

Critical Dialogue

Revoking Citizenship: Expatriation in America from the Colonial Era to the War on Terror. By Ben Herzog. New York: New York University Press, 2015, 216p. \$49.00 cloth.
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— Ayten Gündoğdu, *Barnard College–Columbia University*

Citizenship has long been studied with a focus on immigration, as scholars have examined its multiple meanings and traditions mainly by addressing the question of who is allowed to join a political community. In *Revoking Citizenship*, Ben Herzog radically shifts this focus by turning attention to the exclusionary practice of expatriation. Perhaps one of the reasons that expatriation has often been neglected in studies of citizenship is the tendency to associate it with despotic and totalitarian regimes such as Nazi Germany or Stalinist Russia. But Herzog reminds us that expatriation has long been a standard practice in many democratic states. His nuanced historical account illuminates the legal, political, social, and symbolic meanings of expatriation in the United States from the colonial era to the more recent debates during the War on Terror, including the well-known story of Yaser Esam Hamdi, and highlights expatriation as by no means an archaic remnant of a bygone era.

Why was expatriation introduced, and why do democratic states maintain this practice? The brief answer lies in the “national world order,” according to Herzog (p. 4). Multiple allegiances, exemplified by dual citizenship, challenge the hegemonic principle of nationality, and expatriation is instituted as a solution to this problem. More specifically, this practice has to be understood in relation to the distinctive characteristics of modern citizenship introduced by the French and American Revolutions. Modern citizenship, Herzog argues, represents “a shift from membership being perceived as a biological condition to membership as a social construction” (p. 29). Biological attributes do not altogether disappear, but what emerges with modern revolutions is the quite novel idea that citizenship can be acquired and renounced on the basis of individual choice. Modern understanding of citizenship also has a dark side, however: Once it becomes possible to imagine that citizenship could be detached from the assumption of allegiance to one’s birthplace, then the state can also “demand the reverse” and assume “the power to revoke citizenship from

persons who did not deserve...to be members of the polity any more” (p. 42).

In the American case, modern conception of citizenship emerges as a result of the break with the British notion of perpetual allegiance, as Herzog underscores in Chapter 2. A voluntaristic understanding of citizenship can be seen, for example, in the introduction of the oath of allegiance in 1795. But that oath also represents the anxieties about “divided national loyalty” (p. 30). If the contractual understanding of citizenship breaks with the essentialist tradition of unchanging loyalty, it also operates according to a national logic that considers multiple allegiances to be a problem. In addition, he argues, it would be wrong to think of the American transition from the essentialist view of citizenship to a contractual one as a linear process; more precisely, the American system represents the superimposition of one view on the other (p. 33), interweaving liberal, republican, and ascriptive or ethnic approaches to citizenship (pp. 22, 52).

The dark side of the shift to voluntary allegiance as the basis of membership comes into full view in Chapter 3, as Herzog examines various legislative initiatives related to repatriation in the United States since the early nineteenth century. One of the most troubling cases is the act of July 1, 1944, which allowed the renunciation of citizenship within the U.S. territory. Under the chimera of voluntary renunciation, 5,589 American citizens of Japanese descent were stripped of citizenship and interned in camps (p. 46). This act perfectly illustrates the author’s argument that the contractual understanding of citizenship continued to coexist with the essentialist one in the United States, as individual choice was invoked along with such criteria as race in delineating the boundaries of membership (p. 48).

Revoking Citizenship is to be commended not only for turning attention to the much neglected topic of expatriation but also for the way it approaches this topic. Herzog adopts a sociological perspective, instead of a legalistic one, in order to explain the social contexts and symbolic meanings of expatriation. Accordingly, he examines not only the laws that were put in effect but also the legal initiatives that failed. Take, for example, Patriot Act II, which was drafted by the George W. Bush Administration in order to expatriate any citizen affiliated with a group designated as a “terrorist organization.” This proposed

legislation did not reach Congress, but it deserves attention as a document demonstrating that expatriation continues to be viewed as a legitimate form of punishment for treason (p. 115), despite the Supreme Court ruling that it is unconstitutional to revoke citizenship as a punishment (p. 81). In addition to situating expatriation in a broader political and social context, Herzog examines a wide range of primary sources to demonstrate how this practice has been shaped over the years by the actions of various actors at domestic and international levels. For this purpose, he analyzes changing international norms regulating nationality and expatriation (Chapter 4), different interpretive frameworks adopted by the U.S. consular offices in settling questions related to national allegiance (Chapter 5), the Supreme Court rulings that have significantly limited the U.S. government's power to revoke citizenship (Chapter 6), and the decisions of the U.S. Board of Appellate Review in contested cases of expatriation since the 1980s (Chapter 7).

One of the book's key findings is that the U.S. practice of expatriation undergoes a crucial change starting with the late 1950s. Herzog's analysis offers insights into the Supreme Court rulings that placed significant constraints on the government, but it leaves more to be said about the broader domestic and international factors that are at play. In *Trop v. Dulles* (1958), the Court ruled that it was unconstitutional for the government to revoke citizenship as a punishment (p. 81), and in *Afroyim v. Rusk* (1967) and *Vance v. Terrazas* (1980), it further established that the loss of citizenship should be based on an individual's voluntary renunciation (p. 82). These decisions eventually led to changes in legislation, even though the Congress delayed the process significantly (p. 87). But why did the judicial branch set these constraints on the sovereign power to revoke citizenship at this particular moment in time? Herzog locates the answer to this question primarily in "the 'agenda of rights' promoted by the Warren Court" and emphasizes "the commitment of justices in the 1960s and 1970s. . . to a tolerant society" (p. 81). But this answer is not entirely satisfactory, given that the Court does not act in a vacuum, isolated from the broader political and social context. Particularly important in this regard are the changes at the international level, which are discussed in Chapter 4. As Herzog notes, prior to World War II, forced expatriation was deemed to be a legitimate state practice in efforts to deal with dual citizenship, which was perceived as a threat to the national order (p. 57). After World War II, the international community instead began to see statelessness as a problem, forbidding expatriation in cases where it leads to statelessness (p. 66). While Herzog does discuss these international developments after World War II, he does not state whether they have had any impact on the ways that expatriation is viewed and practiced in the United States.

Addressing this question might have also allowed the author to engage more directly with the literature asserting that the rise of human rights norms radically transforms sovereignty and citizenship. As can be seen in arguments about "postnational membership" (Yasemin Soysal, *Limits of Citizenship*, 1994) or "the decline of citizenship" (David Jacobson, *Rights Across Borders*, 1996), some scholars have argued that the universalistic discourse of human rights shifts the basis of entitlement to rights from citizenship to personhood, allowing noncitizens to exercise many of the rights formerly associated with citizenship. Herzog does not directly address these claims, but his analysis suggests that they are highly questionable: Forced expatriation is still perceived as a legitimate state practice as long as it does not lead to statelessness (pp. 57, 68), and "truly cosmopolitan citizenship, which grants rights to all people regardless of nationality, religion, residence, and political belief, does not exist" (p. 131). Although the recent tendency to accept multiple allegiances comes close to a "post-national ideal" (p. 132), dual citizenship is far from being "universally perceived as a positive status" (p. 68), and the War on Terror underscores "how fragile and temporary" this recent trend can be (p. 112). Given that Herzog's account has so much to offer in response to the argument that the rise of human rights has led to a radical reconfiguration, if not the decline, of citizenship and sovereignty, one expects him to engage with this scholarly debate more directly.

Finally, some of the theorists Herzog invokes sit somewhat uneasily with his historical account. One example of this tension can be seen in his turn to Carl Schmitt to discuss the legislative initiatives related to revocation of citizenship in the United States. According to Herzog, the introduction of such initiatives, especially during military conflict, indicates that even a democracy regulates and secures national allegiance by invoking a state of exception and creating an enemy (p. 54). Schmitt's position suggests, however, that the sovereign power to decide the exception cannot be checked and regulated by legal norms. It would be difficult to adopt that position given Herzog's argument that the sovereign practice of revoking citizenship has been significantly constrained since the 1950s, especially with the rulings of the Supreme Court. A similar tension can be seen in Herzog's turn to structuralist theorists, such as Louis Althusser and Pierre Bourdieu, to argue that expatriation is a necessary consequence of "a global ideology" of national order (p. 133) or the "game" of sovereignty (p. 139). Within such a structuralist view, it would be hard to account for the variations across states; as Herzog's comparative analysis of the United States and Canada in Chapter 9 highlights, a state's attitude toward dual citizenship can significantly change depending on its involvement in military conflict (p. 125). In addition, a structuralist perspective would have difficulty in explaining how the

meanings of sovereignty and citizenship can change over time as a result of multiple factors and how that change can affect repatriation policies—a point that is vividly illustrated by the author's in-depth analysis of repatriation.

None of these remarks should take away from the valuable contribution that Herzog makes to the contemporary debates on citizenship. His compelling account of expatriation shifts our attention in the right direction, demonstrating why and how citizenship remains “the right to have rights,” to use Hannah Arendt's famous phrase, despite various domestic and international changes that took place since the time she wrote about statelessness. *Revoking Citizenship* is a powerful reminder that it might be too hasty to announce the end of sovereignty or the decline of citizenship.

Response to Ayten Gündoğdu's review of *Revoking Citizenship: Expatriation in America from the Colonial Era to the War on Terror*

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— Ben Herzog

As many of the respondents of critical dialogues have done, I would also like to begin by thanking Ayten Gündoğdu for her constructive and thoughtful review of my book. However, unlike many of the other texts, my acknowledgment is not just a formal expression of thanks that conceals total disagreement with her comments. While I cannot amend the current book to take her ideas into account, I appreciate her comments, which will be very valuable for my future projects.

In a series of court cases, the U.S. Supreme Court established that the loss of citizenship should be based on an individual's voluntary renunciation. Gündoğdu correctly maintained that the “agenda of rights” promoted by the Warren Court cannot be isolated from the broader political and social context. As her book demonstrates, both normatively and institutionally, the rise of human rights is a new form of politics that places normative restraints on sovereign power and gives voice to victims of oppression. It is important to highlight that in *Revoking Citizenship*, I show that while the legal system had adopted human rights norms in accordance with the changes in the international community, it took the political system in the United States much longer to accomplish a similar stance, and it is still not clear that there is a consensus that repudiates forced revocation or favors dual nationality in society at large. As Gündoğdu suggests in her comment, it is not certain that the rise of human rights has led to a radical reconfiguration, if not the decline, of citizenship. Even if there are significant changes, those are neither uniform nor linear.

It is also true that in the book I invoke some theorists who sit somewhat uneasily with each other or with my

historical account, especially if their positions are read comprehensively as coherent texts. Taken as a whole, Carl Schmitt's position is indeed challenged by the legal constraints placed on expatriation policy since the 1950s. In the same manner, Louis Althusser's structuralist view cannot account for the variations across states. However, I do believe that adopting parts of their theories and analyses is productive. While in the past, sociologists and other scholars tried to compose grand theories whose aim was to provide a comprehensive explanation of all social phenomena, today it is widely accepted that it can be effective to make use of fragmented scholarship. Accordingly, it is my contention that we should also adopt the criticisms and insights arising from certain theories, even if we do not accept them as a whole.

Gündoğdu's comments reinforce my determination to look at the revocation of citizenship. The contribution of this inquiry is not limited to the analysis of American political culture, but it shines a light on the changing relations between the individual and the state in the global world.

Rightlessness in an Age of Rights: Hannah Arendt and the Contemporary Struggles of Migrants. By Ayten

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Are Hannah Arendt's philosophical inquiries about the perplexities of human rights in the first half of the twentieth century relevant to our understanding of the problems of contemporary migrants? Is Arendt's observation that the stateless find themselves in a fundamental situation of rightlessness valid in a time when legal personhood replaces citizenship as the basis of the entitlement to rights? Ayten Gündoğdu argues that Arendt's ideas are indeed applicable in our times.

Writing after the horrific events of World War II, Arendt criticized the failure of the world to confront the fundamental condition of rightlessness endured by those who were deprived of their citizenship. Human rights relied on membership in an organized political community. “The Rights of Man,” which were considered natural, inalienable, and independent of political membership, were unenforceable for those who were stateless. The contemporary reconfiguration of sovereignty, citizenship, and rights is extensive. As a result, migrants can now lay claim to many of the civil, social, and cultural rights that were formerly associated with citizenship. Indeed, Gündoğdu maintains that those changes have resolved many, but not all, of the pervasive problems encountered by different categories of migrants. I concur with her claim that rereading and reinterpreting Arendt's

analysis is crucial for revealing the complexities in the existing human rights framework.

In line with the book's structure, I shall begin by highlighting a couple of the many insights Gündoğdu offers on Arendt's political philosophy that are particularly significant for the understanding of human rights norms and practices today. First, according to Gündoğdu, Arendt's critical thinking is aporetic, with no final closure. The task is neither to find a new normative foundation for human rights nor to devise an institutional model for their protection. By critically assessing contemporary political and ethical dilemmas in rightlessness, she calls into question existing norms, values, and criteria about human rights, trying to make this concept meaningful again. Second, according to the author, Arendt presents the equivocality and contingency of human rights. The 1789 "Declaration of the Rights of Man and of the Citizen" simultaneously emancipated man, called into question all social privileges, and provided the protection of rights; at the same time, it identified "man" with "the citizen," thus creating the problems of statelessness and rightlessness. In assessing the many migrants in a condition of rightlessness today, one should pay attention to those observations.

Gündoğdu's analysis, however, is not limited to focusing on Arendt's insights on the contemporary problems of asylum seekers, refugees, and undocumented immigrants. The author also reinterprets some of Arendt's key concepts and arguments in light of the hurdles faced by these people. For example, in contrast to customary readings of Arendt's political theory, Gündoğdu suggests a rethinking of the way that Arendt distinguishes between the "political" and the "social," arguing that a clear-cut political/social distinction cannot be upheld, given that most human rights problems breach that boundary. Instead, we should carefully examine the ways in which the social enables or hinders possibilities of politicizing challenging problems of rightlessness.

Gündoğdu claims that Arendt's analysis might have dealt with different legal, political, and normative circumstances than our own, but rightlessness has not been eradicated. In support of the author's thesis, I can add that on June 20, 2014, the United Nations refugee agency reported that the number of refugees, asylum seekers, and internally displaced people worldwide has, for the first time in the post—World War II era, exceeded 50 million people. However, the differences and similarities are not just quantitative but qualitative. At the time Arendt wrote her analysis, rightlessness meant a total absence of any international legal recognition. Gündoğdu acknowledges that post—World War II legal developments guarantee some legal protection for asylum seekers and migrants. But she also insists that those formal guarantees are fragile and can be set aside. Rightlessness today exposes the precarious and vulnerable legal, political, and human standing of migrants that persists even in the face of human rights declarations.

Gündoğdu discusses four such groups and analyzes their conditions in light of Arendt's political philosophy: expelled aliens, detained migrants, refugees in refugee camps, and undocumented immigrants. In the next few paragraphs, I attempt to present her key arguments regarding those issues.

Nation-states have always used deportation to exclude those deemed undesirable from the political community. The rise of human rights norms after World War II, and the international conventions and treaties that attempted to secure them, curtailed the discretionary power of sovereign states to perpetrate arbitrary physical expulsions. However, even the principle of *non-refoulement* (that forbids the expulsion of refugees to any country in which they might be subject to persecution) has an exception clause, and states can execute deportation orders in cases of apparent threat to national security or public order. Accordingly, in 2008, the European Court of Human Rights affirmed the sovereign power of the United Kingdom to refuse asylum for an HIV-diagnosed asylum seeker from Uganda. Like the stateless in Arendt's analysis, asylum seekers today are dependent on the unpredictable sentiments of others.

Since the 1990s, detention has been normalized as a legitimate tool for immigration control. Asylum seekers, undocumented immigrants, and noncitizens waiting for deportation are routinely detained in detention sites, which may resemble the internment camps used to hold the stateless. Although international conventions forbid states from imposing penalties on account of unauthorized entry or presence, such detentions have been legitimized by the European Court of Human Rights for administrative convenience and expediency. As in deportations, some of the clauses in international human rights law erode the personhood of migrants.

Despite the significant developments in the field of international human rights, camps remain the primary solution for refugees (under the anticipated but incorrect assumption that this condition is temporary). Corresponding to Arendt's analysis, refugee camps are spaces that prevent the conduct of the fundamental human activities of action, work, and labor: "They undermine the possibilities of engaging in familiar routines of life (labor), establishing a reliable and durable dwelling place (work), and creating public spaces where one can act and speak in the presence of others (action)" (p. 141).

Lastly, Gündoğdu explores the condition of undocumented immigrants by examining the mobilization of the *sans-papiers* since the 1990s in France. As irregulars, they were not entitled to claim rights or even be heard. Nevertheless, those activists refused to be passive victims and contested publicly their condition of rightlessness. Their presence defied social and political norms in several ways. Like Arendt's description of eighteenth-century revolutionaries, they were subjects who claimed rights that

they were not yet allowed to claim, and thus challenged the official identities rendering them speechless. They demanded regularization and residence outside the scope of the existing framework of human right laws. And they challenged the boundaries of French national identity by mobilizing around symbols of the French Revolution.

One of the most captivating observations in the book is the notion of the perpetual perplexities of human action, and, in particular, that of human rights. Practices, norms, conditions, and events can simultaneously have multiple meanings and even contradictory effects on our lives. The existing framework of human rights laws upholds the principle of territorial sovereignty and even legitimizes it, and at the same time, it is a novel development that curtails the unconditional autonomy of the state and enables noncitizens to have standing before the law and make claims to rights. Although not explicitly mentioned in the book, this tension is highlighted through a look at the abovementioned activities of the *sans-papiers*. Although they demanded recognition that opposed the national framework and the moral universalism underlying it, their desire was not to replace it but to be incorporated into it. Moreover, we can see that although undocumented immigrants' demonstrations ignited the debates on undocumented immigrants, it was the pressure by French citizens that ultimately impacted policies.

Gündoğdu is correct to maintain that rather than advocating a political and normative vision, as scholars we should continue to critically examine the perplexities of global politics: "A critical thinking that is attuned to perplexities is promising in this regard precisely because it questions an evolutionary understanding of human rights without subscribing to a totalizing critique that suggests that human rights inevitably lead to nothing other than suffering and violence because of their inextricable connection to sovereign power" (p. 211). The author acknowledges that there have been significant changes in the logic that organizes the world into distinct nation-states. Human rights are not limited to national citizens in the manner presented by Arendt. Nevertheless, at times—like in the analysis of the *sans-papiers*—she overlooks the importance of national logic as the world's organizing principle, and that the demise of this principle is not expected in the near future.

Gündoğdu meticulously examines the underlying philosophical assumptions in Arendt's work on the perplexities of human rights and their appropriateness to the twenty-first century. Yet while the stated goal is to examine contemporary struggles of migrants in relation to Arendt's philosophical thinking, I felt that that manuscript gave considerably more attention to the latter than to the analysis of the former. Gündoğdu presents us with many insights into Arendt's work, many more than could be described in this short review. As the book is theoretical and not empirically driven, at times, those philosophical

inquiries supersede a robust examination of numerous additional occurrences of rightlessness in our contemporary age of rights, for example: refugees not in refugee camps, including internal refugees; guestworkers; human trafficking; convicts who are stripped of many civil and political rights; and other ethnic or national minorities. Conversely, the cases that are dealt with are not systematically analyzed.

If there are any shortcomings in this book, they are mainly connected to disciplinary sensitivities rather than to substance. For, in *Rightlessness in an Age of Rights*, Gündoğdu has furnished an important account of the normative perplexities associated with political efforts to address the problem of rightlessness in our times.

Response to Ben Herzog's review of *Rightlessness in an Age of Rights: Hannah Arendt and the Contemporary Struggles of Migrants*

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— Ayten Gündoğdu

I would like to thank Ben Herzog for his careful and generous reading of my book, *Rightlessness in an Age of Rights*. As he notes, my main argument is that "the perplexities of the Rights of Man," examined by Hannah Arendt in the context of statelessness in the first half of the twentieth century, have not been fully resolved by moving to the framework of universal human rights. Despite the important changes in our legal and political landscape, asylum seekers, refugees, and undocumented immigrants continue to find themselves in a condition of "rightlessness," as they are left with a precarious legal standing, confined in detention centers or camps, and expelled from the political and human community. These problems have been even further aggravated since the publication of the book as the troubling news of the current "refugee crisis" highlights, and they demand a critical inquiry into the perplexities of human rights, including those arising from the intertwinement of a universalistic conception of personhood with the principle of territorial sovereignty. These perplexities are not dead ends, however, as they have been navigated by various groups of migrants for the purposes of making new claims that reconfigure our understanding of rights, citizenship, and humanity. With these key points in mind, I would like to briefly address two of Herzog's critical remarks.

First, Herzog suggests that my discussion of the new rights claims made by *sans-papiers* in the final chapter "overlooks the importance of the national logic as the world's organizing principle." But that discussion, in line with the rest of the book, highlights how principles of nationality and territorial sovereignty install divisions and hierarchies within the universal human rights framework

to the effect of relegating most migrants, particularly those in an irregular status, to a much narrower set of rights with uncertain guarantees. I am reluctant to understand this problem, however, in terms of a “national logic,” especially because this phrase suggests an unchanging, ironclad system. Contemporary border-control practices, as well as migrants’ contestations of those practices, point to transmutations (and not simply reinscriptions) of the nation-state and the principle of territorial sovereignty—and not always to the effect of increasing rights protections for migrants, as can be seen, for example, in transnationalization of border security technologies that challenge conventional understandings of “national logic.”

Herzog’s second critical remark is related to the amount of attention Arendt gets in *Rightlessness in an Age of Rights*; while appreciative of the interpretive insights that the book provides into her work, he suggests that I could have engaged instead with “numerous additional occurrences of rightlessness.” Herzog is right to point out that the book’s analyses of detention, deportation, and refugee camps do not exhaust contemporary instantiations of rightlessness by any means, and one could definitely add here, as he proposes, the problems of internal displacement, human

trafficking, felony disenfranchisement, guest worker programs, and ethnic and racial minorities. But my goal in this book was not to offer an exhaustive list of problems of rightlessness. I focused on some “representative figures,” or “examples,” which Arendt (in a Kantian way) understood to be particulars that could reveal the general in their very particularity. Instead of envisioning the book as an exercise in applying theory to numerous cases, I strove to create a critical encounter between these contemporary examples and Arendt’s political theory. That task entailed rethinking and revising Arendt’s key concepts and arguments, including her controversial concept of the “the social,” her understanding of “labor,” and her proposition of a “right to have rights.”

Such rethinking was necessary not only because we inhabit a different landscape but also because Arendt’s political theory itself is replete with perplexities or puzzles with no easy answers. These perplexities are of interest to me partly because of my “disciplinary sensitivities” as a political theorist, but also because grappling with them, I hope, gave rise to new ways of thinking about the contemporary predicaments and struggles of migrants.