

Chapter 23

Beyond the Borders. Migration Policies, Justice and Citizenship from a Global Perspective

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Abstract The universalistic logic of justice and human rights clashes with the particularistic logic of national sovereignty. This contraposition is thrown into sharp relief in the analysis of migration politics. This article provides an argumentation in favor of a flexibilization of the access to citizenship and of the conditions for border crossings as an appropriate institutional framework for the recognition of human rights and the implementation of distributive justice on a global scale. This thesis is developed in four stages by: offering some reasons for overcoming the state-centered focus of the Rawlsian theory of justice (1); describing poverty and the migrations that derive from it as a question of justice (2); analyzing the obstacles that state boundaries present at the moment of implementing a global conception of justice (3); and, finally, arguing in favor of a redefinition of the notion of citizenship that constitutes the normative horizon of migration policy (4).

The public policies that are intended to manage the complex phenomenon of immigration resonate profoundly in the affected societies. They also call into question the foundations of the conception of justice professed by these societies. Justice, as a distinctive feature of the basic institutions of a society, demands a juridico-political scenario in which all individuals are equal before the law and subjected to the same general criteria. Such a demand of justice—of which only minimum criteria have been explained here—has also to serve as an orientation, both in the moment of defining public policies of immigration and during their implementation. Such policies make it possible to proceed towards a progressive equalization of the rights of all residents, regardless of nationality. In certain circumstances, they would also allow for a distribution of resources, goods and

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services to recent immigrants. It is not surprising, however, that in societies that receive immigrants—rich and even opulent societies, at least in relative terms—there are movements of resistance on the part of sectors who feel that their own welfare is threatened. In such cases, special efforts have to be made to explain the sense of these measures in order to avoid a complete revision of the already accepted criteria of justice to the disadvantage of the immigrants. If citizens are not prepared to make certain efforts in favor of an equitable redistribution of resources and positions of power, we risk the emergence of a dual society with two clearly differentiated categories of individuals: citizens and immigrants. This would imply an unacceptable social fracture, as it would destroy any possibility of a scenario that would allow for the realization of justice.

The more or less permanent presence of immigrants and refugees poses, in all its crudity, the ethical question of the limits of the political community and, in particular, of the legitimacy of those limits based on the nationality of individuals. The real situation in which immigrants live clearly shows that the implementation of human rights has traditionally been conceived by taking into account the frame of reference of sovereign states. Therefore, immigrants, getting settled in their new countries, often experience significant differences in the level of the effective enjoyment of rights relative to the rights of the nationals. The persistence of these experiences is extremely disquieting because the respect for human rights defines the minimum standard of justice that nowadays enjoys a very broad (although not universal) consensus. For this very reason, questions of migratory movements, and especially of the rights that have to be guaranteed to immigrants, are difficult to avoid in any serious discussion of global justice. Without disguising the relevance of this subject, the recognition of the human rights of all individuals in any part of the world is not, however, the only theme of justice related to the well being of immigrants. This approach to the problem will suffer from a certain narrowness, as there are other considerations that affect the dimension of global justice.

The choice to leave one's country is in most cases a forced choice. Due to a global distribution of wealth and resources that is neither homogeneous nor equitable, such a decision is frequently linked to a situation of scarcity of, or difficult access to, resources. Indeed, there is a close connection between migrations and the unjust distribution of wealth at a global level. It is not surprising, then, that increasing global poverty finds itself amongst the most urgent and unavoidable questions on the current international agenda. The theoretical positions concerning this are divided, although in one way or another they side with one of the following two basic options: global poverty is to be dealt with either as a question of humanitarian aid or as a question of strict distributive justice. Against the conscience appeasing position of John Rawls, who inclines towards the first option, there have emerged a series of critiques that decide on the second option in the name of the principles he proposed.

In this article, I will deal with the effects of migratory politics on the concepts of justice and citizenship in four stages: I will offer some reasons for overcoming the state-centered focus of the Rawlsian theory of justice (1); I will describe poverty and the resulting migrations as a question of justice (2); I will analyze the obstacles that