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Borders, Citizenship, and Global Inequality: What Barriers, Pushbacks, and Passport Controls Reveal About Our Understanding of the Equality of Humankind

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Abstract

Borders are ubiquitous. As invisible lines, they contribute to a functioning world order and guarantee security for the people. In the form of walls and fences, they divide society and establish strongholds of prosperity that are not accessible to everyone. A similar effect can be observed in connection with the concept of citizenship, which binds people fatefully to a particular territory and thus significantly determines an individual's life chances. This article shows how borders and their protection as well as the concept of citizenship challenge fundamental ideas of justice and traces discourses that seek to evolve the current border and citizenship regimes into a more universal and just form of human coexistence.

Keywords: Borders; citizenship; global inequality; exclusion; discrimination

A. Introduction

The meaning and role of (national) borders have always been subject to constant change; and even in the current age of globality, which is characterized by a spirit of rapprochement and understanding, of dissolution of borders, the dynamics of borders—contrary to expectations—are becoming apparent anew: While shortly after the fall of the Berlin Wall in 1989 there were only about a dozen borders fortified by walls or similar structures, today there are already more than seventy,¹ and “build that wall” chants are resoundingly loud. Despite these developments, from a cosmopolitan-liberal perspective borders are irritating relics of anachronistic nationalism.

Borders serve various purposes. On the one hand, they ensure orderly human coexistence and serve to protect people—as has been shown not least in view of the Russian war against Ukraine: the external border of the European Union became a safe haven for many Ukrainians. On the other hand, legally sanctioned, robust border security also serves to defend resources and prosperity and is therefore a sign of globally unequally distributed prosperity, marking and perpetuating fundamental injustice in the world. In a society of free and equal citizens, borders can be interpreted and legitimized as legal instruments of order, but their isolating function cannot be justified when measured against historically established concepts of justice. To counteract

¹Élisabeth Vallet, *State of Border Walls in a Globalized World*, in *BORDERS AND BORDER WALLS: IN-SECURITY, SYMBOLISM, VULNERABILITIES* 7–24 (Andréanne Bissonnette & Élisabeth Vallet eds., 2022).

injustice, states should consider softening borders and strive towards more liberal border control and migration policies.

Similar issues can be observed regarding the concept of citizenship. Although this concept serves to constitute states and to ensure order in the world, serious injustices are manifested in the color of the passport. Whether burgundy red, azure blue, green, or black, the holder of a specific citizenship is either granted valuable rights on a global level or inevitably subjected to rigorous restrictions all over the world. Just as border regimes, the concept of citizenship must therefore be viewed particularly critically when assessed against fundamental ideas of justice. A liberalization of the concept of citizenship could compensate for possible injustice.

B. Terminology

I. Origin and Meaning of the Term “Border”

Borders are not an invention of modern times. Long before our era, people began to build ramparts to protect their settlements from invaders, thereby separating themselves from the outside world.² The word “border” was inherited from the Middle English term *bordure*, which was already in use during the 14th century.³ It originates from the Old French term, *bordeure*, and the Frankish-Germanic term, *bord*. In earlier times the term was not supposed to describe a clear dividing line but more a vague contact zone of two areas extending over a larger region—much closer in its meaning to today’s words “edge”, “side”, or “margin”.⁴ Thus, during the medieval period the word could refer to either side of the “borderline”.

With the emergence of territorial states and the simultaneous shift of protection efforts away from the center of a territory to its outskirts, the meaning of the term border shifted to its more common political aspect from the mid-18th century onward. At the same time, understanding the border as a larger region lost popularity—from then on, it was rather a conceptual proximity to the word “end” that could be observed. Since then, borders have been understood as imaginary geographical lines that serve to separate various areas of the earth’s surface. On the one hand, they mark off different political, cultural, or linguistic areas from one another, but on the other hand, they separate such areas in an arbitrary way.⁵ To this day, the term “border” is inherently dynamic: In times of increasing migration and political conflict, the continuous hardening and shifting of borders is likely to result in a renewed semantic meaning at any given time. On top of that, as yet to be shown, the “border” is a fundamental term in international law today.

II. Development and Meaning of the Concept of Citizenship

Closely related to borders is the concept of citizenship. Its basic features already existed in ancient Greece: Within the sovereign Greek city-states, all political participation rights were restricted to free men whose parents have already been citizens of the respective city-state.⁶

²ÉTIENNE BALIBAR, POLITICS AND THE OTHER SCENE 75 (2002); Paolo Novak, *Back to Borders*, 43 CRITICAL SOCIO. 847, 851 (2016); Sajani Jinny Menon & Muna Saleh, *Borders*, in KEYWORDS IN THE SOC. STUD.: CONCEPTS & CONVERSATIONS 53 (Daniel G. Krutka et al. eds., 2018).

³James Anderson & Liam O’Dowd, *Borders, Border Regions and Territoriality: Contradictory Meanings, Changing Significance*, 33 REG’L STUD. 593–604 (1999).

⁴STEVEN G. ELLIS & REINGARD EßER, FRONTIERS AND THE WRITING OF HISTORY, 1500-1850 14–15 (2006).

⁵See Maria Baramova, *Border Theories in Early Modern Europe*, EUROPEAN HISTORY ONLINE (Dec. 3, 2010), <http://iegego.eu/en/threads/crossroads/border-regions/maria-baramova-border-theories-in-early-modern-europe#>.

⁶Tim Cresswell, *Citizenship in Worlds of Mobility*, in CRITICAL MOBILITIES 105, 107 (Ola Soderstrom et al. eds., 2013); Richard Bellamy, *Historical Development of Citizenship*, in INT’L ENCYCL. SOC. & BEHAV. SCI. 643, 646 (James D. Wright ed., 2d ed. 2015); Ryan K. Balot, *Revisiting the Classical Ideal of Citizenship*, in THE OXFORD HANDBOOK OF CITIZENSHIP, 26 (Ayelet Shachar et al. eds., 2017).

Everyone else—women, foreigners, slaves, and craftsmen—were excluded from citizen status.⁷ During the Middle Ages, the concept of citizenship mostly disappeared and was replaced by a system of feudal rights and duties.⁸ It was not until the French Revolution, widely regarded as the moment that gave birth of modern citizenship, that this feudal system was suppressed: In the course of the abolition of the estate-based society, the ascendance of republican thinking and the gradual emergence of modern states with a national identity, by the early 19th century, the “state” was understood not merely as a territorial entity organized in an absolutist way but rather as a personal association of citizens.⁹

As a result of these developments, the contemporary state is constituted not only by its territory and governmental authority but also by its people.¹⁰ Whether an individual belongs to the people of a certain state is determined by their specific citizenship. Citizenship, not to be confused with nationality, serves as an allocating and formal link between the citizens of a state and the organized national community of the state.¹¹ While nationality is understood as merely the legal connection between an individual and a state, citizenship encompasses the rights and duties associated with the citizen status.¹² Accordingly, it is through only citizenship that an individual is able to exercise the rights and obliged to fulfill the duties tied to belonging to a national community. This leads to the ultimate realization that “every citizen is a national, but not every national is necessarily a citizen of the state concerned.”¹³ National laws determine if someone is considered merely a national or in fact a citizen endowed with comprehensive rights and duties.¹⁴ The forthcoming analysis will take a detailed and critical look at the concept of citizenship in its entirety. Consequently, from here on, the emphasis must be directed toward the term “citizenship”.

C. Borders in (Legal) Reality

I. Borders in the Course of Time

1. Historical Development of the Border

Since the dawn of time, borders have existed in the form of lines, zones, or stretches of land serving as sites of interaction, transit, obstruction, or contention.¹⁵ While borders in their original form spatially separated plots of land, the first political borders—such as *Hadrian’s Wall*, built during the Roman Empire, or the *Great Wall of China*, parts of which were constructed as early as the seventh century A.D., those are probably the most prominent examples—served primarily as

⁷MARTIN STILLER, *EINE VÖLKERRECHTSGESCHICHTE DER STAATENLOSIGKEIT* 16 (2011).

⁸See Bellamy, *supra* note 6, at 7; HAROLD J. BERMAN, *LAW AND REVOLUTION, I: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983); SASKIA SASSEN, *TERRITORY, AUTHORITY, RIGHTS: FROM MEDIEVAL TO GLOBAL ASSEMBLAGES* (2008).

⁹See STILLER, *supra* note 7, at 15; JOHN C. TORPEY, *THE INVENTION OF THE PASSPORT: SURVEILLANCE, CITIZENSHIP AND THE STATE* 26 (2d ed., 2018).

¹⁰See GEORG JELLINEK, *ALLGEMEINE STAATSLEHRE* 395 (2d ed., 1914); Art. 1 of the Montevideo Convention on Rts. & Duties of States (“The state as a person of international law should possess the following qualifications: (a) permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.”); Patrick Weil, *Access to Citizenship: A Comparison of Twenty-Five Nationality Laws*, in *CITIZENSHIP TODAY: GLOB. PERSPS. & PRACTS.*, 17–35 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2001).

¹¹Julien Berger, *Staatsbürgerschaft als Ware – von Goldenen Pässen und der Europäischen Union*, 81 *HEIDELBERG J. INT’L L.* 1033, 1036 (2021); CHRISTINE SAUERWALD, *DIE UNIONSBÜRGERSCHAFT UND DAS STAATSANGEHÖRIGKEITSRECHT IN DEN MITGLIEDSTAATEN DER EUROPÄISCHEN UNION* 27 (1995).

¹²Oliver Dörr, *Nationality*, in 7 *MAX PLANCK ENCYC. PUB. INT’L L.* 496 (Rüder Wolfrum ed., 2012); GERARD-RENE DE GROOT, *STAATSANGEHÖRIGKEITSRECHT IM WANDEL: EINE RECHTSVERGLEICHENDE STUDIE ÜBER ERWERBS-UND VERLUSTGRÜNDE DER STAATSANGEHÖRIGKEIT* 13 (1989).

¹³PAUL WEIS, *NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW* 6 (2d ed., 1979).

¹⁴If a distinction between the terms “nationality” and “citizenship” is not enshrined in national law, it has no legal relevance. While such distinction is established in U.S. Law, the Constitutions of most modern states no longer contain such a distinction.

¹⁵See BALIBAR, *supra* note 2, at 77.

visual markers of the respective realm and for defending one's territory.¹⁶ Borders as we know them today are a modern phenomenon: It was not until the end of the 18th century that European central powers began to separate themselves from one another for nationalistic reasons.¹⁷ Using natural barriers such as mountain ranges or rivers, territories were assigned to specific states. Roughly half of the border kilometers that exist today were not even delineated until the 20th century.¹⁸ Thus, previous border courses have little in common with the present ones.¹⁹ Today's map is the result of a multitude of historical and political conflicts.²⁰ For example, during the process of decolonization, which began in the 20th century, the Principle of *Uti possidetis juris*, commonly used in international law, led to existing colonial borders becoming state borders, regardless of the will of the local population and without taking regional circumstances into account.²¹ To this day, this border demarcation, which is often based solely on latitude and longitude, is the cause of numerous territorial conflicts.²² And in Europe, too, the fronts between the victorious powers hardened in the aftermath of the world wars. Borders continued proliferating, and their significance continued growing.

2. Transcendence of the Border at the End of the 20th Century

The global political structure changed toward the end of the 20th century. The collapse of the Eastern Bloc heralded an era of rapprochement and the softening of previously rigid fronts. In addition to the expansion of the European Union, the ratification of the Schengen Agreement, the reunification of Germany, and the end of the Cold War fueled hopes that the global community was coalescing. The starting point of these developments was the desire of the economically powerful nations to dismantle political as well as economic borders. The goal pursued by these same nations, to achieve welfare and security gains for all regions of the world through economic cooperation and trade on a global scale, prompted the international community to significantly reduce trade barriers.²³ In the course of the European integration process, the debate about softening borders also reached the field of constitutional law.²⁴ Not least, the increasing number of

¹⁶See Baramova, *supra* note 5, at 3.

¹⁷And, in the aftermath, the idea of the border was "exported" by Europeans to all parts of the world in the course of colonization. See Scott F. Abramson et al., *Historical Border Changes, State Building, and Contemporary Trust in Europe*, 116 AM. POL. SCI. REV. 875, 877 (2022).

¹⁸Fabian Sommavilla, *Grenzen – Brauchen wir sie überhaupt? Gespräche mit Thomas Walli im Podcast*, Institute of Political Science, University of Innsbruck (2022), <https://www.uibk.ac.at/de/politikwissenschaft/kommunikation/podcast/sommavilla-grenzen/>.

¹⁹See BALIBAR, *supra* note 2, at 75.

²⁰An illustrative map showing the year each border was drawn is available at: https://c1.staticflickr.com/5/4596/24556520177_d5a5b6d97a_o.png.

²¹Dieter Blumenwitz, *Uti possidetis iuris – uti possidetis de facto. Die Grenze im modernen Völkerrecht, in RAUM UND RECHT. FESTSCHRIFT 600 JAHRE WÜRZBURGER JURISTENFAKULTÄT 377* (Horst Dreier et al. eds., 2002); Malcolm N. Shaw, *The Heritage of States: The Principle of Uti Possidetis Juris Today*, 67 BRITISH Y.B. INT'L L. 75 (1996); CHRISTIANE SIMMLER, *DAS UTI POSSIDETIS-PRINZIP. ZUR GRENZZIEHUNG ZWISCHEN NEU ENTSTANDENEN STAATEN* (1999).

²²See Joya Chatterji, *The Fashioning of a Frontier: The Radcliffe Line and Bengal's Border Landscape*, 33 MOD. ASIAN STUD. 185 (1999); Silke Diettrich & Jürgen Webermann, *Der Konflikt zwischen Indien und Pakistan. Das Trauma ewiger Feindschaft*, DEUTSCHLANDFUNK (Feb. 27, 2019), <https://www.deutschlandfunk.de/der-konflikt-zwischen-indien-und-pakistan-das-trauma-ewiger-100.html>.

²³While this goal is particularly desirable from the perspective of the industrialized countries, see Gabriel Felbermayr et al., *Wohlfahrtseffekte der Handelsliberalisierung: Studie im Auftrag des Sachverständigenrates zur Begutachtung der gesamtwirtschaftlichen Entwicklung*, (Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung, Working Paper No. 03/2017), liberalization of the global economy can also be accompanied by welfare losses for economically weaker states, see Herbert Giersch, *Freihandel als Aufgabe*, 108 J. INSTITUTIONAL & THEORETICAL ECON. 504, 509 (1952).

²⁴See STEPHAN HOBE, *DER OFFENE VERFASSUNGSSTAAT ZWISCHEN SOUVERÄNITÄT UND INTERDEPENDENZ. EINE STUDIE ZUR WANDLUNG DES STAATSBEGRIFFS DER DEUTSCHSPRACHIGEN STAATSLEHRE IM KONTEXT INTERNATIONALER INSTITUTIONALISierter KOOPERATION* (1998).

problems of global scope—especially environmental problems such as the ozone hole in the past or climate change now—underlined the need to transcend existing borders and to solve such problems by means of inter-national, cross-state cooperation. Advancing globalization trends raised expectations of a gradual transcendence of borders.

3. Renaissance of the Border in the New Millennium

These developments encountered setbacks in the new millennium: In the aftermath of the terrorist attacks on September 11, 2001, another turning point was becoming apparent, with repercussions reverberating well beyond North America.²⁵ Terrorist attacks were no longer a phenomenon of regional conflicts in distant territories; instead, they increasingly and unpredictably disrupted the fabric of the “Western world”. Attacks in Madrid, London, Paris, Brussels, and Berlin globalized political conflicts, and the permeability of borders obviously encouraged the import of terrorism operating on a global scale, mirroring the dynamics of global trade. A prolonged period of intra-European peace, which had lasted since the peaceful fall of the “Iron Curtain,” was coming to an end.²⁶ While “9/11” is a visible marker and cipher for new isolation, the strengthening of borders and the resurgence of nationalisms, the actual causes for the “renaissance” of the border are more diverse: The globally increasing migration—stemming from global political upheavals and growing economic inequality—was viewed with more and more apprehension in the societies of industrialized nations regarding their own prosperity. Fear of so-called “economic refugees,” “fleeing from poverty”—whether they were trying to get from Africa to Europe or from South America to the United States—grew.²⁷

The states of the “Global North” reacted: The establishment of more stringent national security laws was the initial indication of an advancing tendency towards isolation. In this process, the curtailment of basic human rights and civil liberties was gradually tolerated. Border closures became more prevalent, the Schengen rules were partially suspended;²⁸ countries were declared pariah states, part of the “Axis of Evil,” and, in general, purely national interests were increasingly prioritized.²⁹

A resurgence of populism was an almost inevitable consequence: Political slogans such as “America First!” symbolize the increased desire for separation from others, for economic self-sufficiency, for security through a return to the familiar and the exclusion of the foreign. Unequally distributed gains in prosperity and the pronounced weaknesses of capitalism fueled protectionist and nationalist populism, which, contrary to expectations, did not lead to the hoped-for taming of the global economy and a more just world order, but rather to a return to the *status quo ante*.³⁰

²⁵See TORPEY, *supra* note 9, at 195.

²⁶Liam O’Dowd, *From a ‘Borderless World’ to a ‘World of Borders’: ‘Bringing History Back in’*, 28 ENV’T & PLANNING D: SOC’Y & SPACE 1031, 1034 (2010).

²⁷See DAVID MILLER, *STRANGERS IN OUR MIDST. THE POLITICAL PHILOSOPHY OF IMMIGRATION* 94–111 (2016) (elaborating on the term “economic migrants”).

²⁸During the European migration crisis border controls were established in order to prevent unwanted migrants from entering German territory. See *Reaktion auf Flüchtlingskrise. Die Maiziere verkündet Einführung von Grenzkontrollen*, SPIEGEL ONLINE (Sept. 13, 2015), <https://www.spiegel.de/politik/deutschland/fluechtlinge-thomas-de-maiziere-verkuendet-grenzkontrollen-a-1052724.html>. Only recently, new border controls were announced at the German borders, which are to be intensified during the European Football Championship. See *Die Sicherheit der Fußball-EM hat höchste Priorität*, BUNDESMINISTERIUM DES INNERN UND FÜR HEIMAT (Apr. 19, 2024), <https://www.bmi.bund.de/SharedDocs/kurzmeldungen/DE/2024/04/dt-frz-grenze.html?nn=10001204>.

²⁹The elections to the European Parliament in June 2024 demonstrated that national interests are increasingly taking center stage. See Martina Stevis-Gridneff, *In E.U. elections, the Center Holds, but the Far Rights Still Wreaks Havoc*, N.Y. TIMES (June 9, 2024), <https://www.nytimes.com/2024/06/09/world/europe/european-parliament-elections-far-right.html>.

³⁰See Ernesto Castañeda, *Introduction to “Reshaping the World: Rethinking Borders”*, 9 SOC. SCI. 214, 215 (2020); Sheraly Munshi, *Unsettling the Border*, 67 UCLA L. REV. 1720, 1725 (2020).

The neo-nationalisms and increased protectionist measures conjured up a new battle of systems, and especially world trade—once a symbol of openness—was drawn into this battle: Trade wars and punitive tariffs are increasingly used to economically weaken political opponents.³¹ The rapprochement that could be observed towards the end of the 20th century is nowadays being reversed, bogeymen are being revived, and alliances that had been carefully built up over decades are being terminated with the intention of protecting national interests (e.g. the United Kingdom leaving the European Union).³² The resurgence of national borders, which is driven by economic nationalism, threatens international efforts to jointly protect natural resources. The need for individual protection against a nebulous threat and for separation in order to maintain prosperity ultimately led to the renaissance of the border.

II. Purpose of Borders

Borders are not laws of nature, but legally sanctioned, human-made fictions—and thus legal instruments for behavioral control. Every human organization is structured in some way, for example, into regions, departments, or areas, and thus requires borders. Political-geographical borders empower states to decide not only who and under which conditions can enter or leave their national territory, but also who is admitted and who is rejected. Borders, and in particular the policies and control mechanisms enforcing them, can have severe consequences—in extreme cases, they may even result in the deaths of migrants drowning in the Mediterranean Sea. As is required for all measures conducted by a state, borders and the policies and mechanisms enforcing them require justification by law: if borders evidently serve legitimate purposes, such justification would initially appear possible. The underlying standard, which is commonly accepted in the German legal system, helps to assess the proportionality of measures conducted by a state. According to this standard, if a measure pursues a legitimate purpose, there is a good chance that the measure is also proportionate. In this case proportionality can only be undermined by a lack of suitability, necessity, or appropriateness.³³

1. Cultural and Geographical Function and Relevance in International Law

Often, an alleged “cultural homogeneity” is invoked to justify borders. In this respect, factors such as language or religion, frequently coupled with an idea of a (national) identity, play a prominent role. Because people in today’s largely transculturally globalized and pluralistic society cannot generally be reduced to certain cultural identities, borders drawn upon the idea of homogeneity are not justifiable in a rational way. As borders adhere to such patterns of justification, they are an expression of the once-thought-overcome division of the world into different ethnic groups and cultures.³⁴

Beyond these archaic ideas, borders initially serve a geographical separating function. They divide the earth into different political, economic, or legal systems. As “lines on the map,” they are the abstract manifestation of an international legal order that involves the territorial allocation of areas to specific states. Borders thus delineate the extent of each state’s territory and define the

³¹Weijian Shan, *The Unwinnable Trade War. Everyone Loses in the U.S.-Chinese Clash—but Especially Americans*, 98 FOREIGN AFFS. 99 (2019); Falk Steiner, *US punitive tariffs against China: Europe is also affected*, HEISE ONLINE (May 17, 2024), <https://www.heise.de/en/background/US-Strafzoelle-gegen-China-Auch-Europa-ist-betroffen-9723161.html>.

³²See Brett Ashley Leeds & Burcu Savun, *Terminating Alliances: Why Do States Abrogate Agreements?*, 69 (4) J. POL. 1118, 1132 (2007); Brett Ashley Leeds & Burcu Savun, *Premature Alliance Termination: Explaining Decisions to Abrogate or Renegotiate Existing Alliances* (July 2006).

³³See Guy Lurie, *Proportionality and the Right to Equality*, 21 (2) GERMAN L. J. 174, 196 (2020) (detailing “proportionality”); Yutaka Arai-Takahashi, *Proportionality — a German approach*, 19 AMICUS CURIAE 11, 13 (1999); AHARON BARAK, PROPORTIONALITY. CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS 175–210 (2012); Moshe-Eliya & Iddo Porat, *American Balancing and German Proportionality. The Historical Origins*, 8 INT’L J. CONST. L. 263 (2010).

³⁴MICHAEL SCHMIDT-SALOMON, HOFFNUNG MENSCH. EINE BESSERE WELT IST MÖGLICH 30 (2014).

scope of territorial sovereignty: Within its own territory, each state is free to exercise its sovereign power.³⁵

In addition, borders are one of the key criteria for the application of central regulations of international law: For example, the general prohibition on violence expressed in Article 2(4) of the United Nations Charter, which forbids member states from threatening or using violence against the territorial integrity or political independence of another state, is linked to the national territory which is defined by its borders. The great importance of borders for the international state structure is also made clear by the fact that a large proportion of international law disputes brought before the International Court of Justice involve the definition of borders.³⁶

2. Ensuring Security and Order

By defining nation-states in this way, an *inter-national* order of peace is intended to be created and safeguarded: Border shifts forced by violence are sanctioned as a war of aggression under international law.³⁷ The definition, clarification and sanctioning of borders create this order of peace, which must be maintained, for example, with the help of the prohibition of violence under international law, the United Nations definition of aggression and its Friendly-Relations-Declaration.³⁸ Thus, an additional purpose of borders is to be seen in ensuring security and order. On the one hand, the ordering function is reflected in the fact that (“internal”) political decisions can be made at the national level so that the interests of the people living within the respective borders can be taken into account in the best possible way. On the other hand, they fulfill their organizational function by dividing the world into different jurisdictions within which states may exclusively set and enforce law.

The idea of the power monopoly of the government is therefore closely linked to the idea of the border: By contributing to the preservation of a country’s territorial integrity borders serve a protective function.³⁹ They are—as emphasized by *Jellinek’s* “Three-Element Doctrine”—the foundation of any state’s monopoly on the use of force, and, depending on the circumstances, they might even indicate political territory which guarantees freedom and security.⁴⁰ For people trying to escape autocratic and despotic regimes borders—as soon as they are surpassed—can be the first harbinger of the freedom and security that prevail in the entered political territory. For instance, since the beginning of the war in Ukraine, more than ten million Ukrainian citizens have crossed the external borders of the European Union to leave their war-torn homeland in order to protect their lives.⁴¹ The Geneva Refugee Convention, international human rights, as well as European and national Residence Acts—for example the just recently adopted EU-Regulation on establishing a Union Resettlement and Humanitarian Admission Framework⁴² and also

³⁵See Florian Becker, *Gebiets-und Personalhoheit des Staates*, in 11 HANDBUCH DES STAATRECHTS DER BUNDESREPUBLIK DEUTSCHLAND § 230, Margin No. 13 (Josef Isensee & Paul Kirchhof eds., 2013); WALTER MAIER, STAATS-UND VERFASSUNGSRECHT 27 (4th ed., 2001).

³⁶See *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 2021 I.C.J. 206 (Oct. 2021); *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, 2015 I.C.J. 592 (Sep. 2015); *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, 2007 I.C.J. 832 (Dec. 2007).

³⁷John Agnew, *Borders on the Mind: Re-framing Border Thinking*, 1 ETHICS & GLOB. POL. 175, 176 (2008).

³⁸See Article 2 Paragraph 4 of the Charter of the United Nations (regarding the prohibition on violence); see United Nations, GA Resolution 3314, Dec. 14, 1974, A/RES/3314 (defining “aggression”); see United Nations, GA Resolution 2625, Oct. 24, 1970, A/RES/2625 (regarding the Friendly-Relations-Declaration).

³⁹STEFFEN MAU, SORTIERMASCHINEN: DIE NEUERFINDUNG DER GRENZE IM 21. JAHRHUNDERT 25-27 (2021).

⁴⁰See JELLINEK, *supra* note 10, at 395.

⁴¹See Mediendienst Integration, *Flüchtlinge aus der Ukraine* (2023), <https://mediendienst-integration.de/migration/flucht-asy/ukrainische-fluechtlinge.html>, (providing current figures).

⁴²See Regulation (EU) 2024/1350 of the European Parliament and of the Council of May 14, 2024, establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147.

Sections 22–26 of the German Residence Act—provides these people with legally justified shelter, giving them an opportunity to escape the acute danger of a Russian invasion. Besides that, the COVID-19 pandemic has shown that borders can also fulfill a major order and protective function in the containment of diseases.⁴³

Borders also convey a sense of internal security to the people living on the right side: As sites of control and manifestation of state authority, they are intended to deter malicious intrusion into one's own territory at an early stage. Walls, fences, and barriers carry symbolic significance.⁴⁴

3. Defense of Resources and Prosperity

Another justification for borders is seen in their function of contributing to the defense of resources and prosperity.⁴⁵ While individuals from affluent industrialized nations can live in peace, freedom, and prosperity, those from economically weak and politically unstable countries may not experience such good fortune.⁴⁶ On a global scale, the gap between the rich and the poor is exceptionally wide.⁴⁷ In this context, colonialism, a period of excessive exploitation of colonies by colonial states, represents one—and probably *the*—decisive driving force, its impact is increasingly recognized today.⁴⁸ Persistent xenophobia, systematic racism, modern forms of slavery, and, as just mentioned, the extreme disparity in wealth—colonization continues to have a tangible impact on the international structure of states, making its thorough reappraisal an urgent matter;⁴⁹ without justice, there can be no peace.

In addition to the motives outlined in II.1. and II.2., the countries of the “Global North” also protect their borders exceptionally robustly in order to preserve their prosperity: Whether by the construction of a border wall between the United States and Mexico for “protection” against refugees or through the deployment of military force by the European Border and Coast Agency (Frontex) to secure the EU's external border: So-called “economic refugees,” seeking a better life by fleeing to a more prosperous country are to be prevented from crossing the border at all costs.⁵⁰ Through such isolation, not only are resources located within a country to be preserved for the domestic population, but more importantly the wealth accumulated over centuries is intended to be secured for the future.

⁴³Whether border closures actually had a noticeable impact on the containment of the COVID-19 pandemic remains a matter of debate to this day. However, as the COVID-19 pandemic has shown, border closures are indisputably one of the first measures taken when it comes to preventing the spread of diseases. Compare Mathieu J.P. Poirier et al., *Quasi-experimental evaluation of national border closures on COVID-19 transmission*, 3 (2) PLOS GLOB. PUB. HEALTH (2023) (finding that border closures had “some effect on temporarily slowing COVID-19 transmission”) with Mary A. Shiraef et al., *Did border closures slow SARS-CoV-2?*, 12 SCI. REPORTS 1709 (2022) (arriving at a different conclusion).

⁴⁴Steffen Mau, *Mauern der Ungleichheit. Die Rückkehr der befestigten Grenzen*, 8 BLÄTTER FÜR DEUTSCHE UND INTERNATIONALE POLITIK 61, 63 (2021), <https://www.blaetter.de/ausgabe/2021/ausgust/mauern-der-ungleichheit>.

⁴⁵See Ron E. Hassner & Jason Wittenberg, *Barriers to Entry: Who Builds Fortified Boundaries and Why?*, 40 INT'L SECURITY 157, 159 (2015); Iñigo Moré, *The Borders of Inequality: Where Wealth and Poverty Collide* 6–26 (2011); Josiah Heyman & Natalia Ribas-Mateos, *Borders of Wealth and Poverty: Ideas Stimulated by Comparing the Mediterranean and U.S.-Mexico Borders*, 21 ARCHIVIO ANTROPOLOGICO MEDITERRANEO (2019).

⁴⁶AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY. CITIZENSHIP AND GLOBAL INEQUALITY* 4 (2009).

⁴⁷See Branko Milanović, *Global Inequality. A New Approach for the Age of Globalization* (2016) (distinguishing between inequality between states on a global level, playing an important role especially in the context of (state) borders, and inequality within states, which cannot be addressed in this article).

⁴⁸PHILIPP DANN ET AL., (POST)KOLONIALE RECHTSWISSENSCHAFT. GESCHICHTE UND GEGENWART DES KOLONIALISMUS IN DER DEUTSCHEN RECHTSWISSENSCHAFT (2022).

⁴⁹Human Rights Council Res. 48/7 U.N. Doc. A/HRC/RES/48/7 (Oct. 14, 2021).

⁵⁰See Hassner & Wittenberg, *supra* note 45, at 159; ERNESTO CASTAÑEDA, *BUILDING WALLS. EXCLUDING LATIN PEOPLE IN THE UNITED STATES* (2019); Marie-Eve Loiselle, *The American Border Wall: A History of Legal Division*, 20 (1) LAW, CULTURE & THE HUMANITIES 176 (2024).

Undeniably, this function of the borders carries a significant injustice: It depends on the purely accidental circumstances of birth (“*birthright lottery*”) on which side of a border a person grows up, which, in turn, is a crucial determinant for its overall life chances.⁵¹

III. Borders as a Symbol of Injustice

The justification of the border requires—according to the principle of proportionality which was outlined above—not only the mere existence of a purpose but also its legitimacy. Against this backdrop, it must not be ignored that borders are an expression of serious injustices. Especially because they mark and perpetuate existing inequalities even to this day, borders embody an ethical dilemma.

1. Borders as an Arbitrary Exclusion Mechanism

One of the most central principles of the constitutional order of values and law in Germany is that of the equality of all human beings. The (formal) *Aristotelian* idea of equality, according to which equal things are to be treated equally and unequal things unequally, shapes German legal discourse until today.

By serving as “sorting machines”⁵²—borders effectively distinguish between wanted and unwanted crossings—and by consequently creating insurmountable strongholds for those who were born on the “wrong” side, borders symbolize inequality in the world.⁵³ This fundamental injustice becomes particularly evident in the context of global migration and refugee movements: According to the United Nations High Commissioner for Refugees (UNHCR), at the end of 2022 there were almost 100 million people worldwide fleeing war or political persecution—and as long as people are exposed to such influences, there will also be migration and refugee movements.⁵⁴

For displaced people and refugees⁵⁵, crossing the borders of industrialized nations is comparable to winning a lottery; for people originating from such nations, it is relatively easy to cross almost all of the world’s borders.⁵⁶ This opposition illustrates the precarious semi-permeability of borders: For some, they are barely noticeable—except for the need to show their passports to border control officers—while others risk their lives in the attempt to cross.⁵⁷ By making an individual’s origin the “border opener,” borders combined with the policies and control mechanisms enforcing them act as an exclusion mechanism that arbitrarily divides people into “wanted” and “unwanted.”⁵⁸

⁵¹SHACHAR, *supra* note 46; Kristina Korte, “Who Is the Animal in the Zoo?” *Fencing In and Fencing Out at the Hungarian-Serbian Border. A Qualitative Case Study*, 37 (3) J. BORDERLANDS STUD. 453 (2022).

⁵²MAU, *supra* note 39.

⁵³Milanović, *supra* note 47, at 155.

⁵⁴See United Nations High Commissioner for Refugees, *Figures at a glance* (2023), <https://www.unhcr.org/about-unhcr/who-we-are/figures-glance>.

⁵⁵See DANA SCHMALZ, *REFUGEES, DEMOCRACY AND THE LAW: POLITICAL RIGHTS AT THE MARGINS OF THE STATE* 15-26 (2020).

⁵⁶See Ayelet Shachar, *Beyond Open and Closed Borders: The Grand Transformation of Citizenship*, 11 (1) JURIS. 1 (2020) (discussing the same problem but with regard to citizenship); Ayelet Shachar, *Unequal Access: Wealth as Barrier and Accelerator to Citizenship*, 25 CITIZENSHIP STUD. 543 (2021) (discussing the same).

⁵⁷BALIBAR, *supra* note 2, at 79 (calling this the “polysemic character of borders”); see also STEFFEN MAU ET AL., *LIBERAL STATES AND THE FREEDOM OF MOVEMENT. SELECTIVE BORDERS, UNEQUAL MOBILITY* 88-120 (2012).

⁵⁸Castañeda, *supra* note 30, at 22; Committee on the Elimination of Racial Discrimination, *Racial Discrimination Against Persons Fleeing from the Armed Conflict in Ukraine* (Mar. 17, 2022), <https://www.ohchr.org/sites/default/files/2022-03/Statement-racial-discrimination-against-persons-conflict-Ukraine.pdf?symbolno=INT/CERD/SWA/9532&Lang=en>; Tendayi E. Achiume, *Racial Borders*, 110 GEO. L. J. 445 (2022); Munshi, *supra* note 30; JUSTIN DESAUTELS-STEIN, *THE RIGHT TO EXCLUDE. A CRITICAL RACE APPROACH TO SOVEREIGNTY, BORDERS, AND INTERNATIONAL LAW*, 63-65, 253-264, 313-316 (2023); RICHARD EKINS, *THE STATE’S RIGHT TO EXCLUDE ASYLUM-SEEKERS AND (SOME) REFUGEES, IN THE POLITICAL PHILOSOPHY OF REFUGE*, 39-58 (David Miller & Christine Straehle eds., 2020).

2. *Injustice of the Border from a Philosophical Perspective*

Consequently, borders entail an ethical dilemma: Whether a person grows up in peace and prosperity or in war and poverty is neither the subject of a decision that can be influenced in any way or even consciously made, nor is it based on personal merit. The living conditions in which and individual ultimately grows up depend primarily on the accidental circumstance of birth and descent.⁵⁹

2.1. *Veil of Ignorance*

To illustrate this dilemma on a legal philosophy level, albeit in a simplified manner, the *Harsanyi/Rawlsian* “veil of ignorance” can be used in combination with the categorical imperative of *Kant*: What agreement of ends, what validity of norms, and what use of means would any human being reasonably agree to if they did not know what situation, what position, and what role they would be born into on earth, that is, if they were not guided by their own interests?⁶⁰ To put it differently: What do people consider appropriate for themselves—and what can therefore claim validity as generalizable for all people?

In the context of borders, these philosophical standards can be presented as follows: In the “original position,” an individual does not know on which side of the border it will be born, in which political system it will grow up, and what difficulties its life will entail.⁶¹ Without such prior knowledge, it will typically wish for a life in security, freedom, prosperity, and peace for itself and those closest to it. This initially purely individual desire, which, according to *Rawls’s* “ideal theory,” an individual would also uphold even in the case of “lifting the veil,” may be generalized as being a desire of all those people guided by reason.⁶²

The objection remains that *Rawls’s* “theory of justice,” which underlies the veil of ignorance, applies primarily at the level of individual states or closed societies: Although *Rawls* himself rejected a transfer of his theory to a global level due to the absence of a global framework, numerous contemporary philosophers accept the validity of his theory also on a global level, arguing that a limitation to closed societies is no longer up to date in times of a globalized world.⁶³

Following this idea of a universal applicability of the thought experiment of the “veil of ignorance,” it must be noted that borders, in their current appearance, do not exclusively contribute to satisfying the human aspiration for security, freedom, prosperity, and peace. Instead, they force the vast majority of the global population to live in conditions far from this ideal. Based on the understanding of justice outlined above, justifying borders by the *purpose of effectively securing prosperity* faces substantial challenges. It may, therefore, be necessary to improve the opportunities for people to leave their country of origin and enter another country with more promising life chances.

2.2 *Utilitarianism*

The ethical dilemma described above can also be illuminated from a utilitarian perspective. The main objective of utilitarianism is the maximization of overall utility. Among several conceivable courses of action, which one generates more benefit for all people, or at least for as many people as

⁵⁹SHACHAR, *supra* note 46, at 4.

⁶⁰JOHN RAWLS, *A THEORY OF JUSTICE: ORIGINAL EDITION* 136–42 (1971).

⁶¹*Id.* at 17–21, 118–92.

⁶²*Id.* at 8–9, 244–48.

⁶³*Id.* (rejecting a transfer of the theory of justice to the global level). In JOHN RAWLS, *THE LAW OF PEOPLES* (1999), he clarifies his position once again. Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 *THE REV. POL.* 251, 255 (1987) (accepting a transfer of the theory of justice also to the global level); Allen Buchanan, *Rawls’s Law of Peoples: Rules for a Vanished Westphalian World*, 110 *ETHICS* 697–721 (2000).

possible?⁶⁴ *Jeremy Bentham* refined this main utilitarian objective within his “greatest-happiness-principle” by developing the maxim of “the greatest happiness for the greatest number.”⁶⁵

When transferring these thoughts to borders, an unclear picture emerges at first sight: For European society, (external European) borders are associated with a high level of utility based on utilitarian standards—through them prosperity is secured for those living within the borders and they guarantee a high level of security to European citizens. When broadening the view and looking at the global community, this picture changes: The few wealthy people for whom borders are associated with added utility are facing a huge number of poor people for whom borders deny access to a life in security and prosperity. Without borders, these people would have the opportunity to move to the place with the greatest life chances.⁶⁶ Wealth could be more evenly distributed in the long run if properly managed, the basic needs of all people could be better met, and the overall societal benefit, which is decisive in utilitarianism, would increase. Because the evenly distributed happiness of many people outweighs the only selectively increased happiness of a few privileged people, borders and the accompanying restriction of migrants should be evaluated as questionable from a global moral perspective.⁶⁷ From a utilitarian perspective, therefore, borders are—again—difficult to justify.⁶⁸

Regardless of the applied philosophical standard, one thing is certain: Many people would leave their motherland for their own survival, but possibly also for a more promising life for themselves and their children and seek refuge in other countries and on other continents—which, from a philosophical perspective, undermines the basis of the border as being a mechanism for securing prosperity. In this context, the derogatory talk of “economic refugees” or of “immigration into the welfare systems” seems particularly cynical.⁶⁹

IV. Borders as a Global Social Problem

In an era dominated by the resurgence of national interest, borders have become an expression of the fear in society. On the political horizon of “Western” nations, statements frequently emerge that categorically doubt the ability of refugees to integrate or wrongly blame them for a high crime rate⁷⁰, as a review of criminology textbooks shows.⁷¹ Those statements lead to increased xenophobia in society. To prevent this diffuse “danger” from the unknown, people try to separate themselves from the outside world by strengthening borders. In addition, the preservation of prosperity is a decisive motive for the establishment of borders. The fear that more permeable borders will lead to increased immigration and serious economic losses reinforces the desire for separation. In response to this fear, politicians often react by promising an intensification of border controls. The fact that industrialized nations are thus depriving themselves of the

⁶⁴RICHARD E. BRANDT, *A THEORY OF THE GOOD AND THE RIGHT* (2d ed. 1998); PETER SINGER, *PRACTICAL ETHICS* (3d ed. 1993); AMARTYA SEN & BERNARD WILLIAMS, *UTILITARIANISM AND BEYOND* (1982).

⁶⁵Ruut Veenhoven, *Greater Happiness for a Greater Number: Is that Possible and Desirable?*, 11 *J. HAPPINESS STUD.* 605–29 (2010); JEREMY BENTHAM, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* 196–210 (1781).

⁶⁶See STEFAN SCHLEGEL, *DER ENTSCHEID ÜBER MIGRATION ALS VERFÜGUNGSRRECHT. EINE ANWENDUNG DER ÖKONOMISCHEN ANALYSE DES RECHTS AUF DAS MIGRATIONSRECHT AM BEISPIEL DER SCHWEIZ* (2017). See also Emanuel V. Towfigh, *Rezension zu Stefan Schlegel, Der Entscheid über Migration als Verfügungsrecht*, 51 *DIE VERWALTUNG* 602 (2019).

⁶⁷BENTHAM, *supra* note 65, at 198. The example of the European Union is an excellent illustration of this effect. As a result of the liberalized border regulations, under the Schengen Agreement, prosperity is distributed across the area of the Union. Even if individual states must accept slight losses in welfare, the benefits for the entire European area are nevertheless greatly increased.

⁶⁸Carens, *supra* note 63, at 263.

⁶⁹See Tendayi E. Achiume, *Migration as Decolonization*, 71 *STAN. L. REV.* 1509 (2019).

⁷⁰Castañeda, *supra* note 30, at 217; Alvaro Huerta, *The “War on Immigrants”: Policies in the Trump Era*, 5 (2) *MIGRATION & CITIZENSHIP* 57 (2017), <https://perma.cc/UPY3-3M9W>.

⁷¹See BERND-DIETER MEIER, *KRIMINOLOGIE* 129–131 (2010); HANS-DIETER SCHWIND, *KRIMINOLOGIE. EINE PRAXISORIENTIERTE EINFÜHRUNG MIT BEISPIELEN* 489–554 (2010).

opportunity to counteract demographic change and eliminate existing injustices is being ignored.⁷²

It must not be forgotten that in liberal-democratic legal systems it is legitimate to establish border regimes in order to set up and maintain a necessary order, but nevertheless, measured by philosophical-ethical standards, it is not justifiable to strictly seal off borders in order to defend prosperity. Global justice asymmetries that become visible through and at borders can only be eliminated by creating the foundations for security and prosperity globally; the impulse to secure one's own prosperity by strengthening and securing borders must be resisted by any society that is seriously committed to the idea of the (equal) dignity of human beings—borders can only be legitimized as a principle of order, but not as an exclusion mechanism.

D. (Legal) Legitimacy of the Concept of Citizenship

I. Purpose of the Concept of Citizenship

Like borders, the concept of citizenship is not to be regarded to as law of nature, but as a legally sanctioned, human-made fiction, which, too, serves as a legal instrument for behavioral control. The concept of citizenship empowers states to decide who may reside within a state's territory, who may exercise political participation rights, and who can be considered a holder of fundamental rights. By regulating political inclusivity (and also exclusivity) in a democracy, the concept can have severe consequences for the individual. Therefore, as a measure conducted by a state, the concept of citizenship requires justification by law; it must, like borders, serve a legitimate purpose.⁷³

1. Assignment and Distinguishing Function

Firstly, the concept of citizenship can be justified, on the one hand, by its function of clearly assigning people to a specific state and, on the other hand, by its function of distinguishing them from people belonging to other states. Citizenship not only determines who belongs to a certain state, it also draws the line between citizens and foreigners. The assignment function stems from the idea of uniting people within homogeneous nation-states, which emerged at the time of the rise of nationalism. In particular, an individual's citizenship aims at establishing a legal bond between the individual and the state by granting certain rights and imposing certain obligations.⁷⁴ This enduring legal bond is characterized as being highly exclusive: Only citizens are the subjects of those rights and obligations—everyone else is excluded.⁷⁵

The assignment and distinguishing function that is inherited in the concept of citizenship is currently being challenged by the growing popularity of the concept (and in today's world even social reality) of "multiple citizenship": If an individual holds the citizenship of several states, it is no longer possible to clearly assign them to just one single state. A person holding multiple citizenships could consequently make use of the rights of multiple states, potentially leading to an

⁷²Agnew, *supra* note 37, at 177.

⁷³For more in detail about the principle of proportionality, *see supra* note 33. On such purposes regarding the concept of citizenship, *see* DAVID MILLER, CITIZENSHIP AND NATIONAL IDENTITY 24–40 (2000).

⁷⁴*See* Sophie-Charlotte Lenski, *Der Bürgerstatus im Licht von Migration und europäischer Integration*, 127 DEUTSCHES VERWALTUNGSBLATT 1057, 1058 (2012).

⁷⁵Rolf Grawert, *Review: Protest und Repression im Vormärz. Norddeutschland zwischen Restauration und Revolution*, 23 DER STAAT 179, 183 (1984). *See* Ayelet Shachar et al., *Citizenship—Quo Vadis?*, in THE OXFORD HANDBOOK OF CITIZENSHIP, 8 (Ayelet Shachar et al. eds., 2017) (discussing the exclusionary effect of citizenship); Veit Bader, *Citizenship and Exclusion: Radical Democracy, Community, and Justice. Or, What is Wrong with Communitarianism?*, 23 (2) POL. THEORY 211–46 (1995) (the same); Veit Bader, *Citizenship and Exclusion* (1997) (the same); Margaret Coady, *Citizenship: Inclusion and Exclusion*, in HANDBOOK OF CHILD. & YOUTH STUD., 1–11 (Johanna Wyn & Helen Cahill eds., 2015); BARBARA VON RÜTTE, THE HUMAN RIGHT TO CITIZENSHIP. SITUATING THE RIGHT TO CITIZENSHIP WITHIN INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW 336–339 (2022) (the same).

unintended preferential treatment of this very person compared to someone holding only a single citizenship. Nevertheless, “multiple citizenship” is based on the intention that an individual who is born to “bi-national” parents and thus rooted in several countries can participate equally in the political decision-making process and be part of society in all these countries. This suggests that the assignment and distinguishing function of the concept of citizenship has lost some of its relevance today and could, to a certain extent, require a softening.⁷⁶

2. Granting of Rights and Imposition of Obligations

As mentioned above, the concept of citizenship is also justified by the fact that it provides individuals with comprehensive rights, but at the same time imposes duties on them to ensure the functioning of the state, such as the obligation to pay taxes or to perform military service. Since the granting of rights is particularly important for the justification of the concept of citizenship, a selection of the most important of those rights shall be examined in greater detail:

Above all, citizenship—at least in states with democratic structures—grants political participation rights.⁷⁷ The right to participate in political decision-making processes is in most cases—only a few exceptions apply⁷⁸—reserved to citizens: They can take part in elections, run for political offices, or form political parties.⁷⁹ The German Basic Law, for example, grants such “membership rights” in Article 38 Paragraph 2 (active and passive right to vote) and in Article 33 Paragraph 2 (access to public office). To exercise these rights holding German citizenship is mandatory.⁸⁰ The criterion of citizenship aims at ensuring that the right to political participation is exclusively available to those who actually belong and want to belong to a “polity,” and who have at least some knowledge of domestic processes and topics. Those to whom these characteristics do not apply, either because they only stay in the respective country for a short time (e.g., tourists) or because they belong to another political community, are excluded from the opportunity for political participation through the instrument of citizenship.⁸¹ Nonetheless, in some cases, citizens of foreign states may still have a legitimate interest in political participation even if they are not part of the national community. For example, the outcome of the 2013 German parliamentary elections was expected to have a major impact on the Greek economy, as measures of austerity and financial aid for Greece were a hotly debated topic.⁸² Therefore, it is likely that many Greek

⁷⁶Basic literature regarding the topic “multiple citizenship”: Anita Böcker & Dietrich Thränhardt, *Multiple Citizenship and Naturalization: An Evaluation of German and Dutch Policies*, 7 J. INT’L MIGRATION & INTEGRATION 71 (2006); Peter J. Spiro, *Multiple Citizenship*, in THE OXFORD HANDBOOK OF CITIZENSHIP, 621–43 (Ayelet Shachar et al. eds., 2017); THOMAS FAIST & PETER KIVISTO, *Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship* (2007); YOSHI HARPAZ, *Citizenship 2.0: Dual Nationality as a Global Asset* (2019); ANA TANASOCA, *The Ethics of Multiple Citizenship* (2018); T. Alexanders Aleinikoff & Douglas Klusmeyer, *Plural Nationality. Facing the Future in a Migratory World*, in CITIZENSHIP TODAY. GLOB. PERSP. & PRAC., 63–88 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2001).

⁷⁷See Ashley Mantha-Holland & Liav Orgad, *Citizenship at a Crossroad*, 18 INT’L J. CONST. L. 1522 (2020); Rainer Bauböck, *Political Membership and Democratic Boundaries*, in THE OXFORD HANDBOOK OF CITIZENSHIP, 60–82 (Ayelet Shachar et al. eds., 2017).

⁷⁸See LUCIY PEDROZA, *Citizenship Beyond Nationality: Immigrants’ Rights to Vote Across the World* (2019); Felix Bender, *Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?*, 25 (1) CITIZENSHIP STUD. 56 (2020); Joachim Blatter et al., *Enfranchisement Regimes Beyond De-Territorialization and Post-Nationalism: Definitions, Implications, and Public Support for Different Electorates*, 29 (7) DEMOCRATIZATION 1208 (2022); Daniele Caramani & Florian Grotz, *Beyond citizenship and residence? Exploring the extension of voting rights in the age of globalization*, 22 (5) DEMOCRATIZATION 799 (2014).

⁷⁹Wichard Woyke, *Politische Partizipation*, in HANDWÖRTERBUCH DES POLITISCHEN SYSTEMS DER BUNDESREPUBLIK DEUTSCHLAND (Uwe Andersen & Wichard Woyke eds., 2021), <https://www.bpb.de/kurz-knapp/lexika/handwoerterbuch-politische-system/202091/politische-partizipation/>.

⁸⁰GEORG JELLINEK, *SYSTEM DER SUBJEKTIV ÖFFENTLICHEN RECHTE* 182 (1892).

⁸¹See SCHMALZ, *supra* note 55, at 43 (regarding refugees).

⁸²See *Die Kanzlerin wirbt trotz Risiken für Griechenland-Hilfen*, ZEIT ONLINE (Feb. 27, 2012), <https://www.zeit.de/politik/deutschland/2012-02/bundestag-griechenland-hilfspaket-merkel>.

citizens had a significant interest in political participation in these parliamentary elections. In such situations citizenship excludes people from the right to vote although they do have legitimate interest in political participation. Similar arguments could be made with view to the significance of US presidential elections for many non-US citizens throughout the world.

Furthermore, citizenship establishes rights of protection and defense against the state. The state is responsible for its citizens. By granting fundamental rights such as freedom of speech, freedom of religion, or freedom of property the state must fulfill this responsibility.⁸³ Still, the level of protection varies from state to state: While in liberal democracies a comprehensive catalog of rights is usually granted, citizens of non-liberal states are, at best, granted a significantly reduced level of protection.⁸⁴ To a certain extent, these differences arise because “states routinely provide citizens fewer rights than they are owed.”⁸⁵ Nevertheless, there is no specific level of protection that states are obliged to grant their citizens because, after all, the legal and factual circumstances in each state differ.⁸⁶ Although the international community is constantly trying to work towards a more harmonized granting of fundamental rights for all people, to this day an individual’s citizenship is still determining the scope of legal protection: A good example of this is the differentiation made by the German Basic Law between civil rights, which only apply to German citizens, and human rights, which apply to all people regardless of their citizenship.⁸⁷

One very important right that is conveyed through and still closely linked to citizenship is the (global) freedom of movement. Apart from the fact that citizens can generally move freely within their own country, the passport—manifestation of a person’s citizenship—is the key criterion for entering another country.⁸⁸ While on the one hand, citizenship is associated with strict entry regulations or even entry restrictions for the majority of the global population, on the other hand, passports from certain states allow visa-free entry to numerous countries. For example, according to the “Henley Passport Index,” German citizens can enter as many as 194 countries without requiring a visa, whereas the lowest-ranked Afghan passport only grants visa-free entry to 28 countries.⁸⁹ This shows that as far as freedom of movement across borders is concerned, there are serious inequalities at a global level: While some privileged people can effortlessly move from state to state, other people are effectively unable to legally leave their own country. This inequality becomes particularly apparent in the context of migration: Usually, any migration efforts are preceded by a prior legal stay in the respective destination country. Freedom of movement across borders, therefore, is a precursor to subsequent legal migration. Nevertheless, if this freedom is limited by entry restrictions, legal migration is almost impossible.⁹⁰

⁸³These examples are limited to fundamental rights, which are reserved exclusively for citizens. Besides these rights, there is a catalog of rights that the State guarantees to every human being, regardless of their citizenship.

⁸⁴See Maarten Peter Vink, *Comparing Citizenship Regimes*, in THE OXFORD HANDBOOK OF CITIZENSHIP, 221–46 (Ayelet Shachar et al. eds., 2017).

⁸⁵Daniel Sharp, *Immigration, Naturalization, and the Purpose of Citizenship*, 104 PACIFIC PHIL. Q. 408, 411 (2022).

⁸⁶*Id.*

⁸⁷See Hans D. Jarass, *Art. 19 GG. Grundrechtseinschränkung, Grundrechtsträger, Rechtsschutz*, in GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND Art. 19 margin no. 13 (Hans D. Jarass & Bodo Pieroth eds., 17th ed. 2022). The German Basic Law binds the enjoyment of several rights to German citizenship. Andreas Fischer-Lescano, *Deutschengrundrechte: Ein kolonialistischer Anachronismus*, in (POST)KOLONIALE RECHTSWISSENSCHAFT. GESCHICHTE UND GEGENWART DES KOLONIALISMUS IN DER DEUTSCHEN RECHTSWISSENSCHAFT (Philipp Dann et al. eds., 2022) (explaining that contrasted with human rights, only German citizens are entitled to those so-called “Deutschen-Grundrechte”).

⁸⁸Cresswell, *supra* note 6, at 110; Sara Dehm, *Passport*, in INT’L L.’S OBJECTS 350 (Jessie Hohmann & Daniel Joyce eds., 2018).

⁸⁹See Henley & Partners, *Global passport ranking* (2024), <https://www.henleyglobal.com/passport-index/ranking>.

⁹⁰Achieme, *supra* note 58, at 467.

3. Citizenship as an Element of the Identification Process

At border crossings and airports, customs officials typically check the passports of people seeking to enter a country and make the final decision on whether an individual can actually exercise their freedom of movement. As part of this identification process, the officials compare a person's characteristics with the data listed in the passport. Characteristics such as eye color, gender, height, age, and physical appearance are particularly important in the context of this proof of identity. If all these characteristics match the elements of identity listed in the passport, there is a reasonable chance for entry. Still, there is one much more important element that significantly influences the official's decision whether entry is granted or not: Citizenship.⁹¹ If a person holds the "right" citizenship, there are no obstacles to its entry. But no matter if a person's characteristics exactly match the elements of identity listed in the passport, chances of entering a country with the "wrong" citizenship are slim. Thus, citizenship, like the other characteristics mentioned above, becomes part of the identification process and plays a crucial role in the final admission decision.

To sum up, citizenship often is a decisive determinant of inclusion or exclusion. While society is continuously trying to eliminate existing inequalities based on elements of identity such as gender or age, discrimination based on citizenship is still commonly tolerated. In view of this, the question arises as to whether it is fair that citizenship has become a central element of identity which determines an individual's life chances based (once again) on the arbitrary circumstance of birth.⁹²

II. Citizenship as an Instrument of Division and Discrimination

Although the concept of citizenship serves the above-mentioned purposes, according to the principle of proportionality, the justification of the concept also requires the legitimacy of these purposes. As the inequality that stems from passports, the granting of rights based primarily on citizenship, and the exclusionary effects of citizenship have shown, the concept is accompanied by serious injustices, querying the ethical validity of the concept of citizenship.

1. Citizenship Divides the Global Community

Like borders, citizenship has become a tool of segregation, violence, and discrimination that impairs equality.⁹³ Citizenship draws a significant distinction between equal people by assigning them to specific countries in which dramatically uneven sets of life opportunities prevail.⁹⁴ This is problematic because these opportunities depend on an individual's citizenship which is entirely unmerited.⁹⁵ From an equality perspective, however, this grievance only becomes relevant considering that individuals cannot simply choose their citizenship and the associated, either favorable or unfavorable, life chances.⁹⁶ In contrast, the acquisition of citizenship is based on completely arbitrary circumstances that are beyond an individual's control, such as the place of birth or the descent: The most common ways of acquiring citizenship are *ius sanguinis* (right by blood) and *ius soli* (right by soil). The former acquisition principle, which used to be the sole

⁹¹See Sharp, *supra* note 85, at 413; Christian Joppke, *Transformation of Citizenship: Status, Rights, Identity*, 11 CITIZENSHIP STUD. 37 (2007); Charles Tilly, *Citizenship, Identity and Social History*, 40 (3) INT'L REV. OF SOC. HIST. 1 (1995); Dehm, *supra* note 88, at 350.

⁹²Dehm, *supra* note 88, at 348; Craig Robertson, *A Documentary Regime of Verification: The Emergence of the U.S. Passport and the Archival Problematization of Identity*, 23 CULTURAL STUD. 329, 331 (2009).

⁹³STEFAN ZWEIG, *THE WORLD OF YESTERDAY: AN AUTOBIOGRAPHY* 308 (1947).

⁹⁴See Rainer Bauböck, *Ius Filiationis: A defence of Citizenship by Descent*, in *DEBATING TRANSFORMATIONS OF NATIONAL CITIZENSHIP* 83, 87 (Rainer Bauböck ed., 2018).

⁹⁵DIMITRY KOCHENOV, *CITIZENSHIP* 9 (2019). Even "merit" is a problem concept. See MICHAEL J. SANDEL, *THE TYRANNY OF MERIT* (2020).

⁹⁶Yasemin Nuhoglu Soysal, *Citizenship's double-edged sword: Locating liberalism and illiberalism in citizenship*, 18 INT'L J. CONST. L. 1519, 1521 (2021).

common principle in the countries of the European Union, means that a child acquires the citizenship of its parents at birth, regardless of the country in which it is born.⁹⁷ With the latter, which to this day is the common acquisition principle in the United States, any child born on the territory of a state automatically acquires the citizenship of that state.⁹⁸ In most cases, an individual that has acquired its citizenship according to one of those principles is almost fatefully bound to that citizenship for a lifetime. Genuine equality cannot be achieved as long as an individual acquires citizenship in a way comparable to a lottery and is from then on fatefully bound to it.⁹⁹ If citizenship could be acquired as desired, the concept of citizenship as a whole would be less controversial from an equality perspective. In this context, the process of naturalization, which makes it possible to acquire citizenship based on individually controllable criteria such as the place of residence and the “*nexus*”¹⁰⁰ to the society of a state, would ensure greater fairness.¹⁰¹ Nonetheless, the formal requirements for naturalization are exceptionally strict, and *ius sanguinis* and *ius soli* are still the most common grounds for acquisition.

This is why the concept of citizenship poses a serious ethical problem to this day: Some people enjoy the benefits of a “high-value” citizenship that grants its holders valuable rights all over the world, others are condemned to poor living conditions by their “low-value” citizenship.¹⁰² While the former can spend their entire lives without even thinking about their own citizenship, the latter are constantly confronted with the fact that their citizenship makes their lives significantly more difficult.¹⁰³ Of course, this does not mean that everyone possessing a “low-value” citizenship suffers from or laments that status. Although their citizenship may be “inferior” compared to others, many people, including the very poor, may still take some pride in their national identity (as expressed through their citizenship) and would not want to live in another polity, even if that would guarantee them better living conditions. Those people may actually enjoy living in the community they were born into and prefer to contribute to the well-being of that community rather than leaving it.¹⁰⁴ However, even if some people prefer to stay in their home countries despite any hardships, citizenship should still not (pre-)determine the difficulties one might face in life. The global community, whose members should all have the same opportunities according to an understanding of free and equal human dignity, is arbitrarily divided by the concept of citizenship along the lines of “superior” and “inferior” people. The problem is that people holding a “high-value” citizenship tend to do everything they can to maintain this division in order to preserve the benefits that come with their citizenship: Education, prosperity, political participation, and increased life expectancy—people with privileging citizenships are generally unwilling to give up these benefits for the sake of the disadvantaged. By upholding the concept of

⁹⁷Patrick R. Hoffmann, *Völkerrechtliche Vorgaben für die Verleihung der Staatsangehörigkeit* 239 (2022); Julien Berger, *Staatsbürgerschaft als Ware – von Goldenen Pässen und der Europäischen Union*, 81 HEIDELBERG J. OF INT’L L. 1033, 1039 (2021). Today, most European states apply a combination of both acquisition principles.

⁹⁸Hoffmann, *supra* note 97, at 237; Ferdinand Weber, *Konzeptionelle Grundfragen des Staatsangehörigkeitsrechts*, in STAATSANGEHÖRIGKEITSRECHT margin no. 193-197 (Kay Hailbronner et al. eds., 7th ed. 2022).

⁹⁹SHACHAR, *supra* note 46, at 4.

¹⁰⁰*Id.* at 164.

¹⁰¹See Liav Orgad, *Naturalization*, in THE OXFORD HANDBOOK OF CITIZENSHIP 337-357 (Shachar et al. eds., 2017); Weber, *supra* note 98, at 200; Nottebohm Case (second phase) (Liechtenstein v. Guatemala), Judgment, 1955 I.C.J. REPORTS, 4, 20 (Apr. 1955).

¹⁰²KOCHENOV, *supra* note 95, at 247 (referring to “high-value” citizenship as “super citizenship”). See also Christian Kälin & Dimitry Kochenov, *Kälin – Kochenov Quality of Nationality Index Global Rankings 2020* (2020), <https://www.henleyglobal.com/publications/kalin-and-kochenovs-quality-nationality-index-global-rankings>. See also SHACHAR, *supra* note 46.

¹⁰³KOCHENOV, *supra* note 95, at 4. Of course, there are many people who are at peace with their “low-value” citizenship. These people are proud of their citizenship and unwilling to leave their home country, even if it would be economically desirable for them to do so. Nevertheless, there are still many people who want to migrate to a more prosperous country in the search of better life opportunities.

¹⁰⁴Peter A. Fischer et al., *Should I Stay or Should I Go?*, in INT’L MIGRATION, IMMOBILITY AND DEVELOPMENT 49-91 (Tomas Hammar et al. eds., 1997).

citizenship, which is deeply rooted in the thinking of society, this “elite” is progressively isolating itself from the rest of the world.¹⁰⁵

Therefore, the concept of citizenship—similarly to borders—must be viewed critically against the *Aristotelian* idea of the equality of all human beings, which must be applied to assess such legal instruments in free and democratic states. This is due to the fact that citizenship, as an instrument of isolation and division, effectively differentiates between fundamentally equal people, resulting in serious legal and factual inequalities and an obvious unequal distribution of goods and opportunities.¹⁰⁶

2. Discriminatory Effect of the Concept of Citizenship

This highly questionable degradation of people holding a certain citizenship to “second-class people” becomes even more controversial considering that citizenship is often linked, at least indirectly, to a particular ethnic group.

The denial of access to the territory of the industrialized countries on the grounds of “non-compliance with entry requirements” generally affects the people of the “Global South” who tend to hold “inferior” citizenships. This is underlined by the visa regulations of the Schengen area: Citizens of African, Middle Eastern, or Asian countries need a visa to enter the European Union because there is suspicion that these people will not leave the Union once they have entered; thus, a Schengen visa can only be obtained if strict entry requirements are met.¹⁰⁷ Since migration is often preceded by a previous legal stay, which is rarely an option due to the restrictive visa regulations of industrialized countries, the immigration hopes of people from these parts of the world are minimized as a result of their original citizenship.¹⁰⁸

Therefore, the decision of whether one may enter or migrate depends largely on an individual’s citizenship.¹⁰⁹ Still, since citizenship is usually closely linked to a specific ethnic group—for example, the citizens disadvantaged under the European Union’s visa policy primarily belong to the “non-white” population—this decision is eventually based on the ethnicity of those seeking to enter or migrate.¹¹⁰ For this reason, the entry decision reveals origin-based discrimination, disguised by the criterion of citizenship. Certain ethnic groups are wanted, others are not.¹¹¹ Although the citizenship-based differentiation does not appear to be a “racist categorization” at first glance, it can in fact manifest itself as “hidden” racism: For example, the citizens of African countries, who are often being discriminated against in the context of entry decisions, are mostly Black, whereas the privileged citizens of industrialized countries are predominantly White.¹¹² This

¹⁰⁵KOCHENOV, *supra* note 95, at 60.

¹⁰⁶See DAVID MILLER, ON NATIONALITY 49-80 (1995) (discussing the ethics of the concept of citizenship).

¹⁰⁷Achiume, *supra* note 58, at 466; RYSZARD CHOLEWINSKI, BORDERS AND DISCRIMINATION IN THE EUROPEAN UNION 21 (2002); Maarten den Heijer, *Visas and Non-Discrimination*, 20 EUR. J. MIGRATION & L. 470, 484 (2018).

¹⁰⁸Achiume, *supra* note 58, at 468; Michelle Foster & Timnah Rachel Baker, *Racial Discrimination in Nationality Laws: A Doctrinal Blind Spot of International Law?*, 11 (1) COLUM. J. OF RACE & L. 83, 89-97 (2021).

¹⁰⁹Although there is a complex asylum system, which anticipates entry rights without immediate regard to citizenship, citizenship still plays a decisive role in determining whether this asylum system is applicable to a person—especially regarding the question of whether an individual seeking entry originates from a “safe” country or not.

¹¹⁰See Dimitry Kochenov, *Ending the passport apartheid. The alternative to citizenship is no citizenship – A reply*, 18 INT’L J. CONST. L. 1525, 1528 (2021).

¹¹¹*Id.* (exemplifying the core of this differentiation because those considered “non-white” were excluded from society). Notably, this racism continues to this day, except today the exclusion is justified by citizenship. See also Mekonnen Tesfahuney, *Mobility, racism and geopolitics*, 17 POL. GEOGRAPHY 499, 512–13 (1998); David Scott Fitzgerald, *The History of Racialized Citizenship*, in THE OXFORD HANDBOOK OF CITIZENSHIP, 130 (Ayelet Shachar et al. eds., 2017).

¹¹²Paul Asquith et al., *Visa Problems for African Visitors to the UK: A joint All-Party Parliamentary Group Report by the APPG for Africa, the APPG for Diaspora, Development & Migration and the APPG for Malawi* (2019), <https://perma.cc/2DZ9-KFTB>.

observation uncovers that the concept of citizenship is not only discriminatory but also inheres a racist element.¹¹³

While these days persistent efforts are made to eliminate discrimination and racism based on personal characteristics such as skin color, age, gender, or religion, discrimination and racism based on citizenship continue to be tolerated. In this respect, it is possible to refer to the above-mentioned finding that citizenship serves as an identity-creating feature that defines people and thus exerts a decisive influence on the possibility of entry or migration. As long as such “veiled” discrimination and racism can occur, efforts to eliminate other obvious discrimination and racism are only half the battle.¹¹⁴ Resolute action must be taken against *all* forms of discrimination and *all* forms of racism, regardless of where they originate.

The origin-based discrimination and racism emanating from the concept of citizenship illustrate the inherent injustice of the concept from an even more concrete perspective. Although the concept of citizenship is legitimate for assigning people to particular states and for granting rights and imposing obligations to citizens, it cannot be justified as a discriminatory instrument of isolation and division. In view of its “double-edged” nature, the concept of citizenship must be seen as an intermediate step necessary to maintain order in the world, which has so far made many things possible, but still makes some things impossible and thus leaves room for improvement.¹¹⁵

E. Alternative Border and Citizenship Models

I. Open Borders

In the past, numerous orders of privilege have already been discarded in favor of the equality of all people: The estate-based society was overcome, slavery was abolished, and equal rights for men and women were achieved.¹¹⁶ Why should (state) borders, which suffer similarly serious injustices, not also meet such a fate?¹¹⁷

A straightforward approach to eliminate this injustice would be the complete abolition of all (state) borders. The most prominent proponent of this idea is *Joseph H. Carens*, who considers open borders and free migration essential for a just social order.¹¹⁸ Although he does not consider this idea (which he justifies on the basis of the equality of all human beings and tries to prove by means of various philosophical theories) to be immediately realizable, he describes it as a long-term goal towards which society as a whole should work.¹¹⁹ From an individual’s perspective, the scenario of open borders not only makes cross-border movement much easier but also facilitates immigration to other countries.¹²⁰ As a consequence of this possibility of free migration, every person is at least theoretically free to move to a place that offers better opportunities in life.¹²¹ This

¹¹³Achiame, *supra* note 58, at 466; Radhika Viyas Mongia, *Race, Nationality, Mobility: A History of the Passport*, 11 (3) PUB. CULTURE 527 (1999).

¹¹⁴KOCHENOV, *supra* note 110, at 1528.

¹¹⁵See Soysal, *supra* note 96.

¹¹⁶See GRUNDGESETZ [GG] [Basic Law] art. 3, para. 2, <http://www.gesetze-im-internet.de/>, (creating the principle of equal treatment of women and men).

¹¹⁷This question is addressed by Kochenov in the context of the comparable discussion on the validity of citizenship, see KOCHENOV, *supra* note 110, at 1526. On the idea of open borders, see MILLER, *supra* note 27, at 38.

¹¹⁸Carens, *supra* note 63, at 251.

¹¹⁹*Id.* at 252–64, 270. His initially still very radical view—that a world without open borders is unjust—is relativized in his later work, *THE ETHICS OF IMMIGRATION* (2013). There, he ultimately concedes a certain benefit to borders, without, however, abandoning his image of an ideal world without these borders.

¹²⁰Castañeda, *supra* note 30, at 217.

¹²¹See SCHLEGEL, *supra* note 66. MARTINO MONA, *DAS RECHT AUF IMMIGRATION: RECHTSPHILOSOPHISCHE BEGRÜNDUNG EINES ORIGINÄREN RECHTS AUF EINWANDERUNG IM LIBERALEN STAAT* (2007) (favoring a right to immigration for everybody, similar to the approach of opening all borders).

would align with the idea of universalism, stating that all people are born equal and therefore entitled to equal rights, while simultaneously resolving the ethical dilemma presented above.¹²² From a societal and economic perspective, the opening of borders holds potential as well. For one thing, the prosperity acquired by the countries of the “Global North” in a historically questionable manner (keyword: colonialism) could be used in a way that benefits as many people as possible.¹²³ For another, facilitating international trade and increasing the efficiency of global supply chains could lead to an increase in the global gross domestic product.¹²⁴

Regardless of these potentially positive effects, one should not lose sight of the fact that more permeable borders are not the sole solution for a modern world order. The call for the complete abolition of borders fails to recognize that borders also serve other purposes in addition to securing prosperity and isolating from the outside world: They fulfill the ordering and protective function described above, which is essential for human coexistence. Moreover, opening all borders could exacerbate the problem of global poverty, as those who seek new opportunities in more affluent regions would primarily be those who can “afford” it, because they possess a certain (human or financial) capital (selection effect). This, in turn, could lead to a “brain drain,” meaning an alarming emigration of qualified workers away from developing countries. The result would not be more justice for *all* people, but rather a further segregation of the world’s population. On top of that, the destination countries could be negatively affected by a large-scale movement of people aspiring for economic advancement.¹²⁵ Massive population shifts would not only pose a huge logistical and financial challenge to the host countries, but it would also threaten their governmental structures.¹²⁶

Although fixed borders violate the principle of openness in a democratic society, it is, nevertheless, important to note that a democratic society can hardly endure if all borders were torn down in the pursuit of universalism.

II. Global Citizenship

The idea of global citizenship stands in line with the approach of open borders and seeks to eliminate the injustices inherent in the concept of citizenship. The ideology that underlies this idea, also referred to as cosmopolitanism, views the entire earth as the common home of humanity.¹²⁷ The “global citizen” does not identify with a single state, but transcends national allegiance to become part of a supranational society.

The citizenship acquired arbitrarily by birth binds individuals fatefully to specific living conditions.¹²⁸ If these living conditions do not align with a person’s expectations, citizenship often deprives the person of the opportunity to move freely (across state borders), which is necessary to escape those conditions. That very freedom of movement is a central element of the idea of global

¹²²ANDREAS CASSEE, *GLOBALE BEWEGUNGSFREIHEIT. EIN PHILOSOPHISCHES PLÄDOYER FÜR OFFENE GRENZEN* 210-233 (2016).

¹²³Seyla Benhabib, *The Rights of Others. Aliens, Residents, and Citizens* 71-98 (2000).

¹²⁴Achille Mbembe, *The Idea of a Borderless World*, in *AFRICA IS A COUNTRY* (Nov. 11, 2018), <https://africasacountry.com/2018/11/the-idea-of-a-borderless-world>.

¹²⁵See World Bank, *Poverty and Shared Prosperity 2022: Correcting Course* 30 (2022), <https://openknowledge.worldbank.org/bitstream/handle/10986/37739/9781464818936.pdf>.

¹²⁶JULIAN NIDA-RÜMELIN, *ÜBER GRENZEN DENKEN. EINE ETHIK DER MIGRATION* 157-173 (2017).

¹²⁷See Achille Mbembe, *Out of the Dark Night – Essays on Decolonization* (2021). (detailing contributions to the idea of global citizenship and to cosmopolitanism in general); see also MATTHIAS LUTZ-BACHMANN (ED.) ET AL., *KOSMOPOLITANISMUS. ZUR GESCHICHTE UND ZUKUNFT EINES UMSTRITTENEN IDEALS* (2010); MARTHA C. NUSSBAUM, *KOSMOPOLITISMUS. REVISION EINES IDEALS* (2020); STEVEN VERTOVEX & ROBIN COHEN, *CONCEIVING COSMOPOLITANISM: THEORY, CONTEXT AND PRACTICE* (2002); IMMANUEL KANT, *ENTWURF ZU EINER ALLGEMEINEN GESCHICHTE IN WELTBÜRGERLICHER ABSICHT* (1784); ANTHONY APPIAH, *COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS* (2006); DAVID MILLER, *NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE* 23–50 (2007).

¹²⁸See SHACHAR, *supra* note 46, at 4.

citizenship. Its establishment would ensure that borders do not represent a barrier for the individual, rather it would create the opportunity to seek individual happiness anywhere in the world. In this scenario, all people would have the same rights and freedoms regardless of their place of birth. The essentialization often denounced in anti-discrimination law, that citizenship has become an essential characteristic that defines a person, could be overcome by the idea of global citizenship.¹²⁹

Nevertheless, this idea fails to recognize that the concept of citizenship allows orderly coexistence in the first place: Sovereign states legitimize themselves (among their territory and their governmental authority) through their citizens.¹³⁰ Without the existence of legitimized sovereign states, which significantly contribute to the order of society, the world could not be governable. And just like the opening of borders, global citizenship would as well entail the risk of massive population shifts, as the newfound freedom of movement could prompt many people to move to a place with better life opportunities. As a result, this could lead to an overload of infrastructure and to political unrest in the destination regions.¹³¹

Although the idea of global citizenship would pave the way toward a unification of the global community, it is associated with significant implementation difficulties and unpredictable risks. Given those difficulties and risks, pursuing a less radical approach—such as the progressive liberalization of citizenship law¹³² and the strengthening of the global sense of community by creating a “One World” mentality¹³³—might be more promising in the medium-term. Nevertheless, global citizenship itself could serve not only as a kind of litmus test to assess whether the world is becoming a more just place but also as a long-term goal for society to strive toward.

F. Borders and Citizenship as Indicators of the Need for Gradual Change

Borders, as well as the concept of citizenship, continue to serve significant purposes even in today’s world. In particular, borders are important for ensuring security and contributing to order in the world; they also serve to assign territories to certain states, thus helping to transform the world into a more governable framework (C.II.). The concept of citizenship is the key determinant when it comes to granting rights to citizens and imposing obligations on them; besides that, an individual is assigned to a specific state by its designated citizenship (D.I.). These vital purposes clearly underline the fact that borders and the concept of citizenship cannot be completely abolished, even if they suffer from serious deficits and injustices (C.III. and D.II.). If—as suggested by some (E.)—borders and the concept of citizenship were completely abolished, these purposes

¹²⁹Another approach to address the inherent weaknesses of the concept of citizenship has gained popularity in the past decade. Through the concept of “denizenship”, foreigners who have already resided in a certain country are to be granted special rights that improve their standing. See Jürgen Bast, *Denizenship als rechtliche Form der Inklusion in eine Einwanderungsgesellschaft*, 33 (10) ZEITSCHRIFT FÜR AUSLÄNDERRECHT UND AUSLÄNDERPOLITIK 353 (2013); Daniel Thym, *Vom „Fremdenrecht“ über die „Denizenship“ zur „Bürgerschaft“*, 57 (1) DER STAAT 77 (2018).

¹³⁰JELLINEK, *supra* note 10, at 395.

¹³¹See Stefan Kadelbach, *Staatsbürgerschaft–Unionsbürgerschaft–Weltbürgerschaft*, in EUROPÄISCHE DEMOKRATIE 89–108 (Josef Drexler et al. eds., 1999).

¹³²Literature on the topic of liberalization of citizenship laws includes: Ayelet Shachar, *Sustaining Global Inequality Through Citizenship Laws*, 44 CHILD, FAMILY, AND STATE 345 (2003); Christian Joppke, *Transformation of Citizenship: Status, Rights, Identity*, in CITIZENSHIP BETWEEN PAST AND FUTURE (Engin F. Isin et al. eds., 2008); Ayelet Shachar & Ran Hirschl, *On Citizenship, States, and Markets*, 22 J. POL. PHIL. 231 (2014); Tarik Tabbara, *Modernisierung des Staatsangehörigkeitsrechts – halbierte Reform*, 56 ZEITSCHRIFT FÜR RECHTSPOLITIK 237 (2023); VON RÜTTE, *supra* note 75, at 329.

¹³³To create a “One World” mentality, education plays an important role. Education is the most effective way to shape values, attitudes, behaviors, and skills that will equip the peoples of the world to act in the long-term interest of the planet and humanity. Governments should seek to make the principle of global citizenship part of the standard education of every child. See *World citizenship: A Global Ethic for Sustainable Development*, BAHÁ'Í INT'L CMTY. (Jun. 14, 1993), <https://www.bic.org/statements/world-citizenship-global-ethic-sustainable-development-0>.

could no longer prevail. The consequence of such an abolition would be chaos at the places of refuge: A large number of people from less developed countries would no longer be prevented from migrating to the industrialized countries in search of a better life, possibly overburdening the structures of these countries. The resulting loss of prosperity and destabilization, and even more so the loss of the ability to provide protection and security would benefit no one. Therefore, an immediate and complete opening of borders as well as an immediate shift away from the concept of citizenship towards new models of citizenship cannot be a panacea, because such drastic measures at this present time appear to be utterly utopian, given the numerous purposes that borders and the concept of citizenship undeniably serve and the disadvantages that could result from their abolition.

Yet the previously developed critique of the border and the concept of citizenship shall not be in vain. Rather, this critique is meant to highlight the need for gradual change. Because the analysis has shown that borders and the concept of citizenship entail both positive and negative aspects, a compromise between the complete abolition of borders and the concept of citizenship, on the one hand, and the adherence to the current system, on the other, should be pursued. The existence of borders and the concept of citizenship must be understood as an appeal to the global community to more resolutely reduce existing deficits and injustices. More permeable borders and more liberal citizenship and immigration laws could not only be economically desirable but could also pave the way for the creation of equal living conditions for all people.¹³⁴ A truly open society is not characterized by isolation and segregation, but by fundamental values such as openness, integration, and social cohesion. The traditional understanding of borders and the concept of citizenship does not fully do justice to these values.

Thus, although the idea of opening all borders or establishing a global citizenship may appear utopian today, it still helps to sharpen the vision: Because even if it ultimately does not seem to be fully feasible, the call for free migration that underlies the aforementioned idea can provide an incentive for the wealthy states to contribute more seriously than before to a more equal, global distribution of wealth, for example through fairer world trade and compensation for colonial injustice.

People do not flee of their own free will but because living conditions in their home countries have become unbearable. By fleeing, they hope for a life in peace and security; the fear of the dangers at borders is ignored. The concept of citizenship should not bind people fatefully to a particular territory, and the legal idea of the border should not become an insurmountable barrier where hopeful people drown or freeze to death.

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¹³⁴See Thomas Straubhaar, *Wirtschaftliche Folgen der Zuwanderung*, 56 *DER BÜRGER IM STAAT* 235 (2006); see also Holger Bonin, *Langfristige fiskalische Erträge künftiger Zuwanderung nach Deutschland*, 95 *WIRTSCHAFTSDIENST* 262 (2015).