

Self-Determination and the Limits on the Right to Include

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Lior Erez¹  and Ayelet Banai²

Abstract

States' right to *exclude* prospective members is the subject of a fierce debate in political theory, but the right to *include* has received relatively little scholarly attention. To address this lacuna, we examine the puzzle of permissible inclusion: when may states confer citizenship on individuals they have no prior obligation to include? We first clarify why permissible inclusion is a puzzle, then proceed to a normative evaluation of this practice and its limits. We investigate self-determination – a dominant principle in theories of the right to exclude – as a normative ground for limits on the right to include. We argue that states' duties to respect one another's self-determination yield limits on permissible inclusion. When inclusive policies for citizenship undermine the permissible scope of self-determination of other states, they are impermissible; they should either be prohibited, or require compensation.

Keywords

citizenship, self-determination, permissible scope, exclusion and inclusion, political membership, naturalisation

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Introduction

States allocate citizenship according to diverse principles. Most citizens acquire their citizenship by birth – according either to the rules of *jus sanguinis* (being born to citizens), *jus soli* (being born within the state's territory), or through a combination of the two. Others are naturalised, normally after long-term residence within the state's territory, and often on the condition of meeting specified civic and cultural criteria (Bauböck and Joppke, 2010; Orgad, 2017; Vink and Bauböck, 2013). Some citizenship allocation

¹Blavatnik School of Government, University of Oxford, Oxford, UK

²Department of Government and Political Theory, School of Political Science and Center for German and European Studies, University of Haifa, Haifa, Israel

Corresponding author:

Lior Erez, Blavatnik School of Government, University of Oxford, Oxford, 120 Walton St, Oxford OX2 6GG, UK.

Email: lior.erez@bsg.ox.ac.uk

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policies, however, are far less restrictive. Hungary, Slovakia, Bulgaria, Romania, and, most notably at the time of writing, Russia, have expedited naturalisation policies for co-ethnics in neighbouring states, in what has been described as ‘passportisation’ (Dumbrava, 2014; Natoli, 2010; Peters, 2010). In recent years, Malta, Cyprus, and a dozen other countries worldwide began to offer citizenship to investors with few to no residency requirements (Džankić, 2019; Surak, 2023). Spain and Portugal have amended their nationality laws to offer citizenship to descendants of Jews expelled from the Iberian kingdoms in the 15th century (d’Oliveira, 2015; Kandiyoti and Benmayor, 2023). And some states, such as Italy, France, and Greece, interpret *jus sanguinis* very broadly – in Italy’s case, potentially extending citizenship to millions of descendants of Italians in the Latin American diaspora (Tintori, 2011).

The state’s right to *exclude* from membership is the subject of a fiery debate in contemporary political theory (Bertram, 2018; Blake, 2013; Fine, 2013; Miller, 2016; Song, 2018; Wellman and Cole, 2011). But are there normative limits on *inclusion*? Are some policies of inclusion excessive and objectionable and, if so, on what grounds? This question has received surprisingly little scholarly attention in normative political theory. We aim to address this lacuna.

In this article, we articulate the puzzle of permissible inclusion and examine the implications of the principle of self-determination to the state’s right to determine its membership policy. Self-determination is a prominent principle in arguments for the state’s right to exclude. Permissible inclusion, as explained below, refers to states conferring citizenship on willing individuals they have no prior obligation to naturalise. These individuals do not possess the pertinent connections and links to the state (or its society) that, according to most normative theories, ground a claim-right to citizenship.¹ Insofar as self-determination protects the state’s freedom to exclude unwanted members, it might appear that it also protects the state’s freedom to include desirable new members at will. Conversely, an account that seeks to limit the scope of state discretion seems to be at odds with the right to self-determination. We argue that this is not the case. Our main claim in this article is that principled self-determination-based arguments for the right to determine membership rules also set limits on permissible inclusion.

This article proceeds as follows. In the first section, we explain the puzzle of permissible inclusion, and lay out the basic parameters of our discussion: whether states should be permitted to offer citizenship to individuals who do not have a claim to it. In the second section, we reconstruct the two prominent positions in the literature with regard to this puzzle, the discretionary view and the ascriptive view, and argue that the choice between them entails a dilemma regarding the right to self-determination. In response to this apparent dilemma, in the third section, we offer our alternative conditional account, as we examine the principle of self-determination as a normative rationale for limiting the scope of permissible inclusion. Finally, we examine the implications of this account for permissive citizenship policies, with a focus on weaponised passportisation and citizenship by investment.

Setting the Stage: The Puzzle of Permissible Inclusion

The right to determine citizenship status and to set rules for acquiring citizenship is largely considered to be at the state’s discretion. Theoretically, this prerogative is thought to represent the people’s right to self-determination and the ‘last bastion’ of state sovereignty. This discretionary view is thoroughly reflected in international law.² Article 1 of the Convention on Certain Questions Relating to the Conflict of Nationality Laws states

that '[i]t is for each State to determine under its own law who are its nationals' (League of Nations, 1930). The ICJ *Nottebohm* case, which stipulates the need for a 'genuine link' between the state and the naturalised individual, pertains to the recognition of nationality by other states in the specific case of diplomatic protection and abuse of rights. But it does not establish that a genuine link is a necessary condition for naturalisation, nor does it establish a right to citizenship by those who possesses a 'genuine link' (*Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase, 1955; see Sloane, 2009). Principle 11 of the 2008 Bolzano/Bozen Recommendations on National Minorities and Inter-State Relations permits states to take cultural, linguistic or historical ties into account when granting citizenship to individuals abroad, although with the caveat that this should respect the 'principles of friendly, including good neighborly, relations and territorial sovereignty', and avoid conferring citizenship *en masse* (OSCE High Commissioner on National Minorities (HCNM), 2008).

Even within the European Union, where citizenship of a member-state also confers union citizenship, individual states retain the right to determine their own nationality laws (Van den Brink, 2022). Indeed, even in the extreme case of selling citizenships, and despite opposition from EU institutions, all member-states are legally obligated to recognise citizenship sold by a co-member. Importantly, however, as this brief survey of international law demonstrates, the state's discretion is not absolute. Beyond the above-mentioned weak limits (of good neighbourly relations and territorial integrity), customary international law and human rights treaties stipulate a presumption against assigning nationality opposed to the will of the individual in question, and against nationality laws that will result in statelessness.

That leaves open the question of latitude with regard to rules of conferring citizenship upon willing individuals. On what grounds can we distinguish, then, between permissible cases of inclusion and blatant abuses of the state's right to determine its own citizenship rules? Consider the case of automatic naturalisation of the residents of Crimea by Russia in 2014. To the extent that pro-Russians among them indeed wanted to naturalise, was it still wrong, and if so, why?

We argue that the existing normative theoretical literature does not provide a clear perspective on this question. While political theorists have focused on the scope and justification of the right to *exclude* and its limits, the question of the right to *include* is by and large overlooked. While we do find some discussion on the normative limits on *admission of immigrants* (Ferracioli, 2021: 114–130), here we focus on the question of *allocation of citizenship*, independently of the question of migration. Indeed, some of the more controversial practices of permissive citizenship allocation are not connected with immigration into the country – for example, citizenship for sale for investors and 'passportisation' of national minorities by their kin states.

We aim to show that examining citizenship policy independently of questions of immigration is productive for generating new insights about self-determination and the state's presumptive right to determine membership policy. Furthermore, in contrast to the literature's focus on exclusion, we aim to explore permissible *inclusion*; that is, when states that grant citizenship voluntarily, according to criteria of their choice, to willing individuals they have *no prior obligation to naturalise*. To clarify, we make two assumptions about these forms of citizenship allocation. First, we assume that the decision to offer citizenship is voluntary on the part of the state; it is not coerced to grant citizenships by another actor, nor does it have the duty to do so. Second, we assume that the decision to naturalise is voluntary on the part of the individual in question; citizenship is not

coercively imposed on them by the naturalising state or by some other actor.³ Moreover, we assume that the individual in question has no duty to naturalise (contra de Schutter and Ypi, 2015). In sum, *permissible inclusion* refers only to individuals who do not have a duty to naturalise, nor a claim-right to citizenship.

Permissible Inclusion Between Discretion and Ascription

The puzzle of permissible inclusion highlights two differing approaches in the literature to states' right to determine their membership policy. One approach, hereafter the discretionary view, holds that the state has a presumptive right to shape its membership policy. This presumptive right need not be absolute; as we shall see later, it may be trumped by weightier claims of others. But *pro tanto*, the right exists. The competing approach, hereafter the ascriptive view, largely denies that self-determination entails the right to determine membership policy. Instead, membership rules are determined by an external normative theory, most prominently related to the value and function of citizenship. What are the implications, then, of these accounts to the question of permissible inclusion? Is it permissible for states to include individuals who do not meet the criteria specified by normative theories of citizenship, and, if not, why not?

In the discretionary view, the freedom to set rules of membership is considered essential for self-determination. As Bauböck and Paskalev (2015: 62–63) describe it, this view:

regards the sovereign power of states to determine their own citizens not merely as a principle of international law that applies in relations with other states but also as an element of their internal democratic self-determination . . . A democratically legitimate legislature should be broadly free to set the rules not only for citizenship acquisition but also for deprivation in accordance with its political goals and in a way that it considers conducive to the public good, within constraints of constitutional and international law that the legislature has itself freely accepted.

Michael Walzer (1983: 39) argues that membership rules – admission and exclusion – ‘suggest the deepest meaning of self-determination’. Similarly, Christopher Wellman (2008: 115) argues that ‘because the members of a group can change, an important part of group self-determination is having control over what the “self” is’.

Why does self-determination entail the right to shape membership? One prominent view, championed by Wellman, is to interpret self-determination as a political instance of the freedom of association. Members of an association should be free to associate (or not) with whomever they see fit, and according to rules of their choice. This lies at the core of what makes the association *free*. Wellman (2008: 110) draws an analogy to the individual's freedom to ‘permissibly choose whom (if anyone) to marry’ (Wellman and Cole, 2011: 37). Analogously, a self-determining political community has the right to control its boundaries by deciding who belongs to it.

The implications of the discretionary approach for citizenship allocation policies are somewhat obscured by the fact that some prominent advocates of this view maintain that the right to shape membership rules is restricted to immigration control, rather than citizenship policy. Walzer, for example, argues that while ‘[i]mmigration . . . is both a matter of political choice and moral constraint . . . [n]aturalization, by contrast, is entirely constrained: every new immigrant, every refugee taken in, every resident and worker must be offered the opportunities of citizenship’. He further argues that ‘[n]o community can be

half-metic, half-citizen and claim that its admissions policies are acts of self-determination or that its politics is democratic' (Walzer, 1983: 62). Wellman similarly argues that a position of permanent non-citizen status leads to oppressive social relationships, and should therefore be resisted (Wellman and Cole, 2011: 133–142). As Jakob Huber (2019: 803) notes, these theorists hold:

that once a person resides within a territory, they have certain justice-based claims against the host state . . . Hence, the only way to account for citizens' freedom of association is to preclude migrants from entering the territory in the first place.

This common view seems to put some pressure on the idea that the right to self-determination generates a right to exclude from citizenship. At the very least, claims of justice, or other weighty considerations, may outweigh the presumptive right to exclude from membership.

It should be noted that other proponents of this approach adopt a stronger position, and maintain that self-determination entails a right to exclude from membership even those who are physically present in the territory. Peter Schuck and Rogers Smith (1985), for example, argue against *jus soli* birthright citizenship for children of undocumented migrants precisely on these grounds, claiming that it violates the principle of mutually consensual citizenship. Interestingly, some critics of the discretionary view challenge the distinction between immigration and citizenship policy, arguing that a discretionary view with regard to immigration entails a similar position with regard to citizenship as well. Following the logic of this position would allow, for example, for immigrants to voluntarily accept permanent alienage status (Oberman, 2017) or for state discretion with regard to expatriation of existing members (Akhtar, 2017).

The discretionary view, then, maintains that self-determination generates a right to determine membership rules, with a presumptive right to exclude from membership that may be outweighed by other claims of justice, or particularly weighty interests. What are the implications of this view for permissible inclusion? To the degree that this question has been discussed by proponents of the discretionary view, it seems likely that there are few to no limits on inclusion. For example, Ruth Rubio-Mario (2000: 38), who – more strongly than Walzer and Wellman – argues for a duty to naturalise long-term residents, writes that

[a]s long as we recognize the liberal legitimacy of the existing order of states, even if with the necessary corrections, to a large extent the distribution of membership will essentially remain a matter of democratic self-determination and will presumably be guided by national self-interest.

Taking a more libertarian position, Javier Hidalgo (2016: 224) argues that '[i]f it is permissible for a state to deny foreigners access to citizenship, then it is *prima facie* permissible for this state to sell citizenship to these foreigners if this transaction is voluntary and does not violate anyone's entitlements'. That is, the right to exclude from membership implies a broad liberty to include.

To specify limits on this broad right to include, one needs to identify who might have a strong entitlement against otherwise permissible inclusion. Potentially wronged parties may include individuals, groups of individuals – for example, existing citizens of the state, prospective citizens, or subgroups within them – or other states. It might be the case, for example, that fast-tracked naturalisation for the wealthy or for ethnic kin is a

form of wrongful discrimination against other prospective members, or that using certain criteria for permissive citizenship (e.g. race) is expressively harmful towards citizens of minority groups (cf. Akhtar, 2022; Erez, 2021). These are important considerations, but importantly for our purposes they serve as external limits on self-determination with regard to membership rules. In other words, these external limits on the scope of the right to determine membership do not deny that this right exist. In practice, these considerations generate few limitations on the right to include.

This is arguably a limitation of the discretionary approach, as even in private associations there are internal normative constraints on members' preferences regarding rules of admission.⁴ Take, for example, Wellman's case of marriage, which he takes to be paradigmatic of self-determination. An individual's freedom to decide on a partner is not absolute, but is subject in most societies to normative and legal constraints regarding age, number of partners, and so on. Importantly for our purposes, we often consider at least some of these constraints as internal to the practice in question. The individual freedom to choose whom to marry is constrained by considerations regarding the nature and purpose of marriage. The implicit normative foundations of this freedom and its limits become visible when we notice that conceptions of the institution of marriage tied to an ideal of romantic love, and ones that are tied to an ideal of economic or political inter-familial alliances, generate different limits on the freedom of choice. The general point illustrated by the example of marriage is that self-determination grants a presumption of freedom to decide about membership (i.e. about exclusion and inclusion) that is limited not merely by external constraints but also by an internal normative account of the nature and purpose of the association (Kollar and Banai, 2023: 496–499).

The idea that constraints on the right of self-determination are internal, and are a consequence of the value and function of citizenship, motivates the competing ascriptive approach. This broad church of views maintains that membership rules – about who is to be included and who should not be included – are to be determined by normative principles that are internal to the practice of citizenship, but are largely independent of the state's (and, perhaps, the individual's) will.

The factual conditions that determine whether an individual is a citizen (or not) arise from a myriad of normative theories, and so both the justificatory basis and the practical implications of this approach vary. For example, both *jus sanguinis* or *jus soli* determine citizenship status according to facts about circumstances of birth, but the justification for relying on these conditions vary from theories of subjecthood (Price, 1997) to adherence to republican freedom (Hoye, 2021). Nationalism offers another prominent example, where membership is owed and limited to members of the nation. Whether one can only be a fellow national only by birth, or whether one could join the nation through cultural integration, is the central disagreement between exclusionary and liberal forms of nationalism.

Most contemporary normative theorists, however, adopt a version of this approach that focuses on an entitlement to citizenship (and a corresponding duty to naturalise) arising from an ideal of civic equality. This, in turn, generates a factual criterion of social membership, or long-term territorial presence, for determining a right to citizenship. Thus, Joseph Carens (2013: 159) argues that 'living in a society over time makes one a member, and being a member generates claims to legal rights and to legal status'; Patti Lenard (2023) argues that 'any form of long-term subjection without inclusion is impermissible'; Rainer Bauböck (2018a: 45) argues for a 'stakeholder theory of citizenship', according to which 'all whose individual autonomy and wellbeing depends on the collective self-government and flourishing of a polity have a claim to citizenship in

that polity'; Matthew Lister (2010) argues that principles dictating rules of membership should be governed by a theory of justice, specifically tied to a civic-liberal conception of citizenship rooted in the idea of social cooperation; and Daniel Sharp (2023) develops an account of the normative function of citizenship, which aims to explain why citizenship as a status, beyond simply the bundle of rights it is associated with, is required for civic equality. These illustrative examples are not exhaustive, but they demonstrate the strict limits on exclusion, generated by individuals becoming *de facto* members of society, as interpreted through a normative theory of citizenship.

One may object here that since the discretionary approach also offers limits on exclusion – ruling out permanent alienage, for example – the two approaches may not be so distinct. Yet, it is important to note that the ascriptive approach does not merely suggest limits on the scope of the right to determine membership rules, but essentially denies that such a right exists. This becomes evident when we shift our focus from limits on exclusion to limits on overinclusion. Ayelet Shachar, for example, argues that her principle of *jus nexi* ensures that 'some proximity must be established between full membership status in the polity and an actual share in its rights and obligations, responding to the democratic legitimacy concerns raised by *both under- and overinclusion*' (Shachar, 2009: 165, emphasis added). Helder de Schutter and Lea Ypi (2015) argue that once the factual conditions of membership are met, neither the state nor the individual should have any discretion with regard to membership; the category of non-citizen resident should be abolished. Jakob Huber is even more explicit, arguing that 'territorial presence should not only be *a sufficient but also a necessary* condition of citizenship, such that non-resident citizens ought to be denaturalised after a period of living abroad' (Huber, 2019: 811, emphasis added). The implication of this view is that, strictly speaking, permissible inclusion is impossible: for any given individual, the state is either required to include them, or their inclusion is prohibited.

For proponents of this view, the upshot is that the right to self-determination does not confer the freedom to shape membership policy but merely a principle of self-government, which protects the right of members to self-rule. Arguing from a neo-republican perspective, Iseult Honohan (2014: 43) explicitly writes that:

people may have a right to be self-determining, but this does not include a right to choose their members, in so far as a political community is not strictly analogous to a club, in which membership is a matter of consent, but rather a group of people whose membership stems from their being or becoming collectively subject to a common political authority.

Similarly, Sarah Fine (2010: 353) argues that '[i]n the absence of full control over access to membership, a group still can be self-determining to the extent that it is free to set its own internal policy agenda without external interference'.

In summary, the two prominent positions in the literature, despite their practical overlap when it comes to limits on the right to exclude, generate opposite conclusions with regard to permissible inclusion. The discretionary approach adopts a permissive view on inclusion, according to which the right to self-determination entails that inclusion is virtually always permissible (as long as there are no strong claims of justice made against it). The ascriptive view, on the contrary, holds that the value and function of citizenship entail sufficient and necessary conditions for membership, and therefore that the right of self-determination (insofar as it exists) does not include a right to include those who do not have a claim to be included. If our analysis is correct, then it appears that one must either

accept that there are no limits on permissible inclusion, or that there is no right to self-determination with regard to membership. In what follows, we argue for a middle ground between these two positions, which yields limits on permissible inclusion from the value of self-determination itself.

The Conditional View: Self-Determination as a Limit on Permissible Inclusion

As an alternative for the discretionary and ascriptive views, we propose the ‘conditional’ view. On this view, the freedom to shape rules of membership conferred by the right to self-determination is circumscribed by the basic interests that the right protects. Exclusion, then, is permitted only for the purpose of protecting the basic interests that self-determination fulfils (Kollar and Banai, 2023; Stilz, 2019: 187–215). What follows depends on the account of what these interests are, and what it means to protect and harm them. Arguments for a conditional right to exclude narrow the scope of self-determination-based permissible exclusion significantly, because there should be a plausible case that prospective newcomers threaten the self-determination of the receiving society.

What follows for *permissible* inclusion? Like the discretionary view (and in contrast with the ascriptive view), the conditional view holds that the state has a right to include individuals who do not have a prior claim to be included, and so permissible inclusion is not ruled out as a matter of principle. Yet unlike the discretionary view, the conditional view yields a more limited scope for permissible inclusion. First, it is permissible insofar as it does not harm the basic interests fulfilled by the polity’s *internal* self-determination. For example, a generous naturalisation policy for wealthy foreigners, with the intention of marginalising the political participation of the local poor, would undermine internal self-determination and as such will be impermissible.⁵ The state is not prohibited in principle from naturalising the wealthy, but in ought to safeguard effective channels of political participation for the poor to safeguard self-determination. In addition, there will be further considerations to whether the rule is violated in this case. Was the policy to grant citizenship to wealthy foreigners formed through effective political participation? Would citizens that already had fewer effective channels of participation be negatively affected by the policy? Furthermore, because self-determination protects an interest in non-alienation from the polity in which one lives, inclusion of individuals that set out to alter the public institutions and practices beyond recognition will be impermissible on this account.

We explain this point in more detail below, but let us preview and clarify that the scope of permissible inclusion remains significant: the condition of non-alienation does not assume a homogeneous society with a thick set of values and cultural practices. The idea is rather of a pluralistic society with a wide range of public projects and practices within a contour of core political values and institutions, for example, a public language, specific federal and regional structures, civic public holidays, or institutions of public services. Self-determination protects peoples’ right to participate in shaping these values and institutions – whether to maintain or change them over time. A polity can include many new members with no jeopardy in this regard. In some cases, the interest in non-alienation will rule out policies of inclusion.

Second, limits on permissible inclusion arise not only from harm to the internal self-determination of the naturalising state, but also from the right to self-determination of other polities. To see what follows from this would require a brief detour into theories of self-determination. It is broadly accepted among contemporary theorists that self-determination

is universal – namely, that all the pertinent subjects (i.e. peoples, states or nations) possess this right.⁶ Therefore, the rightful scope of self-determination is determined by the right of others to self-determine. As Anna Stilz (2019: 14) clarifies, ‘. . . if external sovereignty is to be a recognized right, it must be limited, at a minimum by duties to respect the reciprocal sovereignty of other states’. The question of what follows from this general proposition – what are the reciprocal duties of self-determining polities towards one another, as a matter of reciprocal respect of sovereignty – is contested among contemporary theories of self-determination and sovereignty. A particularly divisive issue, which we argue below is relevant for the question of limits on permissible inclusion, is whether duties of international distributive justice are among the duties of reciprocal respect.

An important subset of these theories takes the sufficientarian view, interpreted as a duty to respect a global standard of basic human rights (Miller, 2007), a duty of assistance for burdened societies (Rawls, 1993), or a principle of non-coercion (Altman and Wellman, 2009). The core idea is that polities have to meet a certain threshold of institutional and socioeconomic resources in order to be considered self-determining. Unequal distributions beyond the threshold are considered justifiable; they are results of exercising sovereignty – of good and bad decisions that self-determination polities take. This view on self-determination may generate some limits on permissible inclusion, if it is shown to bring other polities below the threshold of minimal self-determination. Some of the more egregious examples, such as weaponised passportisation, may fit the bill (more on this below). But notably, this leaves a fairly wide scope for permissible inclusion.

However, this is an overly minimal view. In some cases, the capacity of a polity to design and implement socioeconomic policy is significantly restricted by the actions and policies of others, even without it being pushed below the threshold of sufficiency. Consider tax policies that undermine the capacity of other countries to mitigate domestic socioeconomic inequalities:

Tax competition between states puts pressure on domestic fiscal regimes. Mobile factors of production have the opportunity to ‘shop around’ to minimize their tax burden. This interdependence of national tax regimes generates external effects that undermine the *de facto* sovereignty of states. As a consequence, tax competition tends to exacerbate inequalities of income and wealth both within countries and across borders (Dietsch and Rixen, 2012: 151).⁷

Is self-determination not violated here? Are the duties of reciprocal respect of sovereignty fulfilled? From the sufficientarian perspective, self-determination and sovereignty remain intact. However, we concur with those who insist that sovereignty is wrongfully restricted. Miriam Ronzoni (2012: 577) describes the distinction between negative and positive sovereignty as follows:

. . . a state is negatively sovereign when it enjoys immunity from external intervention, whether or not it is capable and has the necessary resources to use such an immunity to self-assigned ends . . . A state is positively sovereign when it possesses the internal resources to decide which kind of polity it wants to become and acts on it successfully.

It seems plausible to say, then, that states can potentially infringe on one another’s sovereignty also above the level of sufficiency and beyond non-intervention. To specify what is the permissible scope of exercise of sovereignty and self-determination – in the interest of reciprocal respect of sovereignty and self-determination of others – theories propose various principles including the background conditions of international justice

(Ronzoni, 2009), international non-domination (Buckinx et al., 2015; Laborde and Ronzoni, 2016), and the capacity of states to establish and fulfil domestic social justice (Banai et al., 2011). Anna Stilz's account recognises duties of international distributive justice among sovereign states, including a 'duty to ensure fair terms of economic cooperation' and 'a duty to ensure fair background conditions for self-determination' (Stilz, 2019: 16).

Thus, the 'permissible scope' theories, while they differ in their interpretations of sovereignty and self-determination share the view that duties of international justice demand more than non-intervention and sufficiency in order to safeguard everyone's self-determination and sovereignty. Accordingly, they also work to figure out dominant international institutions and practices affect the scope of participants' self-determination – for example, in the field of tax policies (Van Apeldoorn, 2018), international trade (Suttle, 2018) and policies of labour migration (Brock, 2020).

With this general perspective in view, let us re-focus our attention on the question of self-determination and permissible inclusion. Naturalisation policies are equally subject to the question of permissible scope, if and when they violate the obligation to respect others' self-determination. Let us illustrate this principle with two simplified examples:

1. Country A naturalises a large portion of the citizens of neighbouring country B. The newly naturalised are a large ethnic-linguistic minority in B, while their group is the majority in A. B is a democracy that adheres to basic principle of political and socioeconomic justice, but is poorer and less powerful than A. With material support from A, the newly naturalised develop an independent education system, media and cultural institutions and withdraw from participation in B's public, cultural and political life. They hold a referendum to decide on their secession from B.
2. Country A grants citizenship to wealthy citizens of country B. A offers the newly naturalised reduced taxes in return for transfer of their financial capital to A. For the sake of the simplicity, assume – counterfactually – that tax liability always follows nationality.⁸ B is a democracy that adheres to basic principle of political and socioeconomic justice, but the mass capital flight from it due to A's policies undermines its capacity to implement these principles in practice.

We think that in both the examples, the voluntary naturalisations of citizens of B by A are *pro tanto* impermissible, because they wrongfully interfere with the self-determination of country. The capacity of the citizens of country B to take collective decisions effectively and conduct their affairs freely is undermined by the interference of A. Insofar as B enables self-determination for its citizens (including members a linguistic minority and the wealthy), it is unfair that a neighbouring country would extract portions of its wealth and territory; it violates the right of country B's citizens to self-determination.⁹ To understand why and when this is the case, let us take a closer look at permissible scope theories of self-determination, and how their conditionality about exclusion applies to permissible (and impermissible) inclusion.

According to Anna Stilz's (2019: 10–12) account of the morality of territorial sovereignty, self-determination is one (of three) moral justification of a sovereign-territorial international order; 'a people's collective self-determination will be valuable for it members if they reasonably affirm their political cooperation together' (Stilz, 2016: 117). An important interest that this affirmation serves is that '... it enables a valuable kind of

political freedom, the freedom of understanding oneself as a “maker” of the coercive political institutions by which one is governed’ (Stilz, 2016: 117). This idea of ‘maker’s freedom’ – the interest of individuals in shaping, together with others, the social and political institutions that govern them – is recognised as a valuable interest that self-determination fulfils; it is therefore distinct from other individual rights and liberties that protect wellbeing interest and anchor the demands individuals vis-à-vis the institutions under which they live (Stilz, 2016: 100–101). Participation in shaping our political and social conditions, through self-determination is a distinct form of freedom; it is an ‘. . . experience of a different (collective) dimension of autonomy – compared to the strict individual (private sphere) protection of autonomy . . .’ (Moore, 2014: 133). The ‘people relationships goods’ account of the values of self-determination as well draws a distinction between wellbeing interests and agency interests protected by self-determination (Banai and Kollar, 2019: 378–382). The basic value of self-determination lies in that ‘. . . it uniquely protects and enables the fulfilment of interests – wellbeing and agency interests – that other institutions and relationships do not reliably fulfil’ (Banai and Kollar, 2019: 381).

With the core values of self-determination in view, we can draw a clearer picture of when a policy of over-inclusion potentially undermines them and becomes impermissible. There are two types of conditions emerging from this discussion. The first is related to the wellbeing interests that self-determining polities fulfil. Therefore, inclusion that takes away significant resources from worse-off and poorer polities impairs their capacity to fulfil these interests. In both examples above, the naturalisation involves transfer of significant resources towards the wealthier states and therefore is *prima facie* impermissible. It impairs the capacity of the country of origin to fulfil wellbeing interests.

The second is related to the agency interests, expressed by a sense of affiliation to the polity, the ability to reasonably affirm collective projects, participate in shaping its institutions, and engage in a collective form of freedom. Issues of affirmation and affiliation have a subjective element: some individuals may feel alienated from their societies, even under optimal social and political circumstances. Therefore, the condition of non-alienation and affirmation pertains to social and political conditions, not psychological ones. They do not focus merely on descriptions of what individuals feel, but on the social conditions for non-alienation (Kollar and Banai, 2023). On this condition, too, the inclusion in both examples above is *pro tanto* impermissible. Insofar as the polities adhere the relevant mechanisms and institutions that enable the participation of their citizens, including those of minority groups, the presumption is in favour of intra-state self-determination rather than secession to another state.

In sum, the principle of self-determination, which support the conditional right of self-determining polities to determine their membership policies with regard to exclusion, also support limits on permissible inclusion. Naturalisation policies that violate the conditions required for fair opportunity to effective self-determination are objectionable and possibly impermissible on this basis. This general principle of fair opportunity required further specification according to each theory’s preferred interpretation of what effective self-determination means (people relationship, positive sovereignty, freedom from international domination, problem-solving capacity or capacity to maintain domestic social justice).

Application of the Principle in the Real World

There is, then, a limit on permissible inclusion that arises from the value of self-determination, and the duties of reciprocal respect of self-determination of others. Moreover,

permissible scope theories of self-determination that recognise duties of international distributive justice offer a rationale for distinguishing permissible and impermissible inclusion, consistent with international law. To illustrate this point, we turn now to consider few illustrative real-world examples of expansive citizenship policies, and how to evaluate their permissibility according to the framework we suggest here.

Consider, for example, Russia's decision to confer citizenship on ethnic Russians in Crimea shortly before a referendum about the transfer of the peninsula from Ukrainian to Russian sovereignty, or the more recent conferment of Russian citizenship to members of the separatist regions of Eastern Ukraine in anticipation of similar referenda held in September 2022 (Euronews, 2022). This mass naturalisation of non-residents, or 'passportisation', serves as a clear case of impermissible inclusion on our account (Peters, 2010). The loss of the Crimean territory, or potentially (at the time of writing) the Eastern regions, does not as such bring the Ukraine below a threshold of self-determination on the more minimal sufficientarian views. Yet clearly the Russian interference affects Ukraine's self-determination on the egalitarian views, specifically, its capacity to form and follow objectives as to which polity it wishes to be.

The Russian case is an extreme one, but it reflects the ways in which over-inclusive citizenship policies may serve expansionist geopolitics and irredentism, or other weaponisations of citizenship to undermine political rivals at home or abroad (Jain and Bauböck, 2023). In 2010, Victor Orban's Fidesz party amended the Hungarian Citizenship law, opening the path to naturalisation for many of the 2.2 million ethnic Hungarians living in neighbouring states. This has not only artificially amplified the political support for Fidesz, but also affected the internal politics of other states, most notably Slovakia, which amended its own citizenship law in retaliation (Bauböck, 2010).

Citizenship by investment offers another striking, if less visible example of the ways in which one state's citizenship policy may encroach on another's self-determination. In the abstract, each state's right to determine how it allocates its own citizenship is within its full discretion, and it is permissible to assign different criteria for selecting new members. The ability to pay is not obviously more objectionable as a criterion than selection by national affinity or having desirable skills (Erez, 2021). However, examining the actually existing market for citizenship by investment, we find that the way it is currently structured leaves it open to abuse by individuals who wish to evade taxes, dodge sanctions, or launder illicit funds. Tax residency is not necessarily attached to nationality, so acquiring a second nationality (through investment or other pathways) would not, in itself, render an individual not liable to taxation in their original state of nationality. However, citizenship by investment can arguably facilitate tax evasion as it can generate a way to avoid the Common Reporting Standard (CRS) and not declare financial assets held in tax havens.¹⁰

Importantly, the objection here is not that selling citizenship is inconsistent with the democratic nature of the institution of citizenship, or similar arguments focusing on the internal content of citizenship (Bauböck, 2018b; Besson, 2019; Shachar, 2017; cf. Erez, 2023). Rather, we point to the potential infringement of the right of self-determination in other polities' tax and criminal policies as the ground for limiting the state's right to include. Naturalisation policies of third-party states, when they facilitate avoidance of such measures, undermine the opportunity for self-determination in the states of origin.

Finally, there may be cases where an expansive citizenship policy can be permissible, even when it is in tension with other polities' right to self-determination. The evaluation of specific policies must consider not only the collective interests of self-determination, but also the private interests of individuals in autonomy and security. Given such considerations,

there could potentially be cases that, while affecting the right to self-determination, are overridden by an overwhelmingly strong individual interest in acquiring citizenship. In the analogous debate in migration ethics over brain-drain, some have suggested a compromise between individual freedom of movement and collective welfare in the form of an emigration tax (Bhagwati and Dellalfar, 1973). If the harm to the origin state is minimal, it is possible that even with relatively minor interests, better alternatives to prohibiting naturalisation could be found. Suppose Turkish Jewish citizens wish to express their ‘affective citizenship’ by reclaiming Spanish nationality (Benmayor, 2023). This could have minor implications for Turkish self-determination (e.g. affecting military service), but should not necessarily bar such a path to citizenship.

Moreover, we might even think of cases where a state can permissibly undermine another state’s right to self-determination, conferring citizenship as a tool of foreign policy in war, or as a form of humanitarian intervention. For example, a state may expedite naturalisation for citizens of an enemy state in order to undermine the technological capabilities of its opponents (Baker, 2022), or grant citizenship to vulnerable people for the purposes of diplomatic protection.¹¹

Conclusion

Our discussion focused on the state’s right to include, and the puzzle of permissible inclusion. As we have suggested, this is surprisingly unexplored terrain in normative theory. Scholarly focus on the state’s right to exclude and its limits has meant that the distinction between discretionary and ascriptive views on membership rules have been obscured, and turning to questions of over-inclusion highlights the difference between them. While proponents of the discretionary view hold that the right to self-determination entails that the right to include is virtually unlimited, proponents of the ascriptive view deny that self-determination entails the right to shape membership rules.

Our aim has been to question this false dichotomy. We have argued that while the right to determine the polity’s membership rules is an important part of political self-determination, the right to include is not without limits. Moreover, we aimed to show that these limits arise from the value of self-determination itself. Defending a conditional account of self-determination-based freedom to shape membership rules, we argued that when inclusive membership policies undermine the equal right to self-determination by other polities, it should, in most cases, be prohibited.

To be clear, our argument is intended as a preliminary exploration of this question, and the precise contours of the right to include are yet to be determined. While incidents of weaponised mass ‘passportisation’ are clear illustrative cases of excess, there is room for reasonable disagreement about the permissibility of less extreme cases. Importantly, our framework suggests that uniform rules of membership for different self-determining polities are neither desirable nor feasible, and it is certainly possible that extra-territorial naturalisation policies would fall into the realm of the permissible. What is needed is a framework for adjudicating these matters. A conditional conception of the self-determination-based right to shape membership rules, of the kind we defend here, can help us define the precise boundaries of this realm.

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ORCID iD

Lior Erez  <https://orcid.org/0000-0002-8025-5905>

Notes

1. As explained below, the kind of links and connections we have in mind are those highlighted in theories of citizenship as grounds for a state's duty to grant citizenship to individuals who possess them. They are also recognised in international law as relevant for nationality rights.
2. Although, as we note later, this discretion is increasingly limited with regard to exclusion (Spiro, 2011).
3. The question of non-voluntary inclusion is a separate normative question that receives some attention in contemporary theory (e.g. the First Nations in Quebec, in the context of secession). In the real world, the question of whether these assumptions apply in specific cases requires further reflection. For instance, do poor Caribbean states freely choose to sell citizenship, or are they pressured by powerful actors to do so? Do ethnic Russians in Crimea or the Eastern provinces of Ukraine voluntarily naturalise as citizens of Russia? These questions are beyond the scope of this article and remain for future discussion (cf. Knott, 2022).
4. For further criticism of the discretionary right to exclude would-be migrants, specifically with regard to self-determination (see, for example, Bertram, 2018; Fine, 2010; Kollar and Banai, 2023; Lepoutre, 2016; Schmid, 2022; Van der Vossen, 2015).
5. Political participation is a feature of self-determination, which protects the interest of individuals in collective autonomy as well as their interest in non-alienation.
6. The statement 'all peoples possess the right to self-determination' does not entail that all peoples have a right to an independent state. In international law and normative theory, there is an important place for the idea of intra-state self-determination, which grants regional autonomy, and other mechanisms of self-government for the pertinent groups within a state and some argue that self-determination is a right of individuals. But we do not address this question here. We go with the many theories that place the right in the hands of a collective agents.
7. The question of differences between self-determination and sovereignty in the context of global justice lies beyond the scope of this article. For current purpose, in the theories discussed here, self-determination and sovereignty can be used interchangeably.
8. Real-world taxation policies are much more complex, as we briefly discuss in the next section.
9. There is a view in cosmopolitan theories of international justice that self-determination is the right to individuals to decide individually to which state they want to belong. However, most contemporary international law and theory consider self-determination as a right of peoples, states or nations – a corporate or collective agent (composed of individuals) that is the right-holder. Secession is then a remedial right, not a general liberty of individuals, and with appropriate domestic arrangement self-determination of more than one people is possible in a state (Buchanan, 1997, 2003: 205–260).
10. The relationship between citizenship by investment and tax evasion is a complex and contested debate (Langenmayr and Zyska, 2023; Surak, 2023: 227–236; Van der Baaren, 2023), which is unfortunately beyond the scope of this article. We would like to thank an anonymous reviewer for pressing us to clarify this point.
11. We thank an anonymous reviewer for suggesting this possibility.

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Author Biographies

Lior Erez is an Alfred Landecker Postdoctoral Fellow at the Blavatnik School of Government, University of Oxford, the United Kingdom.

Ayelet Banai is a Senior Lecturer in the Department of Government and Political Theory, School of Political Science and the Center for German and European Studies at the University of Haifa, Israel.