

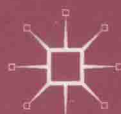


TRANSFORMATIONS OF THE STATE SERIES

Liberal States and the Freedom of Movement

Selective Borders,
Unequal Mobility

Steffen Mau
Heike Brabandt
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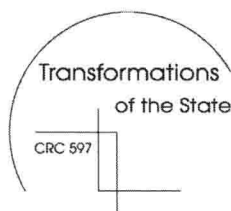
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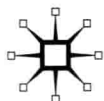
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Series Editors' Preface

Over the past four centuries, the nation-state has emerged as the world's most effective means of organizing society, but its current status and future are decidedly uncertain. Some scholars predict the total demise of the nation-state as we know it, its powers eroded by a dynamic global economy on the one hand and, on the other, by the transfer of political decision-making to supranational bodies. Other analysts point out the remarkable resilience of the state's core institutions and assert that even in the age of global markets and politics, the state remains the ultimate guarantor of security, democracy, welfare, and the rule of law. Does either of these interpretations describe the future of the OECD world's modern, liberal nation-state? Will the state soon be as obsolete and irrelevant as an outdated computer? Should it be scrapped for some new invention, or can it be overhauled and rejuvenated? Or, is the state actually thriving and still fit to serve, just in need of a few minor reforms?

In an attempt to address these questions, the analyses in the *Transformations of the State* series separate the complex tangle of tasks and functions that comprise the state into four manageable dimensions:

- the monopolization of the means of force;
- the rule of law, as prescribed and safeguarded by the constitution;
- the guarantee of democratic self-governance; and
- the provision of welfare and the assurance of social cohesion.

In the OECD world of the 1960s and 1970s, these four dimensions formed a synergetic constellation that emerged as the central, defining characteristic of the modern state. Books in the series report the results of both empirical and theoretical studies of the transformations experienced in each of these dimensions over the past few decades.

Transformations of the State? (Stephan Leibfried and Michael Zürn (eds), Cambridge 2005) and *Transforming the Golden-Age National State* (Achim Hurrelmann, Stephan Leibfried, Kerstin Martens and Peter Mayer (eds), Basingstoke 2007) define the basic concepts of state transformation

employed in all of these studies and provide an overview of the issues addressed. Written by political scientists, lawyers, economists, and sociologists, the series tracks the development of the post-World War II OECD state. Here, at last, is an up-to-date series of reports on the state of the state and a crystal-ball glimpse into its future.

Acknowledgments

In this book, we present findings of the research project “From ‘Containers’ to ‘Open States’? Border Regime Change and the Mobility of Persons”. The project is part of a larger research endeavor, the Collaborative Research Center 597 “Transformations of the State” at the University of Bremen, Germany, funded by the German Research Council. In this research center scholars in political science, sociology, law, and economics work together to determine whether and how pressures from globalization and liberalization over the past three decades have changed the core functions that define the classic nation-state. Our project looks at the territorial nature of the state, in particular at issues of mobility control. The project began in January 2006 with a slightly different group of researchers than today. We thank Sonja Wrobel, who left in September 2008, for her input during the early days, when we were conceptualizing our work to come. After Sonja’s departure, Lena Laube and Christof Roos conducted the expert interviews referred to in this book. In addition, a range of student research assistants has supported us over time. We are particularly grateful to Ole Hilbrich, Johanna Leinius, Alexander Noehring, Sarah Rossa, Maike Schulz, Elena Weber, and Mia Caroline Wyszynski.

Parts of this book have been presented at different conferences and the feedback we have received has helped us to improve our work. This is also true of the excellent comments provided by the reviewers of our book proposal. We owe special thanks to Jean-Pierre Cassarino of the European University Institute in Florence, who allowed us to use his graphical material and database on readmission agreements. In addition, we are most grateful to Benjamin Veghte, who provided invaluable language support when reading the manuscript. Alexandra Webster at Palgrave Macmillan was very enthusiastic about the book from early on. Liz Holwell, her current replacement, also did a great job. We are grateful to the reviewers of our book who provided us with excellent feedback and food for thought.

This book is not going to be our final word on the issue of borders and selectivity. The German Research Council has provided us with funding for another four years of research on this topic. What is more, two Ph.D. theses will result from the greater context of this work. While

Lena Laube continues to explore the spatial flexibilization of border controls, focusing in particular on factors restricting or facilitating mobility (see also Chapter 5 of this book), Christof Roos is working on the internationalization of borders (see also Chapter 6 of this volume); his current focus is on the negotiations for a common EU migration policy.

Last but not least, we would like to thank our colleagues at the Collaborative Research Center for the great work environment they provide and, in particular, the service team for their patience and support.

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1

Introduction

It is received wisdom that processes of globalization have led to an increase in and intensification of border-crossings. In this book, we examine changes in territorial borders and attempts to regulate human mobility in the age of globalization. We are interested in the way states try to manage the cross-border movement of people for the purposes of tourism, business, family visits, work, or migration. Our focus is on liberal states, that is, states of the Western hemisphere. Liberal states are states with representative democracies, market economies based on property rights, and constitutional protection of civil and political rights. Liberalism eschews the absolute state and affirms the superior value of individual liberty. To this end, liberal societies have limited their sovereign prerogatives by constitutional rules and principles which protect equality of status and individual rights. From this perspective, the right to free movement may be seen as a key element of individual freedom. Nonetheless, even liberal states are not open states: they have an ongoing interest in closure and constantly negotiate the balance between liberal principles and sovereign interests.

The movement of people has always been a central feature of human history, but it has never been as frequent and widespread as today. The number of people crossing borders per year has increased about 50-fold since the end of World War II (UNWTO 2009a). More than 3 million people around the world fly on an aircraft every day (WTO 2007). As the main destinations of mobility, liberal states are strongly affected by the increased magnitude of cross-border movement. Hence they need to readjust the way they organize openness and closure.

There is reason to believe that the traditional nation-state – often characterized as a “container” where political, economic, and social activities are relatively confined and territorially bounded – is likely to

be replaced by a new configuration of social order marked by high levels of cross-border activity (Agnew and Corbridge 1995). As a consequence, some authors speak of “vanishing borders” (French 2000) and of a “borderless” or “seamless” world (Ohmae 1990; Krugman and Venables 1995), implying a loss of significance of national borders. This is especially apparent with regard to the flow of information across national borders, which in the age of the internet and television can hardly be regulated by states. The loss of control with respect to the international movement of goods and money is just as far-reaching (Rosecrance 1999). As globalization is predominantly theorized in terms of social openness and social fluidity, it is often suggested that human mobility – be it that of consumers, business people, tourists, or workers – is likely to increase as well (Anderson, O’Dowd et al. 2003).

However, while the term globalization connotes openness, the tendency toward increased border permeability may well differ across domains of cross-border transactions. With regard to the mobility of people, borders still play a role in protecting collective goods, providing security, and fostering collective identity (Eigmüller and Vobruba 2006). They continue to determine “[...] with whom we interact and affiliate, and the extent to which we are free to move from one space to another” (Newman 2003: 123). However, as these functions increasingly run into conflict both with the state’s interest in profiting from global economic activity and with normative liberal principles (Hollifield 1992), states may rearrange practices of control. Hence, we might observe that states reorganize their policies in order to take part in increased global exchange or to remain faithful to self-defined liberal principles, while at the same time maintaining their control and power (Andreas 2003a; Walters 2006). In this vein, this book argues that under conditions of globalization and in the light of their principles, liberal states face the challenge of both facilitating wanted mobility and restricting unwanted mobility. We argue that border controls are increasingly designed to differentiate between two groups of people: on the one hand, the “wanted” who are allowed access and whose mobility is facilitated, and on the other the “unwanted” who are rendered immobile (Salter 2004).

In fact, hardly any border is open or closed in an absolute sense; most borders mean different things to different people. In other words, they are devices for sorting and selecting. Habermas (2001: 67) describes borders as “internally operated ‘floodgates,’ meant to regulate the currents so that only the desired influxes (or outflows) are permitted.” From this perspective, borders can be regarded as a system of rules (and their enforcement) determining conditions of entry into a particular

territory that take into account possible costs and benefits for those inside the territory. Along these lines, the book claims that liberal states have come to operate their borders “in the service of international class differentiation” (Balibar 2002: 82). By the same token, Shamir (2005: 200) states that the “differential ability to move in space – and even more so to have access to opportunities for movement – has become a major stratifying force in the global social hierarchy.” We indeed witness the emergence of a new system of stratification between those who cross borders with ease and those to whom this freedom is denied. Along with other authors we suggest that “transnational inequalities” will grow as a consequence of unequal capacities to transcend or cross borders (Bauman 1998; Bauman 2002; Shamir 2005; Beck 2007). As we will show, this pattern of inequality is not simply a product of the unequal distribution of resources that enables only the better-off part of the world population to enjoy opportunities for mobility, but also a result of the unequal distribution and the differentiation of rights to mobility. While borders are still difficult or even dangerous to cross for the vast majority of people, people from Western and/or rich countries or social and economic elites have completely different experiences when crossing a border. Entering another country is often merely a formal act which requires nothing more than identification – no application for a visa, no further proof of trustworthiness, no scrutiny of hidden intentions, and no guarantees of return (Walters 2006).

In this book, we investigate these changes and how they have served to foster and maintain the sorting function of borders. Though permanent immigration is the primary concern of many countries, ostensibly temporary movement of people across borders is central to understanding the efforts of border controls in our estimation because “contemporary migration often begins as tourism, study visits or temporary work abroad” (Kosłowski 2004b: 4). The focus on mobility allows a more inclusive understanding of the control efforts of states than would a narrower analysis of migration. We focus on OECD countries, for here the nation-state has acquired its typical features and has become the dominant form of political organization. What kinds of strategy and new sorting techniques do these states utilize to achieve their selectivity objectives? We concentrate on control policies and their legal basis rather than on mobile peoples experience with the border and their compliance with the rules of entry. There are dynamics of mobility which clearly circumvent and undermine states’ interest in control. The US–Mexican border is a prominent example of a massive expansion of border enforcement with ambivalent results. It remains

unclear whether it counteracts the increasing numbers of undocumented migrants moving from south to north (Massey et al. 2002). However, as our main interest is in the transformation of the state and the rearrangement of territorial control in terms of techniques and policies, we focus on what the state is doing in defining and controlling legal forms of entry. Whether it is easy or difficult (or even dangerous) to enter a territory and whether people enjoy mobility opportunities and a secure legal status depends largely on the state's regulations and policies, even if there is always a gap between policy ambitions and effects. However, we understand our work as complementing the rich insights of studies interested in the "human face of global mobility" (Smith/Favell 2006), including mobility channels and loopholes which may undercut the mobility opportunities or restrictions provided by the state, rather than as providing an alternative narrative. From our perspective, the pivotal issue is how Western states have reacted to the mobility challenges of globalization.

The book begins (Chapter 2) with a general overview of the role of borders in the historical development of the territorial state. The formation of the nation-state was accompanied by a twofold process of closure: on the one hand, the closure of geographic space by borders; on the other hand, the closure of membership. In medieval times, Europe had been marked by political heterogeneity and overlapping jurisdictions. The practice of formally demarcating borders began with the Peace of Westphalia in 1648. It was not until the 18th century that the norm of exclusive territorial jurisdictions replaced previous notions of overlapping realms of authority. Then, borders slowly came to be seen as lines of demarcation between two territories, control being carried out at the "point of entry" to a territory. At the height of the modern nation-state, the control of territory was exercised primarily through the control, regulation, and restriction of cross-border mobility. A range of instruments was used to control the new borders, most of which are still known. As a consequence, states managed quite successfully – and sometimes with draconian measures – to sort wanted and unwanted travelers. At the end of this historical development, border controls have become accepted as a legitimate governmental action: anyone wishing to pass a border can legitimately be checked and states have the last say in determining who is to enter (Kaufmann 2006). At the same time, Western states liberalized internal movement and granted their citizens the right to exit and to return. They did not, however, push for a universal right to freedom of movement as this would have conflicted with their interest in territorial sovereignty.

Against this background, Chapter 3 presents pertinent debates on the transformation of state borders with particular focus on liberal states. It does so in several parts. First, it discusses how normative theory, in particular liberal egalitarianism, frames the issue of mobility. At first glance, one could argue that the core values of liberal democracies such as individual autonomy and freedom would make them supportive of the idea of freedom of movement. As market economies, they are interested in open markets as well. At the same time, they cherish the principles of collective self-governance and self-determination, which may run counter to open borders. This means that the “alien admission” principles of liberal states have to strike a balance between openness and closure. Second, we introduce key debates on the establishment and evolution of borders in the context of globalization and, in so doing, provide an overview of the ambivalent reading of modern state borders in the literature. The concept of globalization, for example, implies an increasing loss of authority and “conjures up images of overflowing rivers, washing away all the frontier checkpoints and controls, and ultimately the bulwark of the nation itself” (Habermas 2001: 67). However, this account of a loss of autonomy underestimates states’ attempts to maintain high levels of mobility control. In our view, security, the production of collective goods and social cohesion are central to understanding why liberal states have a tangible interest in regulating access to their territory. In this vein, we argue that liberal states have fundamentally reorganized their borders and their means of mobility control with the aim of making their borders more selective. The central purpose of border control today is to distinguish between desired flows of populations and undesired and therefore restricted and heavily controlled forms of mobility.

Having set out this theoretical frame for the dilemmas liberal states are facing, we then turn to the empirical arena. We are interested in the who (who are the beneficiaries, who is excluded?) and the how (how is selectivity organized?). Thus, in the empirical chapters (4–7) we will examine the central strategies of putting selectivity into practice and of implementing sorting techniques and, therefore, analyze changes in territorial borders in the age of globalization. We draw on three case studies – the United States, Finland, and Austria – and cover the period since 1970. These are three comparatively rich and stable OECD countries in possession of highly developed state administrations. The latter is a prerequisite for controlling and steering mobility across borders. While the U.S. is a traditional immigration country, Austria and Finland are not. However, the U.S. and Austria are major tourist destinations

and need to regulate access to their territories. In contrast, Finland has never been confronted with a significant number of people wanting to cross its borders. The U.S. is extremely powerful not only politically but also economically. The same does not hold for Austria or Finland. While the latter countries are integrated into a supra-national system, the EU, the U.S. lacks a similar degree of supra-national integration. It is only a member of the multilateral framework of NAFTA. Choosing the U.S., Finland, and Austria, we have decided for a “most different case design” (Przeworski and Teune 1970; Gerring 2007) within the community of OECD states that enables us to examine whether there are general trends in border control policies that cannot be explained by a close similarity of the case study countries. In our empirical chapters we focus on the one hand on institutional and legal entry regulations, and on the other hand on issues of border management and control. For each of our cases we compare two territorial borders. The types of country neighboring these borders differ greatly across our cases and have undergone fundamental changes over time (Finland: Sweden and Russia; U.S.: Mexico and Canada; Austria: Hungary and Switzerland). Paired comparisons allow us to scrutinize the determinants and logics of border change over time.

We draw on qualitative and quantitative material. For the qualitative part, we use government publications, legal documents such as legislation, parliamentary papers, guidelines and directives, and academic literature. This research was partly carried out as archival work, partly with the help of experts. In addition, we conducted 43 semi-structured interviews with national administrative officials, tourist operators, and NGO personnel working in the fields of border and migration policy (see Appendix 2). This is because expert interviews add information to the knowledge we retrieved from documents. Most interviewees had the position of a head of unit or secretary of a committee that deals with the control of some type of cross-border movement in our case countries. Interviewees from governmental institutions mostly belonged to the administrative side of policy making rather than to the political side. Politicians elected into office for a limited time often do not have the same long-term overview and knowledge of changes in institutions. The specific insider knowledge on policy change and actor preferences render these bureaucrats experts (Meuser and Nagel 2005). We used a pre-structured questionnaire in conducting our interviews (see Appendix 2). This left room for the interviewees’ description of border regime change (Pfadenhauer 2005, Gläser and Laudel 2006). The interviews were audio-taped, transcribed, and analyzed thematically in