
Where Rawls Was Right

Seyla Benhabib

**The Rights of Others: Aliens,
Residents, and Citizens**

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Reviewed by Michael S. Kochin

Seyla Benhabib is a Sephardic Jew, born in Turkey, educated in the United States and Germany, and currently a professor of political philosophy at Yale. She is also one of the leading American disciples of the German philosopher Jürgen Habermas, and her work applies Habermas' method of deriving an ethical and political teaching from the

preconditions of reasonable conversation. Like Habermas, she pitches her work as a contribution to debates about the political future of Europe.

In her latest book, *The Rights of Others*, Benhabib has something to tell us about belonging—about what it is to be a member of a political community, and by extension about what it is to belong to the Jewish people. Here she gives us her vision of what she calls “just membership,” of the terms under which a political community ought to open itself to new members. Naturalization, Benhabib contends, ought not to be a matter of sovereign discretion exercised by the naturalizing state. She argues for a *right* to membership, to be enforced

on states by orders from supranational courts, for example. Her first three chapters cover the views of Immanuel Kant, Hannah Arendt, and John Rawls on the question of political membership. The final two chapters draw the consequences of Benhabib's critique of these philosophers for contemporary debates in Europe over the absorption of Muslim immigrants, debates which are becoming ever more pressing in countries like France, Germany, Italy, and Spain, which can no longer ignore the problems of absorption and civic education posed by large flows of Muslim immigration.

There is, however, one particular form of membership that seems to bother Benhabib a great deal: Membership in the Jewish people, and the relationship between Jewish peoplehood and citizenship in the State of Israel.

Arendt, Benhabib notes elsewhere, legitimates the juridical fact that all Jews are potentially Israeli citizens under the Law of Return, together with the claim that Israel is the state representative of the Jewish people.

Benhabib, however, rejects both claims. For Benhabib, being Jewish is an "ethnic identity," not a national one. In her view, what is right is what is justifiable not just in terms of the collective interest of current members of some group or other, but that

which is justifiable to non-members as well. What cannot be justified, Benhabib says, is the exclusion on the basis of ethnic criteria of some people from membership in order to preserve a country's ethnic or religious character. Benhabib's real target, of course, is Israel's Law of Return. Combined with its refusal to grant the right of Palestinian return, this law represents what she calls "the concept of an ethnic democracy which is current in some contemporary discussions in Israel," but which she finds intolerable.

To assess where Benhabib goes wrong, we must return to first principles. To think about membership is to ask "who are we?" or "with whom do we share a common fate?" The two social forms that most resist rational analysis remain the family and the polity, precisely because we do not have much of a handle on how to think about who ought to, or has a right to, belong to them.

The duty to act as I think best—the fundamental demand of the rationalism to which Benhabib adheres—has two possible versions: The search for the best or the good (the old rationalism which goes back to Socrates), and the attempt to free my thinking from external constraint and to think for myself (the new rationalism that begins with Kant). The old rationalism, which Benhabib rejects, wanted

to know and pursue the good, and so challenged the bounded community or family in the name of what is simply good and not simply one's own. It pointed away from the family and the city or nation toward the superfamilial and superpolitical—be it the trans-national community of pursuers of truth in antiquity or the supra-political Catholic Church.

By contrast, the new rationalism—which Benhabib, like Habermas and Kant before her, endorses—demands that the individual be autonomous, not determined by his opinion of the impersonal good. This way of thinking reconciled itself to the fact that the people that wills itself into a democracy must be defined more narrowly than by the mere acceptance of democratic norms, otherwise there could be only one democratic state that would enfranchise all democrats. If both Italians and Australians accept democratic norms, there must be something other than their common commitment to democracy that explains to each why they should continue to exist as separate political entities called Italy and Australia.

Although the new rationalism reconciled itself to the bounded nature of a people, however, it shares with the old rationalism a refusal to reconcile itself to the family. (Tellingly, in her 2002 book *The Claims of*

Culture, Benhabib neglected to list the right to found a family in her list of minimum basic rights, even though that right appears in the Universal Declaration of Human Rights.) The new rationalism prefers to de-emphasize the family because the family is not a location for the exercise of autonomy—only, at best, for the education of autonomous children. Moreover, parents are concerned for their children not simply out of sympathy with human beings who are incapable of caring for themselves, but out of a special concern for their own children.

In *A Theory of Justice* (1971), Rawls argued that political justification has to be made in terms of the interests of parents in the well-being of their children, and even stronger, of the interest of the living in the welfare of their descendants. Considering that Benhabib devotes this book's central essay to a critique of Rawls' views on political membership, it is both striking and unfortunate that she does not address his claim that the right to belong to a family or polity is the right to share in that group's open future. Thus for Rawls, but not for Benhabib, in deciding who should be allowed to join a polity, citizens must ask themselves what sort of country they wish to leave to their great-great-grandchildren.

Benhabib wants us to think about membership in the political community not only in the light of past forms of rationalism, but also under the new circumstances of economic and cultural globalization. Here she argues that the state autonomy enjoyed by current nation-states is a poor instrument for the protection of rights. She first rehearses two familiar reasons: Increased trade flows make states less effective agents of economic policy, and globalization of security threats means that a state, acting alone, can no longer protect its citizens from terrorism.

Benhabib's more serious objection to the old view—of a world divided into sovereign states with sole discretion over their own membership—is that although sovereign states aimed to protect the rights of citizens, they often violated the rights of non-citizens, or even deprived some residents of the rights of citizenship (as when German Jews were denaturalized by the Nazis). Benhabib argues that states protect rights as instruments of larger multi-state orders; today, she says, “the local itself is but an extension of the international.” Former Labor MP Tony Benn put it more starkly: “Political leaders... are no longer the representatives of the people, simply the regional managers of the global authority.”

But in Benhabib's view, the most serious challenge to state capacity to handle questions of membership is posed by large flows of immigrants and refugees. Muslims who immigrate into liberal democratic states, she notes, bring with them their own struggle between autonomy and patriarchy. Benhabib herself speaks of the *chador* (head scarf) as a sign of a woman's “private faith and identity” but admits that such an interpretation represents a “protestantization of Islam”—in other words, the transformation of Islam from a communal submission to divine law into a personal confession of conscience. Such a transformation of Islam is perhaps devoutly to be wished, but Benhabib wants European states to treat their Muslim minorities as if it had already occurred.

In the end, Rawls proves a better guide than Benhabib to thinking about membership, because he recognizes that a political community must struggle to maintain its existence through time, and he recognizes that immigrants determined to preserve and extend their own illiberal way of life can destabilize a liberal culture. The problem is not cultural difference as much as a rejection of the governing liberal norms of autonomy. Many Muslim immigrants do not merely

wish to live as Muslims in voluntary Muslim communities; they want to forbid apostasy from those communities or blasphemy of what those communities hold sacred.

The question is not where Benhabib stands on the issue of democratic rights. Presumably she would agree with Habermas that “the democratic right to self-determination includes the right to preserve one’s *political* culture.” The question, rather, is whether her intervention would make it more difficult for a coherent liberal community to exist. For Benhabib, the Dutch are exemplary in disaggregating citizenship to such an extent that they grant local political rights to Muslim immigrants without demanding that they become Dutch. This policy, however, only results in cities with high concentrations of Muslim immigrants, who use the machinery of municipal government to protect Muslim intolerance.

Unlike Benhabib, Rawls acknowledges that if religious differences are not up for discussion between members of different religious communities, then liberal states are going to have to put forward terms under which they will share the world with states that are not liberal. Rawls reminds us of the

hardest lesson of the twentieth century: Individual rights cannot be protected unless liberal principles themselves are chastened in the service of peace.

What is so difficult for Benhabib and other followers of the new rationalism to swallow is that despite the lofty pretensions of would-be cosmopolitans, the pious invocation of universal principles—or of the transnational judicial institutions meant to put them into practice—cannot effectively guarantee the liberal rights of national minorities. Benhabib quotes Hannah Arendt’s 1951 observation that “The restoration of human rights, as the recent example of the State of Israel proves, has been achieved so far only through the restoration or establishment of national rights.” It is this truth embodied by Zionism that ultimately bothers Benhabib.

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