

CONCLUSION: A TYPOLOGY OF “PAPERS”

I have tried to demonstrate in the preceding pages that identification documents such as passports have played a crucial role in modern states' efforts to generate and sustain their “embrace” of individuals and to use this embrace to expropriate the legitimate “means of movement.” We have witnessed over the past two centuries a shift in the “reach” of documentary controls on movement from relatively small-scale spaces (municipalities) in dynastic states to “national” spaces and, more recently, to the “suprastate” level of the European Union. The documents involved have been critical to state-building activities in that they identify who is “in” and who is “out” in membership terms, and thus help distinguish who may make legitimate claims to the rights and benefits of membership. Here I explicate in greater detail the nature of the different types of such documents and analyze their relationship to states' assertion of a monopoly on the right to regulate people's movements.

Such documents come in three basic varieties. Clearly, (external) passports and internal passports or “passes” are not the same thing, although the former appears to have evolved out of the latter to a significant degree. External or international passports, most familiar today to those from liberal democratic countries, are documents associated with movement across international state boundaries. They ordinarily constitute *prima facie* evidence of the bearer's nationality. In contrast, internal passports or passes are designed to regulate movements *within* the jurisdiction of a state. The identification card, common to societies on the European continent and to those that have

endured colonial domination by Europeans, constitutes a “mixed” type, lying between the other two in terms of its role in control over movement and in securing citizen access to privileges and benefits.

The legal implications of the differences between “internal” and “external” passports are far-reaching. The **right to leave and return to one’s country is a prerogative** that has come to be widely accepted in international human rights law, even if that law is often ignored in practice. Note that the very enunciation of such “rights” indicates the extent to which states and the state system have expropriated and monopolized the legitimate means of movement in our time. In contrast to the widely recognized right to leave and return, the right to move *within* one’s country is a matter of the domestic law of sovereign states, subject only to the relatively weak and largely unenforceable strictures that may be imposed by human rights norms and conventions. Despite the emergence of a greater propensity to intervene militarily in the internal affairs of states to forestall atrocities, it remains true that “once a population is incorporated into complete citizenship, a nation-state is given almost complete authority to subordinate the population: It can expropriate, kill, and starve, with relatively little fear of external intervention.”¹ Needless to say, this authority extends to nation-states’ control over the movements of persons within their borders as well.

Most familiar to and accepted by people today is the right of states to **control entry, a prerogative that has come to be understood as one of the quintessential features of sovereignty.** It is important to note, however, that the widespread recognition of this prerogative is a fairly recent development. Recall that in his survey of the international legal opinion prevailing during the period immediately preceding the First World War, a German analyst of the international passport system, Werner Bertelsmann, was unable to muster any consensus for the view that states had an unequivocal right to bar foreigners from entry into their territory.²

Still, although they have come to be governed by different bodies of law, passports and passes share the function of regulating the movements of people within and across delimited spaces, thereby affirming states’ control over bounded territories and enhancing their embrace of populations as well as their authority to exclude unwanted outsiders. Identification cards, by contrast, are not normally, or at least not

¹ Meyer 1987 [1980]: 52. ² Bertelsmann 1914: 13–17.

primarily, used to regulate movement, but simply to establish the identity of the bearer for purposes of policing and administration and for gaining access to benefits distributed by the state. Let us examine each of these documents in turn.

INTERNATIONAL PASSPORTS

The contemporary international passport is primarily an expression of the attempt by modern nation-states to assert their exclusive monopoly over the legal means of movement. But the passport cannot be reduced exclusively to a mechanism of state control, even if this is certainly its principal function today. For in addition to enhancing bureaucratic domination over persons and territories, the passport vouchsafes the issuing state's guarantee of aid and succor to its bearer while in the jurisdiction of other states. Possession of a passport thus constitutes *ipso facto* evidence of a legitimate claim on the resources and services of the embassies or consulates of the issuing state – not to mention, in extreme cases, on its military power.

For the traveler, the modern passport also functions as a *laissez passer*, bearing witness to the document's partial origins in diplomatic practice. Passports issued by the United States, for example, carry the following inscription:

The Secretary of State of the United States of America hereby requests all whom it may concern to permit the citizen/national of the United States named herein to pass without delay or hindrance and in case of need to give all lawful aid and protection.

Individual travelers have thus been transformed into quasi-diplomatic representatives of particular countries, simply because the issuing state has usurped the capacity to authorize movement and thus “embraced” the traveler as a citizen-member of the nation-state.

These ambiguities of passports indicate that these documents cannot be regarded merely as a means of governmental control. To use again the words of the US passport, the “passport is a valuable citizenship and identity document. It should be carefully safeguarded. Its loss could cause [the bearer] unnecessary travel complications.” Modern passports, like their predecessors such as safe-conducts and *laissez passers*, facilitate movement into and out of spaces controlled by others than one's own sovereign. The ambiguous significance of the passport is suggested nicely by the fact that, in the United States, passports are issued by

the Department of State (our “Foreign Ministry”), while passports are inspected upon entry by the Immigration and Naturalization Service, a branch of the Justice Department.³

Despite these ambiguities, state control over individual movement is clearly the predominant purpose of passports today. The functions performed by the passport in contemporary interstate travel may be outlined as follows.

Departure

Routine travel across international borders involves a three-part process. First, the individual must depart his or her state of origin. Permission to leave one’s country is by no means a foregone conclusion for people from many lands, despite the widespread recognition of such a right in international law.⁴ Subjects of a state cannot automatically assume that they have the right to travel abroad, a situation both manifested and exacerbated by the fact that most states now require passports for departure from their domains. Because passports are also normally required for entry into other countries, the right to a passport from one’s own government is virtually synonymous with the right to travel abroad. For example, a 1967 decision by the Supreme Court of India holding that Indian citizens have a constitutional right to travel abroad also held that, in consequence, the government had no prerogative to withhold a passport from any citizen who requested one, for such withholding would have nullified the basic right.⁵ Consistent with this sort of ruling, most citizens of democratic states, at least, can reasonably assume that they will be able to acquire a passport on demand.

These considerations point to the usual connection between access to a passport and national citizenship. A 1990 German study of passport law put the matter as follows:

³ Since the first edition of this book appeared, the agency in question has changed. Upon arrival at a port of entry in the United States, passports are now inspected by US Customs and Border Protection, a branch of the Department of Homeland Security. The point being made is only strengthened by the shift in passport inspections, resulting from terms of the PATRIOT Act, from the Department of Justice to that of Homeland Security.

⁴ See Hannum 1987.

⁵ See Turack 1972: 8–9. The case in question was *Satwant Singh Sawhney v. Assistant Passport Officer, Government of India*, April 10, 1967. Ironically, the result of this decision was the Passport Act 1967, which enumerated the specific grounds on which the Indian government could refuse a passport to an applicant. The 1967 Act was the first statutory regulation of a matter that theretofore had been left arbitrary.

Each state may issue passports only to those who stand in a close factual relationship to it. As a rule, therefore, passports are issued primarily to citizens of the state in question. Only in exceptional cases are travel documents issued to foreigners who happen to be within the state's territory.⁶

This presumed connection between citizenship and possession of a state's passport is, of course, the basis for the colloquial reference to the latter as an indication of possession of the former.

Formal citizenship is not necessarily the only foundation of a claim to a passport for travel, however. As indicated by the inscription in the US passport quoted earlier, states may elect to offer passports for interstate travel to their noncitizen *nationals* (e.g., noncitizen populations over which states hold dominion, such as natives of American Samoa). In principle, states may elect to give passports to anyone they choose, restricted only by the terms of international law and agreements and by their own legal determinations concerning to whom they want to extend their protections while those persons are abroad. According to a leading expert on international migration law, in fact:

[S]tate practice in the issuance of passports is so varied ... that it is impossible to establish a connection in international law between the issuance of a passport and the acquisition or tenure of nationality. The problem is not merely that very many states issue travel documents of various kinds to travelers of foreign nationality but that some [s]tates issue passports, in the strict sense of the term, to aliens of defined classes.⁷

The widespread deviations from the standard assumption of a connection between citizenship and access to a passport invalidate this assumption, even though the principal function of a passport in international law is to demonstrate the identity and nationality of the bearer. Because states and the state system have monopolized the power to regulate international movement, persons generally must possess a passport regardless of its origins of issuance if they wish to travel across borders; this situation creates anomalies for those who have difficulty in claiming affiliation with a particular state.

Conversely, states may choose *not* to grant passports to particular persons, irrespective of their legal status (citizens, nationals, etc.). States that curtail free departure and return generally deny their subjects many of the other rights we associate with modern citizenship and

⁶ Bergmann and Korth, 1990: 4. ⁷ Plender 1988 [1972]: 150.

human rights norms. In 1982, for example, the apartheid-era South African courts ruled that access to a passport was a privilege rather than a right for both blacks and whites, and that the government could revoke any passport without cause or appeal.⁸ Yet even nominally democratic states have been known to refuse to grant documents for international travel to certain groups of their citizens. As noted earlier, for example, the State Department gained the authority under the terms of the Internal Security Act of 1950 to deny passports for international travel to members of the Communist Party.⁹ These examples point to states' interest in monopolizing the authority to grant legal passage for political or ideological reasons.

Beyond the passport itself, a number of countries insist that the international voyager acquire an exit visa as evidence of the state's acquiescence in the traveler's (emigrant's?) departure. Rulers' fears of "brain drain" often underlie such restrictions. As a result, less developed countries in particular have frequently argued that they must retain control over the departure of their subjects in order to be able to take advantage of the expenditures on education and training from which those subjects have benefited.¹⁰ Restrictive exit policies are frequently found, as Zolberg has noted, in countries that impose extraordinary tasks on their populations in either political or economic terms: "It is nearly impossible to secure compliance with drastic state demands if people are able to vote with their feet."¹¹ Exit visa requirements make this form of voting more difficult.

Freedom of movement and citizenship rights may thus diverge in significant and unexpected ways. Modern states have frequently denied their citizens the right freely to travel abroad, and the capacity of states to deny untrammelled travel is effected by those states' control over the distribution of passports and related documents, which have become essential prerequisites for admission into many countries.

Entry

Having successfully departed the country of origin, the traveler must gain access to a destination country. In an international state system that still regards sovereignty as its most fundamental principle, no traveler can presume that receiving states will grant access to their soil.¹² At a time when substantial but unknown numbers of people

⁸ Dowty 1987: 171. ⁹ Dowty 1987: 128. ¹⁰ See Bhagwati 1976.

¹¹ Zolberg 1978: 271.

¹² For a thoughtful discussion of the reasons why a liberal polity might want to restrict entry into its territory, see Whelan 1988.

become “immigrants” simply by overstaying the legally prescribed duration of their stay, limiting ingress into the territory is the best way for states to avoid entering into a series of potentially costly obligations to nonnationals.¹³ Passport and visa controls are crucial mechanisms for this purpose, the first line of defense against the entry of undesirables. Indeed, the fundamental purpose of passports from the point of view of international law is to provide to the admitting state a *prima facie* guarantee that another state is prepared to accept an alien that the destination state may expel or choose not to admit.¹⁴

Passports have come to be more or less universally required for admission to a foreign territory, but they may not suffice in themselves for gaining such admission. For the entry portion of the process of international travel, an entry visa may be required in addition to the passport. In such cases, the passport plays primarily the role of a certificate of identification, assuring the receiving government that would-be entrants are who they say they are. If required, the visa is the document of record authorizing entry. In other words, passports may be necessary but not sufficient for legally crossing international borders.

Just as possession of citizenship in certain countries may present barriers to international movement, the *lack* of a nationality – the condition of statelessness – may also pose severe problems for anyone wishing to navigate the international state system and its strictures on individual movement. In a world in which the legitimacy of the nation-state remains quite strong, the lack of a nationality may indeed be a calamity, and has led the United Nations to adopt conventions intended to reduce the prevalence of statelessness. Dowty dourly concluded, however, that “these efforts have not stirred a broad response.”¹⁵ The loss by the stateless of a community to guarantee their rights has had particularly profound ramifications for their ability to gain entry into states typically defined since the early twentieth

¹³ Already in 1959 – that is, before the arrival in Europe of large numbers of “guest workers” who have been seen as the vanguard of a reconfiguration of the relationship between citizenship and access to rights (see Soysal 1994) – a leading analyst of the role of nationality in international law put it this way: “Admission, especially of persons who wish to take up residence in the admitting State, resembles in many respects naturalization (which sometimes results): the foreign national is thus admitted to the local legal community; through his residence or actual sojourn[,] rights and obligations come into being which resemble those resulting from nationality” (Van Panhuys 1959: 55).

¹⁴ Goodwin-Gill 1978: 26.

¹⁵ Article 15 of the Universal Declaration of Human Rights (1948) states flatly, “Everyone has the right to a nationality” (UN Department of Public Information 1985). The Convention Relating to the Status of Stateless Persons was adopted in 1954 and the Convention on the Reduction of Statelessness in 1961. The quotation is from Dowty 1987: 109.

century in ethnonational terms and requiring documents to regulate who may enter.

Return

Finally, the traveler wishing to return to his or her country of origin will typically need a passport as unambiguous evidence of eligibility for readmission. As a matter of international law, states are required to admit their own citizens (and only them). This requirement has relatively little to do with the rights of persons as such, however. Rather, the doctrine of “restricted returnability” entails that states must admit their own citizens to avoid a situation in which the state whose national a person is might frustrate the legitimate efforts of another state to expel unwanted aliens. From the point of view of the individual, the ever more widely recognized right to return to one’s own country flows not from rights inhering in the individual, but rather from the exigencies of sovereignty in the international state system. Just as the passport constitutes *prima facie* evidence that the issuing country will take in the bearer if he or she is denied entry into or expelled from the destination country, the document constitutes *prima facie* evidence of a claim to return to the issuing country.

In the end, therefore, passports are necessary *and sufficient* not for gaining entry to another country, but only for returning to one’s country of origin. Assuming that the document is deemed genuine, the passport indicates that the bearer has an incontestable right to enter the territory controlled by its issuing state. This unexpected fact explains the panic that grips international travelers abroad when they discover that they have lost their passport in some distant land. Beyond the fact that the lack of a passport is likely to complicate travel to any third countries, the ill-fated tourist fears especially that return to his or her place of origin may be difficult or even impossible in the absence of a passport. A lifeline has been cut, and the traveler is adrift in a world in which states have monopolized the authority to grant passage.

The external or international passport thus proves to be a document of considerable ambiguity. As the documentary expression of modern states’ efforts to monopolize the means of legitimate movement, the passport concentrates in itself the enormous increase in modern states’ control over individual existence that has evolved especially since the nineteenth century. At the same time, bearers of these documents are ensured that they may avail themselves of the protections that states may provide in an uncertain and potentially hostile world. Modern

international passports thus join together diplomatic functions with mechanisms of state control. Their spread and more vigorous enforcement during and after the First World War – as nationalist fervor reached its height, opportunities for mass travel expanded, and nation-states consolidated their control over territories and populations – indicate that the control function predominates. Still, if passports were intended purely for purposes of state control, they would hardly command such a high price on many of the world's black markets.¹⁶ In contrast, states' control over movement is the more or less exclusive function of internal passports.

INTERNAL PASSPORTS

The internal passport or “pass” has few similarities to the international passport, with its connotations of access to foreign territories and to the protections of the issuing state while in those other jurisdictions. Internal passports lack the ambiguity characteristic of the latter as documents that both enhance state control and afford their bearers various rights and immunities. Instead, the internal passport may be a state's principal means for discriminating among its subjects in terms of rights and privileges. In particular, passes may be used to regulate the movements of certain groups of subjects, to restrict their entry into certain areas, and to deny them the freedom to depart their places of residence (or of authorized presence, as in the South African mines and urban areas during the apartheid period). In the Soviet Union, internal passports in combination with the *propiska* system of housing registration restricted the movement and domicile of Soviet subjects, especially inhibiting their freedom to take up residence in certain urban areas and constraining the departure of collective farmers from the countryside.¹⁷

As modern states have expanded their administrative capacity to embrace the populations resident in their jurisdictions, controls on internal movement (and on residence) have sometimes been strengthened as well. Nowadays, the use of internal passports to control movement within state boundaries bespeaks illegitimate, authoritarian governments lording it over subdued or terrorized populations. Internal passports and passes constitute a reversion to practices

¹⁶ I am grateful to David Laitin for insisting on this point in a personal communication.

¹⁷ See Garcelon 2001; Fitzpatrick 1994; Matthews 1993; Torpey 1997; Zaslavsky and Luryi 1979.

generally abandoned by democratic nation-states by the twentieth century. Such states have generally dropped requirements that internal movement be specifically authorized in favor of a requirement that all persons be in a position to identify themselves to the authorities when the latter demand that they do so. The identity card has thus assumed much greater importance in such countries than internal travel documents per se.

IDENTITY CARDS

Identity cards confront us with a documentary “gray zone.” They, rather than internal passports authorizing movement per se, may be used by the authorities to enforce intermittent checks on movement. Those required to have such documents (often after the age of sixteen) must produce them on the demand of the organs of social order, and failure to do so is likely a punishable offense. Even in democratic states, such identity checks may be used to control access to certain areas, although the degree to which such regulation is admissible may be subject to legal dispute. Yet such identity documents may also be necessary for gaining access to certain rights of democratic participation (e.g., voting), public services (e.g., medical care), and transfer payments (“welfare”). Internal identification documents that may be used by states to control movement therefore frequently share some of the features of international passports, enabling their bearers to obtain access to the benefits associated with citizenship in a particular state.

Modern democratic states typically require some kind of identification card that is used to regulate movement only sporadically, but that may be crucial for acquiring certain benefits of membership (e.g., the *Personalausweis* in Germany; the *carte d'identité* in France; the driver's license or social security card in the United States, although technically speaking these are not “ID cards”). In contrast, authoritarian states often impose pass controls on movement for significant elements of the population and enforce those controls more regularly and stringently; the connection of such documents to the provision of social services or the acquisition of the benefits of citizenship is dwarfed by their use for purposes of social control. It would perhaps be most useful to think of internal identity documents as reflecting, together with external and internal passports, points on a continuum defined by the efforts of modern states to grasp their populations and monopolize control over legitimate movement. What all of these documents

share in common, however, is the use of pieces of paper to construct and sustain enduring identities for administrative purposes – that is, to enhance states' embrace of individuals.

Ultimately, passports and identity documents reveal a massive illiberality, a presumption of their bearers' inclination to be less than forthcoming when called upon to identify themselves. The use of such documents by states indicates their fundamental suspicion that people will lie when asked who or what they are, and that some independent means of confirming these matters must be available if states are to sustain themselves as going concerns. In the face of potentially unstable and possibly counterfeit identities, states impose durable identities in order to achieve their administrative, economic, and political aims. Passports and other documents authorizing movement and establishing identity discourage people from choosing identities inconsistent with those validated by the state.

Documents such as passports and ID cards constitute the proof of our identities for administrative purposes, and permit states to establish an enduring embrace of those admitted into their communities and to distinguish them from others. Our everyday acceptance of “the passport nuisance”¹⁸ and of the frequent demands from state officials that we produce “ID” is a sign of the success with which states have monopolized the capacity to regulate movement and thus to constrain the freedom of ordinary people to come and go, as well as to identify and constrain possible interlopers. The state monopolization of the means of legitimate movement has thus rendered individual travelers dependent on state (as opposed to private) regulation of their movements in a manner previously unparalleled in human history. In this regard, people have to some extent become prisoners of their identities, which may sharply limit their opportunities to come and go across jurisdictional spaces.

Passports and identification documents, the products of elaborate bureaucracies devoted to identifying persons and regulating their mobility, have made possible this extraordinary transformation of social life – a transformation akin to those identified by Marx when he analyzed the monopolization of the means of production by capitalists, and by Weber when he discussed the modern state's expropriation of the legitimate use of violence. To these two, we must add a third type of “expropriation” in order to make sense of the modern world – the

¹⁸ Fussell 1980: 24.

monopolization of the legitimate means of movement by modern states and the state system more broadly. While hardly seamless, the monopolization of the legitimate means of movement by states and the international state system as a whole in the modern world has been extremely successful in regulating population movements and sorting out who belongs where. It has thus been critical to states' efforts to construct putatively homogeneous "nations," although this is an aim that in the very nature of the case is impossible to achieve.