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Do Human Rights Reinforce Border Regimes? Differential Approaches to Human Rights in the Movement Opposing Border Regimes in Berlin

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ABSTRACT

Scepticism often dominates the debate regarding the potential of human rights for eroding border regimes. Powerful actors make use of human rights to justify migration control. However, subaltern groups can also rely on human rights to challenge oppression.

In this article, I argue that the ambivalence of human rights must be contextualised within the wider human rights politics pursued by different social actors. By drawing on my ethnography of the social movement contesting border regimes in Berlin, I analyse how different social movement organisations contest deportation and I emphasise crucial differences in their approaches to human rights.

More specifically, human rights NGOs, which I conceptualise as moderate organisations, draw on legal notions of human rights and oppose deportations only partially. In contrast, radical organisations oppose all deportations by elaborating non-legal notions of human rights.

I contend that NGOs see human rights as imperatives that need to be upheld by the law and state institutions. In contrast, radical organisations conceive of human rights as aspirations for social justice and locate the source of human rights in social struggles. These differential approaches to human rights entail a distinctive potential for eroding border regimes as they underpin different models of migration governance.



KEYWORDS

Human rights; NGOs; grassroots organisations; deportation; border regimes; migration

Introduction

In summer 2018 a group of lawyers in Berlin, the Association of Republican Lawyers (RAV), facilitated the establishment of Unteilbar, a large coalition of non-governmental organisations (NGOs), grassroots organisations (GROs), and trade unions. A few months later, on 13 October 2018, the coalition staged a big protest in Berlin against the rise of populist radical right parties and movements.

The activists involved in the process of drafting the coalition's manifesto, which formulated shared grievances and demands, explained to me that NGOs involved in the

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coalition, such as Amnesty International, opposed references to the 'right to stay', which grassroots organisations contesting border regimes in Germany had been claiming for a long time (Odugbesan and Schwiertz 2018).

In contrast, Unteilbar formulated its claims against border regimes through the idea of the 'right to protection and asylum'.¹ When I talked to Sara, an employee of Amnesty International, she pointed out that the organisation had disagreed with an early draft of the Unteilbar's manifesto because it embedded claims for the right to stay. She highlighted:

We support the right to asylum but we don't call for open borders or anything like that. I suggested amending the manifesto so that it could be compatible with other calls.

Moreover, she emphasised that calling for the right to stay and for unrestricted freedom of movement was not compatible with human rights law. She told me:

The right to stay ... what is it? The right for those whose claims are rejected and cannot stay here? We cannot support this, we can only support calls falling within human rights law. People who are rejected can be deported, not to Afghanistan, certainly, but this doesn't mean they cannot be deported[...] There is no human right allowing people to choose to go wherever they want.²

Sara's observations introduce the debate regarding the type of human rights politics pursued by different social movement organisations, their interpretation of human rights, and the potential of human rights for challenging forms of oppression, contesting border regimes, and improving the lives of racialised migrants.

In this article, I contribute to the debates regarding the ambivalence of human rights by taking into account the broader types of human rights politics pursued by different social actors, and the different approaches and interpretations of human rights that they embrace. I contend that formulating claims against border regimes that embed non-legal notions of human rights can promote a new model of migration governance.

The potential of human rights for eroding border regimes does not simply rely on the possibility for migrants to formulate rights-based claims but is crucially associated with the construction of non-legal notions of human rights. By analysing the differences between grassroots organisations and NGOs, which I identify as radical and moderate social movement organisations respectively, I argue that formulating notions of human rights beyond their legal meaning is emancipatory for migrants as these notions of human rights are more suited for challenging aspects of border regimes that oppress them and deny them rights, such as deportation.

To develop my arguments, the rest of this article is organised as follows: first, I introduce the debates regarding the ambivalence of human rights and by linking them with different conceptualisations of human rights politics. Second, I provide some information regarding my ethnography of the grassroots movement opposing border regimes in Berlin through which I collected the data that I present in this article. Then, I analyse the claims that grassroots organisations (GROs) make against deportation, one of the main mechanisms that internalise border regimes, and their formulation of the notion of the right to stay. Third, I discuss how human rights NGOs partially contest deportation by making use of legal notions of human rights. Fourth, I draw on the frames that NGOs and GROs mobilise against deportation to conceptualise a

crucial difference between moderate and radical organisations. I then summarise and discuss my findings by arguing that the different approaches to human rights followed by radical and moderate organisations underpin different migration governance models.

Human Rights: A Contested Tool for Challenging Border Regimes

Scepticism often dominates the debates regarding the potential of human rights for challenging structural forms of oppression, including those produced by border regimes (Gordon et al. 2000, Mezzadra 2015, Moyn 2018). Human rights work, rather than being emancipatory for migrants, can contribute to the process of humanitarianization of borders, a process in which human rights arguments are central for justifying the global discipline of mobility (Cuttitta 2018, 2020). Human rights can thus be a tool of humanitarianism and serve the purpose of providing relief and alleviating suffering rather than contesting the social injustice and hierarchies embedded in, and produced by, border regimes (Fassin 2011, Schwiertz and Steinhilper 2021).

However, some scholars argue that human rights are ambivalent rather than intrinsically inadequate for achieving social justice; in other words, social and political actors can make use of human rights to pursue contradictory purposes and achieve opposite results. On the one hand, the entanglement between human rights and power implies that governments and other powerful actors can use human rights to justify policies and practices that reinforce the oppression of subaltern groups. Human rights standards and protection in the area of migration intermingle with governments' security concerns and enable the control and categorisation of migrants (Mezzadra 2015).

On the other hand, subaltern groups can also use human rights to formulate progressive claims and to challenge oppression (Nash 2015, 2019, Perugini and Gordon 2015, Stammers 2009, 2015). Despite the barriers that migrants experience in enjoying human rights (Dembour and Kelly 2011), in some instances, human rights have contributed to protecting migrants (Rodriguez and Rubio-Marin 2011). Moreover, human rights conceived as broader social justice ideals represent a resource for social movements and, more specifically, for migrants' struggles (Merry 2010, McNevin 2013).

The potential of human rights for reinforcing or challenging border regimes is associated with different conceptualisations of human rights politics. Human rights can be conceived as tools that need to be implemented by force, and human rights politics as the 'use of power to advance the moral imperatives of protecting these rights' (Ingram 2008, p. 404). In contrast, based on the Kantian tradition, human rights can be seen as moral imperatives that need to be upheld by laws and institutions; this conceptualisation rests on an idea of politics as oriented towards seeking justice, which is a property of laws and institutions (Ingram 2008, p. 405).

By drawing on Rancière, Ingram suggests a further conceptualisation of human rights politics that exceeds laws and institutions as it primarily consists in claiming them, including beyond their legal codification (Ingram 2008). Rights-claiming is also crucial in the Critical Citizenship Studies scholarship as it is a mode through which migrants challenge exclusionary notions of citizenship by performing acts of citizenship (Isin and Nielsen 2008, Ataç et al. 2016). By claiming rights, migrants put into practice crucial principles of radical democracy, namely the principles of equality and freedoms, precisely because they constitute themselves as subjects with rights (Schwiertz and Steinhilper 2021).

However, focusing predominantly on rights-claiming as a process does not fully capture the emancipatory potential of human rights. If collective rights-claiming can be associated with emancipatory outcomes, the content of these claims underpins specific approaches to human rights and different alternatives and solutions to current border regimes.

Multiple approaches to human rights, as well as overlapping human rights politics, coexist in the movement opposing border regimes. Monforte has conceptualised concurrent approaches to asylum law and legal status categories among social movement organisations contesting border regimes. He argues that humanitarian NGOs providing services on behalf of the state are usually defined by a legitimised identity. They act for the relief of groups that they perceive as victims, and they accept official legal categories embedded in asylum laws. Human rights organisations embrace principled identities; they challenge the implementation of asylum laws by, for example, criticising the legal categories of asylum seekers and refugees. In contrast, migrant-led organisations and those organisations working closely with them propose an autonomous understanding of legal categories that radically challenge their definition (Monforte 2014, p. 70).

These multiple approaches to legal status categories and asylum laws stem from different types of human rights politics pursued by humanitarian organisations, human rights NGOs and migrant-led organisations. Fitzgerald and Rodgers make a distinction between radical organisations and moderate organisations, which is useful to analyse the different types of human rights politics in which social movement organisations opposing border regimes engage. While radical social movement organisations formulate a radical agenda focused on structural change, moderate organisations elaborate a reformist agenda in the context of their collective action, which emphasises that they are contenders in the existing political system (Fitzgerald and Rodgers 2000).

As I argue in this article, legal human rights norms are at the core of the work of moderate organisations that aim to keep states accountable for their wrongdoings by relying on laws and institutions that they see crucial for upholding human rights (Nash 2015). Conversely, radical organisations can interpret and construct human rights as non-legal notions (de Sousa Santos & Rodriguez-Garavito 2005). They see human rights originating from social struggles (Dembour 2010), which I argue is crucial in the pursuit of a human rights politics that is emancipatory for migrants as it can contribute to challenging their oppression under border regimes.

Moderate and radical organisations may all contribute, albeit differently, to challenging border regimes. As Jeffries and Ridgley argue regarding sanctuary cities, moderate social movement organisations can, for example, support reforms of border regimes that enable their radical transformation in the longer term (2020). Alliances can indeed occur between, for example, NGOs and grassroots organisations, especially when specific political opportunities emerge (Perolini 2021).

However, I argue that differences in the human rights politics pursued by moderate and radical organisations, and their approaches to human rights, are crucial to understanding their potential role in challenging border regimes as they are associated with different types of migration governance. More specifically, while radical grassroots organisations propose an alternative, (non) governance of migration, reformist organisations, such as human rights NGOs, support a model of migration governance premised

not only on the respect of human rights but also on managerial and utility-based purposes (Pécoud 2021).

Data Collection and Analysis

This article is based on the ethnography of the movement opposing border regimes that I conducted in Berlin between January and November 2018. I carried out participant observation of the daily activities of five grassroots social movement organisations challenging border regimes, including two organisations that were led by migrant activists. I chose these five organisations by considering several sampling criteria. First, I chose to reach out to two migrant-led organisations given my interest in the grassroots struggles of subaltern groups. Second, I sampled organisations according to their specific grievances against border regimes; thus, I chose to conduct participant observations with both organisations formulating claims against European and German border regimes. Moreover, I approached one network of grassroots organisations to study ties and alliances at the grassroots level.

I adopted the role of active participant-observer (Johnson et al. 2006) as I fully participated in the activities of the organisations that I observed. Although my role varied across organisations, it generally involved supporting them in organising protests, commenting on, or drafting speeches, as well as translating and ensuring their coordination with other organisations and networks.

Furthermore, I participated in dozens of protests and interviewed 37 activists who mobilised with 15 organisations, including grassroots organisations and NGOs. In this article, I identify small organisations relying mostly on activists who make claims on their behalf rather than on paid staff members and following flat decision-making procedures as grassroots organisations (GROs). In contrast, non-governmental organisations (NGOs) rely on highly formalised organisational structures, including vertical decision-making procedures, paid staff members, and regular sources of funding (Nash 2015).

I analysed different approaches to human rights among social movement organisations by first identifying the language used to frame claims against deportation in both protests and daily mobilisation, including regular meetings. The analysis of frames is conducive to understanding approaches to human rights as they embed the grievances that actors collectively formulate against border regimes, as well as possible solutions (Goffman 1974, Benford and Snow 2000). Moreover, I identified approaches to human rights as one of the main themes that I discussed in interviews with activists; the interviews provided an opportunity to collect further data in this area.

I identify all the activists mentioned in this article with a pseudonym and I do not disclose information regarding the organisation (s) in which they mobilise to protect their security and privacy, and in compliance with their informed consent.

The Right to Stay: How Grassroots Organisations Frame Their Alternative to Deportation

Deportation is one of the main mechanisms through which borders are multiplied and internalised (Cuttitta 2020, Menjivar 2014, Mezzadra and Neilson 2013). German

authorities make extensive use of deportation; in 2018 alone, the year when I conducted my ethnography, they deported more than 21,300 people.³

Grassroots resistance opposing deportation emerged in Germany already in the second half of the twentieth century, specifically in shared asylum accommodation where migrants started mobilising (Bojadžijev 2008; Karakayali 2008). The end of all deportations remained one of the main demands that grassroots organisations formulated against border regimes, both in the context of the protest camp in Berlin Oranienplatz from 2012 to 2014 (Langa 2015, Odugbesan and Schwiertz 2018, Stierl 2019) and in more recent years after the eviction of the protest camp (Perolini 2021).

In protests and other repertoires of contention, grassroots organisations frame deportations as an injustice and a punishment for racialised migrants. For example, on 11 February 2018, a grassroots organisation staged a protest against all deportations in Berlin. The slogan ‘Deportation kills, deportation torture, right to stay now’ was repeatedly chanted during the march. The press release published shortly before the protest, which was signed also by nine other grassroots organisations, framed deportation as the ‘most brutal means of state social exclusion’.⁴

Grassroots organisations framed deportation also as a mechanism that criminalises migrants. In a public speech given in the context of an anti-racist march in September 2018, an activist of another grassroots organisation in which I conducted participant observation argued that the government added insult to injury by deporting people who had already suffered enormously during their journeys to Europe. The speech emphasised:

Many risked their lives to get here, we had to go through terrible experiences and face multiple traumas during the journey. We have lost some of our fellow travellers and friends. Despite all that, the government doesn’t care about our mental health and only aims to deport us towards our countries of origin [...]. It’s up to us activists to support all our brothers and sisters who are trapped in this injustice and to oppose the criminalization of this human behaviour. Migrating is not a crime; deporting people is a crime. Stop, Stop, Stop deportations.⁵

In response to these grievances, grassroots organisations formulate prognostic frames, which are proposed alternatives to current border regimes, in the context of their collective mobilisation (Benford and Snow 2000). Analysing these prognostic frames is conducive to understanding how grassroots organisations use the language of rights, as well as how they approach and interpret human rights. I argue that grassroots organisations elaborate the notion of ‘the right to stay’ as a prognostic frame, which entails equal residence rights and equal access to other legal rights, such as family reunification, for all migrants in Germany. The right to stay offers protection against deportation because it disassociates residence rights from any specific legal status. As we shall see, the right to stay embeds an interpretation of freedom of movement, which is also a human right, exceeding its legal definition and interpretation.

For example, Welcome United, a coalition of grassroots organisations, framed the right to stay as necessary to terminate the fear, insecurity, and uncertainty associated with deportability, a situation where migrants live under the constant threat of deportation (De Genova 2002, 2005). Their manifesto published ahead of the anti-racist march that they organised in September 2018 emphasised:

We call for a clear stance of all those taking part in the political decision-making process: an unconditional right to remain and an end to deportations – now! All those who are here, are from here, and will stay!⁶

The activists who mobilise with grassroots organisations conceive of the right to stay as a component of freedom of movement, which is a human right included, for example, in the Universal Declaration of Human Rights, as well as in international human rights treaties.⁷ However, activists interpreted freedom of movement as the unrestricted possibility for people to move to, reside in and leave any country of their choice, which is distinct from the restricted legal notion of freedom of movement, as discussed in the next section.

For example, Carmela, a European activist who mobilised with a migrant-led grassroots organisation, explained to me that freedom of movement comprised multiple dimensions, including the right for migrants to remain in the country of their choice. In an interview, she told me:

You can leave the place where you live, you can come back or you can stay in another place where you feel safe, if you feel comfortable and you want to be there during your whole life. Freedom of movement refers to border crossings. What it evokes is that you have the right to cross a border to go to another country but the language we use [the right to stay] refers also to a sedentary component.⁸

Activists who mobilise with grassroots organisations conceive of the right to stay and freedom of movement as human rights. However, they interpret these rights as human entitlements or aspirations as social justice, rather than legal norms (Dembour 2010). Carmela for example pointed out that freedom of movement ‘is part of our essence as humans to move freely, to decide where we want to go and to do it.’⁹ Other activists, in particular racialised migrants who mobilised with grassroots organisations, saw the right to stay and freedom of movement as aspirations for social justice that challenged global inequalities. For example, when I asked Julia, an activist from Kenya, whether she interpreted freedom of movement and the right to stay as human rights, she stressed:

[Freedom of movement] is a demand for those people who have fewer privileges. There are people with privileges who can go everywhere with their passport without fighting, they can get the visa in the country where they are going [to reside] or travel worldwide.¹⁰

Grassroots organisations make claims against deportations that embed notions of human rights. They claim the right to stay for all migrants, which is associated with the idea of unrestricted freedom of movement. Their approach to human rights departs from the idea that human rights are legal notions codified by international law. Activists interpret human rights as human entitlements or aspirations for social justice. As I argue in the conclusions, this approach to human rights is associated with a greater potential for eroding border regimes. In contrast, as we shall see in the section, non-governmental organisations approach human rights as imperatives that need to be upheld by the law and make claims against deportations by invoking legal notions of human rights codified in international law.

The Right to Asylum: How NGOs Challenge Deportation Only Partially

As I argued in the introduction, the coalition for the protest *Unteilbar* framed its demands through the right to protection and asylum. The manifesto published by the

coalition ahead of the protest that took place on 13 October 2018 in Berlin did not make any reference to freedom of movement or the right to stay. In an interview, Sara, an employee of Amnesty International, emphasised that claims framed through the notion of the right to stay were not grounded in international human rights law.

Freedom of movement is a human right codified in international law. More specifically, it entails the possibility for everyone to leave any country, including their own.¹¹ Therefore, governments should not prevent people from leaving a country, including when they migrate to another country.¹² However, the right to leave a country is not associated with the right to travel to another country, either for the short term or for residence purposes, without any restriction.¹³ The legal meaning of freedom of movement is thus much narrower than the notion of freedom of movement underpinning the right to stay that grassroots organisations collectively elaborate as a prognostic frame against border regimes. Crucially, the legal meaning of freedom of movement does not include the right to stay, which entails residence rights for everyone irrespective of legal status and asylum claim outcomes, and thus protection against deportation.

Contrary to grassroots organisations, human rights NGOs do not challenge all deportations. They invoke legal notions of human rights, specifically the right to seek and enjoy asylum, to oppose deportation only partially. This right is grounded in the principle of non-refoulement, which prohibits the return of people to places where they could face serious human rights violations such as persecution or torture. The right to seek and enjoy asylum also implies the possibility for people to enter other states' territories to claim asylum, as well as the assessment of asylum claims through a fair and effective procedure.¹⁴

However, the right to seek and enjoy asylum does not protect everyone against deportation. States can return people to their countries of origin after having rejected their asylum claim; the right to seek and enjoy asylum only provides procedural guarantees as states should make sure that migrants have access to a fair and effective asylum procedure. Moreover, the principle of non-refoulement protects migrants from being deported to countries where they are at risk of grave human rights violations. However, in contrast with the right to stay, the right to seek and enjoy asylum does not protect anyone from deportation.

For example, based on the right to seek and enjoy asylum, human rights NGOs contested the decision of the German government to lift the ban on deportations to Afghanistan in October 2016.¹⁵ In 2017, Amnesty International called on European states to implement a moratorium on deportations to Afghanistan, and highlighted that any such forced return constituted a breach of the principle of non-refoulement.¹⁶ In a press statement published on 26 September 2018 ahead of the protest of Unteilbar, Amnesty International and Pro-Asyl, one of the main NGOs protecting refugees' rights in Germany, reiterated their opposition to deportations to Afghanistan. They emphasised that 'the human rights and security situation in Afghanistan is so bad that any deportation violates international law.'¹⁷

Amnesty International opposed deportations to countries and areas other than Afghanistan including, for example, conflict areas in Sudan. In 2018, Amnesty International criticised the Belgian government following the deportation of 10 Sudanese citizens to Sudan and stressed the need for procedural guarantees to avoid people being forcibly returned to areas where they could suffer serious human rights violations. While

Amnesty International asked the Belgian government not to return anyone to conflict areas, the organisation did not oppose in principle any such deportation to other areas and regions in Sudan.¹⁸

Human rights NGOs conceive of human rights as universal norms that are enforceable because of the commitment made by states to respect international law (Nash 2015). The approach to human rights that NGOs embrace restrict the options available to them for framing claims against border regimes through non-legal notions of rights, such as the right to stay, which is, as discussed in the previous section, at the core of grassroots resistance against border regimes. As we shall see, the NGOs' approach to human rights is associated with a limited potential for eroding border regimes. In the next section, I conceptualise the distinction between moderate and radical organisations, which is useful to understand the association between the potential for eroding border regimes and different approaches to human rights.

Moderate and Radical Organisations: Differential Approaches to Human Rights Reinforce or Challenge Border Regimes

The differences in framing processes that I have discussed in the previous two sections coexist with other differences between grassroots organisations (GROs) and NGOs, including their organisational structure. In this section, I conceptualise the distinction between moderate and radical organisations to capture the differential approaches to human rights followed by grassroots organisations and NGOs. This is a crucial distinction as the role of moderate and radical organisations in eroding or reinforcing border regimes is associated with the type of human rights politics that they pursue.

Grassroots organisations rely mostly on volunteer activists who attempt to put in place flat decision-making processes in their mobilisation against border regimes. In some of the grassroots organisations where I conducted my participant observation, racialised migrants made claims against border regimes on their behalf. Despite their differences, which included the level of funding and number of staff members, these grassroots organisations collectively oppose all deportations, as they frame them as one of the cruelest and most unfair mechanisms through which borders are internalised.

Differences in organisational structure alone are not sufficient to explain the divergent frames that NGOs and GROs invoke to oppose deportation. For example, as I explained in the introduction to this article, Sara, the Amnesty International's employee whom I talked to, did not refer to organisational structure to explain Amnesty's opposition to the idea of the right to stay.

Many of the grassroots activists whom I met were critical of the frames that human rights organisations deployed. In interviews, some activists doubted whether human rights NGOs were part of the same movement contesting border regimes. Others considered human rights NGOs on the movement's fringes. For example, when I asked Sabrina, an activist who mobilised with a grassroots organisation, if she considered human rights NGOs as part of the same movement, she emphasised:

They [human rights NGOs] are strictly attached to this concept of human rights and nation states. I think they don't challenge the idea of the Geneva convention [1951 Refugee Convention] at all and the right to asylum ... No, I wouldn't include them in the movement I am part of.¹⁹

Sabrina referred to the fact that human rights NGOs frame their demands against border regimes through the idea of the right to seek and enjoy asylum and the 1951 Convention on the Status of Refugees (Geneva Convention), which enshrines rights and duties for refugees, including the principle of non-refoulement. Like other grassroots activists, Sabrina interprets the right to asylum as a limited demand that does not protect migrants against deportation and the overall system of oppression imposed by border regimes. When I asked Ester, a German activist who participated in a network of grassroots organisations, why the manifesto for the anti-racist march that took place in Hamburg in September 2018 did not invoke the right to asylum. She told me:

We don't formulate our claims around the right to asylum because it implies that the nation state is allowed to decide if people can be here or not. It's a form of migration control and we for more radical calls, that everyone who is here can stay here.²⁰

The different frames that grassroots organisations and NGOs formulate mirror crucial differences in their approaches to human rights. Pierre Monforte has conceptualised these differences by considering framing processes, as well as organisational structures and interpretation of asylum categories. He argues that while human rights organisations embrace principled identities, migrant and refugee-led organisations and those organisations working closely with them propose an autonomous understanding of legal categories that radically challenge their definition (Monforte 2014, p. 70).

I propose to introduce a further dimension to Monforte's conceptualisation, namely the type of human rights politics that grassroots organisations and NGOs pursue, which reflects a specific approach to human rights. I draw on Fitzgerald and Rodgers' distinction between radical and moderate social movement organisations, which is based on different ideologies, internal structures, tactics, communication, and assessment of their successes. While radical social movement organisations formulate a radical agenda focused on structural change, moderate social movement organisations elaborate a reformist agenda in the context of their collective actions, which emphasises that they are contenders in the existing political system (Fitzgerald and Rodgers 2000).

Grassroots organisations opposing border regimes in Berlin orient their collective action towards the radical transformation of border regimes. They radically challenge asylum laws and the asylum system as they elaborate collective alternatives to current border regimes premised on the notion of the right to stay for everyone, which would protect all migrants against deportation and provide them with residence rights.

In contrast, human rights NGOs are moderate organisations. They frame their demands within the existing asylum system with a focus on the right to seek and enjoy asylum. They aim to reform specific aspects of border regimes; for example, they demand independent legal counselling for asylum seekers and oppose the deportation of people to countries, such as Afghanistan, where they can suffer grave human rights violations.

The distinction between radical and moderate organisations emphasises differences not only in framing processes but also in the type of human rights politics that they pursue. Moderate organisations rely on legal notions of human rights to formulate their claims against border regimes. They consider the law as a necessary tool to uphold human rights imperatives and as a mechanism of leverage that they can use to

exercise pressure on the state to reform border regimes. This approach constrains the potential of human rights for eroding border regimes.

In contrast, radical organisations make use of non-legal notions of rights, in particular the right to stay, to contest all deportations. They collectively elaborate the notion of the right to stay by interpreting freedom of movement beyond its legal codification. These organisations pursue a type of human rights politics based on rights-claiming, a process through which migrants become subjects claiming rights, contest exclusionary models of citizenship and engage in radical democracy (Ingram 2008, Isin and Nielsen 2008, Schwiertz and Steinhilper 2021). However, I argue that the human rights politics pursued by radical organisations is not simply based on rights-claiming as a process but is rather premised on the constructions of non-legal notions of human rights. The scholarly literature on human rights has predominantly focused on the approach to human rights embraced by NGOs (Nash 2015). However, subaltern actors such as racialised migrants can formulate notions of human rights that exceed legal norms (De Sousa Santos & Rodriguez-Garavito 2005). I argue that the type of human rights politics followed by radical organisations is associated with an enhanced potential for eroding border regimes. As we shall see in the conclusions, the elaboration of non-legal notions of human rights, such as the right to stay and universal and unrestricted freedom of movement, enables radical organisations to challenge state sovereignty and border management that are principles embedded in border regimes.

Conclusions

A model of migration global governance based on human rights is currently far from being the dominant one (Pécoud 2021). Questions arise as to whether human rights can be emancipatory for racialised migrants who face oppression, and how social movement organisations can make use of human rights to erode border regimes.

While some scholars have emphasised the potential of human rights for challenging the oppression of migrants, others have highlighted that human rights can be used by governments to produce narratives of humanitarian borders that embed the vision of migrants as victims without agency (Cuttitta 2018). In this article, I have argued that the potential of human rights for eroding border regimes requires an understanding of the human rights politics pursued by different social movement organisations, which underpins different approaches to human rights. Despite dominant approaches positing human rights as legal norms codified in international law, subaltern actors, including racialised migrants, can conceive of human rights as aspirations for social justice that are central to claim-making.

My findings highlight a key difference in the approach to human rights followed by the different organisations that contest border regimes in Berlin. Moderate organisations include in particular human rights NGOs that make use of legal notions of human rights to contest some aspects of border regimes. In contrast, radical grassroots organisations collectively elaborate non-legal notions of human rights in their struggle against border regimes.

More specifically, I have focused on the use of notions of human rights to contest deportation, which is a mechanism through which borders are internalised. I have emphasised that radical organisations oppose all deportations by elaborating the

notion of the right to stay, a corollary of unrestricted freedom of movement, which challenges restrictions on mobility and entails residence rights for everyone in Germany, irrespective of migration status and asylum outcomes. Moderate organisations contest only some deportations, namely those putting people at risk of torture or inhuman and degrading treatment, by making use of legal notions of human rights, in particular the right to seek and invoke asylum, and the principle of non-refoulement.

The differential approaches to human rights between radical and reformist organisations are associated with different solutions to current border regimes. The potential of the NGOs' approach to human rights for eroding border regimes is ambiguous and their alternative solutions to current border regimes underpin a model of migration governance that fluctuates between human rights-based and managerial governance (Pécoud 2021). Human rights NGOs do not contest the existence of an asylum system with negative outcomes for asylum seekers that can result in their deportation. They do not fundamentally contest the migration management function of the asylum system, which distinguishes between people who can obtain international protection and residence rights in Germany, and those who do not qualify for that protection (Perolini 2022). While human rights NGOs rely on legal norms to guarantee basic rights for all migrants, they mostly focus on people who are seen as the most vulnerable, those entitled to international protection as they escape persecution or war, and do not oppose the hierarchies among different legal protection statuses embedded in the asylum system.

Radical organisations support a free (non) governance of migration in which states do not impose restrictions on international mobility, and everyone can access residence rights in Germany, irrespective of their migration status (Pécoud 2021). This idea of (non) governance stems from the non-legal notions of human rights that radical organisations elaborate collectively against border regimes.

The role of social movement organisations, including grassroots organisations and NGOs, in promoting specific migration governance models that erode or reinforce current border regimes is associated with their different approaches to human rights. However, as social movements are complex networks of diverse actors (Della Porta and Diani 2020), further research could identify the nuances in the approaches to human rights within the movement opposing border regimes, as the two categories of radical and moderate organisations are likely not to constitute rigid categories but rather polar opposites of a continuum of organisations following more nuanced approaches to human rights. The differential human rights politics pursued by these organisations do not prevent them from forming alliances and mobilising together (Perolini 2021). Such an alliance occurred for example in the coalition *Unteilbar*, despite the power dynamics inevitably playing out in these contexts, as the process leading to the coalition's manifesto that I evoked in the introduction of this article shows.

Moreover, further insights are needed regarding the overlapping and cross-fertilisation among different approaches to human rights; these may include, for example, mechanisms through which non-legal notions of human rights influence and blend into legal norms and/or the human rights politics pursued by NGOs, as well as strategies through which grassroots organisations can integrate different approaches to human rights, according to the temporal perspective of their mobilisation.

Notes

1. The call for the protest *Unteilbar* is available here: https://www.unteilbar.org/wp-content/uploads/2019/06/Aufruf_Englisch.pdf
2. Phone conversation with Sara, an employee of *Amnesty International*, 3 October 2018.
3. See the government's answer to a parliamentary question about deportations in 2018: <http://dipbt.bundestag.de/dip21/btd/19/080/1908021.pdf>
4. The press release is accessible here (in German): <https://www.africa-live.de/demonstration-gegen-alle-abschiebungen-so-11-02-berlin-wedding/>.
5. Ethnographic notes taken on 1 October 2018.
6. Manifesto published ahead of the anti-racist march that took place on 30 September in Hamburg, <https://www.welcome-united.org/en/charta-2/>.
7. Article 13 of the Universal Declaration of Human Rights, Article 12.2 of the International Covenant of Civil and Political Rights (ICCPR), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
8. Interview with Carmela, 11 June 2018.
9. Interview with Carmela, 11 June 2018.
10. Interview with Julia, 19 September 2018.
11. Article 12.2 of the International Covenant of Civil and Political Rights (ICCPR), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
12. UN Human Rights Committee, General Comment 27: Article 12 (Freedom of movement), paras. 8 and 11, <https://www.refworld.org/docid/45139c394.html>.
13. UN Human Rights Committee, General Comment 27: Article 12 (Freedom of movement), <https://www.refworld.org/docid/45139c394.html>.
14. UNHCR, A guide to international refugee protection and build state asylum systems. The right to seek and enjoy asylum: What does it involve, p. 28, <https://www.unhcr.org/3d4aba564.pdf>
15. Further information is accessible here (in German): <https://www.proasyl.de/wp-content/uploads/2015/12/2017-01-18-R%C3%BCcknahmeabkommen-Deutschland-Afghanistan.pdf>. In December 2016, 34 Afghan individuals were deported by a charter flight. In 2018, the German government deported 284 people to Afghanistan. Further information is accessible here (in German): <https://www.proasyl.de/hintergrund/hinweise-fuer-afghanische-fluechtlinge-und-ihre-beraterinnen/>.
16. Amnesty International. Forced Back to Danger. Returns of asylum seekers from Europe to Afghanistan, <https://www.amnesty.org/download/Documents/ASA1168662017ENGLISH.PDF>. According to the principle of *non-refoulement*, no one shall be returned to any country where their life or freedom would be endangered because of their race, religion, nationality, membership of a particular social group or political opinion, or where they would be at risk of being subjected to torture or inhuman or degrading treatment or punishment. See International Review of the Red Cross, Note on migration and the principle of non-refoulement, 2018, <https://www.icrc.org/en/international-review/article/note-migration-and-the-principle-of-non-refoulement>.
17. Bundesweiter Flüchtlingstag: Amnesty International und PRO ASYL warnen Europa vor weiterer menschenverachtender Abschottung: <https://www.proasyl.de/pressemitteilung/bundesweiter-fluechtlingstag-amnesty-international-und-pro-asyl-warnen-europa-vor-weiterer-menschenverachtender-abschottung/>.
18. Amnesty International. Returns to Sudan violate the principle of *non-refoulement*, <https://www.amnesty.org/download/Documents/EUR1478112018ENGLISH.pdf>
19. Interview with Sabrina, 18 July 2018.
20. Interview with Ester, 11 September 2018.

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Dr. Marco Perolini completed his PhD in Sociology at Goldsmiths College in December 2020. His research focuses on the construction of emancipatory and non-legal notions of human rights by the grassroots migrant resistance against border regimes in Berlin. In 2018, he conducted an 11-month ethnography in Berlin where he participated in the mobilisation of migrant-led grassroots organisations and networks. Until September 2021, Dr. Marco Perolini was a post-doctoral research fellow with the Centre for the Study of Global Media and Democracy at Goldsmiths. During his fellowship, he finalised three drafted journal articles, including this article. Marco Perolini works in the human rights sector as a researcher and policy adviser. He has expertise in the areas of discrimination, criminal justice, LGBT+ rights and sexual and reproductive health and rights.

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