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Journal

Issues in Legal Scholarship, 9(1)

Author

Coutin, SCB

Publication Date

2011

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Peer reviewed

Prohibited Realities and Fractured Persons: Remaking Lives in Transnational Spaces*

Susan Bibler Coutin

Abstract

This review explores the ways that Bosniak's *The Citizen and the Alien* and Shachar's *The Birthright Lottery* usefully expose gaps between permissible and prohibited realities and persons. Drawing on ethnographic research regarding immigration from Central America to the United States, the review also highlights the importance of analyzing the transnational, states' property-like claims on their migrant citizens, and the transformative dimensions of jus soli. This ethnographic material suggests that discrepancies between inclusive social connections and confining legal statuses "fracture" persons, requiring them to exist in multiple yet incompatible worlds. The review concludes that notions of citizenship and alienage must take such fracturing into account.

*Professor of Criminology, Law & Society and Anthropology, University of California, Irvine.

“Citizenship is a divided concept.” (Bosniak 2006: 3)

“To the extent that citizenship is a valuable resource, it is currently secured on the basis of a morally arbitrary set of criteria.” (Shachar 2009: 4)

The recent books *The Citizen and the Alien* by Linda Bosniak and *The Birthright Lottery* by Ayelet Shachar confront one of the most compelling dilemmas of the current historical moment, namely, how best to allocate nation-state membership in an international system marked by high levels of mobility, interdependency, and economic inequality. Both authors point out that formal legal distinctions between citizens and non-citizens often fail to reflect the deep connections that certain non-citizens have with their countries of residence as well as the distance that certain nominal citizens may have with their countries of birth or of descent. Such discrepancies can give rise to agonizing family separations, devastating personal uncertainty, and the effective disenfranchisement of large segments of populations. Shachar suggests that, given the vastly different life chances that membership in particular nations affords, it is worthwhile to reconsider the bases for transferring membership from one generation to the next. Likewise, Bosniak questions the grounds for attributing or denying citizenship to individuals who are within—and at times to those outside—of particular territories. In raising these questions, Bosniak and Shachar seek to denaturalize taken-for-granted assumptions about citizenship, alienage, and the inheritance of national membership. By denaturalizing such categories and processes, these two authors challenge readers and reveal innovative possibilities, possibilities that, in some instances, are already coming into being in incipient forms. In this essay, I will reflect on the central claims of these authors, drawing particularly on my own experiences as an ethnographer of immigration courts and of migration between El Salvador and the United States. I argue that Shachar and Bosniak usefully expose gaps between permissible and prohibited realities and persons, but could devote greater attention to the transnational, to states’ property-like claims on their migrant citizens, and to the transformative dimensions of *jus soli*. In my own ethnographic work, such issues rise to the surface, suggesting further complications of both citizenship and alienage.

Gaps of various sorts are central to the analyses in both of these books. In *The Citizen and the Alien*, Bosniak examines what she refers to as the “dilemmas” of citizenship, namely, the fact that citizenship is frequently construed differently by political and social theorists on the one hand and by immigration scholars on the other. The former tend to focus on the meaning of citizenship for members of nations, and therefore treat citizenship positively, as evincing ideals of community membership and as something to which people aspire. The latter, in contrast, focus on citizenship at the borders, as an institution that sets the boundaries

around the polity, and therefore has exclusionary dimensions. These dual notions construe citizenship as like an egg, hard on the outside and soft on the inside. Bosniak argues persuasively that such hard/soft distinctions can no longer be sustained, given the presence *in the interior* of not only non-citizens but also undocumented immigrants against whom a variety of exclusionary laws are being passed, making citizenship hard on the inside as well. She further notes that citizenship is sometimes “soft” on the outside in that humanitarian reasons are sometimes given for permitting particular individuals to cross borders or to gain legal status. These contradictions that are embedded in the notion of citizenship, Bosniak suggests, could be resolved in multiple ways. One would be to allow the “hardness” of the border to shape relations toward non-citizens who otherwise are community members. This approach is being pursued by those who seek to deny housing, social benefits, educational access, and other rights and services to the undocumented. The other would be to recognize that non-citizens are constitutional persons who enjoy rights *as citizens* of sorts. Bosniak refers to such partial membership as “alien citizenship,” which, she notes, appears to be an oxymoron but which in fact may accurately describe the *de facto* current state of affairs. In the U.S., many rights (including the right to a public defender in a criminal case, the right to emergency room care, the ability to go to civil court to defend a contract, etc.) are available to all territorially present persons, regardless of their citizenship status. Bosniak advocates greater recognition of alien citizenship, of the fact that borders are porous, and of other, non-national, ways of conceptualizing citizenship and alienage.

The central gap taken up by Shachar in *The Birthright Lottery* is the drastically unequal distribution of resources between rich and poor nations. Because citizenship is a key determinant of access to these resources, Shachar argues that it is appropriate to use the analogy of property to critically analyze the ways that membership in nation-states is currently allocated. Citizenship, Shachar points out, is generally inherited in one of two ways. Nations that base membership on *jus soli* (the law of the soil) grant citizenship to individuals born within national territories, whereas nations that practice *jus sanguinis* (the law of blood) transfer citizenship from parents to their legal children. Both of these methods of determining membership are ascriptive—accidents of birth that transfer membership, and thus potential life futures, from one generation to the next. Within property law, however, inheritance is not seen as an entirely legitimate way of transferring rights between generations, as inheritance can concentrate property in the hands of individuals who may not have labored to produce or acquire this property. Such concentrations of wealth deny opportunity to those who are not able to inherit. Therefore, states have developed various methods of taxing inheritance and thus at least partially redistributing property between generations. When citizenship and property are treated as analogous,

Shachar points out, ascriptive distributional methods, which effectively sentence the world's poor to live in abject conditions while permitting citizens of wealthy nations to prosper, no longer appear justifiable. Furthermore, she notes, birthright citizenship laws fail to ensure that those who receive citizenship are actually members of the national community (creating a problem of over-inscription) or that people who actually are members of the community (e.g., long-term undocumented residents) are citizens (creating the problem of under-inscription). To correct the unequal distribution of world resources, she proposes charging the citizens of wealthy nations a birthright levy. These funds in turn could be allocated to underprivileged nations in order to raise standards such that every child would have a minimal level of material and educational support. To correct the problems of over- and under-subscription, she also advocates supplementing or replacing *jus sanguinis* and *jus soli* with what she calls *jus nexi*, that is, membership based on individuals' actual connections to particular nations.

As someone who has dealt with the fraught nature of both citizenship and alienage ethnographically, I am very appreciative of the work that these two authors have done to delineate the ambiguities and to expose gaps, but I also suggest that such gaps can be further complicated through attention to the transnational. For example, Bosniak argues that it is important “to deepen the conversation between inward-looking and boundary-conscious approaches to citizenship” (Bosniak 2006: 2). One might add that the conversation could be further deepened by looking outward, beyond boundaries. In my own work, I have deployed the phrase “nations of emigrants” to draw attention to relationships between nations and to migrants' ties elsewhere (Coutin 2007). As migrant remittances have become key to national economies, advocacy on behalf of immigration rights may be as intent on enabling remittances to continue as on securing rights for immigrants themselves. Moreover, families and histories span national boundaries. To give one example of the ways that lives transcend borders, in 2007, I interviewed Milda Escobar, a twenty-seven year-old Salvadoran student activist, at her apartment in Los Angeles.¹ Milda entered the United States as an undocumented immigrant in 1983, at the age of five, after a four-year separation from her parents, who were already working in the United States. When Milda was eight, she returned to El Salvador on what was supposed to be a short visit, as her mother needed to pick up a green card at the U.S. embassy. When they attempted to return to the U.S., the family discovered that Milda's student I.D. did not give her the right to reenter the United States legally, as Milda's mother had supposed. Instead, Milda had to remain behind with grandparents, and then, for the second time, reenter the United States with an alien-smuggler. In 1992, Milda became eligible for a green card herself, so she

¹ Pseudonyms have been used for all interviewees.

returned to El Salvador briefly to pick it up. Then, in 1994, Milda's returned to El Salvador as a teenager. Milda lived there for two years, developing a strong identification with the country. When she returned to the U.S. to complete her high school education, Milda became a student activist, joining MeCHA, fighting against California's Proposition 209, and completing a year-long public service internship. When she went to college, Milda helped establish a Central American student organization, and eventually led a delegation of students to El Salvador. Most recently, she was a monitor in the Salvadoran presidential elections. Clearly, Milda's life defies neat categorization in terms of national boundaries and affiliations.

Shachar's notion of *jus nexi* and Bosniak's concept of alien citizenship help to explain the complexities of such affiliations in that these concepts highlight the way that, irrespective of formal recognition, unauthorized migrants develop connections within the territories where their presence is prohibited. Extending this analysis further, it is important to note that, absent legal reentry rights, such ties can actually confine migrants to such prohibited spaces. Because they lack the right to reenter the country legally, undocumented immigrants are often afraid to leave the United States and to thus jeopardize the connections that they have forged. For example, Marisol Sanabria, a 19-year-old undocumented college student who immigrated to the United States at the age of five, experienced great deprivation due to her inability to travel. Raised in Southern California in Boyle Heights, Marisol complained that when people asked her about life in El Salvador, she had to admit, "I really don't know' because my mom all her life she worked, you know, and she never had the chance to like teach me how to cook like *pupusas* [a popular Salvadoran dish] and stuff like that." After Marisol's mother passed away, Marisol turned to her uncles seeking information about El Salvador, only to be told, "Oh, you grew up here, so all that matters for you is just this country right?" Marisol resolved, "One day I want to go and see it and look at it with my own eyes to see what was going on, you know. Because I guess I hear news about it and all the times there's killing—there's like, you know. But to be honest with you right now I really don't know that much about my own country. I feel like left out some part of my life—there's like a culture, like there's something missing from me." Similarly, Monica Ramirez, a 20-year-old college student who had Temporary Protected Status at the time of our interview, was frustrated that she could not legally reenter the United States without first obtaining advanced parole from immigration officials, which was a difficult process. Monica wanted to travel to El Salvador to study and to visit her father, from whom she had been separated since the age of eight. But she was restricted from doing so due to her immigration status.

The discrepancies between inclusive social connections and confining legal statuses "fracture" persons, requiring them to exist in multiple yet

incompatible worlds. As one interviewee put it (when describing the experiences of undocumented college students), “one of the biggest challenges for undocumented youth is that they function in both worlds... The world where being undocumented doesn’t matter. And then the other world is where being undocumented *is* the point that matters and affects everything.” This student’s notion of fractured worlds resonates with Bosniak’s discussion of the differences between the exclusionary, border-focused meanings of citizenship, and the more inward-looking notions of community membership as well as with Shachar’s discussion of the limitations of formal definitions of citizenship. Such understandings of citizenship and alienage as fractured also resonate with Mae Ngai’s work on the history of alienage and citizenship in the United States. Indeed, Ngai (2004) and Bosniak note that law enforcement practices make alienage a fundamentally divided category. Ngai refers to the illegal alien as “an ‘impossible subject,’ a person who cannot be and a problem that cannot be solved” (Ngai 2004: 5), while Bosniak points out that “the category of alienage embodies the unachievability of pure separation” (Bosniak 2006: 140). This phrasing captures an important feature of alienage—it is impossible either to fully separate the internal from the external, or to fully fuse them. Such impossibilities take material form in migrants’ lives.

Bosniak’s and Shachar’s attention to gaps raises questions about the nature of the relationships between these seemingly incompatible entities and realities. Elsewhere, I have resorted to the metaphor of “shimmering” to convey the ways that reality shifts between mutually exclusive possibilities: “the movement between what might be termed official and unofficial realities produces a shimmering quality, like a holographic image that appears and disappears when a surface is tilted slightly (Coutin 2007: 5). Such incompatibilities include the notion that there is legal equality between nation-states even as there are enormous economic differences between them (see also Gupta 1992; Malkki 1995); or the understandings of undocumented residents as community members *and* as excluded others. Thus, it is entirely appropriate to question presumptions of “a stark dichotomy between a political society’s inside and out” and to draw attention to “the complex interpenetration of institutions and practices and persons across borders” (Bosniak: 7). At the same time, there are moments, such as when someone is being deported, when the difference between “inside and out” appears to be quite stark. To me, the metaphor of shimmering captures not only the difficulty of pinning down reality but also the sometimes sudden slippage between versions. I therefore find the comment that “[it] may be that what is most important about citizenship is precisely the fact that it is so divided” (Bosniak: 121) particularly insightful. Furthermore, it may well be that the “fiction” of legal boundedness is necessary for reality to assume its current “unbounded” form. For example, in order for territories to appear whole, those who are undocumented

must be excluded. If they are not excluded through removal, they must be excluded through social practices (such as denial of work authorization) that position them outside of the polity. Such exclusions produce “holes,” of sorts, in that national territories are perforated by the spaces occupied by persons who are not legally “there.” Thus, territorial *boundedness* (the wholeness produced by exclusion) is made possible by territorial *disruption* (the social exclusion and denial of those who are present yet forced to live in an “underground.”) If my reasoning here is correct, then the purported boundedness of nations and the reality of “alien” and “unauthorized” presences are not merely contradictory. Rather, the notion of *boundedness* necessitates and contributes to the very *interpenetration* that it denies (see also Butler 2000).

Relatedly, it may well be that instead of being in contradiction, globalization and the increased emphasis on the citizen/alien distinction go hand-in-hand. Thus, it is possible that existing citizenship laws create a desire for undocumented workers who might be both more exploitable and more expendable than other laborers (Calavita 2005; de Genova 2002; Jenkins 1978). This desire can actually promote international movement (and hence globalization) as employers recruit overseas workers in an effort to reduce their own costs (Ngai 2004). In a circular process, the hardening of citizenship laws can be both a response to increased migration and a means of increasing the supply of undocumented workers. For instance, geographer Monica Varsanyi (2008) has argued that the contradiction between border enforcement and the tolerance of undocumented immigrants in the interior has been exacerbated by neoliberal policies that permit the movement of goods but prohibit the movement of people. To address this contradiction, she argues, states have recently been “rescaling” citizenship, such that states and local communities are increasingly regulating what used to be seen as a federal matter. According to her analysis, such rescaling has entailed a legal shift from viewing “immigrants as persons” to viewing “persons as immigrants.” According to the former view, immigrants are persons, and the constitution grants rights to persons, therefore non-citizens enjoy numerous constitutional rights—a point that is also emphasized by Bosniak. According to the latter view, persons are immigrants who do not share the rights enjoyed by citizens. States and local governments are increasingly being permitted to regulate immigration, e.g., through declaring cities “sanctuaries” or by passing city ordinances that prohibit landlords from renting to unauthorized immigrants. To paraphrase Bosniak, such approaches could make citizenship “hard” on both the outside and the inside.

In this context, it may be possible for birthright citizenship to be *both* merely and unjustly reproductive *and* radically transformative. As Shachar points out, there is a tremendous need to redistribute the world’s resources, which are currently concentrated in the hands of wealthy nations—even though there are

also inequities *within* these nations as well. I read Shachar's proposal for a birthright levy as a call for such redistribution, and, while one might quibble about the details (for instance, if one were to do it, it makes sense to me to charge such a levy to *states* rather than to *individuals*), her case for such a redistributive mechanism is quite compelling. However, when non-citizen parents have children within the territory to which their parents have immigrated, *jus soli* can also be a radical transfer between members of different nations, and therefore *is* itself a form of redistribution. Laws that grant citizenship to children born in a particular territory, regardless of their parents' immigration status are not a mere intergenerational transfer, and that is perhaps one reason that such laws have been challenged by groups that favor more restrictive immigration policies (Chock 1999). Shachar is right that migration, which can entail tremendous suffering, is not a solution to the problem of world poverty; however, when the children of undocumented parents acquire citizenship at birth, something transformative occurs. *Jus nexi* might be another valid way of assigning citizenship to such children, but there is something comforting about the *automatic* nature of determining citizenship in these particular instances, given that otherwise, such children's status and rights could come under tremendous challenge. Furthermore, when U.S.-born children accompany non-citizen parents who are being deported, these children *retain* their *de jure* citizenship (though undergoing a *de facto* deportation themselves) and can legally re-enter the United States in the future.

Shachar and Bosniak's analyses invite attention to but do not themselves examine the citizenship strategies of sending nations. Such strategies may focus on making citizens *property* of the state—a point that suggests limitations to the property analogy used by Shachar. For instance, under the conservative ARENA party, the Salvadoran government sought to incorporate Salvadorans living outside of the country with an eye toward encouraging expatriate Salvadorans to send remittances to their family members, finance development projects in their home communities, invest in Salvadoran businesses, purchase Salvadoran products, and visit El Salvador as tourists. In a sense, the Salvadoran government was charging its own citizens an informal birthright levy by promoting remittances. I am not particularly sanguine about relying on remittances as means of redistribution, as, in the absence of more liberal travel and immigration policies, remitting often requires an expensive and life-threatening trip, working in exploitative conditions, and enduring painful separations from family members. Note as well that such approaches position migrants as akin to property of states—the inverse of the analogy that Shachar develops.

My own research further suggests that migrant families are themselves redefining citizenship in ways that make sense for their lives. Thus, one alternative to denying citizenship to the second, third, or fourth generation of migrants who live away from a country of (ancestral?) origin (which Shachar

proposes in the form of a declining membership entitlement, rebuttable through a demonstration of a real connection to the polity) would be to consider whether citizenship itself might take on different meanings for such generations. In the United States, for example, Salvadoran students, such as Milda, who want to learn more about Salvadoran culture and history have been organizing delegations, sponsoring conferences, developing student clubs, and calling for new curriculum and degree programs, such as Central American Studies (see, e.g., the USEU-UCLA website: http://useuyouth.org/useu/?page_id=92). Additionally, as Bosniak notes, it is important to think not only about the “citizenship” that is granted to territorially present aliens but also about the rights that might accrue to non-territorially present persons. She queries, “Why not include those who lived and worked here at one time but who are not currently present? Why not include the large numbers of people around the world who are intimately linked to the nation—familiarily, culturally, economically, politically—without being territorially present?” (Bosniak: 138).

Shachar’s notion of *jus nexi* presents one approach to resolving such questions, though it relies heavily on territorial presence as a means of demonstrating actual real connection. Bosniak cogently delineates dilemmas associated with the simultaneous inclusive and exclusionary meanings of “citizenship,” but does not discuss the movement between these, that is, the ways that some people attempt to obtain legal status in the formal sense by acting like citizens in the social sense. Such efforts are another way in which “spheres” interpenetrate. Shachar’s discussion of *jus nexi*, in contrast, draws attention precisely to the ways that connections to a particular nation-state have already been deemed grounds for granting status. For example, in suspension of deportation cases (a pre-1996 immigration remedy) individuals who were in deportation proceedings attempted to demonstrate that they were *de facto* U.S. citizens, that they had strong family ties in the U.S., that they participated actively in their communities (e.g., they belonged to churches, did volunteer work), that they held jobs, were trying to “progress,” and had investments (if possible), and of course that they spoke English. In other words, by demonstrating that they had acculturated, such applicants argued that deportation would be an “extreme hardship,” one of the three prongs that had to be satisfied to prevail in order for their deportations to be suspended. And, more broadly, immigrant rights advocates have argued that unauthorized migrants are members of the community in all but the formal sense, and that they therefore deserve legal recognition. Furthermore, a “path to citizenship” has recently been created for certain temporary migrants who serve in the military.² As Shachar points out, “the ties that bind... can receive retrospective legal recognition” (178).

² This policy is controversial because these migrants’ status makes them suspect (will they serve the U.S. or another country? Where do their loyalties lie? “Status” is taken as a measure or

Finally, it is important to note the ways that deportees who have lived in the United States for considerable periods of time appeal to *jus nexi* in challenging the morality and legality of their own deportations. To give one example, in July 2008, I interviewed Victor Castillo, a Salvadoran citizen who had immigrated to the United States on a family visa in 1967 at the age of four. When Victor turned eight, his stepfather, who was a U.S. citizen, adopted him, an action that Victor believed made him a U.S. citizen as well. Victor explained,

I was Americano. I never liked saying I was born here [in El Salvador]. Even my father taught me, “You don’t have to go around saying—you are from here now!” That’s what he told me. And that’s how I grew up, *hermano* [brother]. *Ciudadano, ciudadano* [citizen, citizen]. Believing from the age of 5 years that I was a citizen. And that when I was adopted at age 8, that was it. *Cerró todo*. [Roughly, “that clinched it.”] That’s how I saw myself. Registered voter. Because I even have a birth certificate from California. This, look!

Victor handed me a copy of his birth certificate, and, sure enough, it had been issued in California, with his adoptive father listed as the parent, and with El Salvador still listed as the birthplace. Even though he had eventually been deported, Victor was very familiar with the landscape that I myself occupy. He told me, “I’ve done everything. MacDonalds, when I was 16. K-Mart, selling with a tie. Unloading trailers. Warehousing. Mechanic. Various things. But I went to a technical school for drafting. And carpentry. I liked it and was trained. When I worked in South Orange County. Because everything there is *un billete*. Irvine, is a university of prestige!” Nonetheless, after being convicted on drug charges, Victor was stripped of his legal permanent residency and deported, despite having lived in the United States for 41 years. In El Salvador, he was regarded as a foreigner, and was criticized for his poor Spanish skills. Deeply traumatized, Victor cited, in effect, *jus nexi* to denounce the injustice of his deportation: “I was ready to serve my country, I was a registered voter, I voted for governor of CA, I voted for presidents, my whole life was over there, my wife, my kids, I was a total American, I was American in my heart, my mind. And for them to just uproot me, and just throw me [away]... I’ve been *banished* from my country... and they said forever!” As a registered voter with extensive kin ties and such a high degree of loyalty that he would risk his life by serving in the military, Victor argued, he was a “total American,” regardless of his formal citizenship status.

indicator of “loyalty”) but military recruiters have complained that there are people who seem patriotic and who want to serve but for the fact that they do not have green card.

By denaturalizing the accountings that make individuals such as Victor appear foreign (in multiple countries), Linda Bosniak and Ayelet Shachar have done a great service. At the very least, their work will make scholars more aware of ambiguities and contradictions entailed in citizenship, alienage, and inheritance. And, at the most, their work provides grounds for rethinking current policies, for considering whether the partial membership that Bosniak terms “alien citizenship” deserves greater legal recognition, whether more substantial transfers of wealth between nations are in order, and whether *de facto* social connectedness ought to be grounds for preventing citizenship from being assigned on relatively arbitrary facts of individuals’ birth. Both of these books are at the cutting edge of work that reevaluates institutions that shape individuals’ life chances, and that seem, to many, the natural and obvious way of doing things. By critically analyzing bases of current policies and by suggesting alternatives, these two scholars break new ground, thus making possible innovations that are more commensurate with migrants’ realities.

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