, however, which is least in evidence in global affairs.

Kant's idea of this cosmopolitan right to hospitality differs from his theory of justice and morality in states within the 'common European mind' because it is not predicated on people's commonalities of culture and experience, but on their shared predicament of being occupants of a fragile and unpredictable world. Further, because the world is a sphere and not a flat plane, people cannot separate themselves from each other: every step away from someone brings a person closer to someone else. Encounters with strangers are thus inevitable and must be governed so as to reduce conflict and danger. Deriving an ethical precept from a situation that is shared by all the people of the world means that it envisages all these people as a moral community (HUDSON, 2011). For Kant, although single states have sovereignty, and much of the organization needed to secure peace will be conducted between states, the cosmopolitan right of hospitality that is not confined within borders counterbalances these state-centred relationships.

In contemporary times, the term 'hospitality' conveys the idea of a guest being afforded the best one has to offer, more than simple refuge. In Kant's version, and as developed by Bauman, Benhabib and Derrida, among others, it is made clear that hospitality in the global context is somewhat different. Bauman (1991) draws on Simmel's notion of the uninvited guest, while Derrida (2003, 2000) argues that the hospitality given to the uninvited stranger will be 'conditional' rather than open-ended, and Benhabib (2004) talks of a right of refuge but not abode.

These interpretations are consistent with Kant's proviso that the right to be received in another's territory does not include the right to occupy that territory and that the person (or state) receiving the stranger has the right to refuse hospitality if that stranger does not act in a peaceable manner, save only to offer such admittance as to avoid their loss of life. It should, however, be borne in mind that Kant was writing at a time of imperialism and the slave trade: visitation was of people from the powerful nations to less-developed lands. Today, travelers in need of refuge are more likely to be the powerless arriving in the lands of the powerful. The

conditions of ‘conditional hospitality’ should, therefore, be much more generous than currently obtains in the powerful destination nations.

The idea of a duty of hospitality to strangers does not, of course, originate with Kant. It can be traced back to Diogenes, who called for a politics that concerns itself with the stateless, the outcast, the despised – and this duty is present in most cultures. The idea of the moral community as a community that encompasses all humankind is not something new and startling.

While the moral community is clearly not the same as the political or national community, the word ‘community’ being in both terms implies that there *is* something common to both. This is, of course, the idea of a sphere of moral concern and obligation. As has been said, however, the insecurities and anxieties arising from global mobility and loss of national identity and national sovereignty have given renewed impetus to the desire to maintain a nation’s community as distinct and discrete from other nations and other people (Bauman 2007). So, a key question is this: How can a sense of moral community as ‘all the people of all the world’ be fostered?

Rorty (1993, 1999) emphasizes the importance of narratives that take a long, sentimental journey through the experiences of others, anticipating that the human capacity for empathy and the similarities in human hopes and dreams, whatever their culture, will bring about sympathetic understanding and so engender concern for the fate of the stranger. This may happen, but cosmopolitan responsibility to the ‘Other’ cannot depend on it. What if no understanding, no reciprocity, is reached, if the degrees of difference between the visitor and the one in place are irreconcilable (HUDSON, 2003, 2006)? If no understanding, no feeling that ‘if I were in their shoes, I might do the same’ can be achieved, this is surely the point where fundamental, universal human rights are most needed; they are needed when sympathy cannot guarantee good treatment.

Cosmopolitanism is, as Appiah (2006) suggests, ‘ethics in a world of strangers’. He explains that unlike other forms of universalism, cosmopolitanism does not assume that ‘underneath’ we are all the same. We may well be different in important ways and may never completely understand each other but, as Appiah claims, cosmopolitans believe that between different cultures and ways of life, there is enough overlap for a conversation to begin. For cosmopolitan ethics, even if the conversation does not lead to any mutual understanding or consensus, the moral responsibility to the stranger remains.

5. REGARDING THE PAIN OF OTHERS

I have argued in this chapter that although critique of international borders suggests

that they (a) ignore the human rights of migrants, (b) inflict destitution, deprivation and humiliation on would-be entrants, and (c) create new barriers to exit and entry and strengthen existing ones, nevertheless – though they may vary in degree of openness and closure and indeed in location as new countries emerge and old alliances crumble – they are likely to remain. Moreover, although present political discourse may discuss border mainly in terms of people's entry, borders are also important for those seeking to exit – to escape wars, tyrannies or discrimination.

I have argued, further, that although in many parts of the world (Europe and South America, for example) national borders may be becoming more porous, regional borders have become less penetrable. Most immigration now takes place within regions, to places with more perceived opportunities to earn a livelihood for oneself and one's family and to escape the causes of forced migration – natural as well as human. Regions are now expected to contain their own conflicts, which places considerable pressure on countries that receive large waves of migration, as well as trapping people in the situation that they are trying to escape. Such regional movements leave people stateless – they are outside their own state – yet embedded within a regime of aid that is organized through states, dependent on the permission of host states or conflict-torn states to enter and operate or mandated by the UN. The cosmopolitan morality of human rights and relief of the suffering of the individuals regardless of citizenship is developed nowhere near sufficiently to counterbalance the present worldwide system of states and the ideology of national sovereignty.

It might have been expected that this countervailing cosmopolitan morality would become more prominent with the growth of mass media and communications technology. But while most people now know more about the suffering of others throughout the world than ever before, via a seemingly constant stream of hear- rending mass media reports of disasters, conflicts, discrimination and oppression, there is no effective recognition of the right to move and little or no expansion of asylum conditions strong enough to dilute the idea that nations should be able to control whom they admit into their countries. There is popular and political sympathy for suffering humans, but only, it seems, for as long as they stay in their place, as long as they do not cross regional borders.

Susan Sontag (2003) wrote that although people see footage of the suffering of others, they see this through an already-in-place interpretive frame. The dominant interpretive frame currently seems to be one of sympathy for the human plight, combined with fear that the people concerned will come 'over here', overwhelming 'our' resources and damaging the integrity of

‘our’ national identity and culture. Accordingly, there is much more support for fundraising to help people in their own part of the globe than to help them move away from the troubled and damaged regions in which they live.

Consumers of news footage are more generous in response to natural disasters than to conflict: famines in Africa, tsunamis in the South Asian seas, and the earthquake in Haiti raised much more money than is currently being donated to the crisis in Syria, although the latter is injuring and displacing more people. Citizens in more fortunate places may be reluctant to give or – even more – to press for migrants from the conflict to be allowed to enter their own countries, perhaps because it is difficult to understand the causes and contours of the conflicts, to know how long people will need shelter outside their country, and to distinguish the good guys from the bad guys.

Changing the interpretive framework is, of course, challenging; one element that is needed to do so is what has been termed ‘cosmopolitanism from below’, or ‘subaltern cosmopolitanism’ (SANTOS and RODRIGUEZ-GARAVITO, 2005). Cosmopolitan federalism, from this perspective, requires a federalism of non- governmental organizations (NGOs), charities and other non-state bodies to balance the state-based structure of the UN. Subaltern cosmopolitanism also calls for associations of more loosely aligned groups, a global civil society where alliances between workers, environmental activists, human rights campaigners and others allow for the recognition of interests in common with counterparts from different countries and regions, as well as community groups who campaign for the right to stay of migrants they have come to know as friends and neighbours.⁵ The creation of a moral community across borders also depends on the advocacy of those who are categorized as ‘other’, as ‘risky’, as those we seek protection from rather than give protection to. Drucilla Cornell draws attention to the ‘Women in Black’, who demonstrate on behalf of those on the opposite side of conflicts in which their states are involved (HUDSON, 2009). She quotes one woman from Serbia:

I do not see why we should not worry about ‘our people’ and ‘their people’ in the same way, because this exclusion of the other is at the roots of fascism, in the division between ours and theirs, me and the others and normal and abnormal. (CORNELL 2004, 114).

6. CONCLUDING COMMENTS

While there may be advances in peaceful and humane treatment at the borders, this is

⁵ Original editor’s note: “See Barker, this volume [Barker, 2015]”.

manly restricted to complying with the basic human rights standards of the region in question. For example, a report by the EU Agency for Fundamental Rights (FRA, 2013) on the conduct of the EU1's southern borders (Cyprus, Greece, Italy, Malta and Spain) emphasizes the need for border personnel to have life-saving equipment for land and sea rescues, and for resources – whether provided by the border state or by NGOs – to provide immediate humanitarian aid; for fairer screening processes, with more opportunities for would-be entrants to tell their stories; and for all border guards to have training in fundamental human rights. On the other hand, the insecurities apparent in the present phase of globalization, with competition for resources, economic downturn in some of the most powerful countries, climate change, conflicts, and breakdowns in law and order in main regions of the world, seem to leave little room for optimism about the prospects for peace at international borders or for greater hospitality to be shown to those who wish to move beyond the borders of their regions.

If rights are universal ethics written into law, and if they therefore depend on membership of a state in order to be activated, then, as Agamben (1998) says, the refugee, the stateless person, the person outside their state but not effectively inside another should be the focus of rights: the stranger at the border should embody the regime of rights. Yet the refugee, the forced migrant, instead represents the challenge of rights, perhaps the challenge that brings about the end, the defeat, of the rights regime (DOUZINAS, 2000). Rather than the sympathetic or symbolic figure of universalist ethics, the refugee becomes the asylum seeker, whose arrival is greeted not with hospitality but with the validation or rejection of particularist law. If borders are to provide access to sanctuary and to opportunity, the interpretive frame needs to be changed: there needs to be a strong countervailing universal morality based on the principle that rights are due to all individuals as individuals, not only as citizens of particular states. The particularism of law must be more strongly balanced by the universalism of ethics.

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