

Citizens and States: Considering the concept of citizenship

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by

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Abstract

This thesis is an investigation into the concept of citizenship, or, more precisely, *the core concept of citizenship*. It attempts to show how certain key debates within citizenship theory can (and should) be framed once the core concept has been clarified. Its central claim is that citizenship is primarily an institutional relationship between an individual and the laws and organs of government to whose authority she is subject. All other ‘aspects’, ‘dimensions’, ‘senses’, or conceptions of citizenship, should be oriented in relationship to this core meaning.

Understanding citizenship as primarily an institutional relationship affects how we should approach a number of issues in citizenship theory. The first issue I consider has to do with the limits of both citizenship theory and the extension of citizenship in practice. Specifically, can the conceptual category of citizenship apply to non-human animals, or, indeed, for animals to *be* citizens in sense that is substantively on par with human citizens?

I next consider what the core concept tells us about the moral aspect of citizenship and the relationship between co-citizens. I ask whether one’s membership in a morally bounded community could be either necessary or sufficient for a kind of citizenship, and whether citizens owe each other special obligations *qua* citizens.

Finally I ask who might have a moral claim to citizenship in a given state. I consider the possible moral claims a person might have to each of citizenship’s two primary elements—what I call *democratic membership* (i.e. to be included in the demos of a democratically governed polity), and *basic membership* (i.e. the rights to live and work within the territory of a polity). The first sort of claim brings us into contact with the debate over what is known as the *democratic boundary problem*, while the second leads us to consider the practice of *birthright ascription*.

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1 Introduction

There is a strong undercurrent of inclusiveness and expansionism in both the theory and practice of modern citizenship. In practice, this is most obvious in the laudable extension of citizenship status and its attendant rights and duties to classes of people historically excluded from it. In theory, it is a central force in debates about, e.g., cosmopolitan, trans-national, and post-national citizenship. In recent decades a similar expansionist tendency can be seen in the application of the language and concept of citizenship. It is common for theorists writing about citizenship to begin by noting that there is no single definition of citizenship, no overarching theory, or unified concept. They will instead typically stipulate a definition which marks out in broad strokes the conception of citizenship *they* mean to employ, that describes what *they* will mean by ‘citizenship’. Depending on the question they are addressing, this might be all they offer. It is sometimes taken for granted that any definition of ‘citizenship’ a theorist might suggest is an

acceptable use of the term or a legitimate application of the concept of citizenship within the context of a given theoretical inquiry, just so long as it bears a passing resemblance to one of the many practices, institutions, behaviours, relationships, etc., that have come colloquially to attract the label 'citizenship'. Those who are concerned to discuss the idea of citizenship itself tend to offer a bit more. They might perhaps defend the definition they've offered or, more commonly, build their initial definition into a full-fledged normative conception of whatever phenomenon or phenomena their initial definition captures. This tradition reaches back at least as far as Aristotle, who notes in his *Politics* that 'the definition of a citizen is a question which is often disputed: there is no general agreement on who is a citizen.' He then goes on to define a citizen as one who 'is entitled to share in deliberative or judicial office'.¹ If citizenship was a fraught concept in Aristotle's time, nothing has changed. More recently, Judith Shklar has suggested that 'there is no notion more central in politics than citizenship, and none more variable in history, or contested in theory.'² Rainer Bauböck goes a step further, making explicit a view which, one suspects, many theorists today hold. He writes,

Citizenship is a concept with multiple dimensions. It is impossible to encompass all of its uses and meanings in a single definition. It is also pointless to try and do so since many interpretations of citizenship are metaphorical or overstretched.³

¹ Aristotle and E Barker (trans, ed) *The Politics of Aristotle Book III* (Oxford University Press 1958) 85.

² Judith Shklar, *American Citizenship: The Quest for Inclusion* (Harvard University Press 1991) 1.

³ Rainer Bauböck, 'Stakeholder Citizenship: An Idea Whose Time Has Come' (2008) Migration Policy Institute 1.

And yet the fact that we recognize many interpretations as metaphorical or overstretched suggests, at least, that we share some common understanding of what, at its core, citizenship is really about—about what *at a minimum* something must satisfy to count as a *genuine* instance of citizenship or a proper application of its concept. While we might disagree about its fringes, we can, as Bauböck goes on to suggest, ‘define its centre’.⁴

In its simplest terms, this thesis is about the concept of citizenship. It is about how we conceive of the practices, behaviours, institutions, and relationships that have come to be theorized using the language of citizenship—about which ones are and which ones are not helpfully understood in these terms. It is about the conditions a thing must satisfy for it to be properly recognized as an instance of citizenship or for a person to be a citizen. It is an attempt to get clear about what is distinctive and characteristic about citizenship, and about what is really at stake in (some of) those debates in which the idea of citizenship appears to play a central role. I argue that in order to preserve the integrity of the concept as a meaningful analytic tool, we must adopt a fairly restricted understanding of the core elements of citizenship, one that sets harder limits than we currently allow on the sorts of things to which the label ‘citizenship’ can be meaningfully attached, or which the tools of citizenship theory can be used to describe.

The Rise of Citizenship Theory

⁴ *ibid.*

As the passage from Aristotle suggests, contests about the nature of citizenship are as old as the concept itself. Naturally the extent to which it is actually contested at any given time is subject to the usual ebb and flow of what is of interest to people who think about political concepts. Near the end of the twentieth century, theorists noted a surge of interest in the concept of citizenship. In a survey of work being done in citizenship theory at the time, Will Kymlicka and Wayne Norman pointed out that ‘citizenship [had] become the “buzz word” among thinkers on all points of the political spectrum.’⁵ It was during this period that ‘citizenship studies’ emerged as a *de facto*, if not yet an institutionalized, field in the humanities and social sciences.⁶ The surge has hardly abated since. We may comfortably agree with Richard Bellamy’s more recent assessment that ‘interest in citizenship has never been higher.’⁷

Though the shape of contemporary national-state citizenship has its roots in the Enlightenment, and theorizing citizenship reaches back at least as far as Plato, the recent history of citizenship theory arguably begins in 1950 with the publication of T.H. Marshall’s influential ‘Citizenship and Social Class’.⁸ In that paper Marshall argued that citizenship was characterized by a particular set of rights, categorized as either civil, political, or social, that are held by most or all members of a single nation state. Much of the critical

⁵See e.g. Will Kymlicka and Wayne Norman ‘The Return of the Citizen’ in Ronald Beiner (ed) *Theorizing Citizenship* (SUNY Press 1995) 285. See also Ronald Beiner, ‘Introduction’ in *ibid*.

⁶ E Isin and Bryan Turner (eds) *Handbook of Citizenship Studies* (Sage 2002) 1.

⁷ Richard Bellamy, ‘Introduction’ in Richard Bellamy and Antonio Palumbo *Citizenship* (Ashgate 2010).

⁸ TH Marshall *Citizenship and Social Class: and other essays* (Cambridge University Press 1950) 84. See also Derek Heater, *What is Citizenship?* (Polity Press 1999) 12-24.

response to Marshall's paper focused on the claims he made about the order in which these categories of rights historically emerged and the inevitability of this pattern in different national contexts. The three-fold classification itself however was quietly accepted by most, and continues to influence much of the discussion within citizenship theory today.

The agenda of political theory after 1971 was heavily influenced by the publication of John Rawls' *A Theory of Justice*. Rawls' work included a number of claims—both implicit and explicit—about the nature of citizenship, e.g. that it is an institutional membership in a single nation state, distinct from individuals' identities as people, and a role people might step into in order to engage in abstract discussions about how to order a just society.⁹ However the nature of citizenship was not itself a central theme. While analysis of Rawls' conception of 'the person' flourished, the idea of 'the citizen' seemed, for a time, to fall off the radar.¹⁰

The last decades of the twentieth century saw turbulent political upheavals in Europe, as well as a growing need everywhere to understand and control the many and varied forces that fall under the heading of 'globalization'. These conditions brought for many a new urgency to questions about the nature and role of citizenship in the guise of national-state membership.¹¹ Traditional understandings of both the nature and the

⁹ See John Rawls, *Political Liberalism* (Columbia University Press 1996) 214-15.

¹⁰ See Ronald Beiner, *Liberalism, Nationalism Citizenship: essays on the problem of political community* (University of British Columbia Press 2003) 'Introduction'; and Herman van Gunsteren, 'Notes Towards a Theory of Citizenship in F. Dallmayr (ed) *From Contract to Community* (Marcel Drecker 1978). cf David Miller, *Citizenship and National Identity* (Polity Press 2000) 45.

¹¹ See e.g. Jurgen Habermas, 'Citizenship and National Identity' in Beiner (n 5).

relevance of national-state borders came under scrutiny. Increased personal mobility and an attendant rise in migration between developed and developing countries fuelled cultural pluralism even within states that had previously enjoyed relatively homogenous cultural identities, raising questions about the legitimacy of political communities based on a single national identity. Growing disparities between states not only in terms of economic wealth and opportunity, but also personal and political freedom, cast doubts on the perceived justice of the traditional right of sovereign states to exclusively determine their membership and the allegedly apolitical criterion of birth. Contemporary theorists and politicians alike worry increasingly about the levels of political participation in all its forms within developed western liberal democracies, and especially, perhaps, in the European Union. Both structural (i.e. institutional) and psychological obstacles have been implicated in a ‘democratic deficit’—a degradation of the legitimacy of democratic politics that points to, e.g., a renewed need for the active cultivation of civic virtue.¹²

These issues make up the core of contemporary citizenship theory. Normative theories of citizenship today inevitably address one or more of them. Notice however that this core effectively extends to the very ‘skin’ of political philosophy generally. There is hardly an aspect of political life that is not deeply implicated in the sorts of claims we might make about these core issues. For every political challenge we currently face—both in practice and in

¹² This is not to suggest that it is only poor levels of political participation that lead to a democratic deficit. Other structural and cultural factors have also been implicated. See Bellamy (n 7). For updated accounts of the classical civic virtues, see e.g. Philip Pettit *Republicanism* (Clarendon Press 1997); Stephen Macedo *Liberal Virtues* (Clarendon Press 1990).

theory—solutions have been proposed using the language of citizenship. (In some cases, traditional views about citizenship are themselves cast as the source of those challenges.) There is no shortage of ‘conceptions’, ‘meanings’, ‘aspects’, ‘dimensions’, ‘senses’, or ‘components’ of ‘citizenship’ from which to choose and which can be tailored to solve one problem or another. There are theories of corporate citizenship, environmental citizenship, economic citizenship, sexual citizenship, cultural and multi-cultural citizenship, to name only a few.¹³ The language of citizenship has become the ultimate catch-all in political theory.

The prolific invocation of the language of citizenship in the way we frame questions and search for solutions to theoretical and practical political problems comes at cost. It often contributes as much to the confusion surrounding which ideas are really at stake within a given issue as to addressing the issue itself.¹⁴ As the use of citizenship language expands, the concepts that underlie it become increasingly difficult to untangle. It becomes hard to tell, for example, which are the obligations we owe as citizens, and which are those we owe as neighbours, or residents, or human beings. Perhaps this is unavoidable. As Norman and Kymlicka note, ‘the scope of a theory of citizenship is potentially limitless—almost every problem in political philosophy involves relations among citizens or between citizens and the state.’¹⁵ This observation rings true, but it is unclear what lesson we

¹³ This list draws from the table of contents of a just single collection of essays: Isin and Turner (n 6).

¹⁴ See Bellamy (n 7) xi-xii.

¹⁵ Kymlicka and Norman (n 5) 284.

ought to take from it. After all, a similar claim might be made about a number of political concepts. Could not most aspects of political life be expressed in terms of, or through the lens of, a theory of authority, or a theory of justice, or a theory of government? The reality is that, at least among political concepts, everything tends to be deeply connected to everything else. Does this mean that we should despair that meaningful distinctions can be drawn? Should we doubt that we can place limits, (even hard ones), on when and where such concepts are being properly or helpfully applied in both ordinary and theoretical discourse? Is there anything we can say about citizenship ‘in general’ beyond that it has something to do with civic, political, and social rights?

Conceiving of citizenship

It helps to get a handle on precisely what are the obstacles to identifying *the* concept of citizenship. Bauböck is right that the word ‘citizenship’ has too many meanings referring to too many different things for any single concept to encompass them all. However, the many meanings of ‘citizenship’ tend to be oriented around a relatively limited number of central meanings. The fact that we recognize some meanings as ‘metaphorical or overstretched’ suggests that we have some sense of what citizenship is about at its core. One question is whether these central or core meanings themselves refer to several disparate, though related phenomena, or whether they refer to aspects of a single unified phenomenon, something that might be captured by a single *core concept of citizenship*. I argue that they do, and in Chapter 2 I offer and defend

a description of the core concept. Briefly put, I argue that the core concept of citizenship is of an institutionally recognized relationship between an individual and the laws and organs of government to which she is subject. This relationship is characterized by the possession of the legal status, rights, and obligations of *democratic membership*—i.e. the right to participate in the democratic governance of the polity. As a form of political membership (which I argue is a wider category than that of citizenship), it also involves the possession of the rights of *basic membership* such as the rights to live and work within the polity's territory.

Even if we accept that citizenship is a unified phenomenon, some might argue that we can identify no single core concept of it, because the concept of citizenship is *essentially contested*. I argue that this worry is unfounded. The concept of citizenship is not like other paradigm examples of essentially contested concepts in that it is not essentially evaluative, which is to say that the concept of citizenship is not itself the concept of an ideal. This is not to deny that *are* normative ideals of citizenship. A good share of citizenship theory concerns defining precisely what form the relationship of citizenship ought to take in practice, and there is longstanding tradition of dividing these into 'liberal' vs. 'republican' conceptions. Part of my task will be to explain the role the core concept plays within such 'full-blooded' normative conceptions, and to distinguish what traditional normative theorists are doing from the project I propose to undertake. The core concept that I describe, I argue, captures broadly that phenomenon of which normative theories are theories.

The Limits of Citizenship

As I noted above, a prominent aspect of the practice of citizenship in the past century has been its tendency to expand to include ever more groups who were previously excluded from it. Within developed liberal democracies, the vast majority of adult human residents are now typically recognized as citizens and have the full range of rights and responsibilities of citizenship. Is there any reason to stop at human beings? After all, human societies are never really *just* human societies. We live among and depend upon numerous non-human species for food, clothing, companionship—indeed the history of human civilization is in many ways no less a history of animal ‘civilization’, i.e. domestication. Is there any reason why citizenship’s expansionist streak should draw a line with *homo sapiens sapiens*?

Sue Donaldson and Will Kymlicka have recently argued that the answer is ‘no’—at least for domesticated animals.¹⁶ They argue that citizenship theory ought to expand to make up for the shortcomings of much of traditional animal rights theory, that the normative categories we use to theorize political relations between humans should be adapted to include our relations with animals as well. Moreover, they argue that domesticated animals should be recognized, both morally and institutionally as citizens of our political communities. Crucially, this means extending to domesticated animals the political rights of citizenship, those which stand at the core of the concept as I defend it.

¹⁶ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press 2011).

Donaldson and Kymlicka offer a provocative vision for the future of animal rights theory. However, their argument requires the kind of overly inflated understanding of citizenship and its attendant concepts that I believe a clear understanding of the core concept of citizenship helps to avoid. In Chapter 3 I use a discussion of their case for domesticated animal citizenship to show why certain interpretations of ‘citizenship’ which might apply to non-human animals are in fact unhelpfully understood as conceptions of citizenship at all. They do offer a number of examples intended to show how in fact non-human animals might meaningfully stand in the sort of relationship captured by the core concept. However these examples ultimately rely on untenably expansive notions of responsibility and participation. In short, the discussion of animal citizenship reveals one way in which the concept of citizenship cannot be stretched without consequence.

World Citizenship, Moral Boundaries

The core concept of citizenship I defend is primarily the concept of an *institutional* relationship. To stand in the relationship of citizenship it is both necessary and sufficient that one possesses a particular *legal* status and certain *legal* rights and duties, which are recognized, protected and enforced by a polity’s *institutions* (or organs) of governance. The primary relationship of citizenship is not, I suggest, a *moral* relationship, e.g. between co-citizens. Citizenship is primarily a relationship between citizens and the institutions of governance of the state, and only secondarily involves a relationship between

co-citizens. That is, it is neither necessary nor sufficient for citizenship that citizens stand in a moral relationship to their fellow citizens.

Not everyone takes this view of citizenship. Some theorists arguing within what we might call 'the ethical cosmopolitanism' tradition claim that they are—indeed that we are all—'citizens of the world'.¹⁷ This claim is not (or not only) meant to invoke a vision for the institutional arrangements we might hope one day will govern the world over. It is meant rather as an expression of one's membership in the moral community of all humanity—membership which some understand as itself a kind of citizenship, divorced from the institutional citizenship captured by the core concept. In other words, on this view, membership in the moral community of humanity is *sufficient* for a kind of citizenship.

Another view, which stands in opposition to this idea of 'world citizenship', says that citizenship, or 'genuine citizenship', requires membership in a *particular* morally bounded community. The reason is that 'genuine citizenship' requires from citizens a certain range of behaviours and attitudes over and above the institutional relationship captured by the core concept. These behaviours and attitudes might even be thought necessary to realize the goods of liberal democracy generally. David Miller, for example, has argued that the realization of a particular (republican) conception of 'genuine citizenship' is required to ensure a flourishing liberal democracy, and is best realized in the context of a morally bounded *national*

¹⁷ This claim has an ancient pedigree, but has recently been defended by Martha Nussbaum. Martha C Nussbaum, 'Patriotism and Cosmopolitanism' in Martha Nussbaum and Joshua Cohen (eds) *For Love of Country* (Beacon Press 1996).

community.¹⁸ That is, there is a sense in which citizenship, or ‘genuine citizenship’, requires or presupposes that citizens are or see themselves as morally bounded.

In Chapter 4 I consider whether either of these views poses a problem for the core concept of citizenship I defend and, in particular, the idea that citizenship is not primarily a moral relationship between co-citizens. On the one hand, I argue that the ethical cosmopolitan’s claim to world citizenship is another clear example of an over-extension of the concept of citizenship. If we expand the concept of citizenship to include as a sufficient condition, e.g., the possession of a duty of equal consideration owed to all humankind, then it loses any analytical value—e.g., it does not help us to distinguish what it means to be a citizen from what it means to be a human being. On the other hand, I challenge the idea that certain behaviours or attitudes could reasonably be understood to be *more* central to our understanding of citizenship than the institutional relationship identified by the core concept and, therefore, that whatever might be necessary to promote those attitudes could be a necessary feature of citizenship.

The Obligations of Citizenship

I do not deny that co-citizens stand in a relationship with each other in which they do not stand with respect to, say, non-citizen long-term residents of their communities. I do argue that this should not be understood as the *central* or *primary* relationship of citizenship. One issue for which this difference

¹⁸ David Miller, *On Nationality* (Oxford University Press 1997) esp. Ch 2; and David Miller, *Citizenship and National Identity* (Polity Press 2000) Ch.3 and Ch.5.

touches down is in regards to the special obligations many believe that fellow citizens owe to each other.

Special obligations are moral obligations we are thought to owe to certain people or groups that we do not owe to all people (i.e. our natural obligations or natural duties). Along with our friends and family, our fellow citizens are often cited as a paradigm example of one group to whom we owe special obligations. That is, as a matter of ‘common sense morality’, the belief that citizens owe each other special obligations is, for many, as strong as that we owe them to our friends and family members. Among the most commonly discussed are the duty to give priority to the interests of one’s fellow citizens over the interests of non-citizens, and the duty to participate in the public life of the state.

There is a good deal of debate over how precisely it is that such obligations might be grounded. The natural obligations we owe to all persons—e.g. not to harm them, or to aid them when their need is great and the cost to us is minimal—are typically grounded in those features of humanity that make us moral subjects, such as sentience or a capacity to act for reasons. Similarly, we usually try to ground special obligations in features of the relationship between the people or groups who are thought to have them. However, when it comes to grounding the special obligations of citizenship, it has proved difficult to isolate a morally relevant feature or features of the relationship between citizens, one that is not *also* a feature of the relationship between citizens and, e.g., a state’s non-citizen long-term residents. In Chapter 5, I consider two attempts, what I call *the assigned responsibilities*

argument, offered by Robert Goodin¹⁹, and *the fair play argument*, offered by Richard Dagger.²⁰ The first argument tries to show why citizens owe each other a duty of priority on consequentialist grounds—all of us can most effectively discharge the natural duty of aid we owe to everyone if we focus on those we are best positioned to help. The second suggests we view the state as a cooperative enterprise for the mutual benefit of all and that citizens owe each other special consideration in virtue of their role as co-participants in that enterprise.

Andrew Mason has offered an illuminating critique of these and other similar attempts, showing how they miss the mark in more or less the same way.²¹ Indeed, he suggests that the way they fail is characteristic of *any* attempt to ground the special obligations of citizenship in general moral principles. Namely, they fail to isolate a feature of the relationship between fellow citizens which is not also a feature of the relationships between citizens and certain non-citizens, or which does not capture all citizens. That is, the duties they end up grounding, taken on their own terms, seem to be duties that are owed not only to fellow citizens, but to all long-term residents of a polity. Instead, Mason argues that the ‘only’ way to ground the special obligations of citizenship of this kind is to understand them as *constitutive* of a particular ideal of citizenship, according to which citizenship is intrinsically

¹⁹ Robert Goodin, ‘What is So Special About Our Fellow Countrymen?’ (1988) 98(3) *Ethics* 663

²⁰ Richard Dagger, ‘Rights, Boundaries and the Bonds of Community: A Qualified Defense of Moral Parochialism’ (1985) 79(2) *The American Political Science Review* 436.

²¹ Andrew Mason, ‘Special Obligations to Compatriots’ (1997) 107(3) *Ethics* 427.

valuable. The obligations of citizenship are justified because they contribute to the good of 'the wider relationship of citizenship.'

I argue that Mason's strategy also fails but for different reasons than the other two. It fails partly because it misconstrues the primary relationship of citizenship as the relationship between co-citizens. Moreover, I argue that the relationship in whose value Mason ultimately tries to ground the special obligations of citizenship cannot accommodate the duty of priority or the duty to participate as constitutive of that relationship without circularity.

In light of the patterned failure of attempts to ground the special obligations of citizenship in general moral principles, together with the failure of Mason's constitutive account, I argue that we should abandon the picture of those obligations, and the picture of citizenship that underpins it, that come to us from common sense morality. The failure to explain why citizens might, *qua* citizens, owe each other special obligations, counts in favour of rejecting the view that the primary relationship of citizenship is the one between co-citizens and adopting the core concept of citizenship I propose. In so doing, we are free to take on a different idea of the special obligations of citizenship, one that sees them as uniquely *held by* citizens, but *owed to* all those who are subject to the authority of the state.

Claims to citizenship

In practice, citizenship is given to whomever a self-determining democratic polity decides to give it to. One question that concerns both politicians and legal and political theorists is whether citizenship is always given to the *right*

people. In Chapters 6 and 7 I use the core concept to analyze who might have a moral claim to citizenship in which political communities. The first thing to recognize is that the claim to citizenship actually involves two conceptually distinct claims. The first is a claim to *basic membership*, by which I mean the legal rights and duties involved with living and working in the community's territory, or what might be called 'permanent residency status'. These qualify one as a member of the political community but not yet a citizen. To be a citizen one must also possess *democratic membership*, which consists in the legal status, rights, and duties of full membership in the demos of a democratic polity—i.e. the rights that characterize the central relationship of citizenship. A moral claim to citizenship comprises *both* a claim to basic membership and a claim to democratic membership.

The question about moral claims to democratic membership, which I discuss in Chapter 6, is closely related to what is known as the boundary question (or the boundary problem) of democratic theory. Essentially this is the problem of identifying who must be included in the demos of a democratic polity in order for it to be 'democratic', properly so-called. One of the thornier issues that surround the boundary question is finding an answer that is itself democratic without being viciously circular or hopelessly arbitrary. For example, we cannot depend on a democratic procedure to decide who ought to be included in the demos, for that supposes we know who ought to be included in the demos that makes that 'democratic' decision. Instead, we typically turn towards the values that underpin the use of democratic

procedures in the first place, in the hopes that they might ground a principle to determine who ought to be included in the demos of a given polity.

Insofar as this pertains to the question of claims to democratic membership of the sort required for a claim to citizenship in a given polity, I argue in favour of an interpretation of an autonomy-based principle proposed by Robert Dahl.²² According to what I call *the coercion principle*, all those who are normally liable to the coercive enforcement of the decisions of a demos, and whose personal autonomy is thereby threatened, have a moral claim to membership in that demos.

The coercion principle establishes only one half of a claim to citizenship, though it is arguably the more important of the two for my purposes in this thesis. In Chapter 7 I turn to the possible grounds for claims to basic membership. I argue first that it is relatively straightforward to show why anyone who has a claim to democratic membership will also therefore have a claim to basic membership, thereby showing that anyone who satisfies the coercion principle is in fact likely to have a claim to citizenship as well. Simply put, I argue that anyone who has a claim to the rights of democratic participation also has a claim to whatever non-political rights are available to other members of the demos, and whose possession is likely to affect one's capacity to exercise her political rights. So, in effect, anyone who has a claim to democratic membership will for that reason, also have a claim to basic membership, and thus a claim to citizenship.

²² Robert Dahl, *Democracy and Its Critics* (Yale University Press 1989).

However, something that emerges in the discussion of the coercion principle and claims to democratic membership is that no one is, strictly speaking, born into such claims. A claim to democratic membership and thus a claim to citizenship takes time to develop. In fact, the vast majority of people possess citizenship in a community *before* they have a moral claim to it. The reason is that most people come into their citizenship via the practice of birthright ascription: the assignation of citizenship at birth to those who satisfy criteria having to do with where one is born or one's parentage. One question this raises is whether there might be grounds for a claim to basic membership that are independent of one's claim to democratic membership—i.e. could someone who has no claim to democratic membership, nevertheless have a claim to basic membership. The answer matters for two groups in particular: children who are born into a state, and would-be immigrants to that state.

In a sense, newborns present the more puzzling case. For while extending citizenship to the children of resident citizens seems about as natural a practice as we can imagine, it is in fact quite difficult to justify in terms of the claims of the child herself. Indeed, the most plausible argument we have that children might be born into claims even to basic membership in a particular state, the argument from *constitutive ties*, at most shows only that the onus is probably on anyone who wants to show that newborns ought *not* to be given membership in a particular state at birth—they have no claim to it themselves. In the end, I argue, for the vast majority of people, the only

claims we have to basic membership arise *after* it has already been extended to us.

In sum

The topics I discuss in this thesis represent only a small sample of the issues that we face in contemporary citizenship theory. Naturally, there are far more than could be covered in a single thesis. With the exception perhaps of Chapter 3, I have tried to focus primarily on more traditional questions surrounding the nature of citizenship. I have steered clear from discussing the many novel interpretations of citizenship that have been introduced in recent years, including those that have arisen in response to beliefs about the shifting nature of state sovereignty, and the possibility of new sites for democracy on a global scale, as well things like ‘social citizenship’, ‘economic citizenship’, ‘ecological citizenship’, etc. My project, again, is to explain what lies at the heart of our common understanding of citizenship, in order that we can make sense of just what should and should not count as a novel conception of citizenship at all—it is to suggest limits on how we use the language and conceptual framework of citizenship to address questions within legal and political theory.

2 Conceptualizing Citizenship

1. Introduction

As with political theory generally, most of the questions that dominate contemporary citizenship theory are normative in nature. What legal rights and responsibilities ought citizens to have? What are the moral obligations of citizenship? What sorts of behaviours should we expect of people ‘as citizens’, should we encourage them, and, if so, how? Who ought to be recognized as citizens of which communities? Questions like these imply that what it means to be a citizen, or what follows from possessing citizenship, is different from what it means to be, e.g., a human being, a neighbour, a resident, or a tourist—they contain an underlying belief that citizenship is different from the many other ways in which people can stand in relation to each other (i.e. passively), or relate to each other (i.e. actively). Were we to ask what legal rights and responsibilities ought humans to have, or neighbours, we would expect different answers. In other words we use concepts like that of

citizenship *to distinguish* certain aspects of social and political life from all the others, and to distinguish certain groups of people from others. In this way alone can we talk meaningfully about these phenomena, about their differences, similarities, relationships, etc. Even when our goal is to theorize more broadly about, e.g., how best to arrange society, the utility of the concepts we use to do this depends in part on their capacity to fulfill this small but crucial *descriptive* function: to identify or to capture a phenomenon that is clearly and meaningfully distinguished from other closely related phenomena. Any concept that fails to uniquely pick out a particular phenomenon worth distinguishing from all the others should at the very least be questioned and, if necessary, abandoned.

This is not to deny that many deep and overlapping connections exist between the various ways in which people organize and relate to each other in social and political life. Phenomena like citizenship do not exist in isolation from other social and political phenomena, nor can the concept of citizenship be understood without reference to the heap of other concepts in which it is embedded. But the notion that ‘everything is connected to everything else’ is comprehensible only if at the same time we recognize that everything is also distinct (or, at least, distinguishable) from everything else. Otherwise, everything *just is* everything else. Nor am I suggesting that a rigorous attention to conceptual distinctions must be enforced in every realm of discourse. While striving for conceptual clarity at all times is probably desirable, it is by no means necessary for one to get by just fine in many, if not most situations. That there are times when it makes no practical difference

whether or not we attend to a distinction between, say, the concept of citizenship and the concept of nationality, as when we sometimes use the words ‘citizenship’ and ‘nationality’ interchangeably, gives us no compelling reason to assume that there is no distinction there worth noticing. I offer only the fairly uncontroversial claim that, if there is one arena in which it is almost always worth noticing such distinctions (even if only to notice their weaknesses), it is in theoretical or philosophical discourse.

One test for the basic plausibility of any answer given to a question like ‘who has a moral claim to citizenship?’ then is whether it employs (implicitly or explicitly) a useful understanding of the concept of citizenship itself, i.e. one that uniquely picks out some distinct feature of the social and political landscape. A crucial measure of success for any such understanding is that it is neither over- nor under-inclusive—that it captures neither too many cases nor too few. Broadly this means that any proffered account of the concept of citizenship fails if it captures things which are clearly not instances of citizenship, or does not capture things which clearly are instances of citizenship. An account might fail this ‘inclusivity test’ with respect to the concept of citizenship and yet still be a successful account of something else, e.g. the concept of nationality. An account might also fail this test but still be a partially successful account of the concept of citizenship if, for example, it succeeds in capturing uncontroversial examples of citizenship, and fails only to adequately capture certain borderline or peripheral examples. Of course which cases we deem borderline or peripheral can depend a great deal on where we locate the centre, on what we take to be central or paradigm cases.

There is always the chance that a ‘minor’ failure at the edges signals a deeper problem at the core, such as a failure to properly identify cases which are clearly instances of citizenship.

In this chapter I set out to defend a definition of *the core concept of citizenship*. By this I mean primarily an account of those features a phenomenon must possess in order to count as an instance of citizenship. It also tells us the necessary and sufficient conditions a person must satisfy to be a citizen, and what any theory of citizenship must ultimately be a theory of. I will begin by stating up front what I take the core concept of citizenship to be. In the next section I will take a step back in order to explain in more detail what I mean when I call it ‘the core concept’. In sections 3 and 4 consider a number of objections that could be raised against the very possibility of identifying ‘the’ core concept of citizenship, as well as some arguments for the limits of what any attempt to do so could achieve. In addressing these challenges we take the first steps towards arriving at the core concept I define. In section 5 I explain the final steps needed to arrive at the core concept. I respond to some possible objections to my account in section 6.

I would like to stress that what I defend is not itself, strictly speaking, a normative theory of citizenship—I defend no conclusions about how citizenship ought to be instantiated in political communities. Its normative aspirations extend only to the ways in which we—by which I mean primarily those engaged in the work of citizenship theory—*talk* about citizenship, about what we allow to count as an instance of citizenship or a theory of citizenship. When I put the core concept to work in subsequent chapters my goal is to

clarify what is at stake in some of the central debates within citizenship theory and what is not. That is my goal is not, in the first instance, to offer solutions to normative problems. Rather, I hope to show why the core concept I offer is the best account of all that is central to our understanding of citizenship today—why it is *the* concept of citizenship and not *a* concept of citizenship—and why it ought to serve as an anchor for any discussion about what citizenship should or will look like in the future.

The core concept of citizenship I want to defend is this:

Citizenship is an institutionally recognized relationship between an individual and a polity's laws and organs of governance. It exists (a) when an individual possesses two broad categories of legal rights and legal duties with respect to a particular polity: those of *basic membership* (i.e. the legal rights and duties of living and working within the polity's jurisdiction) and those of *democratic membership* (i.e. the legal rights and duties of full participation in the democratic governance of that community); (b) when these rights are attached to a single legal status; and (c) when this status and these rights and are in practice recognized, protected, and enforced by the polity's organs of governance, i.e. through its various officials.

2. Concepts, core concepts, and conceptions

Before setting out how we arrive at the core concept, I will make a few general remarks about the way in which citizenship is typically conceived by legal and political philosophers and theorists—not about what they think citizenship is, so much as about the way in which the concept of citizenship itself is handled. To that end I must first explain what I understand terms like 'concept', 'core concept', and 'conception' to mean, and how they are used to talk about citizenship.

Without wishing to delve too deeply into the ontology of concepts, I understand concepts to be what we use to think about the world. They consist of criteria that give shape to our understanding of phenomena we experience or imagine—of their similarities, their differences, and the relationships between them. When I say that something is an instance of the concept of X, or that the concept of X applies to a thing, I mean that that thing satisfies the criteria contained within the concept of X which inform the rules for its correct application. The definition of a concept amounts to a statement of those criteria. This does not mean that it is identical with the definition of the words we commonly use to refer to the things to which a concept applies. Different words—e.g. in different languages—can be used to refer to things of which there is a single concept. A single word in one language can also be used to refer to things to which different concepts apply—i.e. the definition of a single word can include references to phenomena to which different concepts apply. For example, the chair I am sitting on is a different kind of thing from my position as chair of my college's graduate student committee, which is different again from the chair in the philosophy of law presently held by my supervisor. Each of these uses for the word 'chair' refer to phenomena that are instances of different concepts, and the relationship between these phenomena (and their concepts) is one of metaphor, not identity. In section 2 I will discuss the ways in which failing to attend the difference between words and concepts can get us into trouble in the case of citizenship.

A core concept is a concept that captures certain central characteristics of a thing, while not itself being identical with the concept of that thing.¹ It picks out in general terms the kind of thing something is but does not serve as a complete definition of its concept. For example, among the necessary characteristics of bicycles we might include criteria like ‘two-wheeled’, ‘single track’, ‘human-powered’, ‘pedal-driven’, etc. Each of these are reflected in the necessary conditions for the correct application of the concept of a bicycle, though none of them by itself provides a sufficient condition. However, when taken together they start to look like jointly sufficient conditions for the correct application of the concept of a bicycle, most of the time.² Of course there are a number of necessary characteristics of bicycles that are not central in this way. The characteristic of ‘being a terrestrial vehicle’, which is arguably among the necessary characteristics of bicycles, adds little to the four characteristics already listed in most cases. That is it does not further specify the concept by excluding any common phenomena from the list of things that possess those four characteristics but which are not bicycles. Nor does it add to the list any phenomenon that is a bicycle but which does not possess the other four. Put baldly, ‘being a terrestrial vehicle’ captures nothing interesting about what we ordinarily think *it means* for something to be a bicycle. In other words, the core concept of X contains those criteria which capture in general terms what we think it means for something to be an instance of X,

¹ By ‘central’ I mean ‘central to our ordinary understanding’.

² They resemble what Joseph Raz calls the conditions for the minimal possession of the concept. See Joseph Raz, *Between Authority and Interpretation: On the Theory of Law and Practical Reason* (Oxford University Press 2009) 17-45.

and whose satisfaction are necessary and sufficient for the concept of X to rightly apply.

Though the understanding of ‘core concept’ just described is the one I intend for the description offered in the introduction, to avoid confusion, let me distinguish two other ways the notion is sometimes used. Sometimes, the notion of a core concept is used to refer to only a particular aspect of thing that is deemed especially important or central to the meaning of that thing. Consider, for example, the following description Andrew Mason offers of ‘the minimal core concept of citizenship’:

citizenship is a relationship in which the parties enjoy rights or entitlements within a common framework of enforcement and provision, and incur special obligations, duties, or responsibilities to each other.³

Why is this a ‘minimal core concept’ and not simply a description of ‘the concept of citizenship’ or ‘the core concept of citizenship’? The reason is that the criteria he describes apply to things other than those we recognize as instances of citizenship. Mason writes,

[this] characterization picks out elements of the idea of citizenship that are central to our ordinary understanding of it, but it does not provide a sufficient condition of citizenship, nor a definition of it, since there are other relationships that also possess these features, for example, family relationships.⁴

On Mason’s characterization, both family relationships and citizenship are examples of what we might call ‘special obligations relationships’. The concept of a special obligations relationship is distinct from the concepts of both family relationships and of citizenship. However the content of the

³ Andrew Mason, *Living Together as Equals* (Oxford University Press 2012) 1.

⁴ *ibid*1-2.

concept of a special obligations relationship is contained within the core concepts of both citizenship (on Mason's view) and of family relationships. What distinguishes citizenship from family relationships are those characteristics which can be captured within their respective core concepts *in addition to* those criteria that make up the concept of a special obligations relationship. So, for example, the core concept of a family relationship includes the concept of a special obligations relationship (or 'S') plus features 'B' and 'C', whereas the core concept of citizenship is 'S' plus 'D' and 'E'.

By way of comparison, I might employ this understanding of 'a minimal core concept' to say that 'citizenship is an institutionally recognized relationship between an individual and a polity's laws and organs of government.' In general, to stand in an institutionally recognized relationship with a polity's laws and organs of governance (or simply, 'an institutional relationship') requires only that one possesses a legal status and a combination of legal rights and duties. That is, it picks out elements that I suggest are central of our ordinary understanding of what it means to be a citizen, but they are also central to our understanding of what it means to be e.g. a permanent resident or a temporary guest worker. (I will have more to say about Mason's minimal core concept in Chapter 5.)

A related but distinct way in which the notion of a core concept is used is to specify some feature or features of a complex phenomenon that a theorist wants to isolate simply for the purposes of answering a particular question. For example, one might specify 'the core concept of citizenship' in terms of certain legal rights and responsibilities that she believes are

characteristic of citizenship in order to discuss, e.g., the possibility of citizenship beyond the nation state. Unlike the previous case, in this case the author is not necessarily saying that the legal rights and responsibilities she identifies are *the* most important thing about citizenship. She is saying only that they are *one* important feature of citizenship, and that they are the feature with respect to which she want to discuss the question she is considering.

Again, I mention these last two uses only to show how the notion of a core concept is sometimes used. The sense of core concept I intend for the definition offered in the introduction is the first one I described above. That is, the definition put forward in the introduction is not offered as simply an especially important feature of some wider core concept, nor do I mean to stipulate a particular aspect of citizenship that I want to focus on for the purposes of this thesis. The definition put forward in the introduction is offered as *the* core concept of citizenship.

Specifying the core concept of a thing is especially useful in situations where the concept of a phenomenon is controversial. Sometimes disagreement about the content of a concept happens ‘outside’ of its core. That is sometimes we agree about the core concept of a thing but disagree about which criteria must be included in a complete description of its concept. For example, we might agree that the core concept of a bicycle is a two-wheeled, single track, human-powered, pedal-driven vehicle, but disagree about whether or not it is also a necessary feature of bicycles that they are terrestrial vehicles, or that they have at least one seat, etc. When we flesh out

a core concept in different ways, we generate different *conceptions* of the phenomenon we are considering.⁵ By ‘a conception of X’ I mean simply one possible description of the full concept of X, one possible way to flesh out the core concept of X. Calling something ‘a conception of X’ is simply to acknowledge that the concept of X is, as matter of fact, contested—that there are different understandings of the concept of X available. Put differently, when we talk about conceptions of X, we are usually talking about *competing* understandings of the concept of X.

(I should pause here to emphasize that I am not suggesting that concepts, core concepts, and conceptions are different kinds of things. Core concepts and conceptions are both just concepts. What distinguishes them—or, at least, how I am distinguishing them here—is the role the first two play in discussions about the concepts of things, and the attitudes we take towards them in those discussions. A conception is simply a concept that we recognize is, in a sense, up for grabs. A core concept is just the concept of one thing that we think captures something necessary and central about something else, but is not identical to the concept of that other thing.)

Disagreement can also arise over the core concept of a thing. This kind of disagreement takes different forms. The most straightforward form it takes is a disagreement about which characteristics are necessary and central to our

⁵ The distinction between concepts and conceptions is sometimes attributed John Rawls, though he himself draws on HLA Hart. See John Rawls, *A Theory of Justice*, (rev edn, Oxford University Press 1999) 5; cf HLA Hart, *The Concept of Law* (Clarendon Press 1961)155– 159. It is not always entirely clear how either of those authors understood this distinction, e.g. whether concepts and conceptions were somehow different in kind or, as I suggest, conceptions are just different interpretations of a concept. So I cannot say for certain how close the account I am offering here comes to theirs. In any event, hopefully it is clear enough how I mean to use the distinction here.

ordinary understanding of that thing. So, for example, while I might believe that it is central to our ordinary understanding of a bicycle only that it is a single-track vehicle, someone else might think that what is central to our ordinary understanding of a bicycle is only that it is two-wheeled and pedal-driven. Note that our disagreement might be about whether being a single-track vehicle is necessary to our ordinary understanding of what makes something a bicycle *or* whether it is central to it (or both). That is, we might agree that being a single-track vehicle is a necessary condition of bicycle-ness, but disagree that it is central to it—i.e. part of the core concept. In either case our disagreement is still about the core concept of a bicycle. (In contrast, we are likely to agree that the characteristic of ‘being a vehicle introduced to Europe in the nineteenth century’, which is a part of the complete concept of a bicycle, is not a central characteristic.) Notice, too, that, unlike cases in which disagreement arises ‘outside’ of the core, when we disagree about the core concept of a thing there is always the possibility that we are not really disagreeing, but simply talking past each other—i.e. the ‘competing’ conceptions we each endorse are not really competing at all. Rather, they are simply conceptions of *different* things.

Less straightforward examples of disagreement ‘within’ the core are cases in which there is a superficial agreement about the core concept of a thing, about which criteria are central to the concept of a thing, but those criteria involve concepts which are themselves contested. For example, suppose we agree that the core concept of justice is something like ‘fairness in distributions’. Just as before, it is possible for us to agree completely on this

description of the core concept of justice, while disagreeing about the further criteria required for a complete description of the concept of justice—e.g. we might disagree about whether justice is fairness in the distribution of socially produced resources within a society, or in the distribution of all available resources within a society, etc. However it is also possible for us to disagree about the correct description of the concept of fairness, which is contained within the core concept of justice. In such cases the core concept of justice might effectively split into several ‘core concepts of justice’, each corresponding to a different understanding of the concept of fairness, each of which might stand at the centre of a conception of justice. In these cases too the question arises of whether the conceptions we develop out of our different core concepts are really conceptions of the same thing at all.

Debates about the concept of citizenship can take any of the forms just described. Some theorists agree on a core concept but disagree about how to flesh it out, and so develop what are clearly competing conceptions of citizenship. For instance when theories of citizenship are divided into camps such as liberal and republican, the disagreement that exists within each camp are usually of this sort. Others disagree about what is central to citizenship, and so develop different conceptions out of different core concepts. This sort of disagreement tends to occur between different camps (however these camps are demarcated). In such cases it is not always clear to what extent these are really competing conceptions of citizenship, since it is not always obvious that they are best understood as conceptions of the same phenomenon. And others still can be seen as agreeing superficially about the

core concept of citizenship, while defending different ideas about how its contents ought to be interpreted. In a sense this captures, at the most general level, virtually every disagreement about the concept of citizenship. This is because there is a broad agreement that, at its core, citizenship is about membership in a political community, or, perhaps, full and equal membership in a political community—but this leaves open plenty of room for disagreements about, e.g., whether ‘membership’ means ‘legal membership’, or ‘moral membership’, or both, (or something else entirely). And for whatever answer we give to *that* question, there is further room for disagreement about what constitutes, e.g., moral membership, or full moral membership, or equal moral membership, etc. Again, there is always a worry that different conceptions that could legitimately be said to have at their core the idea of ‘membership in a political community’ are, once fully fleshed out, not really best understood as competing conceptions of the same phenomenon.

Most theorists are careful to identify the level at which they mean to engage with the concept of citizenship. For example, they will often simply stipulate that they are dealing with this or that core concept of citizenship, and then engage with different interpretations of that core. Or they might stipulate a particular core concept, *as well as* a particular interpretation of that core (while perhaps acknowledging its contested nature) before going on to defend a particular conception based on that particular interpretation of that particular core concept. Fewer theorists debate at the level of the core concept of citizenship itself, about whether all of the various core concepts,

upon which the many conceptions of citizenship we encounter today are built, actually capture our ordinary understanding of citizenship. Indeed, some might regard such an exercise as not only difficult but fundamentally misguided. The concept of citizenship, they might claim, is *essentially contested*—there is no way to choose definitively between core concepts of citizenship, or between interpretations of that core, short of some act definitional legislation. I will return to the idea of essentially contested concepts, and ask whether it applies to the concept of citizenship in section 4. Now let us consider the relationship between definitions of ‘citizenship’ and the concept of citizenship to see why the latter appears to be so slippery.

3. The many meanings of ‘citizenship’

The word ‘citizenship’ has a number of different meanings or senses—it is used to refer to different kinds of things. One reason we might think that there is no single concept of citizenship is that there appears to be no single thing called ‘citizenship’ to which such a concept would apply. Rather, there appears to be a multitude of distinct phenomena that are related in various ways and to different degrees, and which just happen to attract the same label (in English, at least). Since the word ‘citizenship’ has no single definition, we might conclude, phrases like ‘the concept of citizenship’ or ‘the core concept of citizenship’ are ambiguous, at least until we know which sense of ‘citizenship’ is intended.

This view is demonstrated, for instance, when Linda Bosniak argues that questions like ‘can citizenship be denationalized?’ have no single answer because

there is no single conception of ‘citizenship’. Instead the question can be approached only in relation to the various understandings we have of the concept of citizenship more generally. Depending on whether we are addressing citizenship as a legal status, as a system of rights, as a form of political activity or as a form of identity and solidarity, the answer varies substantially.⁶

It is important to recognize that Bosniak is not here talking about different *normative* understandings (or normative conceptions) of citizenship—e.g. she is not saying that the answer depends on whether we adopt a liberal or a republican conception of citizenship.⁷ The ‘various understandings we have of the concept’ she lists are different phenomena the word ‘citizenship’ can be used to refer to, each with their own distinct concept, e.g., of ‘citizenship as a legal status’, or of ‘citizenship as a form of political activity’. She suggests that

recognizing that citizenship talk implies several distinct discourses—incommensurable or otherwise—is indispensable in any effort to make sense of claims by scholars and activists, for example, that citizenship is becoming or should become ‘denationalized’.⁸

On this view, the same might be said with respect to claims made about ‘the’ concept of citizenship generally. Call this view,

the disparate meanings thesis: There is no single overarching concept of citizenship, because the word

⁶ Linda Bosniak, ‘Citizenship De-Nationalised’ (2000) 7 *Indiana Journal of Legal Studies* 447, 452.

⁷ Nor am I suggesting that different normative conceptions will *not* yield different answers to these questions. For now, though, I want to keep separate discussions about different normative conceptions of ‘citizenship’ from the present discussion about what those conceptions might be *conceptions of*—as I believe Bosniak intends to do as well.

⁸ Bosniak (n 6) 455.

‘citizenship’ has several distinct meanings, corresponding to several distinct phenomena, each with distinct concepts, and which are implicated in distinct discourses.

According to the disparate meanings thesis, ‘citizenship’ is similar to other words that have several meanings, like the word ‘chair’. We know that the word ‘chair’ can refer to, e.g., a piece of furniture used for sitting, an academic post, or a position on a committee. Each of these phenomena have their own independent concept. There might be an interesting etymological explanation for why these phenomena attract the same label, but there is no deep conceptual connection between them. There is no single overarching concept of a chair that could be used to answer a question like, ‘are new chairs better than old chairs?’—it depends on what you mean by ‘a chair’. Similarly, according to the disparate meanings thesis, there might be an interesting historical-linguistic or sociological explanation of the relationship between the various uses we have for the word ‘citizenship’, but there is no deep conceptual connection underlying these uses.⁹ If we ask a question like ‘can citizenship be denationalized?’, the only acceptable answer in the first instance is, ‘it depends on what you mean by “citizenship”.’

However, ordinary usage of the term ‘citizenship’ is unlike that of ‘chair’ in an important way, one that points towards a different underlying conceptual picture. While both ‘chair’ and ‘citizenship’ can be used to refer to several distinct phenomena, unlike ‘chair’, ‘citizenship’ can also be used to

⁹ There are of course some excellent historical and sociological accounts of citizenship. See e.g. JGA Pocock, ‘The idea of Citizenship Since Classical Times’ in Ronald Beiner (ed) *Theorizing Citizenship* (SUNY Press 1995); Derek Heater, *What is Citizenship* (Polity Press 1999) and A Brief History of Citizenship (New York University Press 2004); Engin Isin and Bryan Turner (eds) *Handbook of Citizenship Studies* (Sage 2002). For a rigorous sociological account combined with an analysis of citizenship’s normative foundations see Thomas Janoski, *Citizenship and Civil Society* (Cambridge University Press 1998)

refer to combinations of those phenomena. When someone asks ‘are new chairs better than old chairs?’ she typically has only *one* meaning of ‘chair’ in mind—she is never asking both ‘are new university posts better than old ones?’ and ‘are new pieces of furniture better than old pieces of furniture?’ at the same time. In contrast, if she asks ‘can citizenship be denationalized?’, it would not be unusual for her to have in mind not only any one of the meanings Bosniak lists, but any two of them, or three of them, or, indeed, all of them. So while it is true that we sometimes use ‘citizenship’ to refer to something that is *either* a legal status *or* a form of political activity, etc., we also use it to refer to something that is *both* a legal status *and* a form of political activity, etc. at the same time.

That we use the term ‘citizenship’ in this way suggests we should take a slightly different view towards the relationship that exists between the meanings of ‘citizenship’ than the one entailed by the disparate meanings thesis. On this alternative view, different meanings or senses of the word ‘citizenship’ actually refer to different *aspects* or *dimensions* of a single phenomenon. Citizenship is never *just* a legal status, or a form of political activity, or a system of rights and duties, etc. Citizenship is some combination of these things all at once—different senses refer to different necessary characteristics of citizenship, and the concept of citizenship correctly applies only to things which possess all of them, even if the word ‘citizenship’ can be used to refer to each of them individually. For example, suppose someone possesses the legal status of ‘citizen’ in a polity, a status we might refer to simply as ‘citizenship’ in that polity. Imagine now that that status brings with

it no legal rights or responsibilities in that polity—it is an empty status. On the view we are considering, it would be incorrect to hold that the person who holds that status possesses citizenship in that polity, even ‘in a sense’. What she has is a piece of citizenship (perhaps a necessary piece), but not enough for the concept of citizenship to apply in her case.

On this view, diverging conceptions of citizenship might differ primarily in two ways. On the one hand, different conceptions of citizenship might interpret each of its aspects or dimensions in different ways. Citizenship might be in part a form of political activity, but it is not identical with political activity in general. Rather it is a particular kind or range of political activity. What kind or what range of political activity citizenship is is one area where conceptions of it might differ. Similarly, not all rights and duties are rights and duties of citizenship. And so on. On the other hand, different conceptions of citizenship might not place the same importance on each of its aspects. As with the bicycle example considered in the previous section, not all necessary characteristics of a thing are also central to our ordinary understanding of what that thing is. Some conceptions might present the political activity dimension of citizenship as central and the legal status dimension as peripheral (or even just less central than the political activity aspect—central elements may be ranked relative to each other) without denying that its legal status dimension is a necessary feature.¹⁰ Call this view,

¹⁰ For example, one way to understand the traditional split between republican and liberal conceptions of citizenship is in just this way—republicans do not deny that legal rights are a necessary feature of citizenship, however they place a greater emphasis on citizenship as a form of political activity or a moral relationship between those who hold the legal rights and status of citizenship.

the unitary aspects thesis: Citizenship has a single unitary concept comprising several aspects, each corresponding to a sense or meaning of the term ‘citizenship’. Conceptions of citizenship differ to the extent that each aspect is stressed or interpreted differently.

What does the unitary aspects thesis tell us about how to answer questions about, e.g., whether or not citizenship can be denationalized? We should still, as Bosniak suggests, consider the question for each of citizenship’s different aspects. Again, different interpretations of each aspect (e.g. interpretations of which are the characteristic legal rights and obligations of citizenship) will potentially yield different answers. What matters is that, on the unitary aspects thesis, no single one of these answers will necessarily be sufficient to answer the overarching question that is being asked, even ‘in a sense’. The answer to such a question ultimately depends on a holistic evaluation of the answers given with respect to each aspect, and the importance of that aspect to the overall conception of citizenship involved. A question like ‘can citizenship be denationalized?’ can in principle be given a single answer, provided that the question can in principle be answered with respect to enough of its central aspects.¹¹

I have suggested that linguistic usage points us towards the unitary aspects thesis and away from the disparate meanings thesis, but I have not mounted anything like a full defence of that suggestion. I only pointed out

¹¹ So, for example, when Hannah Arendt—against whom Bosniak positions her argument—suggests that the question ‘can citizenship be de-nationalized?’ represents a kind of category mistake, it is, on one reading, because she thinks that citizenship’s national aspect, its attachment to a single nation or state, is one of, if not *the* central aspect of citizenship. Arendt writes: ‘[a citizen] is by definition a citizen among citizens of a country among countries. His rights and duties must be defined and limited, not only by those of his fellow citizens, but also by the boundaries of a territory.’ Hannah Arendt, *Men In Dark Times* (Harcourt, Brace, and World 1968) 81.

that the mere fact that the word ‘citizenship’ has many meanings is not itself sufficient to show that there is no such thing as *the* core concept of citizenship—that scepticism towards the present project on *those* grounds is unwarranted. The remainder of this chapter (and, indeed, this thesis) proceeds on the assumption that the unitary aspects thesis is true.¹² Further defence of that assumption primarily consists in my presenting and defending a core concept that accords with it. First, though, there is one last initial hurdle to confront.

4. An Essentially Contested Concept?

Even if we accept that the meanings of the word ‘citizenship’—or, at any rate, many of them—refer to different aspects of the same unitary phenomenon, we might nevertheless think that we cannot pin down a single definition of the core concept of that phenomenon because the concept itself is *essentially contested*. W.B. Gallie introduced the notion of an essentially contested concept to explain concepts like those of ‘art’, ‘a Christian life’, and ‘democracy’. Concepts such as these, he says, ‘essentially involve endless disputes about their proper uses on the part of their users.’¹³ William Connolly later developed and refined the idea, applying it to several political

¹² This is by no means a radical assumption. That the concept of citizenship of citizenship is multi-dimensional is held by a number of contemporary theorists. See e.g. Joseph Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness* (Oxford University Press 2000); Jean Cohen, ‘Changing Paradigms of Citizenship and the Exclusiveness of the Demos’ (1999), *International Sociology* 14(3) 245–268; Will Kymlicka and Wayne Norman, ‘Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts’ in Will Kymlicka and Wayne Norman (eds) *Citizenship in Diverse Societies* (Oxford University Press 2000) 1–41.

¹³ W.B. Gallie, ‘Essentially Contested Concepts’ (1956) 56 *Proceedings of the Aristotelean Society* 169. cf Stuart Hampshire, *Thought and Action* (Viking Press 1959) 230–1.

concepts, including the concept of politics itself.¹⁴ On Connolly's formulation, a concept is essentially contested when

[it] is *appraisive* in the sense that the state of affairs it describes is a valued achievement, when the practice described [by the concept] is *internally complex* in that its characterization involves reference to several dimensions, and when the agreed and contested rules of application are relatively *open* enabling parties to interpret even those shared rules differently as new and unforeseen situations arise.¹⁵

On this view, a concept that satisfies such criteria can be described as *essentially* contested in two senses. On the one hand, it is essentially contested in that rational debate over its proper formulation and application is both inevitable and unending—the concept is open to interpretation in such a way that ‘the common resources of reason and evidence...are insufficient to reduce the number of interpretations rationally defensible to one.’¹⁶ On the other hand, it is essentially contested in that the debates over its interpretation concern features that are both necessary and central to the concept, and not merely peripheral. These (seemingly) interminable debates concern not only the application of the concept in borderline cases, but

¹⁴ William Connolly, *The Terms of Political Discourse* (3rd edn, Wiley-Blackwell 1983).

¹⁵ Connolly (n 14) 10.

¹⁶ *ibid* 226.

potentially extend to paradigm cases as well.¹⁷ If the concept of citizenship is such a concept, if it is essentially contested in both of these ways, then it would seem to follow that any definition I offer here will simply be one interpretation locked in perpetual competition with many others, with no rational hope for a victor.

At first glance the concept of citizenship looks like a good example of an essentially contested concept. The idea that the concept of citizenship is internally complex is implied by the unitary aspects thesis—so this much, at least, I have already granted. The rise of novel applications of the concept I noted in Chapter 1, and which, in part, motivates the present thesis, looks like a strong indication that the concept is open. I also suggested in that chapter that one of the reasons for this rise is the fact that the idea of citizenship is widely thought to pack a positive rhetorical punch—‘citizenship’ is, as Bosniak says, a ‘hurrah word’, one that suggests a political ideal of ‘the highest

¹⁷ On this point see Alasdair MacIntyre, ‘The Essential Contestability of Some Social Concepts’ (1973) 84(1) *Ethics* 1; and David Miller, ‘Linguistic Philosophy and Political Theory’ in David Miller and Larry Siedentop (eds) *The Nature of Political Theory* (Clarendon Press 1983). This way of understanding the ‘essential contestability’ of political concepts is itself—ironically, perhaps—contentious. One prominent critic of the Gallie model, John Gray, uses ‘essential contestability’ much more self-consciously than either Gallie or Connolly. Gray rejects that social concepts are essentially contestable in the sense that we cannot in principle reach rational agreement about their content or the nature of the things to which they apply. Rather, he argues that the claims we make about the content of such concepts, or about the nature of the things to which they apply involve ‘endless disputes’ about their content and application because they necessarily reflect our commitments to deeper, and often controversial philosophical positions regarding e.g. human nature, the good life, etc. John Gray, ‘On the Contestability of Some Social Concepts’ (1977) 5 *Political Theory* 331–48; John Gray, ‘On Liberty, Liberalism and Essentially Contested Concepts’ (1978) 8 *British Journal of Political Science* 385.

normative significance'.¹⁸ This would seem to point towards the apparent appraisiveness of the concept.

However further reflection upon what it means for a concept to be open, and on the way in which a concept must be appraisive in order for it be *essentially* contested in both of senses described above, reveals that the extent to which the concept of citizenship actually satisfies these criteria do not, in fact, present a genuine objection to the project I am here proposing. Briefly put, nothing about the way in which the concept of citizenship is open prevents us from defining a core concept, one that places far stricter limits on what counts as citizenship (or a theory of citizenship) than is commonly supposed. And while it may be true that many full-blown normative conceptions of citizenship, those interpretations of the concept which really do ring with 'the highest normative significance', will likely generate the kind of contests that seem both inevitable and unending, it is also true that we can distinguish between such conceptions and the concept of the thing they are (or purport to be) conceptions of. As we shall see, confronting the difficulties that arise in trying to define the kind of thing they are conceptions of marks the first step towards arriving at the definition of the core concept outlined at the beginning of this chapter.

Conceptual Openness

Again, on the Connolly model, the rules for the application of essentially contested concepts are such that they '[enable] parties to interpret

¹⁸ Bosniak (n 6) 451 fn 10. Later she says 'The concept of citizenship is not merely a label but a signal: to describe a set of social practices in the language of citizenship serves to legitimize them and grant them recognition as politically consequential, while to refuse them the designation is to deny them that recognition.' *ibid* 452-3.

even those shared rules differently as new and unforeseen situations arise.’ James Tully for instance suggests that this is precisely the case with concepts like that of citizenship, and of globalization, and, by extension, of global citizenship.¹⁹ This notion of conceptual openness owes much to the later work of Wittgenstein, and in particular his treatment of the concept of a game. The view that emerges from that discussion is that there is no complete or closed set of necessary and sufficient conditions that an activity might satisfy in order to be an instance of a game, nor therefore a complete set of rules for the correct use of the term ‘game’.²⁰ There are generally agreed upon exemplars of games which have some recognizable and overlapping similarities or, more poetically, which bear a family resemblance. Novel and borderline cases are inevitable but since they cannot be predicted in advance nor can they be captured by any criterial definition of the concept at any given time. In the case of essentially contested concepts, at least, the idea here is more than simply that language has an open texture and that some concepts are, for that reason, fuzzy around the edges. Essentially contested concepts are special instances of open concepts in that the indeterminacy about the rules for their application is thought to run deeper, residing within their core —i.e. they are thought to be *essentially open*.²¹

¹⁹ James Tully, *Public Philosophy in a New Key: Vol II* (Cambridge University Press 2008) 244-6. See also Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton University Press 2006) 12, 26-7.

²⁰ Ludwig Wittgenstein and GE Anscombe (trans), *Philosophical Investigations* (Blackwell 1953) 31e-35e, §66-75.

²¹ On this point see John Gray, ‘Political Power, Social Theory and Essential Contestability’ (n 17) 95. cf MacIntyre (n 17) 1-9, and Miller (n 17).

The notion of conceptual openness and of family resemblance concepts generally, as well as Wittgenstein's analysis of the concept of a game in particular, are by no means uncontroversial.²² Some philosophers have expressed doubts that even this supposedly paradigm example of an open concept resists a closed, criterial definition. Though the arguments in support of these doubts are compelling, my immediate aim is not to argue against the existence of open concepts generally, nor to deny that the concept of citizenship is, perhaps, in a limited sense, open. I mean only to explain why the apparent openness of the concept of citizenship is less of an impediment to the sort of conceptual project I have proposed to undertake than it might appear.

We may grant that the central claim about open concepts, that we cannot define in advance the rules for their proper application in every case, now and in the future, applies to the concept of citizenship to the extent that it is true that social concepts generally are liable to change or shift over time, as the institutions and practices to which those concepts apply themselves change. It is fair to say that the concept of citizenship is open to this extent because, since the dominant understandings of the concept today bear only a 'family resemblance' to what we believe the dominant understandings of the concept to have been in ancient Athens or Rome, it is plausible that the

²² See e.g. Joseph Raz, *Practical Reason and Norms* (2nd edn, Oxford University Press 2009) Chapter 4 and 'Can there be a theory of law?' in Martin P. Golding and William A. Edmundson (eds) *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell 2004). See also Colin McGuinn *Truth by Analysis: Names, Games and Philosophy* (Oxford University Press 2012). McGuinn draws from Bernard Suits, *The Grasshopper: Games, Life and Utopia* (Broadview 2005): 'To play a game is to engage in activity designed to bring about a specific state of affairs, using only means permitted by specific rules, where the means permitted by the rules are more limited in scope than they would be in the absence of such rules, and where the sole reason for accepting the rules is to make possible such activity.' Suits, *ibid* 48-9.

dominant understandings will be different again in another thousand years or two.

However, we must also recognize that such change will often if not always be incremental if it is to be recognized as change at all. Accepting a degree of openness in the concept of citizenship does not require accepting that just *any* application of words like ‘citizenship’, at any given time, will count as genuinely novel applications of the concept of citizenship. (This includes its usage in phrases like ‘a new theory of citizenship’.) Even Wittgenstein acknowledges that language sometimes goes on holiday.²³ In order for a given application of a term like ‘citizenship’ to succeed in manifesting a genuinely novel application of the concept it means to invoke it must sufficiently resemble the dominant or traditional understanding of that concept *even if* the speaker’s ultimate intent is precisely to shift or radically alter that concept’s core meaning. Otherwise the application starts to look more like an appropriation of a familiar term for the denotation of an altogether different concept than it is commonly used to signify.

A truly novel application will sufficiently resemble the dominant understanding of a concept only if it includes a good number of the latter’s central characteristics. The precise requirements for genuine novelty will depend of course on the complexity of the concept, but given that open concepts are often internally complex, the possession of a single element, even if it is a central one, will likely be insufficient. This can be true even for less complex concepts. For instance, to call a rolling trash bin ‘a bicycle’

²³ Wittgenstein (n 20) §38.

because it has two wheels is not to offer a novel application of the concept of a bicycle—it is to send one’s language on holiday. The same would be true were we to call a relationship between people, or between an individual and some wider group or community, a form of ‘citizenship’ simply because that relationship involves some rights and duties. Insofar as this resembles citizenship, it also resembles a host of other human relationships.

In sum, even if we accept a degree of openness to the concept of citizenship there must be at any given time a relatively settled core of necessary and central characteristics that even a novel conception of citizenship must include in order to count as such.²⁴ In attempting to define the concept of citizenship or, in this case, its core concept, I am attempting not only to specify the rules for the application of the concept as it is understood at a particular point in time, but also to specify broadly the restrictions for its subsequent development and change going forward.

Essential Appraisiveness

While the idea of openness provides a way to characterize the fact that any description of a concept will be (or appear to be) incomplete, it is a concept’s appraisiveness that makes contests over its definition likely to actually arise. Most of us enjoy games, to be sure, but there is not much at stake in trying to get the concept of a game ‘right’. In contrast, it is no surprise that the paradigm examples offered of essentially contested concepts are typically those which apply in the areas of politics, religion, and art—areas

²⁴ As Mason says, ‘We at least need to leave open the possibility that some radically different usages of terms such as “citizenship” do violence to the concept it expresses’. Mason (n 3) 15.

in which getting the concept of a thing ‘right’ often has as much value to us as the thing itself. It matters to us that we know whether or not a phenomenon or state of affairs is an instance of justice, or art, or democracy because justice, art, and democracy are things we want more of in the world and so we need to know how to recognize, promote and sustain them.

We use concepts in different ways.²⁵ Some concepts, like the concept of furniture, we use primarily in order to describe, identify, and distinguish things we encounter in the world. These *primarily descriptive* concepts help us to make meaningful distinctions between, e.g., furniture and forests, or philosophy and fiction.²⁶ Other concepts are used primarily in order to signal an evaluative judgement about a given state of affairs or phenomenon.²⁷ At the extreme these *primarily evaluative* concepts can apply to a wide range of different phenomena. For example the concept of admirability applies to any phenomenon or state of affairs thought to be worthy of approval or respect. A stunning landscape, a painting of that landscape, the person who painted it, the effort she put into it—any or all of these might be described as ‘admirable’. What makes any of them more or less worthy of approval or respect will be the extent to which it measures up to some standard of what we believe to be good or valuable about landscapes, paintings of landscapes, landscape painters, etc. These standards in turn ultimately draw upon a network of

²⁵ On this see Quentin Skinner, ‘Language and Political Change’ in Terrence Ball, James Farr, Russell Hanson (eds) *Political Innovation and Conceptual Change* (Cambridge University Press 1989).

²⁶ On the different uses of concepts see Connolly (n 14) 25-30.

²⁷ An evaluative judgement can of course be either positive or negative. Though in some contexts ‘evaluative’ and ‘appraisive’ are used interchangeably, to stay consistent with Connolly’s usage in the passage cited above I will use ‘appraisive’ to mean *only* ‘positively evaluative’. (I will use ‘denunciatory’ to refer to concepts with a negative evaluative valence.)

deeper beliefs about what is fundamentally good and valuable. We do not apply any concept evaluatively without drawing to some extent on our deepest moral and political commitments.

Many political concepts, e.g. those of democracy, freedom, and justice, are, on the one hand, like the concept of admirability in that they too can be used evaluatively—if we say that a society is democratic, for example, we could be saying that it meets certain standards (e.g. of political participation, debate, and accountability) of which we approve. On the other hand, compared with the concept of admirability, these standards apply only to a relatively narrow range of phenomena or states of affairs. This range is captured by what we might call their descriptive content.²⁸ Whatever their merits, paintings and landscapes cannot be ‘just’ or ‘democratic’, because the descriptive content of the concepts of democracy and justice do not apply to them. This is not to suggest that primarily evaluative concepts like that of admirability have *no* descriptive content—almost every concept which is used evaluatively has *some* descriptive content which broadly specifies the kinds of things to which it correctly applies. There is a thin sense in which even the application of a primarily evaluative concept like that of admirability involves a descriptive function. Rather, I mean only to contrast this with the more pronounced descriptive function that the application of most political concepts involves, even when they are being used evaluatively.

²⁸ With respect to the limits of linguistic philosophy regarding political concepts David Miller notes that “‘justice’, ‘freedom’, and ‘democracy’ do not operate in the same way as ‘right’... their meaning cannot be explicated wholly in terms of their appraisive function.” Miller (n 17) 41.

A concept's evaluative function contributes to its being *contestable*—what we might call its contingent or empirical contestability—because, as was just mentioned, it draws upon a network of fundamental beliefs about what is good and valuable. As an empirical matter we know that contests over what is fundamentally valuable, over our deepest moral and political commitments are commonplace—they are as much the stuff of politics and punditry as they are of legal and political philosophy. Any disagreement that occurs at this fundamental level naturally has the potential to translate down the line into contests over the proper application of a concept whose evaluative function is parasitic on those beliefs. This much, at least, is fairly straightforward. In order for a concept's evaluative function to contribute to its *essential* contestability, in the two senses implied by the Gallie-Connolly model, two further things must be true. First it must be the case that disputes about fundamental values cannot, in principle, be resolved. If it is possible that we can reach rational agreement about what is fundamentally valuable, if the disagreement at this level is merely contingent upon, say, having enough time to work it out through rational discourse, then a concept whose evaluative function rests on one's beliefs about what is fundamentally valuable will not be essentially contested in the first sense. Second it must be the case that *every* proper application of the concept in question involves its evaluative function—i.e. the concept must be necessarily or essentially evaluative. If the evaluative aspect of a concept is not itself a necessary and central aspect of the concept and, moreover, unless its evaluative valence is fixed, it will not be essentially contested in the second sense. This requires some explanation.

Not every concept that we use evaluatively is essentially evaluative. Consider the concept of patriotism. The concept of patriotism applies to a particular attitude of commitment and loyalty towards a country or nation. This much is captured by its descriptive content. The concept also has an evaluative function. In some circumstances the attitude to which the concept applies is regarded as laudable, e.g. as a sort of selfless dedication to a wide and worthy cause. In other circumstances it is regarded as reprehensible, e.g. as a sort of mindless dedication to an unworthy cause, an exchange of independent thought for a kind of sentimental groupthink. To apply the concept of patriotism to something, then, could be to signal one's approval or disapproval of it, depending on the context.²⁹ Importantly, regardless the evaluative valence intended by the concept's application, the descriptive content of the concept remains the same—the concept applies to the same range of cases whether the attitude to which it applies in any given case is thought to be laudable or reprehensible, or even if there is disagreement on this score.³⁰ Where agreement on the evaluative valence of a concept's application is not a precondition to agreement about its application generally, where its evaluative function has no bearing on its descriptive content or the rules of its application, then it is also possible to apply the concept 'merely' descriptively. The concept of patriotism can be applied simply to pick out a phenomenon as an instance of patriotism without necessarily evaluating that phenomenon. In this sense, then, such a concept is not essentially evaluative.

²⁹ Quentin Skinner discusses how the evaluative valence of the idea of 'patriot' fluctuated in England in the 18th century. Skinner (n 25) 16.

³⁰ In other words, the relationship between its descriptive content and its evaluative function lack what Connolly calls 'a dialectical relationship'. Connolly (n 14).

Contrast this with a concept whose evaluative function is a necessary feature of its application and whose evaluative valence is fixed: the concept of justice. Like the concept of admirability the concept of justice is always applied evaluatively and moreover always has a positive evaluative valence—nothing is called ‘just’ that we do not approve of in a particular way.³¹ It is, in other words, *necessarily* or *essentially appraisive*. Again, compared to the concept of admirability, however, the concept of justice has a narrower range of application. In particular, the concept of justice applies only to distributions.³² To call something ‘just’ is to say not only that we approve of it but that we approve of it *qua* distribution. A portion of the descriptive content of the concept of justice, then, is fixed—namely, that portion which on its own makes up the concept of a distribution *simpliciter*. However, since not all distributions are just, but only those that we approve of *qua* distributions, the remainder of the descriptive content (and thus the rules for the proper application) of the concept of justice must be informed by our standards for what counts as a good distribution *qua* distribution. And, again, these standards in turn ultimately depend on our deeper beliefs about what is of fundamental value. In other words, we will not agree on the complete descriptive content of the concept of justice, nor, therefore, the rules for its correct application, unless we agree on what counts as a good distribution.

³¹ We might not, all things considered, approve of a situation that could be described as ‘just’ because it is deficient according to some other standard, e.g. efficiency, which we believe to be (a) distinct from justice and (b) a more important measure of that particular situation.

³² Or, more specifically, to distributions among moral agents. Obviously, we also describe things that are not themselves distributions as ‘just’ or ‘unjust’. However we only do so in cases where some distribution is involved. e.g. A court is just if it distributes just decisions; A social institution is just if it justly distributes some right or resource or opportunity, etc.

And agreement about that ultimately depends on agreement about what is of fundamental value. Here, then, we see why a concept must be essentially evaluative—or, more precisely, either essentially appraisive or essentially denunciatory—if it is to be *essentially* contested in the two senses implied by the Gallie-Connolly model. To be essentially contested, it must be the case *both* that agreement about what is of fundamental value is impossible *and* that agreement on what is of fundamental value is necessary in order to determine the descriptive content (and thus the rules for the proper application) of that concept.

Now, assessing whether disputes about fundamental values can in principle ever be resolved would take us into deeper philosophical waters than I can do here. It involves addressing questions about the unity or plurality of fundamental values—a much larger project than I have proposed to undertake. It is also unnecessary since I only need to show that the concept of citizenship is not essentially evaluative and so for *that* reason is not a good example of an essentially contested concept. That is, I only need to show that the concept of citizenship is one whose core descriptive content does not depend on any agreement about what is of fundamental value. In showing why this is the case, I will also make the first moves towards the core concept I offered in the introduction.

Is the concept of citizenship essentially appraisive?

Again, the claim that the concept of citizenship is essentially contested depends on its being essentially evaluative. As I mentioned above, it is certainly often used appraisively. And I suspect many people would agree that

citizenship is 'a valued achievement'. However, conceiving of it as *essentially* appraisive raises some questions. Even if the concept of citizenship were essentially appraisive then, as with the concept of justice, we would still expect to find within its descriptive content a relatively fixed subset of criteria that broadly specify the kind of thing to which the concept applies, in addition to whatever criteria specify the particular form that kind of thing must take in order for it to be worthy of our approval *qua* whatever kind of thing that it is. That is we would expect to find something analogous to the concept of a distribution in the case of justice. What might this be? The most obvious answer is something like 'membership in a political community'. That is, we might hold that the concept of citizenship rightly applies only to instances of political membership that we approve of *qua* political membership. In which case, the concept of citizenship would appear to be essentially contested because we disagree about what precisely is the 'good' or 'ideal' form of political membership, and we disagree about *that* because we (perhaps necessarily) disagree about what is ultimately good and valuable.

So far, so good, perhaps. However, now we must ask what counts as political membership *simpliciter*? For example, are there instances of political membership to which the concept of citizenship does *not* apply? Are there 'un-citizenly' instances of political membership just as there are unjust distributions (to which the concept of a distribution nevertheless applies)? Certainly people can be non-citizens with respect to a given polity. Those who are resident citizens of only one polity are clearly non-citizens with respect to every other polity. However we do not think that such people are

non-citizen *members* of all other polities. At a minimum, to have political membership in a polity requires possessing at least some of the aspects of citizenship we identified in section 2, or possessing all of them to some degree. That is, at a minimum, having political membership in a polity involves, e.g., having a legal status, and a bundle of rights and duties within that polity. Or, to put it in the terms of the core concept suggested above, political membership in a polity requires standing in some sort of institutionally recognized relationship with that polity's laws and organs of government.

Of course, there are people who have a legal status together with various rights and duties (both moral and legal) within specific polities who we also think of as non-citizens, such as tourists, long-term residents, guest-workers, etc. Could we say that such people nevertheless possess political membership? Is the possession of just *any* legal status, or *any* set of (legal or moral) rights and duties, etc., with respect to a particular polity sufficient for political membership *simpliciter* there?

Suppose we answer 'yes': anyone who has some legal status and some set of rights and duties within a polity thereby possesses a form of membership in that polity—the concept of citizenship rightly applies only to that combination of status, rights, duties, etc. which measures up to some evaluative standard we have for political membership *qua* political membership. One consequence of taking this view is that non-citizen members such as permanent residents, guest workers, or tourists would have to be seen as possessing forms of political membership that we regard as

normatively deficient. That is, we would have to think that permanent residents and other non-citizen members do not simply have a *different* status or *fewer* rights and duties than citizens do. Rather there is something *wrong* with the form of political membership they possess *qua* political membership and this is the reason why the concept of citizenship does not apply to it. This is untenable. There is nothing necessarily normatively deficient about the sort of institutional recognition that permanent residents or tourists typically get. We typically regard it as entirely appropriate that those whose institutional relationship to a polity is temporary or who have been resident only a short while should have a different form of institutional recognition within that polity than those who are long-term and fully integrated participants in the polity's social life. That is, the difference between the institutional recognition that citizens, permanent residents, and tourists receive is usually thought to reflect their different moral claims with respect to that community.³³

The point here is not to deny that tourists (and long-term residents, guest workers, etc.) have what could rightly be described as 'less-than' or a 'thinner' form of whatever it is that citizens possess *qua* citizens. It is that if we regard political membership as consisting in the possession of (at a minimum) any legal status and any combination of rights and duties within a polity, then the lesser-than or thinner political membership of, say, tourists should be contrasted with the more-than or thicker membership of citizens,

³³ Of course we can and do debate the grounds for the different claims for institutional recognition that visitors, residents, or citizens might have. I discuss some of these in Chapters 6 and 7.

rather than the ‘better’. The application of the concept of citizenship to an instance of political membership would not *necessarily* involve evaluating that membership—it could be used simply to distinguish a form of political membership within a community that is thicker than the others.

Suppose instead that we answer ‘no’ and say that *only* those who possess the status, rights, and duties of citizenship (whatever these are) count as members of the polity.³⁴ On this view, the definition of the concept of citizenship (when it is understood as an essentially evaluative concept) now starts to look unhelpfully circular. On the one hand it says that the concept of citizenship applies to instances of political membership that are worthy of respect or approval *qua* political membership. On the other hand it says that there are no instances of political membership which are not also instances of citizenship—i.e. there are no instances of political membership that we do not approve of *qua* political membership. In which case, applying the concept of political membership to a thing seems to do the same evaluative work that (we are supposing) is done when we apply the concept of citizenship. At the same time it appears to do none of the descriptive work within the concept of citizenship that we initially supposed it would. It does not help us to distinguish citizens from tourists, or guest workers, or resident non-citizens. Political membership *just is* citizenship. Of course there is nothing wrong with calling the same concept by two different names. We cannot however define the content of a concept by reference to itself.

³⁴ Some theorists seem to adopt this view. See e.g. Sue Donaldson and Will Kymlicka *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press 2011). I discuss this aspect of their theory in Chapter 3.

We might here consider a possible middle ground. We might say that the threshold for political membership lies somewhere between the status, rights and duties of a tourist and having the status, rights and duties of a citizen, while the threshold for citizenship lies somewhere ‘above’ being a political member *simpliciter*. This seems a plausible description of how many normally conceive of the different institutional relationships with the state that people can have. For instance, we might draw the line at, say, permanent residency—all permanent residents can be considered members of the polity, but the status, rights, and duties of permanent residency (such as the rights to live and work within the state’s territory) are not themselves sufficient for citizenship. The first thing to notice is that this view involves a sort of descriptive mismatch. There exist a number of states in which, for the vast majority, the rights and duties of ‘citizenship’ consist in little more than the rights and duties of ‘permanent residency’ elsewhere. That is, there are states in which ‘citizens’ do not have the (legal) rights of political participation that those who are ‘citizens’ in democratically governed states have. So it seems that we must either accept that, though they are called ‘citizens’, the concept of citizenship does not properly apply to the institutional relationships the members of non-democratic states have, or we allow that permanent residency *is* a kind of citizenship.

The latter option seems to reintroduce the circularity problem considered above—if permanent residency is sufficient for political membership, *and* it is also sufficient for citizenship, then the concept of citizenship cannot be essentially appraisive because there are some people for

whom permanent residency is the normatively appropriate relationship for them to have. We might however try to modify this option to avoid this problem. We might suggest that what looks from the outside like ‘mere’ permanent residency actually does count as citizenship when it constitutes the most robust bundle of rights and duties available in that state. That is, we might define citizenship simply as the form of political membership with ‘the fullest’ bundle of rights and duties available in a given state. On the one hand, this would give up on the idea that the concept of citizenship is essentially appraisive, since it would be possible to apply such a concept ‘merely’ descriptively by simply counting up rights and duties. On the other hand, it is a problematic formulation. Consider a tyrannical state in which for anyone who wasn’t the monarch, the fullest or most robust bundle of rights included few or no actual rights. Could the concept of citizenship apply to the monarch’s subjects? In the modern era, at least, there is a long history of understanding citizenship precisely *in opposition to* this kind of mere subjecthood.³⁵

We might try to rescue this definition by combining it with the idea of political membership as permanent residency: citizenship is the fullest form of political membership available in a polity, where political membership is defined as the possession of a status, rights, and duties that include, at a minimum, those of permanent residency. This is a more plausible formulation

³⁵ See, for example, the entry ‘citoyen’ in Diderot, D’Alembert, J Le Rond (eds) *Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers*, Tome 3 (chez Briasson [et al], 1753) 488–489. Though cf Thomas Hobbes *Leviathan*, R. Tuck (ed) (Cambridge University Press 1991 [1651]) 148–9. In fact, the idea that citizenship cannot exist in a monarchy originates with Aristotle. Aristotle and E Barker (trans, ed) *The Politics of Aristotle* (Oxford University Press 1958).

descriptively speaking, since few would object to the claim that those who lack the rights of permanent residency should also be said to lack citizenship. Still, it preserves the notion that the concept of citizenship is essentially appraisive only if we interpret 'fuller' to mean 'better', normatively speaking. That is, if we adopt this definition of the concept of citizenship, and we want to maintain that it is essentially appraisive, then we must also accept that for any polity in which permanent residency is not the 'fullest' status available, it is also a 'worse' status than citizenship. Again, though, this is untenable just as long as we believe that, for some people in that state, a status of permanent residency differentiated from citizenship is the normatively appropriate status for them to have.³⁶

In sum, in order to hold that citizenship is *both* essentially appraisive *and* applies only to certain forms of political membership requires either that we adopt an unhelpfully circular definition of political membership/citizenship, or we adopt an untenable view regarding the normative status of non-citizenship forms of political membership, e.g. tourist or permanent resident. We should of course reject both of these options. We must then choose between either holding that the concept of citizenship is essentially appraisive, but that it applies to something other than instances of political membership, or denying that it is essentially appraisive and leave open the possibility that it applies to some form of political membership. Of these,

³⁶ Someone might argue that anyone who is normally permanently resident within a state's territory has a moral claim to the full range of political rights in that state. i.e. Permanent residency is never the normatively appropriate status for someone to have and is therefore always *worse* than citizenship. While this is probably true for most people in the long run—I argue as much in Chapter 6—it is less obviously true that such a claim is developed instantly. That is, even if we think permanent residency is an inappropriate status to hold indefinitely, it might still be an appropriate status for people to hold while 'normal' residency is established.

only the latter is plausible. Finally, if, having rejected the essential appraisiveness of the concept of citizenship, we still hold that the concept should apply only to certain forms of political membership—i.e. rather than being identical with it—then we must accept that the concept does not properly apply to some instances of political membership which are *called* ‘citizenship’. (I will return to this point in this next section.)

This section has had two primary aims. The first was to show that whatever openness there is in the concept of citizenship is not an obstacle to the project I have proposed to undertake: to define a core concept of citizenship that anchors our common understanding of a particular social and political phenomenon, even as novel applications of that concept are offered. The second was to show that the concept of citizenship is not essentially appraisive in such a way that would render even the core concept I propose *essentially* contested. To define the core concept of citizenship does not in principle require that one takes a stand on any question of what is fundamentally valuable, only on what is analytically expedient vis-à-vis distinguishing certain features of our political world. Finally, from this discussion, two claims in particular have emerged that move us toward the definition of the core concept offered in the introduction to this chapter. The first is that the concept of citizenship applies to a particular form of political membership. The second is that political membership requires, at a minimum, that one stands in an institutionally recognized relationship with respect to the laws and organs of government of a polity.

5. The Core Concept, and Some Objections

We now have the first element of the core concept: citizenship is an institutional relationship. We also now see the basic obstacle to defining the core concept further, namely, how do we determine *which* institutional relationship or relationships the concept of citizenship applies to.

Completing the Core Concept

We might be tempted simply to canvas all those institutional relationships to which the label ‘citizenship’ presently attaches. Here we encounter a problem mentioned above. An institutional relationship that is called ‘citizenship’ in one jurisdiction might look no different than an institutional relationship that is called ‘permanent residency’ in another jurisdiction (one in which ‘citizenship’ attaches to a different institutional relationship). Moreover, again, a group whose institutional relationship within a polity is characterized by the absence of rights, such as a group of ‘mere’ subjects or even slaves, could be *called* ‘citizens’. Indeed, this is one of the problems with treating what is called ‘citizenship’ in the context of international law a genuine instance of the concept of citizenship. In that context, one’s ‘citizenship’—or ‘nationality’, the terms are used interchangeably—in a state means little more than that one has some sort of long-term institutional relationship to that state, that she is ‘assigned’ to it, regardless the precise nature of that relationship. As Sue Donaldson and Will Kymlicka note, slaves in the United States were at one time recognized as ‘citizens’ in this sense.³⁷ So we cannot

³⁷ Donaldson and Kymlicka (n 34) 56.

use how the label ‘citizenship’ is applied in *all* states to identify a sort of lowest common denominator without rendering the resulting concept of citizenship so expansive as to be either essentially devoid of meaning or internally contradictory.

We might instead ask to what sort of institutional relationship the label attaches in *most* contemporary states. This approach is more promising. According to recent estimates, over half of the world’s states are recognized as being governed democratically, though admittedly to varying degrees.³⁸ And in any democratic country, what distinguishes the institutional relationship called ‘citizenship’ from the other institutional relationships available is largely consistent. Take for example Canada, Costa Rica, Norway and New Zealand.³⁹ Each of these countries has at least one form of ‘non-citizen’ permanent residency that allows those who possess it to work, live and travel freely within the state’s jurisdiction and often to have access to all or most of the social benefits available in that state. What distinguishes ‘citizenship’ from ‘permanent residency’ in each of these countries is that, in addition to the rights and duties possessed by permanent residents (what I am calling *basic membership*), ‘citizens’ also have the right to vote in elections and hold public office at all levels of government.

³⁸ See e.g. Richard Bellamy, ‘Introduction’ in Richard Bellamy and Antonio Palumbo (eds) *Citizenship* (Ashgate 2010) *xii*.

³⁹ These countries scored highest in their respective world regions on the Economist Intelligence Unit’s Democracy Index, and so represent uncontroversial examples of democratic states. Economist Intelligence Unit, ‘Democracy Index 2012: Democracy at a Standstill’ <<http://pages.eiu.com/rs/eiu2/images/Democracy-Index-2012.pdf>> accessed March 1 2015.

Of course there are a number of democratic states, including some of those mentioned, which extend at least some voting rights to non-citizen residents immediately or after a certain period of time. However, these are usually restricted to local or regional elections and rarely include the right to hold public office at any level. Let us distinguish then between what I will call *democratic inclusion* (i.e. the rights and duties of *limited* participation in the democratic governance of the polity) and *democratic membership* (i.e. the rights and duties of *full* participation in the democratic governance of the community). In each the four countries mentioned, the institutional relationship to which the label 'citizenship' attaches is one that involves both basic membership and democratic membership, and, moreover, it is the only such relationship. In other words, the combination of basic membership and democratic membership is both necessary and sufficient to attract the label 'citizenship' to a particular institutional relationship in states which are uncontroversially democratic.

While this provides good *prima facie* support for the definition of the core concept of citizenship I have offered, two things must be noted. The first is that the *reason* the majority of states today are, or strive to be, or simply claim to be, democratically governed is because this is widely believed to be the most legitimate form of governance. So it might appear that, in focusing on the difference between the institutional relationships of citizenship and permanent residency in democratic states, I am tacitly endorsing a certain normative picture of citizenship, rather than simply 'describing' its core concept or central meaning. This is half-right. It is true that most normative

theorizing about citizenship today takes place against a background assumption of liberal democracy, i.e., that principles of liberal democracy, broadly construed, are the right ones for organizing political communities. All substantive debate revolves around the fundamental nature of those principles and how they are to be realized in practice at the particular level. The broad strokes of how they apply, however, are largely uncontroversial. For instance, no one holds that the ideal form for citizenship to take is one in which citizens *do not* have the rights and duties of basic membership and democratic membership.⁴⁰ Where normative theorists tend to disagree is about what form precisely these rights should take, or what are the moral grounds for their possession, or what might follow (morally speaking) from standing in the institutional relationship of citizenship, etc. So while it is fair to say that the core concept of citizenship I offer is essentially a basic description of *democratic citizenship*, it is a mistake to make the further claim that I am thereby endorsing the dominant normative framework. Rather, I am saying that, in light of the dominant normative paradigm, combined with the facts about how states actually distinguish between the institutional status of ‘citizenship’ and its closest alternative—‘i.e. permanent residency’—we can safely define the core of our contemporary common understanding of

⁴⁰ This is uncontroversial, at least, in the context of the modern nation state. Some theorists advocate new forms of ‘citizenship’ for which democratic membership alone is sufficient, e.g., because democratic governance has devolved from centralized government to many ‘overlapping jurisdictions’ such people become members of many *demos* whose scope does not include the rights and duties of basic membership in a particular location. See e.g. David Held, ‘The Transformation of Political Power’ in Ian Shapiro and Casiano Hacker-Gordon (eds) *Democracy’s Edges* (Cambridge University Press 1999); David Held, *Democracy and The Global Order* (Stanford University Press 1995) Ch. 10. Whether or not we count these as novel forms of citizenship, rather than simply new kinds of political membership, depends on whether or not we think they resemble closely enough the core concept we have *now*—i.e. one that centres on a particular form of membership in a particular form of political community.

citizenship in the terms I have offered. So long as we think that the concept of citizenship should help us to distinguish between citizens and permanent residents, tourists, business travellers, refugees, etc., we should define the core concept of citizenship as I have suggested.

The second thing to note about this way of arriving at the core concept of citizenship is that for it to succeed we must take a fairly broad, minimalistic understanding of ‘democratic governance’, one that is compatible with the widest possible range of ‘thicker’ normative conceptions of what democracy entails. Again, just because a state *calls* itself ‘democratic’ does not mean that it is actually democratic, on anyone’s account. At a minimum a state must be governed using what we would normally recognize as democratic procedures among those who are in fact entitled to a share in power. Even a state that is governed by an autocratic elite might be said to be democratically governed according to this minimal understanding if, for instance, members of that elite each have an equal share in power, make decisions by voting, etc. In such a state, the concept of citizenship could only rightly apply to members of the ruling elite, while those whom they govern, even if they are called ‘citizens’, would have to be categorized conceptually as, e.g. subjects or, if they were afforded the rights of basic membership, perhaps, permanent residents.

The observation that being called ‘citizenship’ or ‘democratic’ is not sufficient for a thing to actually be an instance of citizenship or democracy, also makes apparent the need for the final piece of the core concept of citizenship—that the relationship consisting in basic membership and democratic membership must be institutionally *recognized*. Even the most

autocratic states today *define* the institutional relationship of ‘citizenship’ in a way compatible with the core concept. However the extent to which the concept of citizenship properly applies to the ‘citizens’ of those states is marginal. Imagine a spectrum on one end of which sits mere subjecthood and on the other end sits the most robust form of democratic citizenship we can imagine. Somewhere in between lies both what is called ‘citizenship’ in Norway, and what is called ‘citizenship’ in North Korea.⁴¹ From the perspective of the constitutions of each country alone, both examples of ‘citizenship’ are instances of an institutional relationship of basic and democratic membership. That is, they are both legally defined in such a way that satisfies two of the necessary criteria for citizenship. In practice, however, the extent to which the rights and duties of basic and democratic membership of Norwegian ‘citizens’ is recognized, protected, and enforced by Norwegian officials is vastly different from the extent to which the same is true of North Korean ‘citizens’. The institutionally *recognized* relationship in which the ‘citizens’ of North Korea actually stand with respect to that country’s laws and organs of government falls much nearer the subjecthood end of the spectrum than the citizenship end. Again, provided that we do not conceive of the spectrum itself as a spectrum of ‘citizenships’, such that the concept of citizenship would apply even to those who are treated as mere subjects, who are ‘citizens’ in name only, we see why the institutional recognition of one’s basic and democratic membership must be a necessary condition for citizenship.

⁴¹ i.e. The most and least democratic states respectively, according to the report cited above (n 39).

We have arrived, finally, at the core concept of citizenship with which we began. Accepting it has a number of implications that will be explored in subsequent chapters. Some of these implications might even seem to provide reasons not to accept the core concept as I have defended it here. I will address these as they arise. In the remainder of this chapter I want to address a few general concerns that might arise regarding the core concept or how we have arrived at it.

Ideals of citizenship

Though I have argued that the concept of citizenship is not essentially appraisive, it might appear that I have not yet adequately explained the fact that the idea of citizenship is widely treated as such. This fact is evidenced by the rhetorical strength of ‘citizenship’ as an appraisive term which I have twice now noted myself. If the concept of citizenship is *not* essentially appraisive, if it is not the concept of an ideal, then why does it so often appear to be treated so? When philosophers disagree about whether we ought to adopt a liberal conception of citizenship or a republican one, or a libertarian one, etc., are they not clearly disagreeing about (a) the concept of citizenship and (b) the concept of an ideal? ‘Liberal citizenship’, ‘republican citizenship’—these tell us how about how political communities ought to be arranged, about how citizens ought to behave, etc., and offer a yardstick with which to measure our progress. Am I denying that these philosophers are disagreeing about the concept of citizenship?

Yes and no. Again, the question is, if, e.g., a liberal conception of citizenship is an ideal, what is it the ideal of? It cannot be the ideal of

political membership, as we have seen, and yet it seems wrong to deny that the concept of citizenship applies to at least some forms of political membership. Normative conceptions of citizenship must be understood as theories about what form we think a *particular* kind of political membership should take. Citizenship *simpliciter*, as captured by the core concept, is just that particular form of political membership. What is captured by the core concept applies to cases that most or all normative theorists would agree are instances of citizenship, and that most or all non-theorists would also recognize as instances of citizenship. In this sense the core concepts captures what is central to our common understanding of citizenship, of what the various ideals of citizenship are ideals of.

The Central Relationship

At this point it might be objected that at least some normative conceptions, and especially, perhaps, republican conceptions, *do not* identify the central relationship of citizenship as the one between individuals and the laws and organs of governance of a democratic state. Rather, they see citizenship as primarily a relationship *between* co-citizens, while the institutional relationship is, in a sense, derivative. Far from capturing a ‘common understanding’, focusing on the institutional relationship of citizenship will perhaps appear to be a decidedly partisan move. That is, it might be seen as demonstrating a bias towards liberal normative conceptions of citizenship.

It might be true that the core concept has more in common with liberal conceptions of citizenship than with republican ones. In a sense, though, this is beside the point. Again, the differences between various normative conceptions of citizenship typically occur above and below the level at which I am focusing. On the particular level, they differ in what precisely the legal rights and duties of citizenship are, or the extent to which those who are co-citizens owe each other moral obligations, e.g. to exercise certain of those rights, or to do so with a particular attitude or mind set. On the fundamental level, they differ with respect to the nature and content of the principles that ultimately inform, ground, or otherwise determine those particulars. The level at which I am engaging stands in between, and is one at which we see a good deal of overlap with respect to what is necessary and sufficient for something to count as an instance of citizenship.⁴²

Even so, it might be objected, why is *this* the level at which the *core* concept of citizenship is to be identified? Why is the core concept of citizenship not to be identified at the most fundamental level? For instance, suppose we hold that the only reason we want people to have the institutional relationship I have described is *in order that* they might stand in a particular (and primarily moral) relationship of ‘co-citizenship’, or ‘equal membership’ with other people. The institutional relationship is simply a necessary precondition for the relationship we are really after, and it is the definition of

⁴² Indeed, as I discuss in Chapters 4 and 5, to be a co-citizen in the moral sense presupposes that one is a citizen in the institutional sense captured by the core concept. i.e. There is no defensible understanding of citizenship according to which standing in a particular moral relationship to a particular group is alone *sufficient* to be a citizen. Moreover, even on those conceptions that stress the moral relationship between co-citizens, the possession of ‘mere’ institutional citizenship still qualifies one as a citizen, even if on its own it is only citizenship in a weak or impoverished sense.

the latter which should be understood as ‘the core’. Or, to put it another way, the *point* or *purpose* of the relationship between individuals and their governments is the realization of a particular relationship between individuals and each other.⁴³ Why is *that* relationship not more central to the concept, more an expression of citizenship’s core meaning, than the institutional one that is ‘merely’ instrumental to its realization? Suppose someone disagrees with this account of the point or purpose of the institutional relationship. Suppose she thinks that its point is really to provide individuals a certain level of security and freedom to pursue their private goals, and the opportunity to periodically hold their governments accountable. Even if we all agree that it is both necessary and sufficient for any individual who is a citizen to stand in that institutional relationship, if we disagree about the point of that relationship, are we not really disagreeing about the ‘core’ concept?

In a sense this objection is less about the point or purpose of citizenship itself, but the point or purpose of an inquiry into our common understanding of citizenship, i.e., of the project I propose to undertake in this thesis. If we assume that either the republican ideal of citizenship, or the liberal ideal of citizenship, or some other ideal of citizenship is *the correct* ideal of citizenship, the ideal towards which all political communities ought to strive, then it does not matter what the common understanding of citizenship is. All that matters is what is *true* about citizenship. If the republican ideal is true, then we must answer questions about citizenship using the republican

⁴³ Here I have in mind the Aristotelian methodology for describing social concepts that has been brought into contemporary legal theory in the work of John Finnis. See John Finnis, *Natural Law Natural Rights* (Oxford University Press 1980) Ch.1.

ideal. If the liberal ideal is true, we must use the liberal. And so on. What I am suggesting, however, and what I hope to defend over the course of this thesis, is that *it does not matter* which normative theory of citizenship is right when it comes to asking and answering certain key questions about citizenship. In fact, it does not matter if any particular ideal of citizenship is exclusively the 'right one'. There may be more than one point to the relationship I am describing, it might serve more than one function.

6. Conclusion

The primary aim of this chapter has been to offer a definition of the core concept of citizenship, to explain its role how we go about theorizing citizenship, and to defend its basic plausibility. The defence I have offered here should be taken as preliminary. In subsequent chapters, as I put the core concept to work, using it to show we might frame our discussions about several key issues within citizenship theory, I will confront and defend against further objections that could be raised against the core concept.

3 Animals and the Limits of Citizenship

1. Introduction

In chapter 2 I offered a particular understanding of the core concept of citizenship, one that I suggested should serve as a touchstone for theorists who seek to propose novel interpretations or applications of the concept, including applications to new kinds of institutional relationships individuals might have with political communities. I also offered a preliminary defense of the core concept as I defined it. Over the next few chapters I will develop that defense by considering other aspects of citizenship that might be thought to have a place, indeed even a prominent place, in the core concept in addition to the institutional relationship I described. I begin in this chapter by looking at an argument that takes a much more expansive view of the concept of citizenship than I have argued we should.

In their book *Zoopolis: A Political Theory of Animal Rights*, Sue Donaldson and Will Kymlicka argue that progress on the issue of animal

rights, both in theory and in political practice, has stalled.¹ They say that we must move beyond a focus on grounding basic and universal rights for animals and investigate the normative implications of viewing them as co-members of our political communities.² To this end, they advocate extending the theoretical framework of citizenship to include animals. In this chapter I raise a number of worries in respect of this proposal. While the language and categories of citizenship might provide useful analogies for how we might conceive of more comprehensive and differentiated rights for animals, I argue that extending citizenship theory—or, indeed, citizenship itself—to encompass animals requires implausibly expansive conceptions not only of citizenship, but also of political participation and responsibility.

Donaldson and Kymlicka's analysis also provides an opportunity for me to consider an objection that might be raised against the concept of citizenship I am defending. Namely, that I have ignored, or dismissed too quickly certain uses of 'citizenship' that signal meaningful understandings of the concept, or expressions of citizenship in practice. For while Donaldson and Kymlicka ultimately argue that animals can (and should) possess citizenship in the sense implied by the concept defended in this thesis, they also argue that animals can be citizens in these other, more expansive senses. Indeed, their argument in defense of this claim rests almost entirely on a

¹ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press 2011). For critical discussion of their project as well as a reply, see Alasdair Cochrane, 'Cosmozoopolis: The Case against Group-Differentiated Animal Rights' (2014) *Law, Ethics and Philosophy Journal* 1; Oscar Horta, 'Zoopolis, Intervention and the State of Nature' (2014) *Law, Ethics and Philosophy Journal* 1; and Sue Donaldson and Will Kymlicka, 'Animals and the Frontiers of Citizenship' (2014) *Law, Ethics and Philosophy Journal* 1.

² In general, 'animals' should be understood to mean 'non-human' animals.

premise that I will grant up front—that animals qualify for a moral status of personhood on a level with that possessed by humans.

Before proceeding, I should circumscribe my remarks in the following way. One might think that if it can be shown that animals cannot or should not be regarded as citizens then we should doubt the more general claim that animal rights theory might be advanced *via* citizenship theory. However, this conclusion does not follow if we meet Donaldson and Kymlicka, as far as possible, on their own terms. For they adopt an ‘expansive’ conception of citizenship theory, one that encompasses not only our conceptions of citizenship, but also our conceptions of sovereignty, denizenship, membership, nationality, and a number of other things besides. If animal rights theory can be advanced by thinking of animal rights in *any* of these other ways, then that would be sufficient to conclude that animal rights theory can be helped by citizenship theory, on their understanding of the latter. So, even though I ultimately conclude that it is unhelpful to conceive of animal rights in terms of citizenship, I do not thereby conclude that citizenship *theory*, understood expansively, cannot be helpful in this regard.

2. Extending Animal Rights Theory

Traditionally, animal rights theory has focused on establishing the basic moral status of animals, accompanied by the same kind of universal inviolable moral rights, e.g. against torture and murder, that we associate with *personhood* in the case of humans. In the human case, the rights of personhood are often thought to be grounded in ‘characteristically human’ traits, such as a capacity

to reason or possession of a subjective experience or sentience. By arguing that certain animals also possess these characteristics to a sufficient degree, animal rights theorists have tried to show that such animals also deserve to be recognized as persons.³

In *Zoopolis*, Donaldson and Kymlicka endorse a robust version of the traditional approach to animal rights. Their position comprises three propositions. The first is that ‘one of the key purposes of justice ... is the protection of vulnerable individuals.’⁴ The second is that animals, like humans, are conscious, sentient, *subjects*—i.e. they possess a subjective experience; they each have an ‘I’ to which their sensations of pleasure, pain, etc., attach. As subjects, animals have an interest in how their lives go, in avoiding pain, suffering, death etc. Those interests can be subject to interference by others. Therefore animals are vulnerable in a way that makes them subjects of justice. This shows that, third, animals have certain basic inviolable rights against such interference.⁵

Of course, in the human case, basic universal rights are only one feature of the normative landscape. Similarly, for Donaldson and Kymlicka, the normative implications of conceiving of animals as interest-bearing subjects go beyond recognize their basic, universal negative rights. For

³ See e.g. Paola Cavalieri, *The Animal Question: Why Nonhuman Animals Deserve Human Rights* (Oxford University Press 2001); Gary L. Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (Columbia University Press 2008); Gary Steiner, *Animals and the Moral Community: Mental Life, Moral Status, and Kinship* (Columbia University Press 2008); Tom Reagan, *The Case for Animal Rights* (University of California Press 1983); Tom Reagan, *Defending Animal Rights* (University of Illinois Press 2001).

⁴ Donaldson and Kymlicka (n 1) 33.

⁵ See generally Donaldson and Kymlicka (n 1) Ch. 2, but especially 24–31.

instance, if both animals and humans are conceived as subjects, then human-animal relationships must be viewed as *intersubjective*, i.e. as relationships between *selves*. Unlike relationships between subjects and inanimate objects, intersubjective relationships can themselves be sources of obligations and rights.⁶ So, for example, our relationships with our pets should perhaps be seen as generating the kinds of moral rights and obligations as do our relationships with our human friends and family. Moreover, once they are seen as subjects of justice, animals who live their lives in and around human communities, whether by choice, happenstance, or necessity, might also have rights grounded in their relationships to those communities as a whole, not just individuals within them. This would apply to both domesticated animals and what Donaldson and Kymlicka call ‘liminal animals’ such as birds, rodents, foxes, wolves etc.—species who regularly live among, around or near human communities. So in addition to our negative duties not to torture or kill animals, humans could have various *positive* duties towards them, namely those constitutive of treating them as co-members of our political communities. It is this *political* component of animal rights that traditional animal rights theory fails to address, according to Donaldson and Kymlicka, and which citizenship theory can help us to understand. They write,

[t]hinking about human-animal relations in light of the familiar categories of citizenship theory—such as citizens, denizens, aliens, sovereigns—can help us identify both the distinctive claims that certain animals have upon us, and also the distinctive sorts of injustices we visit upon them.⁷

⁶ *ibid* 30, 38-9.

⁷ *ibid* 50.

We must recognize, in other words, that there are no true *anthropoleis*. There are only *zoopoleis*, and both citizenship theory and animal rights theory must expand to reflect that.

Donaldson and Kymlicka's proposal is not simply that we should theorize the political rights of animals *as if* they were citizens or denizens or sovereign nations. They want more, for example, than for animal rights theory simply to enjoy the same number and variety of normative categories that we use to describe the political rights of humans. Rather, they think that *the same* categories of political membership that apply to humans apply also to animals. Moreover, not only can animals be theorized as citizens, denizens, and sovereign nations, they should be recognized as such in practice. In the case of domesticated animals, for instance, they say that 'citizenship is both possible ... and morally required.'⁸ i.e. Animals have claims to the same legal protections and political rights enjoyed by human citizens.

For the purposes of this chapter, I will grant *arguendo* the position Donaldson and Kymlicka endorse with respect to the basic and universal rights of animals. I intend to focus only on what it could mean to extend citizenship to domesticated animals or to recognize them as citizens. As we will see, the analysis suggests that we should not be tempted by the expansive conceptions of citizenship, participation and responsibility that are required to make their proposal of domesticated animal citizenship plausible.

⁸ *ibid* 105.

3. Senses of Citizenship

The 'common view'

Once we accept that animals are persons in the sense described above, it might then seem that the question to ask is not whether animals can be understood as citizens, but why couldn't they? One answer that Donaldson and Kymlicka consider is that citizenship, in its fullest expression, is essentially about political participation and so a capacity for democratic political agency should be seen as a necessary condition for the possession of citizenship. Since animals lack the capacity to participate in democratic politics, it follows that animals cannot be—or be conceived of as—citizens. Donaldson and Kymlicka present this 'common view' of citizenship as one of the chief obstacles to extending animals rights via citizenship theory.⁹

According to Donaldson and Kymlicka, the common view contains two misconceptions. The first is an unduly narrow focus on the notion of *citizenship as democratic political agency*. To be a citizen in this sense, they write,

involves being a co-author of the laws and not just a passive recipient of the laws. It therefore rests on assumptions about the illegitimacy of paternalistic rule, and about the capacities of individuals to represent themselves in the democratic process.¹⁰

They do not deny that the capacity to exercise political agency is important for citizenship in its fullest expression.¹¹ Rather, they take issue with idea

⁹ See, e.g., *ibid* 51.

¹⁰ *ibid* 56.

¹¹ *ibid* 58.

that a capacity to represent oneself in the democratic process is a *necessary* condition for citizenship. They point out that we often conceive of citizenship in two other ways, neither of which require this capacity. These are *citizenship as nationality*, whose possession requires nothing more than the rights of residency in a state's territory, and *citizenship as popular sovereignty*, whose possession involves the right to have one's interest counted in the public good.¹² While citizenship in its fullest expression involves being a citizen in all three senses, one can still be a citizen in one or both of these two latter senses. So even if it is true that animals cannot possess citizenship as democratic political agency, it would still be possible for animals to be citizens in one or both of the other senses.

That said, Donaldson and Kymlicka ultimately reject the claim that animals lack the capacity for democratic political agency. Such a claim, they argue, stems from the second misconception of the common view: an unduly narrow conception of political participation. Political participation, they suggest, need not be construed solely as engagement in 'Rawlsian public reason or Habermasian deliberation' or as 'representing' oneself by voting in elections and plebiscites.¹³ They point to theories of *facilitated* or *dependent agency* in the context of severely mentally disabled humans as demonstrating how we might conceive of political participation in ways that make real the

¹² *ibid* 55-6.

¹³ *ibid* 57.

possibility of seeing animals as capable of having citizenship in the sense of democratic political agency.¹⁴

Dispelling the first misconception is ultimately less central to Donaldson and Kymlicka's overarching goal than dispelling the second. We might justifiably set to one side the question of whether animals can possess citizenship as nationality or as popular sovereignty, and move straight to the question of whether animals might possess citizenship as democratic political agency. However, their attempt to apply the ideas of citizenship in these first two senses to animals is instructive *vis à vis* the more general worry which, to a large extent, motivates the present thesis. The ideas of 'citizenship as nationality' and 'citizenship as popular sovereignty' are good examples of concepts which are worth distinguishing more carefully both from each other and from the notions of democratic political agency and the core concept of citizenship defended in Chapter 2 than Donaldson and Kymlicka's argument suggests.

Citizenship as nationality

As Donaldson and Kymlicka present it, 'citizenship as nationality' is about being allocated to a particular territorial state, e.g., in the context of international law: 'To be a citizen of country X is to have the right to reside in

¹⁴ They draw on Michael Prince, *Absent Citizens* (University of Toronto Press 2005); Anita Silvers and L.P. Francis, 'Justice through Trust: Disability and the "Outlier Problem" in Social Contract Theory' (2005) 116 *Ethics* 40; John Vorhaus, 'Citizenship, Competence and Profound Disability' (2005) 39(3) *Journal of Philosophy of Education* 461; John Vorhaus, 'Respecting Profound Disabled Learners' (2006) 40(3) *Journal of Philosophy of Education*; John Vorhaus, 'Disability, Dependency and Indebtedness?' (2007) 41(1) *Journal of Philosophy of Education* 29; Sophia Isako Wong, 'Duties of Justice to Citizens with Cognitive Disabilities' (2009) 40(3) *Metaphilosophy* 382.

the territory of X, and the right to return to X if you travel abroad.’¹⁵ They note that this is a particularly ‘thin’¹⁶ or ‘impoverished’¹⁷ sense of citizenship, since, understood in this way, ‘[people] can be citizens of undemocratic theocracies, monarchies, military juntas, or fascist or communist dictatorships and hence entirely lacking in rights of political participation.’¹⁸ To be a citizen in this sense does not presuppose a capacity to participate in democratic politics, nor anything beyond the capacity to bear legal rights.

While it is true that the terms ‘nationality’ and ‘citizenship’ are sometimes used interchangeably in the context of international law—and, indeed, in everyday conversation—to describe the condition to which they apply in that context as a ‘thin’ sense of citizenship seems to understate the point. It suggests that citizenship as nationality is somehow of a piece with other ‘thicker’ senses of citizenship, as if they all stand on a single spectrum of ‘citizenships’. In fact, what qualifies as citizenship in this ‘thin’ sense can be highly incongruous with the ‘thicker’ notions of citizenship as popular sovereignty or democratic political agency. Donaldson and Kymlicka themselves provide a good example. To illustrate how a group of people might possess citizenship as nationality without possessing citizenship as popular sovereignty, they point out that, ‘slaves in the USA, for example, were considered American “nationals”, at least for some purposes—they were not

¹⁵ Donaldson and Kymlicka (n 1) 55.

¹⁶ *ibid.*

¹⁷ *ibid* 58.

¹⁸ *ibid* 55.

viewed as nationals of some other country or stateless refugees.’¹⁹ We should question whether any category which might include the condition of slavery could be conceived as a sense of citizenship without thereby doing violence to both ideas, since they are often understood as antitheses. Setting that aside, this example is telling in another way. It suggests that even the possession of the two legal rights mentioned above, to reside in and return to a country’s territory, are not really necessary even for citizenship as nationality. For whatever their status in international law, we would not say that American slaves had residency *rights* in the United States. Rather, the example suggests that in order to possess citizenship as nationality in a given state, all one really needs is to possess *any* legal status with respect to that state—regardless of whether or not that status comes with any rights—and no legal status with respect to any other state. In that case, though, even a stateless refugee might still qualify for ‘citizenship’ in this thin sense.²⁰ If slavery is the antithesis of citizenship, statelessness is surely the paradigm absence of citizenship. In which case, if the conceptual category of citizenship is to mean anything, it cannot include senses of ‘citizenship’ that encompass such cases.

My point here is not that citizenship and slavery cannot be seen as sitting on the same conceptual spectrum. Rather I am suggesting that it is a mistake to conceive of it as a spectrum of ‘citizenships’. Consider an analogy:

¹⁹ *ibid* 56.

²⁰ In Brunei there are people who are recognized domestically and internationally as ‘stateless permanent residents’. They have, to a limited extent, just the sort of rights that Donaldson and Kymlicka identify with citizenship as nationality. This perhaps reveals an internal inconsistency even within the context of international law and further shows why we should be wary of putting too much stock in how the term ‘citizenship’ is applied in that context when we are identifying the conceptual categories of membership available within political communities.

the concept of marriage. We might think that marriage, like citizenship, has a fullest expression that can be instantiated in degrees. We might think of spouses who have become estranged, or couples who are engaged in marriages of convenience as having marriages in a ‘thin’ or ‘impoverished’ sense. However we would not say that a dating couple, or a couple engaged to be married have marriages in a thin sense. We might still conceive of dating and betrothal as sitting on a spectrum which includes marriage in its fullest expression further down the line. We might call this a spectrum of, say, intimate partnerships, or romantic relationships. Similarly, I suggest we do better to think of different expressions or senses of citizenship as sitting on a wider spectrum of, e.g., memberships or even political memberships, while recognizing that not all such memberships qualify as instances of citizenship. So, for example, the mere possession of a legal status within a state, with few or no attendant rights, is perhaps better conceived as sufficient for membership in that state—albeit in a thin sense—but not for citizenship in that state *in any sense*. In other words, for the purposes of theorizing citizenship, both humans and animals who satisfy this condition are perhaps better conceived as being on the (conceptual) pathway to citizenship, but not yet through the gate.

Citizenship as popular sovereignty

‘Citizenship as popular sovereignty’, according to Donaldson and Kymlicka, involves membership in ‘the people’ whose sovereignty is embodied in the state and whose interests make up the public good. To be a citizen in this sense is ‘[to have] the right to have [one’s] interests included in

determining the public good of the community.’²¹ The state’s legitimacy, in turn, depends on its being governed in service to the public good, i.e. to be ruled in the name of the people.²² Donaldson and Kymlicka suggest that this does not require that the state be governed democratically. A state can have citizens in this sense just so long as the government acts in service to the public good (or, at the very least, *purports* to act in service to the public good).²³ So, animals can be recognized as citizens in this sense just so long as it is true that they have a right to have their interests included in the public good, regardless of whether or not they have the capacity for democratic political agency. The only capacities animals need to qualify for citizenship in this sense, are the ones that are necessary to be rights holders at all—capacities which I have already granted they possess—and we need not ask what other capacities they might possess.

This argument, however, appears to elide two different conceptions of ‘a sovereign people’. The first of these is the idea of ‘a people’ conceived as a group who collectively identify with a particular (real or imagined)²⁴ historical/ethnic/cultural/religious/linguistic tradition. The right of ‘a people’ so conceived to be sovereign, i.e. to be governed in their collective name, is usually thought to be grounded in the nature or value of the mutually identifying collective itself. That is, one’s membership in ‘the people’ is the

²¹ Donaldson and Kymlicka (n 1) 58.

²² *ibid* 55-56.

²³ *ibid* 56.

²⁴ Benedict Anderson, *Imagined Communities* (rev edn, Verso 2006). See also Jürgen Habermas, ‘Citizenship and National Identity’ in Ronald Beiner (ed) *Theorizing Citizenship* (SUNY Press 1995) 255-282.

source of her right to have her interests included in the public good, not a consequence of having such a right. A person can also have the right to have her interests included in the public good *without* being a part of the people in whose name the state is (actually or ostensibly) governed. Most agree that even the members of ethnocultural minorities living permanently within a state, and in whose name the state might not actually be governed, still have a right to have their interests included in the public good, too, in virtue of their status as moral persons. The point is that having the right to have one's interest included in the public good is not a sufficient condition for membership in 'the people', on this conception of the latter.²⁵ That being the case, if the reason that animals have the right to have their interests included in the public good is because of their status as moral persons, then their possession of that right would not itself be sufficient for them to be members of 'the people' nor, therefore, to have citizenship as popular sovereignty.

One could argue that certain animals can be seen as part of 'the people' understood in this ethnocultural sense, and so, for that reason, should have their interests included in the public good. Domesticated animals, for example, could be said to participate in and identify with the particular ways of life of 'a people' in virtue of living and working alongside its human members. However, this argument immediately raises questions about the capacities animals would need in order 'to participate' or 'to identify' in this context. For instance, it seems that they would require the capacity to reflect

²⁵ Donaldson and Kymlicka offer an example that illustrates this point, and which suggests that this is the sense of "the people" they have in mind: Jews in medieval Europe had residency rights, and so had "citizenship as nationality" within the states in which they lived, but were denied "citizenship as popular sovereignty" because they were not part of "the people". Donaldson and Kymlicka (n 1) 56.

on their identities, actions, and interactions with others. Even if it can be shown that animals have those capacities to the relevant degree, or, indeed, that the possession of such capacities are not required for participation in and identification with an ethnocultural collective the fact remains that we must ask the question. That is, if we understand citizenship as popular sovereignty in terms of membership in an ethnocultural collective, we cannot defend the claim that animals might possess citizenship in this sense without addressing the same sorts of questions we face regarding the possibility of animals possessing citizenship as democratic political agency.

Finally, membership in ‘a people’ so conceived, far from being a ‘thin’ sense of citizenship, looks more like a relatively ‘thick’ sense of *nationality* or *national identity*.²⁶ If this is indeed what Donaldson and Kymlicka mean when they talk about ‘citizenship as popular sovereignty’, then questions about the capacities of animals (beyond those needed for moral personhood) are, to some extent, beside the point. The real problem, as with citizenship as nationality, is the way in which they try to group rather distinct ideas under the same conceptual umbrella.²⁷

There is a second way to conceive of popular sovereignty in which the possession of a right to have one’s interests included in the public good is sufficient for membership in ‘the people’. On this conception ‘the people’ are just those who are already normally subject to a common authority and, for *that* reason, have a right to have their interests included in the public good in

²⁶ I will come back to the relationship between citizenship and nationality in Chapter 4.

²⁷ This is not to deny that nationality is an important aspect of citizenship *theory* understood expansively.

whose name that authority should govern. Anyone who is a moral person could, in principle, qualify for membership in 'the people' so conceived, including, we might think, animals. However, the right of 'the people' to be *sovereign* on this conception is not merely a right to be governed passively in their collective name. Nor, contrary to Donaldson and Kymlicka's suggestion, would such 'a people' be considered sovereign simply because their government *claims* to govern in their interests. The right of 'a people' so understood to be sovereign is a right to be politically empowered, and they are legitimately called 'a sovereign people' only to the extent that they are effectively politically empowered. In other words, on this understanding, 'the sovereign people' are *the demos* of a democratically governed polity. In which case, we not only face questions about the capacities of animals that are similar to the ones we face in the case of citizenship as democratic agency, we face the exact same questions. If possessing citizenship as popular sovereignty means possessing the right to be included in the *demos* of a democratic polity then we must ask whether or to what extent the possession of such a right is predicated upon the possession of the capacities to exercise the political rights of democratic membership—i.e. can animals have the right to membership in the *demos* if they fundamentally lack the capacity for democratic political agency?

I am not suggesting at this point that animals lack these capacities. What these observations about Donaldson and Kymlicka's notion of 'citizenship as popular sovereignty' show is simply that we can not escape

considering whether or not they do when asking if it is possible for them to have (or have the right to) citizenship in any meaningful sense.

The common view revisited

Before considering whether animals could possess citizenship as democratic political agency, I would like to address a more general objection that Donaldson and Kymlicka raise against the common view. If the capacity for democratic political agency is a necessary precondition for the possession of citizenship then this would seem to exclude a significant number of humans. Children and the severely mentally disabled, for example, cannot engage in, 'Rawlsian public reason or Habermasian deliberation.' However, we do recognize that children and the severely mentally disabled are,

very different from, say, tourists or business visitors. The latter lack citizenship, and so lack rights to nationality and to be included in the sovereign people, even though they may have highly developed capacities of political agency.²⁸

So, Donaldson and Kymlicka conclude,

[it] is a serious mistake to treat political agency as a threshold or criterion that determines who is a citizen, such that those who are incapable of this or that form of agency are relegated to the status of non-citizenship.²⁹

The objection appears to contain two separate worries. The first is that by excluding children and the mentally disabled from citizenship we necessarily deny whatever claims they might have to the legal rights associated with citizenship as nationality and membership in the sovereign

²⁸ Donaldson and Kymlicka (n 1) 57.

²⁹ *ibid* 58.

people. If the arguments I have offered so far are persuasive then this worry is largely misplaced. For if the rights associated with nationality are not regarded as themselves constituting a genuine sense of citizenship, then excluding someone from citizenship does not entail denying her rights of nationality—i.e. she can be a non-citizen national. Similarly, if we understand membership in the sovereign people in the first sense described above, then the question is really whether or not they have the capacities needed for national identity, which might be similar in kind but not necessarily similar in degree to those required for citizenship as democratic political agency. If we understand membership in the sovereign people in the second sense described above, then it is true we will have to ask about the extent to which they actually have a claim to political rights. I will return to this aspect of the objection below. However, it is worth pointing out here that we do, in fact, usually think that very young children, at least, are rightly denied full political rights. So if having such a claim is what we mean by having citizenship as popular sovereignty, then it is unclear why excluding them from citizenship is problematic. One possibility, which constitutes the second worry contained within this objection to the common view, is that if children (and the severely mentally disabled) do not qualify for citizenship because we think of it only in terms of democratic political agency then they are necessarily denied an important kind of recognition within the community—i.e. they cannot be distinguished from other non-citizens, and lack equal standing with citizens. This worry can be attenuated with a slight modification to the common view, one that utilizes the core concept of citizenship I am defending.

First notice an asymmetry in how Donaldson and Kymlicka present the three senses of citizenship. While citizenship as nationality and citizenship as popular sovereignty are framed in terms of the possession of certain rights, citizenship as democratic political agency is about the possession of a capacity. Now, of course it is a mistake to hold that visitors should count as citizens of a polity simply because they possess the *cognitive* capacity to participate in democratic politics—that this is ‘a criterion that determines who is a citizen.’³⁰ This would be a decidedly *uncommon* view to hold. It is not the possession of different cognitive capacities that distinguishes visitors to a democratic state from its citizens. It is that citizens have the *rights* of democratic political participation—i.e. citizens have democratic membership—while visitors do not. Citizens have different *legal* capacities for action. This is certainly true in the sense that visitors normally lack the legal rights of political participation that citizens possess. We also normally think that, unlike citizens, visitors have no moral claim to these rights. One might argue that visitors do have such a claim grounded in a certain conception of democratic legitimacy.³¹ However, even if we believe that visitors have such a

³⁰ *ibid* 56. My italics.

³¹ For instance, we might think that a community is democratic only if everyone whose interests are affected by its government’s decisions are given a voice in making those decisions. We might also think that (at least some) visitors are affected in this regard, and should therefore be included in the demos of the community, at least for some decisions. See, e.g., Robert Goodin, ‘Enfranchising All Affected Interests and Its Alternatives’ (2007) 35(1) *Philosophy & Public Affairs* 41. For critical discussion of the so-called ‘affected interests principle’ see Frederick Whelan, ‘The Boundary Problem of Democratic Theory’ in J. Roland Pennock and John W. Chapman (eds) *Nomos XXV: Liberal Democracy* (New York University Press 1983) 13–47; and David Miller, ‘Democracy’s Domain’ (2009) 39(1) *Philosophy & Public Affairs* 201. I discuss this issue in Chapter 6 of this thesis.

claim—i.e. during the time they are visiting—it would still be odd to think that the possession of such a claim itself amounts to a kind of citizenship.

Suppose, then, that we reframe the common view and the objection to animal citizenship that arises from in terms of the core concept of citizenship offered in Chapter 2, specifically, in terms of the possession of the legal rights to democratic political participation. On this modified common view, the (cognitive) capacity to exercise these rights might still be important for citizenship in its fullest expression, but it is neither a necessary nor a sufficient condition for citizenship *simpliciter*. The question then becomes, not whether children, or the severely mentally disabled, or animals, *can be* recognized as citizens, but what reasons there are for recognizing them as such. The inability of a group's members to participate, or to participate effectively or knowingly, provides at least *prima facie* reason not to grant them political rights, as in the case of very young children. There might still be reasons that outweigh this. For example, allowing adults who become severely mentally disabled later in life to retain their participation rights might serve as an important symbolic recognition of their equal standing within the community. And this could outweigh the *prima facie* reason their inability to exercise those rights might otherwise give us to withhold them. Such an argument could also be made in the case of animals. One might argue that it is important for some animals—e.g. domesticated animals—to be granted full citizenship rights as a symbolic recognition of their equal standing within the community.

This solution is unlikely to satisfy Donaldson and Kymlicka. For while the modified common view is less vulnerable to objections based on the exclusion of children and severely mentally disabled adults, it still supposes that there is a *prima facie* reason to exclude those who lack the cognitive capacity to exercise democratic political agency, including animals.

4. Domesticated Animal Citizens

The second misconception of the common view

Donaldson and Kymlicka argue that the idea that animals lack the capacity for political agency depends on an unduly narrow conception of political agency. They argue for a broader conception, one that they believe not only provides a workable account of animal political agency, but also a better account of citizenship as democratic political agency in the human case. However, the examples they offer of animals exercising political agency provide thin support for adopting the broader conception.

A standard view in liberal political theory is that all citizens must possess capacities along the lines of the three moral powers identified by John Rawls. These are: (i) the capacity to have a subjective good, and to communicate it; (ii) the capacity to comply with social norms/cooperation; (iii) the capacity to participate in the co-authoring of laws.³² One reason to think that animals or the severely mentally disabled do not possess these

³² Donaldson and Kymlicka (n 1) 103. They note that Rawls does not explicitly mention (iii), but that it is implicit in his account of (ii). They also note that Jurgen Habermas stresses (iii), while presupposing (i) and (ii). See *ibid* fn 3. Rawls himself is 'agnostic' about whether possession of the moral powers extends to 'marginal' groups like the severely cognitively disabled and animals. See *ibid*; and John Rawls, *Political Liberalism* (Columbia University Press 1996) 21.

powers is because their possession requires the capacity to understand and reflect upon one's own subjective good. It also requires the capacity to reflect on social norms, in order that one can engage in a rational deliberation about those norms. Some argue that if the moral powers, so conceived, do not extend to the disabled, then this would be a reason to reject the Rawlsian conception of them, as well the kind of contractualist theories that depend on that conception.³³ Others argue that the contractualist picture can be extended to these marginal groups if the focus is placed on the *potential* for the possession for moral powers.³⁴ Donaldson and Kymlicka do not reject the basic claim that all citizens must possess something like Rawls' moral powers. Instead, they reject the interpretation that their possession requires the cognitive capacities of understanding and reflection.³⁵ They disagree that to have the first moral power one must have the capacity to understand or reflect on one's subjective good. Similarly, they disagree that compliance with social norms requires that one understands the social norms with which one complies in a rational or intellectual sense. Finally, they reject an exclusively deliberative account of the co-authorship of laws, wherein there is some real or hypothetical negotiation or bargaining over which principles count as fair terms of social cooperation and which, having been decided upon, will remain more or less fixed.

³³ See e.g. Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press 2006) 65-6.

³⁴ See e.g. Wong (n 14) 382-402, especially 384-5.

³⁵ Donaldson and Kymlicka (n 1) 103-108.

Instead, Donaldson and Kymlicka suggest that we take the first two moral powers more or less at face value. Doing so makes it relatively easy to establish that, at the very least, most domesticated animals could have them. For while it may not be clear whether, for example, companion dogs reflect upon their subjective good, it is difficult to deny that they have one, and that they can communicate it to their human companions in various ways. It is equally hard to deny that animals can be socialized to comply with norms which humans have established. Donaldson and Kymlicka rightly point out that domestication is possible at all precisely because some animals are amenable to such socialization.³⁶ This is true whether or not we think that they are rationally reflecting upon or making judgements about these norms of social cooperation *as norms*.

Interpreting the first two moral powers in this way, again, also allows us to conclude that young children and severely mentally disabled adults possess them. This perhaps gives us at least a *prima facie* reason to prefer it to an interpretation that would exclude them. Let us grant *arguendo* that it does. The real difficulties arise when we try to adopt the more inclusive interpretation of the third moral power. What does non-reflective, non-deliberative co-authoring of the laws look like, and how do we reconcile it with the more conventional interpretation?

Dependent agency

³⁶ *ibid* 104-5.

Key to Donaldson and Kymlicka's view is what they call a 'dependent' or 'trust-based' model of political agency.³⁷ On this model, the terms of social cooperation are developed and shaped over time—norms are constantly emerging, being tested and amended.³⁸ This development requires the participation of all members and includes modes of participation that can be performed by those who possess limited cognitive or communicative capacities. For example, people with limited cognitive capacities 'collaborate' with those who have standard cognitive capacities and with whom they have formed relationships of trust. As Eva Kittay writes, 'Those who cannot speak must depend on others to speak for them.'³⁹ Through their participation in these relationships of trust, people with severe intellectual disabilities 'can both assent to, and comply with, schemes of social cooperation envisioned as a process of enacting and revising social norms in the context of ongoing cooperative relationships, rather than a one-time negotiation.'⁴⁰ On this account, '[to] treat someone as a citizen is to look for evidence of their subjective individualized good, and to look for and support areas of individual agency.'⁴¹

³⁷ They draw on Silvers and Francis (n 14); and Leslie Pickering Francis and Anita Silvers 'Liberalism and Individually Scripted Ideas of the Good: Meeting the Challenge of Dependent Agency', *Social Theory and Practice* (2007) (33)2 311. cf Jean Hampton, 'Contract and Consent' in Robert Goodin and Philip Petit (eds) *A Companion to Political Philosophy* (Blackwell 1995) 478-492.

³⁸ Donaldson and Kymlicka (n 1) 106.

³⁹ Eva Kittay 'When Caring is Just and Justice is Caring: Justice in Mental Retardation' in Eva Kittay and Ellen K Feder (eds) *The Subject of Care: Feminist Perspectives on Dependency* (Rowman & Littlefield 2002) 257, 258.

⁴⁰ Donaldson and Kymlicka (n 1) 106.

⁴¹ *ibid* 107.

Donaldson and Kymlicka point out that we all go through various stages of cognitive capacity over the course of our lives. We all begin as children and many of us live long enough to see our cognitive capacities degrade. Even those who possess standard cognitive capacities cannot express their interests in politically efficacious ways without the necessary social and political institutions.⁴² In other words, we all rely on others in order to be effective political agents ourselves. Therefore, they conclude, this account not only lets us expand our understanding of citizenship to include an historically excluded class of people, but also better captures how citizenship works for those who traditionally have been included as well.

Admittedly, this is a very rough sketch of the trust-based model. Hopefully, though, it is enough to show how Donaldson and Kymlicka suggest we move towards recognizing animals as political agents with a capacity to participate in the co-authoring of laws. If we adopt a broader conception of political agency, one that includes the kinds of 'dependent agency' Donaldson and Kymlicka describe, then they are correct to say that we cannot really know the full extent of animal agency until we learn to 'expect, look for and enable agency.'⁴³ However, the examples they offer to illustrate animals' capacity for political agency and participation are not especially promising, no matter how expectantly we look.

⁴² They write: 'All of us need the help of others to articulate our subjective experience; all of us need the help of supportive social structures to participate in schemes of social cooperation.' *ibid.*

⁴³ *ibid* 110.

Sheer Presence

Donaldson and Kymlicka argue that when animals are restricted or absent from the public sphere—e.g. from our places of work, public buildings and parks, public transportation etc.—it contributes to their being largely invisible to the political process and that policy in much of the developed world reflects this. Were domesticated animals allowed to roam more freely in our cities, or if humans were allowed to keep as pets those animals we typically use for food, then this would have an impact on the kinds of political decisions we would take as communities. It might also influence how those decisions are taken. We might try to find ways to ‘poll’ the animal population on a given issue. Again, the pertinent analogy is with those of us who know or have a personal relationship with someone who has a severe mental disability. This certainly can affect one’s attitudes towards people with disabilities in general. It can also affect one’s political views e.g. about state-provided health care or political representation for this (and other) ‘invisible minorities’. This is true even if the disabled persons themselves have no understanding either of the political issues at stake or the role their ‘sheer presence’ is playing in affecting political outcomes. Similarly, Donaldson and Kymlicka argue, under a model of dependent agency, animals can be seen as ‘agents of change’ even if they are not ‘deliberate agents’.⁴⁴ They offer two examples that are meant to show how an animal’s sheer presence in a public space constitutes a form of participation.⁴⁵

⁴⁴ *ibid.*

⁴⁵ *ibid* 113.

The first example involves a couple who own a cheese shop and their companion dog, Justine, who enjoys hanging around inside the shop. Under their local health by-laws, dogs are not allowed to hang around inside cheese shops. As a way of both protesting the by-laws, and satisfying Justine's expressed preference for hanging around cheese shops, the owners falsely register Justine as a service dog, thus exempting her from the by-laws. This is supposed to show how Justine 'participates' in the protest against what (the human couple believe is) an unnecessary restriction on the mobility of dogs. More than that, though, '... Justine, by her embodied presence, educates the cheese shop customers that she is not a menace to their health, but a welcome addition to society.'⁴⁶ By educating the public, Justine can be said to be participating in a political process of advocacy e.g. for greater public animal mobility. All of this is done without Justine reflecting on (or needing to reflect on) any of it. She need only exercise her preference for hanging around in cheese shops.

It is clear that Justine is exercising a kind of agency. It is less clear that we should understand it as participating in the co-authoring of the laws. The worry is that the example seems to require that we understand virtually *any* expression of preference in a public space as a form of genuine political participation. Justine, after all, is just doing what she does and just happens to be doing it in a public space. However, if this counts as an example of co-authoring the laws, then this makes it hard to distinguish between the *right* to express one's preferences in a public space and the *right* to participate in the

⁴⁶ *ibid* 114.

co-authoring of the laws. Notice that non-citizens (e.g. visitors and permanent residents) can also have the right to be in public spaces and to express their preferences in various ways. Are they too exercising their political agency, or acting as co-authors of the laws? If the public expression of preferences counts as political participation in the same way as engaging more directly with the political system, e.g. by voting or running for public office, then how do we distinguish the democratic rights of citizens from the rights of anyone else to be present in public spaces?

In the second example, a group of neighbourhood dog-owners ‘reclaimed’ a local park that had become a hang-out for drug-users and prostitutes.⁴⁷ Among other strategies, the dog-owners ‘used the presence of large off-leash dogs—illegally—to discourage less desirable uses.’ Having forced the people deemed undesirable away from the park, and once the local families were convinced that the dogs were not a risk to their children, the park was then converted officially into an off-leash zone.⁴⁸ According to Donaldson and Kymlicka,

humans are essential ‘enablers’ in this story but ... it couldn’t have happened without the participation of the dogs. Their physical presence played a key role in the political process, resulting not only in their re-integration into public life and space, but in a more general change to grassroots activism in the process.⁴⁹

⁴⁷ The example is taken from Jennifer Wolch, ‘Zoöpolis’ in Jennifer Wolch and Jody Emel (eds) *Animal Geographies: Places, Politics, and Identity in the Nature-Culture Borderlands* (Verso 1998) 119-38.

⁴⁸ Donaldson and Kymlicka (n 1) 115.

⁴⁹ *ibid.*

Importantly, the dogs were not coerced into action. They were brought into a public space that they would have an interest in exploring anyway—dogs love parks—and left to do what dogs do.⁵⁰

As with the first example, here Donaldson and Kymlicka seem to conflate being an agent of change with being a co-author of the laws. There are, however, some other features of this example that make it a curious illustration of animals acting as political agents.

For one thing, the interests of the dogs in this example are largely distinct from their owners' primary goal of 'cleaning up the park'. No evidence is given that dogs are any less fond of drug dealers and prostitutes in general than they are of 'more desirable' park-goers. Now, it might be argued that a park free from drug dealers and prostitutes is, on the whole, safer for everyone, dogs included. So there might be a sense in which the dogs' interests in safety was being promoted. However, if that is true, then by letting the dogs roam freely in order to discourage the undesirable users from hanging around their human companions were exposing them to risks which the dogs could neither have understood nor, therefore, consented to.

Moreover, the park's conversion into an off-leash zone is presented as more of a bonus, knock-on effect, than a motivation to get the dogs involved in the first place. So the advancement of what is arguably the dogs' primary interest in this example was only contingently related to their participation in the 'reclamation'. The phrase '*used* the presence of large off-leash dogs' here

⁵⁰ *ibid.*

is telling.⁵¹ It seems to offer a better description of the relationship between the dogs and their owners than the description of the latter as ‘enablers’. If someone wants to help further my interests and asks for my help to facilitate her doing so—think of Jerry Maguire’s emphatic appeal, ‘help *me* help *you*’—then there is nothing obviously wrong in saying that I am enabling her. However, it seems a bit disingenuous to describe a situation wherein I help someone advance my interests as an instance of my enabling her, when she does not or could not know that she is doing so, *even if* she also stands to benefit.

As I said, these are more curious features of this example than damning ones. The chief worry is that, as with the first example, it succeeds only if we stretch our conception of political participation to include any action taken within a public space, taken for any reason, that could have consequences for the wider political community. This is simply too broad a conception to accept if it is to help us meaningfully distinguish between citizens and non-citizens of a community.⁵²

Finally, in both examples the animals in question were, in one way or another, involved in breaking the law. This leads me to the final problem I want to address—the question of animal responsibility. It is widely accepted

⁵¹ My emphasis.

⁵² It is also curious that Donaldson and Kymlicka claim that the outcomes in this example ‘could not have happened’ without the participation of the dogs. The owners could just as easily have walked around the park with unconcealed weapons (likely breaking a different law) in order to discourage the ‘undesirable’ element. It is also a stretch to say that the dog owners ‘could not’ have succeeded in getting the park designated an official off-leash zone by purely deliberative means. One of the advantages of rational deliberation is that one can be persuaded by arguments about things with which she has little first hand knowledge or experience. While it is probably true that knowing a dog or two brings about a greater appreciation of their needs and interests, it is by no means necessary for it.

that along with its various rights citizenship comes with certain duties and responsibilities. While Donaldson and Kymlicka's account of domestic animal citizenship focuses primarily on the obligations and responsibilities that humans owe to animals they also claim that, as co-citizens, domestic animals would have responsibilities to go along with their rights.⁵³ They acknowledge that the responsibilities of animal citizenship could not include things like a responsibility to be politically informed or to vote in elections, which are paradigm examples in the human case.⁵⁴ However, the disanalogies run deeper than as between the particular responsibilities of human and animal citizens.

Animal Responsibility

Donaldson and Kymlicka identify nine 'presuppositions' of domesticated animal citizenship: (1) basic socialization; (2) mobility and the sharing of public spaces; (3) duties of protection; (4) use of animal products; (5) use of animal labour; (6) medical care; (7) sex and reproduction; (8) predation/diet; (9) political representation.⁵⁵ All but three of these—(1), (7) and (8)—are described entirely in terms of what recognizing animal citizenship would require of *human* co-citizens and the institutions shaped in collaboration with domestic animals. Let us consider each of these three in turn.

⁵³ See generally, Donaldson and Kymlicka (n 1) 108-155.

⁵⁴ *ibid* 112.

⁵⁵ *ibid* 123.

First the presupposition of basic socialization. Socialization is an essential part of integrating into any community. It is, as Donaldson and Kymlicka put it, ‘the basic threshold precondition for social membership.’⁵⁶ Initially, it is the responsibility of the community to socialize new members, who in turn have a right to be socialized. In the human case we recognize a point of maturity after which a person must herself take responsibility for recognizing and abiding by (or violating) social norms. The acquisition of responsibility may occur gradually, but most societies mark, at least symbolically, a threshold moment when a child has fully grown into her responsibilities as a member of society.⁵⁷

One problem with how we currently treat domesticated animals, Donaldson and Kymlicka suggest, is that we typically do not mark for them the transition from a young, unsocialized state to a mature, socialized one. Instead, they argue, domestic animals are perpetually treated as children, subjected to lifelong process of paternalistic socialization by humans—they are trapped in a ‘moulder-moulded’ relationship. Part of recognizing them as co-members involves ending this kind of ‘pernicious paternalism’.⁵⁸ In the human case, it may be appropriate for socialized adults who violate social norms,

⁵⁶ *ibid* 123-4.

⁵⁷ For an interesting discussion of the importance of having this kind of ‘basic’ responsibility for human beings see John Gardner, *Offences and Defences* (Oxford University Press 2006) Ch. 9.

⁵⁸ Donaldson and Kymlicka (n 1) 125.

[to be] humorously tolerated, shunned, or, if they become a danger to others, locked up. But it would be disrespectful to continue to treat them like children.⁵⁹

The idea seems to be that in order to avoid pernicious paternalism, in order to recognize the responsibility of mature socialized animals, we need a different set of sanctions for them than we do for younger, unsocialized animals.

Donaldson and Kymlicka are not themselves explicit about what it means to treat a socialized animal like a child instead of a responsible adult. Nevertheless, let me try to illustrate the point (as I understand it) with an example. Most off-leash dog parks have a standard set of norms for the behaviour of animals (and their human owners). One of these norms is, 'Don't play too roughly with other dogs'. Suppose my dog, Max, plays a little too roughly with one of the other dogs, violating the norm. If Max is young and unsocialized, then perhaps an appropriate response would be for me to give him a verbal warning and, by way of instruction, put him back on his leash for a period of time while continuing to let him play. If, on the other hand, Max is fully grown and socialized to the rules of the park, then an appropriate response might be simply to end the outing. He is spared the warning-instruction sanction because it is assumed he does not need it—he should have known better. In this way I recognize Max's responsibility for his own actions.

So far, so good, perhaps. However, it is important to note that Max's responsibility in this example is not entirely his own. My responsibility to sanction Max in a respectful way only comes about in this example because I

⁵⁹ *ibid.*

also have a prior (and special) responsibility to sanction him at all. Suppose I bring my human friend, Fred, with me to the dog park, and *he* starts to play too roughly with a dog. It is not at all clear that I would have a responsibility, as his fellow citizen, to sanction him. He is certainly deserving of sanction, but that desert does not automatically translate into responsibility *of mine* to sanction him.⁶⁰ It would be strange indeed if the roughly-treated dog's human companion were to approach me and ask me to sanction Fred without first approaching Fred himself. Were I to sanction Fred, in this instance, to chastise him for his anti-social behaviour, he may well have grounds for accusing me of treating him like a child. It would seem, then, that it is an implication of Donaldson and Kymlicka's view that another common park norm, 'Humans are responsible for their animals' behaviour', is itself disrespectful or somehow inappropriate.

A similar concern arises when we look at animal responsibilities with respect to sex and reproduction. Donaldson and Kymlicka tell us that, as co-citizens, domestic animals would have the right,

not to have their sexual and reproductive activities unnecessarily curtailed, and the right to their offspring cared for and protected by the larger, mixed human-animal community. But, as citizens, domesticated animals have the responsibility to exercise their rights in ways that do not impose unfair or unreasonable costs on others, and that do not create unsustainable burdens on the scheme of cooperation.⁶¹

⁶⁰ I am assuming that, while the playing is rough, and thus anti-social, it is not obviously harmful. In cases where a harm is being committed, the question of the responsibilities of bystanders becomes more complicated.

⁶¹ Donaldson and Kymlicka (n 1) 146.

It is perhaps possible that animals could be socialized not to engage in unwanted sexual acts. Donaldson and Kymlicka point out, for example, that dogs have ways of signalling when a bit of play mounting becomes too aggressive, as well as ways of apologizing to each other when the boundaries of play have been crossed.⁶² It is unreasonable, however, to expect animals to fulfil their responsibilities in this area without human intervention. Donaldson and Kymlicka insist that such intervention must be as minimal and non-invasive as possible, and can be justified only in the interests of the individual animal.⁶³ Even so, the bulk of the responsibility here still falls to members of the human community to restrict the opportunities for animals to reproduce—to make it as hard as possible for animals to fail in their responsibilities as citizens. Should an animal manage to find and act upon opportunities beyond those sanctioned by the human community, it represents a failure of humans to fulfil *their* duties far more than a failure of the animal to live up to his responsibilities as a co-citizen.

Similar concerns arise in the case of diet and predation. In the wild, animals hunt and eat other animals because they must, not just because they prefer to. While the rights of predated animals are violated, the circumstances demand it. In a human-animal society, Donaldson and Kymlicka argue, certain animals' nutritional needs *must* be met by humans. This is because humans can provide them with ethical (i.e. vegan) options which the animals

⁶² *ibid* 118.

⁶³ The interests of the individual includes an interest in membership in a community that involves duties. So it can be in the animals' own interests that humans intervene to help them fulfil their own responsibilities. See *ibid* 147.

cannot obtain on their own. Again, what this really shows is that is unethical for humans to allow, e.g. domestic cats and dogs to hunt prey for themselves, or to feed them commercially produced animal protein when nutritious vegan alternatives are available.

What is more, it would be unethical for humans *to hold* an animal responsible for killing another as prey, at least to anything like the degree to which we hold human murderers responsible for their actions. With the exception of particular animals who prove especially hard to control in this regard, it is not clear that the range of sanctions available for humans to use on animals who are occasionally caught red in tooth and claw differs from those that are appropriate to use in the case of more mundane violations. Not only are the responsibilities of animals unavoidably also the responsibilities of particular humans (in a way which is not true in the human case), the degree to which it is acceptable to hold animals responsible for their actions is a far cry from that of their human co-members.

One final point, which I mention somewhat in passing, again has to do with characterizing the responsibilities we have been considering as responsibilities of *citizenship*. I have already argued that we should resist equating the ideas of citizenship and political membership generally—that both membership and citizenship come in degrees, but that citizenship is best understood as a sub-category of political membership. I mean this both in the sense that we should recognize the possibility of multiple forms of membership within a single community, and in the sense that there are forms of community in which the kinds of membership available simply do not

include citizenship. To count tribal membership, for example, as a kind of citizenship would be to stretch the notion too far. Basic socialization, respect for sexual and bodily integrity—these are not responsibilities of citizenship, but of membership in communities of even the most basic (i.e. non-legal) kinds. They are responsibilities we possess as persons living in proximity to other persons. We might then think that animals have the responsibilities we have been considering in virtue of the moral personhood which I have granted they possess. In other words, we do not necessarily have to reject Donaldson and Kymlicka's analysis of animal responsibilities outright. I only challenge that it is an analysis of animals' responsibilities *as citizens*.

5. Conclusion

Donaldson and Kymlicka present a provocative and stimulating strategy for advancing both the theoretical and the political discussion about animal rights. At the same time, the theory of citizenship they rely upon represents the kind of over-extended account that the core concept of citizenship is intended to reign in. In this chapter I have tried to highlight some of the conceptual costs of adopting such an expansive conception of citizenship, and argued that they are too much to pay. In the course of the discussion I also tried to show why other, more common interpretations or senses of 'citizenship' are also perhaps not best understood as instances of citizenship at all—that they too involve stretching the concept in ways that generate more confusion than clarity.

4 Citizenship and Moral Boundaries

1. Introduction

The core concept of citizenship, I have argued, is the concept of an institutional relationship between an individual and the state to whose authority she is subject. It is both necessary and sufficient to be a citizen that one has a certain legal status, legal rights and duties with respect to a particular polity, and that these are recognized, protected, and enforced by the government of that polity. As we saw in the previous chapter, a central feature of this relationship, the idea of democratic membership, was incompatible with the extension of citizenship to domesticated animals. This showed us one way in which the core concept places limits on how far the idea of citizenship can be stretched without compromising its central meaning. In this chapter I begin by considering another way in which the concept of citizenship is sometimes stretched, namely, when people claim to be citizens

of the world. I use this question as a springboard into a larger discussion about the relationship between the institutional relationship I have identified as central to citizenship, and the moral relationship between co-citizens that is the subject of much debate among legal and political philosophers. Indeed, this relationship is even sometimes treated as *more* central to citizenship's meaning than the institutional one. One of the goals in this discussion, which will unfold over this chapter and the next, is to show why this is misguided.

In section 2 I introduce two ways in which we might think about the idea of world citizenship. The first way involves the idea of world government, in some form or another, and is compatible with the core concept of citizenship. However, I argue that it is not a kind of citizenship that anyone yet possesses, and I suggest some ways in which the core concept might limit how the concept of citizenship should be applied to theories of possible world citizenship of this kind. The second way involves a claim made by some in what we might call the *ethical cosmopolitan* tradition. This is the claim that, even in the absence of the kind of world government required for world citizenship on my account, we are all nevertheless citizens of the world. The idea is that our membership in a common moral community of humanity is sufficient for a kind of global citizenship. While the claim has an ancient pedigree, I focus in particular on one recent version defended by Martha Nussbaum.¹ If sound, this would represent a problem for my description of the core concept, since the latter does not admit membership in a moral community of any kind to be sufficient for citizenship. However, I argue that

¹ Martha Nussbaum, 'Patriotism and Cosmopolitanism' in Martha Nussbaum and Joshua Cohen (eds) *For Love of Country* (Beacon 1996); and Martha Nussbaum 'Reply' in *ibid*.

whatever moral ties or obligations we owe to our fellow humans beings, these cannot be construed as ties or obligations of citizenship in any meaningful sense.

Even if we reject the notion that our common moral duties to all humanity could be construed as sufficient for a kind of citizenship, we might nevertheless think that they override whatever moral obligations we owe, or believe we owe, to those who happen to stand in the same kind of institutional relationship of citizenship as we do with respect to a particular state.² That is, we might still find the ethical cosmopolitan position persuasive, even if we deny that it means we are ‘citizens of the world’. Some have argued that even this is incompatible with what citizenship requires, at least on some conceptions. David Miller argues that the idea of world citizenship is incompatible with a particular republican understanding of what it means to be a citizen or what he calls ‘genuine’ or ‘radical citizenship’. According to such a conception, certain behaviours and attitudes which citizens demonstrate towards each other are more central to the meaning of citizenship than the institutional relationship I have identified with the core concept. These attitudes and behaviours in turn require that citizens are able to identify and relate with each other in a particular way. On the one hand, Miller argues that this kind of mutual identification is impossible to realize on a global scale. On the other hand, even on the more manageable scale of the modern nation state, Miller argues, this conception of ‘genuine citizenship’ can be realized only if co-citizens mutually identify with a shared national

² Whether we have such obligations, or what form they might take, is the subject of Chapter 5.

identity, i.e., if they see themselves as members of a morally bounded national community. If it is true that, on some conceptions of citizenship, membership in a morally bounded community might be a necessary condition for citizenship, then this would represent another challenge to the core concept I have described. In section 4 I argue that placing the behaviour and attitudes of 'genuine citizenship' at the core of citizenship is unjustified. In section 5, I consider the extent to which 'genuine citizenship' can be understood as necessary for the maintenance of liberal democracy generally. Since the existence of citizenship as captured by the core concept depends on the existence of democratic governance, we might think that anything that is necessary for the former is necessary for the latter. However, I conclude that while the existence of a morally bounded national community might be helpful towards to the goal of realizing a particular ideal of citizenly behaviour, or promoting a flourishing liberal democracy, neither of these are necessary for citizenship *simpliciter*, and so we should not worry that the core concept is mistaken in placing its emphasis on the institutional relationship of citizenship, rather than the moral relationship between co-citizens.

2. World Citizenship

As I mentioned above, when people talk about the idea of possessing world citizenship, or global citizenship, they typically have one of two things in mind. They might have in mind a kind of national-state citizenship writ large, e.g. citizenship in the context of a single world state, or a world-wide federation of states on the model of the European Union, or some other form

of world government. This sort of view, which I will call *political cosmopolitanism*, is in principle largely consistent with the core concept of citizenship. However, as we will see, it follows from the core concept that world citizenship of this kind is not yet available. Moreover, the core concept also places some constraints on the sorts of institutional relationships that might factor into future systems of world government to which the concept of citizenship could rightly be said to apply. The other way in which people commonly talk about having world citizenship, what I call the *ethical cosmopolitan* view, understands world citizenship primarily in terms of a moral obligation all humans beings possess to give equal consideration to each other's interests, regardless of their race or creed, their geographical location or political affiliation. With respect to the aims of this chapter, my primary concern is with the ethical cosmopolitan view of world citizenship. However a brief discussion of the political cosmopolitan view is useful vis-à-vis the overarching aim of this thesis. It allows me to flesh out some of the implications of the core concept for how we might go about theorizing the possibility of world citizenship.

Political Cosmopolitanism

First let me explain why it follows from the core concept of citizenship that it is not possible at present to hold an institutional relationship of world citizenship. For while it may be true that we do not have anything like a centralized world government, we do have an expansive (and growing) system of international laws, and it is plausible to view individuals as having democratic participation rights in the creation of those laws, devolved from

the international level to the national level through various stages of representation. The chief problem with treating this relationship as a kind of citizenship is that, even if we construe the possession of such participation rights as democratic membership in the international political community, the institutional *recognition* for those rights is ultimately the responsibility of national governments, not the international community's institutions of governance. Insofar as citizens of democratic states have a say in the creation of international law, it is only because their rights and duties of citizenship in their home states are recognized, protected, and enforced by their national governments. The international community might monitor the extent to which the democratic membership of citizens in a given state is being recognized and respected, but it does not (yet) have the authority, say, to step in and take over the job of doing so for a government that is failing at the task. Compare this to a federal arrangement on the national level, such as we find in Canada. Were the government of a Canadian province to consistently fail to recognize, protect, and enforce the rights and duties of democratic membership of its constituency, the federal government (and *only* the federal government) would be within its legal rights to step in to protect the democratic rights of the citizens in that province. Were the international community to take on such a federal form, *then* there would be a genuine possibility for world citizenship.³

³ I do not mean that *only* if the international community took on a federalized form would world citizenship be possible. Other visions of world government, such a centralized world state, would also be consistent with the core concept.

We might put the point in more general terms by saying that citizenship always tracks sovereignty. The reason is because, as discussed in Chapter 2, the institutional recognition of basic and democratic membership requires more than that the rights and duties of each are legally or institutionally *defined*. If a government lacks either the power or the authority to effectively recognize the basic and democratic membership of those who are subject to it, then one can only nominally be a ‘citizen’ with respect to that government and the community it governs. This is in much the same way that someone can be only nominally a ‘citizen’ in a state whose government has the power and authority to recognize her basic and democratic membership but does not, e.g., because that state is governed by an authoritarian regime.

This has implications for what we should recognize as citizenship in the context of certain theoretical models for global governance that have been proposed. For example, David Held is among those political cosmopolitans who are optimistic that genuinely democratic governance can be realized on a global scale, while at the same time deepened at the local level.⁴ For Held, cosmopolitan democracy involves,

participatory democracy at local levels as a complement to the public assemblies of the wider global order; that is, a

⁴ David Held, ‘The Transformation of Political Community: rethinking democracy in the context of globalization’ in Ian Shapiro and Hacker-Gordon (eds) *Democracy’s Edges* (Cambridge University Press 1999); David Held, *Democracy and The Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press 1995) Ch. 10. On the idea of accountability tracking the ‘contours of power’ see also Ian Shapiro ‘Introduction’ in Ian Shapiro and Casiano Hacker-Gordon (eds) *Democracy’s Edges* (Cambridge University Press 1999). For critical discussion of Held’s ideas of global democracy and global citizenship see, e.g., Will Kymlicka, ‘Citizenship in an era of globalization’ in *ibid*; Alexander Wendt ‘Comment on Held’s Cosmopolitanism’ in *ibid*; Michael Saward, ‘A critique of Held’ in Barry Holden (ed) *Global Democracy: Key Debates* (Routledge 2000).

political order of democratic associations, cities, and nations as well as of regions and global networks ... it is a legal basis of a global and divided authority system, a system of diverse and overlapping power centres, shaped and delimited by democratic law.⁵

Held also thinks that we should move away from the state-centric model of citizenship. He writes,

[in] this system of cosmopolitan governance, people would come to enjoy multiple citizenships—political membership in the diverse political communities which significantly affect them. They would be citizens of their immediate political communities, and of the wider regional and global networks which impacted upon their lives.⁶

The idea of multiple citizenships is not in principle inconsistent with the core concept of citizenship. However, the latter does place more limits on the kinds of political memberships that would qualify as citizenship than Held seems to want. For example, Held suggests that some of the political power currently concentrated at the level of states might be devolved to organizations designed to address a single global or regional issue, such as combatting HIV-AIDS, or the management of nuclear waste. Rather than having a handful of sovereign authorities coordinating to address a wide range of issues, as we have now, we would grant a larger number of associations or organizations 'sovereignty' over particular issues. Individuals who are most affected by a given issue could then be empowered to participate democratically in the particular organization that is assigned to addressing it,

⁵ Held 'The Transformation of Political Community' (n 4) 107. cf Held, *Models of Democracy* (2nd edn, Stanford University Press 1996) Ch. 10; and Held, *Democracy and the Global Order* (n 4) Ch. 10.

⁶ Held, 'The Transformation of Political Community' (n4) 107. See also David Held 'The Changing Contours of Political Community' in Barry Holden (ed) *Global Democracy: Key Debates* (Routledge 2000) 30. cf TW Pogge, 'Cosmopolitanism and Sovereignty' (1992) 103(1) *Ethics* 58.

while those who are not can be left out, thus raising the overall democratic quality of that issue's handling.

In light of the core concept, however, democratic membership in such organizations does not necessarily translate into citizenship in each of them. The question is, again, whether the entity in which one has democratic membership is the same entity that is ultimately responsible for its institutional recognition. In a political order comprised of associations and communities of divided and overlapping authority, there are three possibilities for citizenship. First, one's democratic membership in any given association or community is effectively recognized by some larger network or 'constellation' of associations of which it is a part. That is, one's democratic rights with respect to a single organization are *ultimately* secured jointly by all the other organizations in the constellation. This might be a regional constellation or, perhaps more likely in the kind of global political order Held proposes, one's democratic rights in any given organization are *ultimately* secured by the entire world. Either way, it makes sense to talk about one's citizenship only with respect to the wider network which actually secures (i.e. institutionally recognizes) one's democratic membership. Second, it could be that some organizations or levels of political community could have enough authority and power to institutionally recognize the democratic membership of its 'citizens'. However, this will not be the case with *every* association and organization, and certainly far fewer than those in which Held seems to equate membership with a kind of citizenship. An association tasked with fighting HIV-AIDS, for example, seems an unlikely candidate. Moreover, on

the model that Held proposes, it is hard to imagine that *any* such community could be *ultimately* responsible for recognizing the democratic membership of their own members, i.e., such that no other community would be authorized to step in should that community fail at this task. For this would seem to re-introduce a degree of sovereignty that Held's model is designed specifically to avoid. That is unless, third, there is a single organization that is charged specifically with institutionally recognizing the democratic membership of all, or some subset of all associations, organizations, communities etc. In which case, according to the core concept, it is possible that people could be citizens with respect to *that* organization. However, again, it is hard to imagine that any single such organization of 'democracy police' would have, on Held's model, ultimate responsibility for recognizing the democratic membership of any subset of organizations. That is, it seems clear that it would be accountable to all other similar organizations, ultimately resulting in, again, a world-wide network or constellation of organizations responsible for securing recognition for everyone's democratic membership in every association, organization, or community. In other words, it follows from the core concept of citizenship that, once we start to divvy up the sovereignty of contemporary states to the degree that Held suggests, it seems we cannot *avoid* being 'citizens of the world' *and only* 'citizens of the world'.

This is just a brief sketch of the way in which the core concept of citizenship might shape how we discuss the kind of world citizenship with which it is compatible. I am not here endorsing Held's proposal for global democratic governance, nor have I considered every feature of how the core

concept of citizenship bears on his suggestion of multiple overlapping citizenships.⁷ Now let me turn to that version of world citizenship that is fundamentally at odds with the core concept.

Ethical Cosmopolitanism

One of the earliest and perhaps most famous examples of the ethical cosmopolitan claim comes from the Cynic philosopher Diogenes of Sinope, who is said to have offered ‘I am a citizen of the world’ when asked where he came from. This is usually understood primarily as a negative claim about the insignificance of contingent facts about one’s origins for the practice of philosophy or living a philosophical life.⁸ Understood in this way, ‘citizenship’ is not being used literally, but rather for rhetorical effect—it is simply a poetic way of saying ‘where I’m from doesn’t matter’. Other times, however, the pronouncement of one’s world citizenship is meant to be taken more literally. For some it expresses the view that one’s primary moral obligations are the ones we owe to all of humanity. In this context, to say that one is, or that we are all, global citizens contains both a positive and negative claim. The negative claim is, similar to Diogenes’, that one’s membership in, or affective attachments to, a particular political community have little or no bearing on her moral obligations. The positive claim is that one counts herself a member

⁷ I did not discuss at all, for example, where basic membership fits into a model like Held’s. One problem with making democratic membership in an association sufficient for citizenship in that association, is that it makes it hard to see why democratic membership in, say, a trade union wouldn’t be, on Held’s account, a kind of citizenship. Without the requirements of institutional recognition and basic membership, the examples of ‘citizenship’ we can imagine multiply rather quickly.

⁸ For a discussion on the possible positive aspects of Diogenes’ claim see W Desmond, *Cynics* (University of California Press 2008) 199–207

in a single, universal ethical community, and this membership itself constitutes a form of citizenship. Let us focus on this positive claim first.

For the ethical cosmopolitan, world citizenship is a moral notion divorced more or less entirely from the institutional relationship which I argue is the central relationship of citizenship. This is not to say that, for the ethical cosmopolitan, this kind of moral citizenship is the *only* kind of citizenship we can have. Rather it is to suggest only that institutional citizenship is one thing, and moral citizenship is something else, and the former has no bearing on the latter. For the ethical cosmopolitan one's membership in the morally bounded community of humanity, and the rights and duties that come with it, are both necessary and sufficient for a genuine kind of citizenship.

This is of course at odds with the core concept I have offered. I might then reject this notion of 'world citizenship' as a legitimate instance of citizenship simply by reasserting that core concept. However, since it is precisely the strength of the core concept I am trying to establish in this thesis, it is worth treating the cosmopolitan claim to world citizenship as a *prima facie* challenge to it. Luckily, this moral notion of citizenship can be rejected without any reference to the core concept at all.

The first move is to turn the question around—apart from the fact that people sometimes call themselves 'citizens of the world', on what other grounds should we accept that such pronouncements reflect the existence of a genuine kind of citizenship at all? What exactly is it they are saying? If world citizenship is just membership in the moral community of humanity, then to

be a citizen *just is* to be a human being, and the duties of citizenship *just are* the duties we have as human beings. Since we already have another concept that captures that idea (i.e. the concept of humanity) on what grounds should we recognize an independent concept of world citizenship? What (positive) idea or feature of the world is captured by the concept of world citizenship that is not already captured by the concept of humanity or the concept of natural duty? Of course, I have no principled objection to using 'world citizenship' casually as a different label for a familiar concept that is distinct from the concept of citizenship. (Though I would suggest it is not especially helpful to do so.) To be sure, the concepts of humanity and of its natural duties stands in a tense and much contested relationship with the kind of membership in parochial moral communities that is captured by every other conception of moral citizenship—but this hardly justifies thinking of one's humanity as a kind of moral citizenship. The most we can say the idea of world citizenship adds to the idea of membership in the moral community of humanity, understood in terms of the possession of certain natural duties, is the constraint 'and only those duties', as in, 'a human being has certain natural duties; a world citizen is a human being who has certain natural duties *and only* those duties.' This, though, effectively reduces the claim to world citizenship to a negative claim—a way of responding 'that doesn't matter' whenever someone suggests that we have obligations, beyond the natural duties of humanity, on account of our political, familial, or affective attachments.

This version of the positive claim to world citizenship, then, like Diogenes', should be set aside as more of a rhetorical device, albeit one used to express a genuine philosophical position. It is not really a claim about a kind of 'citizenship' at all, but rather a claim about the character and normative supremacy of our natural duties as human beings. There is however another, slightly more nuanced, version of the ethical cosmopolitan's claim worth considering, one that allows for a little more contact between the moral and institutional notions of citizenship, and which offers something more like an independent understanding of citizenship. (Ultimately, though, it too is unsatisfactory.)

Martha Nussbaum, for example, adopts an ethical cosmopolitan view of citizenship in her essay, 'Patriotism and Cosmopolitanism'.⁹ She argues there that world citizenship consists in the duty to consider equally the interests of all human beings, especially when we take political action. We must take care to treat as morally arbitrary those characteristics, such as ethnicity, culture, language, religion etc., that are typically associated with membership in particular sub-global communities and which, at present, heavily influence many of our political decisions. Acting as a global citizen in this sense does not entail abandoning our current institutional arrangements. In fact it is partly through our membership in such institutions that we are able to act politically on global issues at all.¹⁰ However, she argues that our global citizenship requires that we recognize a 'regulative constraint on our political actions and aspirations' which prevents us from allowing our particularist

⁹ Nussbaum, 'Patriotism and Cosmopolitanism' (n 1) 6-10; Nussbaum 'Reply' (n 1) 133.

¹⁰ Nussbaum 'Reply' (n 1) 135.

attachments and local memberships to unjustly influence our political decisions.¹¹ Those in the developed world, Nussbaum notes, are especially well-placed to discharge their duty as citizens of the world because of the strength of their political institutions and their access to a variety of non-governmental organizations that are capable of engaging with global social and political issues.¹² So conceived, cosmopolitan citizenship is characterized by a moral duty that applies primarily over a particular range of action, namely, political action. Even though there is no full-fledged global democratic state there are nevertheless opportunities, unequally distributed throughout the world, to act as global citizens.

We might take Nussbaum's claim about unequally distributed opportunities to act as citizens as an indication that she too is in fact using the language of citizenship rhetorically, in order to make a more general point about the need to give moral priority to problems of global justice, rather than presenting a genuine or literal understanding of citizenship. She might simply be drawing on the common belief, which I explore in the next chapter, that citizens owe certain *special obligations* to each other *qua* citizens, in order to highlight the kinds of duties we actually owe, not as citizens, but as people.¹³ Or, she could be taking hold of that common belief and arguing that the special obligations citizens possess *qua* citizens are not in fact owed to

¹¹ *ibid* 133.

¹² *ibid* 13.

¹³ David Miller offers a similar analysis of the way in which Roman Stoic philosophers like Marcus Aurelius used the notion of world citizenship to take what would have been familiar ideas about what a citizen owes to the city, and applying it instead to the whole world. David Miller, 'The Idea of Global Citizenship' in Sigal R. Ben-Porath, Rogers M. Smith (eds) *Varieties of Sovereignty and Citizenship* (University of Pennsylvania Press 2013)

their fellow citizens. Rather, when citizens act as citizens, i.e., when they act politically, they have an obligation to give equal consideration to the interests of humankind that is 'special' the sense that only citizens have it. This might be plausible if we interpret 'political action' to mean only the exercise of democratic political rights by those so empowered within their particular political communities—i.e. those who are institutionally recognized as citizens of those communities. That is, it might be plausible to describe the duty of equal consideration as a special duty of citizenship *if* only those who are citizens in the institutional sense hold that duty, because only they have the capacity to 'act politically'. This would also in principle be compatible with the core concept of citizenship.

However, Nussbaum is clear this is not the interpretation of political action she has in mind, that those who are citizens according to the core concept only have *more* opportunities to act politically, not *special* opportunities. One need not be a citizen according to the core concept in order, e.g., to work for Oxfam or Amnesty International. Even those who are non-citizens (institutionally speaking) can 'act politically' in the way Nussbaum intends, and so they too are world citizens who owe the duty of world citizenship. So the question then becomes whether or not the possession of a duty of equal consideration, held by and owed to all human beings, could plausibly be understood as sufficient for a kind of citizenship, that it is meaningfully distinct from membership in the moral community of humanity, just so long as this duty is restricted to the realm of 'political action'.

To see why it is not, consider the steps we might take to arrive at the duty of equal consideration in the first place. First we assert something like the intrinsic and equal moral worth of all persons. In this we could ground a *prima facie* natural duty to give equal consideration to the interests of all humans whenever we take a decision about how to act, perhaps qualified by a *ceteris paribus* clause. In the absence of any argument showing why the duty to give equal consideration does not apply in the realm of political action, we also now have enough to justify something like Nussbaum's proposed 'regulative constraint on political action', since any natural duty applies *prima facie* to every category of human action. The natural duty not to kill applies whether one is playing sports, presiding over a tort case, making coffee, etc.—we have no independent duty e.g. to refrain from back-nine murder. This is consistent with the possibility that certain relationships might affect how this general duty is discharged, though of course further argument is required to demonstrate which relationships would qualify.¹⁴ It is consistent, for example, with the possibility that we do not, on balance, owe a duty of equal consideration when we act as parents or as siblings or as friends. It is even consistent with the claim that, in every non-political realm of action, the duty of equal consideration tends to be outweighed by other particularist duties. Nussbaum's claim is only that being a citizen in an institutional sense, or a member of an ethnic or cultural group, etc., is insignificant vis-à-vis the general duty of equal consideration in the realm of political action. However, even if political action is the one area in which the duty of equal consideration

¹⁴ See Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford University Press 2001) Chapter 3.

always has normative supremacy, this does not make it a distinct duty of political action.

The idea that membership in the morally bounded community of humanity could be sufficient for a kind of citizenship, that one could literally be ‘a citizen of the world’ in the absence of some form of genuinely global democratic governance, is unconvincing. So it is not a problem that it is inconsistent with the core concept of citizenship. That said, the core concept is not at all inconsistent with the idea behind the negative claim involved in the moral idea of world citizenship, that citizens do not ultimately owe anyone a special duty of priority. In the next chapter I argue that the relationship between citizens and those who are normally subject to the laws that citizens have a hand in creating is normatively significant. However, I leave it open whether the normative significance of that relationship is enough to give rise to any special obligations, or if it does that they will always trump whatever natural duties they might have as human beings.

3. Republican Citizenship and Nationality

The Republican Challenge to Global Citizenship

David Miller takes a slightly different line against the idea of world citizenship than I have done. He too argues that whatever might be captured by the ethical cosmopolitan’s claim to ‘world citizenship’, it is not a genuine instance of the concept of citizenship. However, the concept he uses to make this point differs from the one I am defending in this thesis. Miller argues that the possibility of world citizenship depends not (or not only) on the

existence of global institutions of democratic governance, but on the possibility of human beings worldwide standing in a particular kind of relationship with each other. For Miller, 'citizenship is centrally a *political relationship* between co-citizens.'¹⁵ What is required for people to stand in 'a political relationship' of any sort is, at the very least, 'a certain weak form of reciprocity, in that those party to [that relationship] must generally be willing to accept authoritative decisions that go against their wishes in the expectation that they will benefit from later decisions.'¹⁶ As a particular form of political relationship, citizenship requires a further form of reciprocity between co-citizens, one in which 'citizens aim at reaching an agreement with each other so that each can accept the authoritative decisions that are made.'¹⁷ Miller argues that whatever relationship individuals might stand in with each other on a global level, it cannot be one that is reciprocal in these two ways. Reciprocity of this kind requires that citizens know who their co-citizens are and can expect them actually to aim at reaching agreement.¹⁸ It also requires that they know something about their co-citizens, enough to know what they would and would not find an acceptable outcome of any attempt to reach an agreement.¹⁹ We cannot hope to know *all* of our fellow human beings in this way. The most we can do with respect to our fellow human beings on a global scale, Miller argues, is 'to identify with them, show

¹⁵ Miller (n 13) 227, my italics.

¹⁶ *ibid* 232. Miller draws here on B. Williams, 'Realism and Moralism in Political Theory' in G Hawthorn (ed) *In the Beginning was the Deed* (Princeton University Press 2005).

¹⁷ Miller (n 13) 233.

¹⁸ *ibid*.

¹⁹ *ibid*.

ethical concern for them, [and] arrange our institutions to avoid global harms.’²⁰

Of course, one could argue that in many contemporary democratic states, the level of familiarity required for the kind of reciprocity Miller describes does not obtain either. Miller is aware of this problem. The solution, he thinks, lies partly in co-citizens standing in an altogether different relationship with one another—as co-members in a morally bounded *national* community. That is, for Miller, in order to realize the central relationship of citizenship, co-citizens must also be co-nationals.

In Chapter 2 I argued that because the concept of citizenship is not essentially evaluative, in order to define its core it is not necessary that we take a stand on the sorts of normative issues that distinguish e.g. liberal from republican conceptions of citizenship. So even if it were true that membership in a morally bounded community were necessary to realize a particular normative conception of citizenship, that would not mean that it was necessary for citizenship *simpliciter*—i.e. it would not be necessary for the existence of a phenomenon or state of affairs to which the concept of citizenship would rightly apply. However Miller’s (republican) conception of citizenship resists this argument. For the relationship Miller identifies as central to citizenship is different from the one captured by the core concept. The features I identify as central, he identifies as ‘derivative’. In the remainder of this section, I want to show why we should not locate the uniquely republican elements of Miller’s conception at the core of citizenship. In doing

²⁰ Miller (n 16) 241.

so, I hope to show why, therefore, membership in a morally bounded national community is not necessary for citizenship, as Miller argues.

Bounded Nationality

Standing in contrast to the core idea of ethical cosmopolitanism, but distinct from the idea that one's parochial institutional membership is normatively significant, is the notion that membership in national communities, defined along territorial, cultural, ethnic, or linguistic lines, ought to make a moral difference when citizens take political action. Certainly, even those who find the idea of a universal duty of equal consideration compelling in principle may, in practice, find themselves *feeling* motivated to act in ways that are influenced by their attachment or commitment to the national communities with which they identify—by what we might call their national patriotism. It is also possible to accept that we have universal duties while allowing that some particular identities and relationships might legitimately modify or influence how and when those duties are discharged. That one's national identity or the relationship between co-nationals is a normatively significant relationship might be justified on the grounds that the very survival of the nation *qua* nation depends on members treating it as such, and nations are intrinsically worth preserving.²¹ It could also be argued that the survival of any democratic society generally depends on at least some of its members' feelings of

²¹ See e.g. Charles Taylor, 'Politics of Recognition' in Amy Gutmann (ed) *Multiculturalism* (Princeton University Press 1994).

solidarity having legitimate normative bite. Michael Walzer suggests as much in his defence of 'hard' national-state borders, saying,

[i]t is only if patriotic sentiment has some moral basis, only if communal cohesion makes for obligations and shared meanings, only if there are members as well as strangers, that state officials would have any reason to worry especially about the welfare of their own people (and all of their own people) and the success of their own culture and politics.²²

Nor is it only officials whose actions we might want to be rooted in particularist, patriotic sentiments. Alasdair MacIntyre reminds us that sometimes we require men and women to put their lives at risk to defend our communities or our way of life.²³ Can we expect them to evaluate each cause we ask them to fight or die for from a neutral, impartial, i.e. 'liberal universalist', standpoint, or to give equal consideration to the interests of those at whom we ask them to point their rifles, those who point rifles at them? Would a state long survive without the patriotism of its soldiers at the very least? If the answer to this is 'no', MacIntyre contends, then good soldiers, at any rate, cannot be liberal universalists.²⁴

It is plausible that patriotic soldiers and civic-minded officials are good things for states to have because of the specific roles they play within the

²² Michael Walzer, *Spheres of Justice. A Defense of Pluralism and Equality* (Basic Books 1983) 38-9 (his italics). cf Henry Sidgwick, *The Elements of Politics* (4th edn, MacMillan 1929) 222: 'we recognize that a political society is in an unsatisfactory and comparative unstable condition when its members have no consciousness of any bond of unity among them except their obedience to the same government. Such a society is lacking in the cohesive force required to resist the disorganizing shocks and jars which foreign wars and domestic discontents are likely to cause from time to time.'

²³ Alasdair MacIntyre, 'Is Patriotism a Virtue?' in Ronald Beiner (ed) *Liberalism, Nationalism Citizenship: essays on the problem of political community* (University of British Columbia Press 2003)

²⁴ *ibid* 226.

state. However, most citizens today are not and never will be soldiers or officials.²⁵ We cannot infer from such examples alone that it is necessary for citizens *qua* citizens to possess any kind of national patriotism, let alone a morally significant kind, without clarifying what their role is within the state. Here is where Miller's notion of a political relationship becomes comes into play. The kind of reciprocity needed for the political relationship of citizenship, on Miller's account, requires a connection between co-citizens that goes beyond what can be achieved through identification with or commitment to the somewhat vague notion of 'our common humanity'. Miller defends what he calls a 'principle of nationality' along these lines.²⁶ The basic idea is that a common nationality serves 'to maintain solidarity among populations of states that are large and anonymous, such that their citizens cannot possibly enjoy the kind of community that relies on kinship or face-to-face interaction.'²⁷ And this sort of solidarity is necessary for the conditions of reciprocity to obtain.

No one denies that national patriotism has proven itself historically to be a powerful force in the realm of collective political action. Critics of

²⁵ This is perhaps one of the most important differences between ancient forms of citizenship and modern citizenship. See John Pocock, 'The Idea of Citizenship Since Classical Times' in Ronald Beiner (ed) *Theorizing Citizenship* (SUNY Press 1995).

²⁶ David Miller, *On Nationality* (Oxford University Press 1997) esp. Ch 2; and David Miller, *Citizenship and National Identity* (Polity Press 2000) Ch.3 and Ch.5.

²⁷ Miller, *Citizenship and National Identity* (n 26) 31-2. cf Benedict Anderson *Imagined Communities* (Verso 2006). At times Miller seems to take it more or less for granted that such solidarity is necessary for states the size of modern ones, focussing his argument on the claim that it is also necessary for 'genuine', i.e. republican, citizenship. He makes the case more explicitly in David Miller, 'In What Sense Must Socialism Be Communitarian?' (1989) 6(2) *Social Philosophy & Policy* 51–73. Arash Abizadeh critically discusses four arguments that liberal democracy requires a national culture of which Miller's 'territorial culture' version is but one. Arash Abizadeh, 'Does Liberal Democracy Presuppose a Cultural Nation? Four Arguments' (2002) 96(3) *American Political Science Review* 495.

national patriotism are quick to highlight this fact when they draw attention to those historical examples of what peoples whose ‘reality has been distorted’ by nationalism can do. Some critics edge towards claiming that a tendency towards its vicious forms is embedded in the very idea of it.²⁸ Miller, for his part, stresses the malleable nature of national identities, that a community’s identity can itself be subjected to public re-definition thus allowing for the possibility that its more iniquitous expressions can be avoided.²⁹ This defence conjoins two familiar ideas in the literature: that nations are ‘imagined communities’³⁰ and that they are ‘daily plebiscites’.³¹ Since it is the members of a nation themselves who ultimately determine what membership means there is no reason to think that they will *always* choose an identity that leads to some form of jingoism. Given this choice, it is doubtful there are many features that a nation *must* have, and so perhaps, as Sidgwick suggests, ‘attempts to give definiteness to this latter term are liable to obscure its real meaning.’³² Put another way, there is no conceptual barrier to a national group seeing themselves as, e.g., ‘peacekeepers’, or ‘inclusive’, or ‘good global neighbours’.

²⁸ See e.g. Kenneth Minogue, *Nationalism* (Penguin 1970) 148. cf Miller, *On Nationality* (n 26) 31. Nussbaum goes so far as to say that “national” patriotism is very close to jingoism.’ Nussbaum (n 1) 14. Hilary Putnam cautions us in reply not to confuse ‘a pretext for human aggression and cruelty with human aggression and cruelty themselves.’ Hilary Putnam, ‘Must We Choose?’ in Martha Nussbaum and Joshua Cohen (eds) *For Love of Country* (Beacon 1996) 92.

²⁹ Miller, *On Nationality* (n 26) Ch.2

³⁰ Anderson (n 27).

³¹ Ernest Renan ‘What is a nation?’ J Hutchinson and A Smith (eds) *Nationalism* (Oxford University Press 1995 [1882]).

³² Sidgwick (n 22) 223.

Moreover, the process of choosing might itself help to give shape to a national identity. Miller argues that the content of any national identity can be shaped by a process of deliberative public discussion about what it means to be a member. Through this discussion about the meaning of membership members reinforce their self-identification with the collective they are jointly defining. In this way, the existence of a national identity furnishes the conditions needed for the kind of political relationship that is central to 'genuine citizenship'.³³ In order to ensure that citizens are willing not only to lay down their lives in defence of their political community, but also to foster the appropriate attitudes towards participation in the community and in public life, an attitude of sensitivity to the general will of the community, a genuine desire to see that will realized and the motivation to act in a way that aims towards it, citizens must see themselves as bound to a public national community, comprising shared territorial, cultural, linguistic, and historical elements.³⁴

All this is to say that it is plausible that national communities might be morally bounded, i.e., that membership ought to make a difference to members' moral rights and duties, and that such membership might help to facilitate a certain degree of reciprocity between co-citizens. What remains to be seen is whether such membership is necessary for such reciprocity or, more

³³ cf Yael Tamir, *Liberal Nationalism* (Princeton 1992).

³⁴ Miller's principle of nationality, 'comprises three interlinked propositions: that a national identity is a defensible source of personal identity, that nations are ethical communities that impose reciprocal obligations on members which are not owed to outsiders, and that nations have a good claim to be politically self-determining.' Miller, *Citizenship and National Identity* (n 26) 6. See also his complete defence in *ibid* Ch.2. There he qualifies the third proposition, that political self-determination does not always mean political sovereignty. cf Tamir's account of nationalism in Tamir (n 33) esp. 25-32.

importantly, whether that kind of reciprocity is central for citizenship. I will consider the second question in the remainder of this section and the first question in the following section.

'Genuine Citizenship'

Miller's conception of 'genuine citizenship' is paradigmatic of contemporary republican understandings. It comprises four elements. The first two elements are those common to both 'thicker' republican and 'thinner' liberal conceptions. They are also (and partly for that reason) consistent with the core concept of citizenship. They are (1) civil rights, duties and responsibilities that guarantee equal treatment before the law and (2) political rights, duties and responsibilities that empower members to participate fully in public life. The first distinctly republican element is (3) that citizens 'must think and behave in a certain way: [to be a citizen] one must have a sufficient measure of what the older republican tradition called public virtue.'³⁵ Such behaviour includes 'being willing to take active steps to defend the rights of other members of the political community, and more generally to promote [the community's] common interests.'³⁶ Promoting common interests is not to be confused with pursuing the 'general will' which is the goal of politics generally on the republican model. Rather, it includes things like nobly coming to the defence of a fellow citizen one sees being mugged, blowing the whistle on government corruption, offering to help renovate the local

³⁵ Miller, *Citizenship and National Identity* (n 26) 82.

³⁶ *ibid* 83.

community centre, or volunteering for public service ‘when the need arises’.³⁷ This third element of republican citizenship, characterized by behaviour that is oriented towards the overall good of the community, is non-political and supererogatory; someone is a good citizen precisely because ‘he did more than he was legally or morally obligated to do.’³⁸ The fourth and final element is (4) ‘[citizens’] active role in both formal and informal arenas of politics’.³⁹

Let us first take a closer look at (3). For republicans, citizenship is about more than simply the possession of rights. Citizenship is a ‘benchmark that we appeal to when assessing how well our institutions and practices are functioning.’⁴⁰ So while the existence of citizenship requires the existence of its characteristic legal and political rights they are insufficient for ‘genuine citizenship’. More than that, the kind of behaviour which is needed for genuine citizenship is given ‘more weight’ in Miller’s conception.⁴¹ Again this is because he views the political relationship between co-citizens as central to citizenship. It is unclear though the sense in which the aspirational elements of citizenship ‘weigh more’ than the institutional elements which, all agree, are necessary conditions for citizenship. What hinges on being a ‘good’ or ‘bad’ citizen in the sense implied by (3)? We do not generally think that a person who holds full political and legal rights but who happens to be of a nervous, shy or unsociable nature, the sort of person unlikely to volunteer for

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ Miller, *Citizenship and National Identity* (n 26) 82.

⁴⁰ *ibid.* 84. cf Ronald Beiner’s discussion of citizenship as a ‘critical standard’ in Ronald Beiner, ‘Introduction’ in Ronald Beiner (ed) *Theorizing Citizenship* (SUNY Press 1995)

⁴¹ Miller, *Citizenship and National Identity* (n 26) 82.

community projects or to heroically intervene in a mugging, should for this reason lose her legal and political status.⁴² Nor would a recent immigrant who quickly integrates into his new neighbourhood, who helps build a new playground, who discusses public issues with his neighbours at the local coffee shop, and who, at significant risk to himself, rescues a neighbour's child who has fallen through the ice at the local pond, have grounds to demand an expedited naturalization process. (Though presumably it wouldn't hurt.) One's institutional status as a citizen is, and perhaps should be, more or less unaffected by whether or not one strives to the ideal described in (3). It is probably true that society would be better off if everyone acted as 'genuine citizens'. However, if this is not just a platitude, it is unclear what we should take from it.⁴³

Still, the behaviours described in (3) are not an unreasonable benchmark by which to measure societies. It is not however a benchmark that is uniquely suited to liberal democratic societies, nor one to which citizens in particular could be measured. Why should we think a community's approaching the ideal in (3) indicates better 'citizenship' rather than, for instance, better 'neighbourliness', 'civility' or 'public spiritedness'.⁴⁴ It is plausible that (3) is constitutive of an ideal (or 'genuine') community

⁴² Of course one *can* become less of a citizen if one's behaviour is anti-social to the point of being criminal, resulting in her being *stripped* of certain rights.

⁴³ Kymlicka and Norman observed that much republican thinking seemed to reduce to a platitude in Will Kymlicka and Wayne Norman, 'Return of the Citizen' in Ronald Beiner (ed) *Theorizing Citizenship* (SUNY Press 1995)—a conclusion Kymlicka later said was 'uncharitable'. See Will Kymlicka, 'Introduction' in Will Kymlicka and Wayne Norman (eds) *Citizenship in Diverse Societies* (Oxford University Press 2000).

⁴⁴ Andrew Mason, 'Citizenship and Justice' (2011) 10 *Politics Philosophy Economics* 263, 266-8.

generally speaking—i.e. applying to communities of all kinds—and so *for that reason* partly constitutes an ideal for a community of citizens. This tells us no more about what it means to be a citizen than the suggestion that citizenship consists in the possession of the universal duty of equal consideration. It offers little help, for instance, in distinguishing citizens from non-citizens within a community containing both. I am not suggesting that every important feature of a concept must be unique to that concept or to the thing of which it is a concept. That citizenship exists in communities is no doubt an important element of the concept of citizenship. I am only asking why, if it is true that the concept of ‘community’ contains an aspirational ideal of behaviour, the idea that a community of citizens ought also to aspire to that behaviour warrants ‘more weight’ within the concept of citizenship than the sorts of institutional features that citizens, and only citizens, typically have?

Now consider (4). Again, it is ‘[citizens’] active role in both formal and informal arenas of politics.’ At first blush this element appears to describe a standard of behaviour that is more plausibly construed as central to citizenship. According to Miller, this element realized to the extent that political participation is viewed not merely as a duty that must be performed however grudgingly or as a necessary check against governmental corruption, but ‘as a way of expressing [one’s] commitment to the community.’ ‘Because the citizen identifies with [the community], he or she wants as far as possible to reach an agreement with other citizens so that what is done is done in the name of all of them.’⁴⁵ Miller recognizes that complete agreement is an ideal

⁴⁵ Miller, *Citizenship and National Identity* (n 26) 84.

that will rarely if ever be achieved in practice. The very possibility of citizens' aspiring to this ideal requires that they possess sufficient motivation to carry out the tasks citizenship involves and that they must behave responsibly when they do carry out those tasks. Such motivation, he argues, flows from a genuine feeling that 'we're all in this together', while responsibility demands that citizens must at all times keep an eye on 'the general will' and move towards it the best we can.⁴⁶

This role appears to be a better candidate than (3) of greater 'weight' within a concept of citizenship because it at least applies to the range of actions that citizens are characteristically better placed to perform than non-citizens. While even non-citizen members of a democratic community might express their commitment to that community through various non-political actions, only citizens have the opportunity to express their commitment to the community through direct political action. However, the possibility of such expressions presuppose the existence of the first two elements of citizenship, i.e. the possibility of realizing the ideal exists by virtue of the opportunities for such expression secured by (1) and (2). If people are inclined to express their commitment to their communities (as we might hope that they would be) then they will do so in whatever ways are available to them and which they believe will count (or what they think others will believe will count) as such an expression. For instance, the idea of sportsmanship includes expressing respect for one's opponents and teammates. Football players might express this by shaking hands with their opponents after a

⁴⁶ *ibid.*

match, whereas fencers might salute with their foils, and boxers might tap each others' gloves. We do not however regard glove-tapping as a special kind of sportsmanship, one that ought to feature prominently in our concept of boxing. Instead, we acknowledge that, characteristically, boxers wear gloves, which do not lend themselves to hand shaking as a form of expressing sportsmanship. Similarly, why is it not an ideal of community in general that members feel and find ways to express their commitment to the community? If citizens in democratically governed political communities have opportunities to express their commitment in unique ways, surely what provides them those opportunities deserves as much if not more 'weight' in our understanding of what it means to be a citizen.

4. The Demands of Liberal Democracy

I have tried to cast doubt on the claim that the central relationship of citizenship is the political relationship of reciprocity between co-citizens, captured by the ideal of 'genuine citizenship'. If the claim that membership in a morally bounded national community is necessary for citizenship depends on the republican conception of citizenship then we should already feel comfortable doubting it. However, one might try to defend the claim on the grounds that the behaviour captured by the idea of 'genuine citizenship' is a necessary pre-requisite for the success of liberal democratic governance generally. The existence of the central relationship of citizenship as defined by the core concept depends on the existence of a reasonably healthy liberal democracy. So if 'genuine citizenship' is necessary for a reasonably healthy

liberal democracy, then it is plausible that whatever is necessary to secure 'genuine citizenship' could, ultimately, be necessary for citizenship, even as described in the core concept.

Miller mounts just such a defence of national identity. On his account, liberal democracy requires citizens who behave in the ways and for the reasons described in (4) above. This sort of behaviour is demanding, and the possibility of people acting in those ways and for those reasons (e.g. as an expression of commitment to the community) depends on the existence of a shared, morally significant, national identity. Whether or not liberal democracy presupposes or requires a common national identity *in particular* is controversial, but it is not my intention to enter that debate here. What concerns me here is the more general claim that liberal democracy requires a morally bounded community of any kind.

Suppose that a reasonably healthy liberal democracy requires (i) a political community large enough to make the protection of liberal rights and the achievement of distributive justice feasible and (ii) sufficient cohesion or social integration amongst members for them to do what is necessary, politically speaking, to achieve those goals. On the one hand, we might assume that cohesion is maximized in small communities where close personal ties exist between most members. However the systemic capacity to make the protection of liberal rights and distributive justice feasible in such communities is limited. On the other hand, it is plausible that a democratic world government could maximize the protection of liberal rights and distributive justice around the world. However it would be exceedingly

difficult to secure the cohesion between members (most of whom would be strangers to each other) needed to bring this about. Miller suggests, as others have, that the modern nation state meets a sort of Goldilocks condition: it is not too small and not too big. It is big enough to provide systemic protection of the liberal rights of its members and to aspire towards redistributive justice. Moreover, we have ample historical evidence showing the capacity for the necessary cohesion in communities on this scale.⁴⁷

For a community to have cohesion its members must not only act in certain ways but do so for certain reasons. A cohesive community is, in this respect like a friendship. It is constitutive of friendship that when one friend helps another move house she does this, in part, as an expression of her commitment to her friend and their friendship, and not just because she was promised an expensive dinner in exchange, or because she hopes that her might friend help her to move sometime in the future. A community is cohesive if membership in that community gives members a reason to act in the interests of the community, and they actually act on that reason—i.e. they act because they wish to further the interests of the community. A community lacks cohesion if its members act for other reasons, even if they acted in ways that in fact served the interests of the community.

Cohesion of this kind appears to be especially important for the particular kind of deliberative democracy that Miller advocates.⁴⁸ On that model, people express their preferences with respect to a given choice prior to

⁴⁷ Miller, *Citizenship and National Identity* (n 26) ch. 5.

⁴⁸ *ibid* Ch. 2. For a discussion about different kinds of deliberative democracy, see James Fishkin and Peter Laslett (eds) *Debating Deliberative Democracy* (Wiley-Blackwell 2003).

choosing a mechanism by which the final choice will be made. This allows them to develop or form their preferences through public discussion first—rather than merely express them through private voting from the outset—and only then select the mechanism that they believe will best reflect people’s collective preferences, or the general will. This process requires a good measure of what he calls ‘democratic self-restraint: [people] must think it more important that the decision reached should be a genuinely democratic one than that it is the decision that they themselves favour.’⁴⁹ Miller argues that historically, the willingness to think and act in such a manner is best seen within national communities, and therefore we should be sceptical about forms of trans- or post-national citizenship that have been offered as alternatives.⁵⁰

The argument, then, relies on three related claims. First, the goods of liberal democracy can be secured only where citizens cohere to a high degree, i.e., where they feel that ‘they belong together’. Second, and implicit in the first, cohesion occurs only within certain kinds of group, those with an affective bond. Third, national communities are the best option available for achieving such cohesion.⁵¹

⁴⁹ Miller, *Citizenship and National Identity* (n 26).

⁵⁰ *ibid* ch.5. See also Cecile Laborde and John Maynor (eds) *Republicanism and Political Theory* (Blackwell 2008) 133–58.

⁵¹ Miller sometimes expresses the strong view that national communities are the *only* possible source of the requisite cohesion, which implies a conceptual connection between nationality, liberal democracy and citizenship. Miller, *On Nationality* (n 26) 92. However, at other times he appears to defend a relationship of simply practical necessity. See e.g. David Miller, ‘The Ethical Significance of Nationality’ (1988) 98(4) *Ethics* 647–62. Either way, as I show below, even if it is the most practicable way to ensure the demands of liberal democracy are fulfilled, this does nothing to make cohesion a requirement of citizenship.

Although we do not here need to assess the truth of the third claim, it is worth pointing out that it is not uncontested. Those who advocate a kind of ‘constitutional patriotism’ have expressed doubts about both the necessity and even the legitimacy of promoting national identities to secure the good of liberal democracy.⁵² With respect to its legitimacy, the worry is that, given the cultural diversity that exists within most developed democracies, the promotion of a single national culture will be unjustifiably oppressive. With respect to its necessity, the argument is that cohesive communities can just as well be formed around, e.g., a shared commitment to the principles of democratic legitimacy themselves. Whether it is plausible, practically speaking, to cultivate cohesive communities grounded in such commitments is by no means uncontroversial. It has been suggested that even these principles might inevitably need to take on a local flavour, that nationalized versions of the ‘universal’ principles of democratic legitimacy might be required in order for people’s commitment to them to become that of a cohesive community.⁵³ The point is simply that even if national identities are an effective way to secure community cohesion, even the most effective way we have seen so far, we cannot conclude from this that they are *necessary*, even practically speaking. In any event, the real question for our purposes here is whether or to what extent it matters at all that citizens belong to a cohesive group, whatever its source, in order to achieve a reasonably healthy liberal democracy.

⁵² Notably, Jurgen Habermas and W. Rehg (trans) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press 1996).

⁵³ See e.g. Margaret Canovan, ‘Patriotism is Not Enough’ (2000) 30(3) *British Journal of Political Science* 413.

Recall that, according to Miller, in order to realize ‘agreement as a regulative ideal’ it is not enough that citizens participate actively in politics if they do so in order to give their own personal interests the best chances of being realized.⁵⁴ On his account, it is a requirement of citizenship that people not only act but act out of a desire to see the general will realized. However, even if we accept that democratic politics will flourish only when people act for the ‘right’ reason, there is no reason to think that this can only happen in cohesive communities of any kind. The insight brought by advocates of constitutional patriotism is that people can and do value democratic goods and ideals for their own sake. Whether or not a commitment to such ideals is something around which a cohesive community can be built, there is no conceptual barrier to imagining a community of citizens who choose to participate in public life, with an eye to realizing the general will as an expression of their *individual* or *personal* commitment to democratic principles. Nor is it obvious that a community that acted in this way would be any less effective at achieving the goods of liberal democracy—i.e. of protecting liberal rights and achieving distributive justice .

Consider again Miller’s conditions for realizing the ideal of ‘genuine citizenship’ expressed in (4): ‘Because the citizen identifies with [the community], he or she wants as far as possible to reach an agreement with other citizens so that what is done is done in the name of all of them.’ It might be true that achieving the aims of liberal democracy require that citizens want as far as possible to reach an agreement with other citizens so

⁵⁴ Miller, *Citizenship and National Identity* (n 26) 5.

that what is done is done in the name of all of them. It is true that the achievement of the aims of liberal democracy beyond a certain threshold is necessary for the very possibility of citizenship. However none of this shows why any particular mode of achieving those aims would be required, either from the perspective of citizenship or from the perspective liberal democracy itself. All that seems to matter is that, by and large, citizens actually act with the idea of reaching agreement in mind. The claim that liberal democracy requires cohesive communities generally is, in this respect, like the claim that citizenship requires national communities specifically—they are at most claims about the empirical likelihood of people acting in certain ways for certain reasons. As a result, it is hard to see why the idea of citizens acting in a specific way for a specific reason deserves a central place in the concept of citizenship at all, let alone a ‘weighty’ one.

5. Conclusion

In this chapter I tried to do two things. The first was to consider the idea of world citizenship understood in a way that is consistent with the core concept of citizenship, and briefly explore how the latter might affect the kinds of conclusions we draw about the possibility of realizing world citizenship in a global democratic political order. The second was to look at number of ways in which one might challenge the core concept on the grounds that it overlooks the centrality of the moral relationship between co-citizens. I rejected the idea that membership in the moral community of humanity and the possession of a universal duty of equal consideration could be sufficient

for citizenship in any meaningful sense. I also argued that whatever empirical grounds there might be for thinking that membership in a morally bounded national community could help to realize a particular ideal of co-citizenly behaviour, or to sustain a flourishing liberal democracy, such membership cannot be regarded as necessary for citizenship to the extent that it deserves any special place in the core concept.

5 The Special Obligations of Citizenship

1. Introduction

Many believe that citizens owe certain obligations to their fellow citizens, obligations beyond those that they owe each other as fellow human beings or fellow moral agents. That is citizens are thought to possess *special obligations*. Among the more commonly discussed special obligations of citizenship are the obligation to participate in the political life of one's community (*the duty to participate*), and the obligation to give priority or special weight to the interests of one's fellow citizens (*the duty of priority*).¹ As with other special obligations, like the ones thought to exist between friends, or family members, the idea that fellow citizens owe each other these special duties, (and especially, perhaps, the duty of priority), is a standard feature of what we might call 'common sense morality'—i.e. it is among those widely held beliefs

¹ I will use 'duty' and 'obligation' interchangeably in this chapter, and unless stated otherwise, I will mean specifically a moral obligation.

that moral and political philosophers inevitably confront and must do their best to explain. We tend to judge harshly any moral theory that does not take seriously, e.g., the belief that friends owe each other special obligations—we might even count it against a theory that it cannot account for special obligations held by, e.g., family members.² So, too, we tend to take seriously the idea that special obligations of citizenship are worth explaining or, if necessary, explained away.

A number of attempts have been made to explain what grounds the putative special obligations of citizenship. Two prominent strategies that I consider in this chapter are what I will call *the fair play argument*, which attempts to ground the special obligations of citizenship in a principle of reciprocity, and which has been defended notably by Richard Dagger;³ and *the assigned responsibility argument*, defended by Robert Goodin, which attempts to ground the special obligations of citizenship in a consequentialist claim about the best way for us to discharge our general natural duties—i.e. those we owe as moral agents to all other moral agents.⁴ Andrew Mason has argued that strategies such as these, which attempt to ground the special obligations of citizenship in general moral principles, fall short in two characteristic

² This is a well-known criticism of some forms of certain ‘unsophisticated’ forms of consequentialism. For a defence of a ‘sophisticated’ form of consequentialism that tries to accommodate special obligations see, e.g. Peter Railton, ‘Alienation, Consequentialism, and the Demands of Morality’ (1984) 13 *Philosophy and Public Affairs* 134. cf Richard J Arneson, ‘Consequentialism vs. Special-Ties Partiality’ (2003) 86 *The Monist* 382.

³ Richard Dagger, ‘Rights, Boundaries and the Bonds of Community: A Qualified Defense of Moral Parochialism’ (1985) 79(2) *The American Political Science Review* 436.

⁴ Robert E Goodin, ‘What is so special about our fellow countrymen?’ (1988) 98(4) *Ethics* 663; See also Robert E Goodin, *Protecting the Vulnerable: A Reanalysis of our Social Responsibilities* (University of Chicago Press 1985).

ways.⁵ Either they cannot successfully ground both of the two special obligations of citizenship mentioned above; or they fail to explain why these are obligations of *citizenship*, rather than obligations held by, e.g., all permanent residents of a polity; or both. Mason suggests an alternative strategy for grounding both obligations, one which draws on Joseph Raz's account of the special obligations of friendship.⁶ Mason argues that *if* citizens have genuine special obligations, it is because (i) citizenship itself is intrinsically valuable and (ii) these two obligations are constitutive of citizenship itself—i.e. part of what it means to be involved in the valuable relationship of citizenship *just is* to have the duty of priority and the duty to participate. Call this the *constitutive obligations argument*.

Mason's analysis of these traditional strategies for grounding the special obligations of citizenship is illuminating. His assessment of the characteristic difficulties with strategies like the fair play argument and the assigned responsibilities argument is compelling, and the alternative strategy he proposes is intriguing. However, it, too, is ultimately unsatisfactory. Mason's proposal obscures the distinction between the relationship that makes someone a citizen *simpliciter*, the institutional relationship identified in Chapter 2, and a certain ideal of the moral relationship between co-citizens.

⁵Andrew Mason, 'Special Obligations to Compatriots' (1997) 107(3) *Ethics* 427. Mason offers slightly different iterations of his argument in his later: *Community, Solidarity and Belonging: Levels of Community and Their Normative Significance* (Cambridge University Press 2000) 108-112; and *Living Together as Equals: The Demands of Citizenship* (Oxford University Press 2012) 31-42. In both 'Special Obligations to Compatriots' and *Community, Solidarity and Belonging*, Mason discusses several other attempts to ground the special obligations of citizenship including those of Alan Gewirth and Jeremy Waldron. See Alan Gewirth, 'Ethical Universalism and Particularism' (1988) 85(6) *Journal of Philosophy* 28; and Jeremy Waldron, 'Special Ties and Natural Duties' (1993) 22(1) *Philosophy and Public Affairs* 3.

⁶ Joseph Raz, 'Liberating Duties' (1989) *Law and Philosophy* 8.

Once this distinction is clarified, I argue, we see that the constitutive obligations account falls short of explaining why citizens might have either a duty of priority or to participate.

Both Mason's critique of the first two proposals as well as the alternative he proposes take as their premise a certain assumption about the nature of the putative special obligations of citizenship, one that is implicit in the picture that comes to us from common sense morality. The assumption is that the duty of priority and the duty to participate are 'special' to citizenship in the sense they are both *held by* and *owed to* fellow citizens only. I suggest that the lesson we should draw from Mason's (persuasive) critique of strategies that work from general moral principles, together with the failure of the constitutive obligations model to provide a plausible alternative, is that it is worth reconsidering and ultimately abandoning this assumption. This does not mean we must abandon the idea that citizens have special obligations altogether. If we approach the question of the special obligations of citizenship from the perspective of the core concept identified in Chapter 2, we see that a number of ways are open to us to ground special obligations that citizens alone possess, but which they do not owe exclusively to their fellow citizens.

That said, my ultimate goal in this chapter is not to show that citizens do in fact have genuine special obligations (of any kind). It is to show why, if we accept the core concept of citizenship identified in Chapter 2, we should not be surprised that attempts to ground special obligations held exclusively between co-citizens fail in the way that they do.

2. Special Obligations

We owe a number of obligations to all people as moral agents. We have an obligation not to murder or to injure other people, regardless of whether we have any personal relationship to them, or whether we have made a promise not to murder or to injure them. We usually call such obligations our *natural duties*.⁷ It is commonly held that, in addition to our natural duties, we also owe obligations to certain people that we do not owe to everyone. These are our *special obligations* and we are thought to owe them to, e.g., our friends and family, those to whom we have made promises, and those with whom we have entered into contracts. For instance we might believe that one has an obligation to care for her parents in their old age, but not to care for everyone in their old age. Or we might think that, if a friend asks me to help him move house, I have an obligation to give his request more consideration than I would a stranger's, or even an obligation to help him if the cost to me to do so would be small.

Natural duties are typically thought to be grounded in features or characteristics that we share as moral persons such as our capacity for autonomous thought or action, or our sensitivity to pleasure and pain. Special obligations, in contrast, are usually thought to be grounded in features or characteristics of the 'special' relationships we occupy.⁸ Since the kinds of

⁷ AJ Simmons describes natural duties as 'moral requirements which apply to all men [and women] irrespective of status or of acts performed...owed by all persons to all others.' AJ Simmons, *Moral Principles and Political Obligations* (Princeton University Press 1979) 13.

⁸ That is, it might be that certain features generate new obligations out of their own intrinsic value, or that allow us to derive special obligations from general moral principles.

relationships which are commonly thought to involve special obligations vary in nature, it has proved difficult to find any plausible over-arching grounds for special obligations in general. Arguments that establish plausible grounds for the special obligations of friendship are less convincing when applied to grounding the special obligations of family members because the nature of the friendship relationship is different from the nature of the family relationship. By the same token, arguments against the existence of the special obligations of friendship might leave the special obligations of family unscathed. While this might lead us to doubt that there is a satisfactory account of special obligations in general, it need not lead us into scepticism about the existence of special obligations altogether. Rather, as Samuel Scheffler argues, we do better to avoid attempts to find categorical grounds for special obligations, and instead evaluate the possible grounds for the putative special obligations of any given relationship on a case by case basis.⁹ In that spirit, none of the conclusions I reach in this chapter are meant to apply beyond the question of the special obligations of citizenship.

In order to establish that a particular kind of relationship involves special obligations, it must be shown not only that people who are in such relationships possess obligations other than their natural duties, but that the reason they have those other obligations is the fact that they are in that

⁹ Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford University Press 2001) 50-1. Scheffler goes on to show that any putative special obligation (or special responsibility) must overcome two broad challenges. The distributive objection sees special obligations as a benefit conferred on those to whom the duty is owed, and challenges the fairness of that conferral when the needs of others might be greater than the duty-recipients'. The voluntarist objection sees special duties as a potentially burdensome, and says that only obligations voluntarily incurred can bind. Since my aim in this chapter is not ultimately to defend the existence of the special obligations of citizenship, but rather to describe what character they might take, I will not address these objections here.

particular kind of relationship. That is, special obligations are 'special' both in the sense that they are distinct from our natural duties and in the sense that they are 'special' to a particular kind of relationship. An obligation is special to a particular kind of relationship only when some feature of that relationship is an integral part of its grounding. Since one person can stand in multiple overlapping special relationships to another person simultaneously, identifying the correct relationship in which a putative obligation is attached is crucial to establishing its proper grounds. For example, suppose that I have a legitimate special obligation to be partial to the interests of the members of my family, i.e. to consider their interests before the interests of strangers or mere acquaintances, grounded in some unique feature of the family relationship. Among those with whom I stand in a familial relationship I will also stand in other narrower relationships which, let us suppose, also involve special obligations. We might think, for instance, that the parent-child relationship involves my having an obligation to support my parents in their old age, an obligation which I do not owe to other members of my family. Now, it might be true that anyone who is a parent to me is, by definition, also a member of my family. That is, for any person who is a parent to me, I owe that person both an obligation to care for her in her old age and an obligation to be partial to her interests. The point here is that, in this example, even if being a parent to me entails also being a member of my family, my obligation

to be partial to the interests of my parents is not itself a special obligation of the parent-child relationship, but rather of the familial relationship.¹⁰

Special obligations can be either symmetrical or asymmetrical. A special obligation to give priority to the interests of one's family members is an example of a symmetrical special obligation. Each member of the family has the same obligation, owes it to every other member, and owes it only to other members. The special obligations of friendship are also usually understood symmetrically, as obligations that friends owe to each other *qua* friends. In both cases, notice that each person involved in either of these relationships will have the same 'status' or 'role' within the context of that relationship. Each party involved in the relationship is 'a friend' or 'a family member'. As well, whatever grounds the special obligations one friend or family member owes to another will be the same as what grounds the reciprocal obligations owed to her by her friends or family members.

For an example of asymmetrical special obligations, consider again the parent-child relationship. Parents and children occupy different roles or possess a different status within the parent-child relationship, and this is reflected in the special obligations they are thought to have. The special obligations that children are thought to owe to their parents (e.g. to support them in their old age) are different than the special obligations that parents are thought to owe to their children (e.g. to care for them while they are

¹⁰ This is not to say that there might not be features of the parent-child relationship that would help to ground an obligation to be partial to the interests of my parents in addition to and independently from those features of the familial relationship that help to ground such an obligation.

young).¹¹ Unlike the special relationship of friendship, there are no ‘special obligations of the parent-child relationship’—there are instead ‘filial obligations’ and ‘parental obligations’. Filial obligations are not special obligations owed by children to their siblings (i.e. to those who are also children to the same parents), nor are parental obligations special obligations owed by one parent to another parent.

One of the underlying assumptions about the putative special obligations of citizenship which, as we will see, makes them difficult to explain is that they are symmetrical obligations. The question that we commonly see asked is how we might ground the special obligations owed by citizens *to* (and only to) their fellow citizens. In section 6 I will argue that this assumption can and should be abandoned. If we understand citizenship as primarily an institutional relationship between individuals and the laws and organs of government they are subject to, then we can usefully reframe the putative obligations of citizenship as asymmetrical. This allows us to avoid at least some of the problems that, we will see, commonly arise for attempts to ground the special obligations of citizenship.

3. Efficiency and Assigned Responsibilities

The first strategy to consider is the assigned responsibilities argument offered by Robert Goodin. In particular this strategy is used to explain what I am calling the duty of priority, the obligation that citizens are thought to have to

¹¹ We might try to group these obligations together and say that both parents and children simply have a special duty of care that simply makes different demands on each party. While this is certainly possible, it is important to recognize that the relationship between parents and children is defined in part by their differentiated duties to each other.

give priority or special weight to each other's needs and interests. Though this obligation is a standard feature of common sense morality and often presented as a paradigm example of a special obligation, its legitimacy has also been challenged on the grounds that it is inconsistent with other aspects of political morality, e.g. the demands of global or international justice, or the fundamental equal moral standing of all persons.¹² My concern here is not whether the assigned responsibility argument can successfully overcome such challenges. Rather I want to focus only on whether, were the argument to succeed on its own terms, it would show that citizens have a symmetrical duty of priority of the sort that common sense morality suggests they do.

At the core of Goodin's approach is the claim that all special obligations are, 'merely distributed general [i.e. natural] duties.' 'That is to say, special duties are...merely devices whereby the moral community's general duties get assigned to particular agents.'¹³ Among the moral community's natural duties is an obligation to protect the vulnerable. However there are more and less efficient ways for the moral community to fulfil this obligation. If we adopt a broadly consequentialist ethical stance, Goodin holds that we ought to pursue the most efficient means available to us for discharging our natural duties. On his view, the moral community's natural duty to protect the vulnerable is, as a general rule, most efficiently discharged when each state takes responsibility for the interests and well being of a certain portion of the global population, namely, its own citizens. Just as a patient is better off having a

¹² See e.g. Simon Caney, 'Humanity, Associations, and Global Justice: In Defence of Humanity-Centred Cosmopolitan Egalitarianism' (2011) 94(4) *The Monist* 506–534.

¹³ Goodin, 'What is So Special About Our Fellow Countrymen?' (n 4) 663.

single doctor assigned to her care than to have each doctor in the hospital take a turn, so people's interests are generally better served when they are assigned a single 'advocate/protector' than if every individual or every state tried to look after the interests of everyone else all at once.¹⁴ Since states and their officials are already well-positioned to serve this advocate/protector function with respect to their citizens, they are justified in, and even required to put the interests and needs of their own 'charges' first.¹⁵ Goodin acknowledges that political boundaries also often reflect national groupings, and that many regard national identities as a (or the) source of the special duty of priority. He rightly notes that 'there are all sorts of reasons' for wishing to be 'lumped together with others "of your own kind."' ¹⁶ However these reasons do not themselves, Goodin argues, give rise to any special duties.

Even granting *arguendo* the broad strokes of the assigned responsibilities argument, however, it does not appear to ground a symmetrical duty of priority, i.e. a duty held by and owed to the citizens of a polity. The reason is that that the argument provides no principled reasons to limit the *recipients* of the duty of priority to those who are citizens of the polity. As Mason points out, making a distinction between the citizens of a state and, say, long-term residents of that state does not appear to serve any

¹⁴ *ibid* 681.

¹⁵ He also points out that we expect citizens to bear certain costs that they do not expect of others—states require people to go to war, or may divert rivers and pollute the air in ways that adversely affect many citizens.

¹⁶ Goodin, 'What is So Special About Our Fellow Countrymen?' (n 4) 682.

useful role ‘in determining the most effective way of discharging our general moral duties.’ He rightly asks,

why isn’t the most effective way of discharging general moral obligations to assign states and their officials special responsibility for those living within their territories over a sustained period, irrespective of whether they are citizens?¹⁷

In other words, the assigned responsibility argument does not pick out anything special about the relationship *between citizens* that would explain any symmetrical special obligations between them.

Mason considers a number of replies that are open to Goodin. I will not rehearse that discussion here.¹⁸ Briefly put, in each case Mason convincingly shows why the assigned responsibilities argument gives us no reason not to think that ‘it is residency not citizenship which is...the most important factor in determining special obligations.’¹⁹ There is however an ambiguity in this conclusion that is worth exploring. It might be interpreted to mean that it follows (or could follow) from the assigned responsibilities argument that fellow long-term residents of a state owe each other a (symmetrical) special duty of priority, while fellow citizens of that state do not (except insofar as they are also fellow long-term residents). The problem with this reading is that it misconstrues the nature of the target *duty-holder* under the assigned responsibilities argument. Goodin’s argument is not primarily aimed at showing that citizens owe a special duty of priority to each other at the individual level—e.g. it does not try to show that individual citizens have a

¹⁷ Mason, ‘Special Obligations to Compatriots’ (n 5) 435.

¹⁸ *ibid* 434-6.

¹⁹ *ibid* 435-6.

duty to give to charities that serve their fellow citizens rather than those with an international mandate, or to give priority to the interests of vulnerable citizens in their neighbourhood over the interests of vulnerable non-citizen long-term residents.²⁰ Rather it purports to show that citizens, *acting collectively or through their officials*, owe a duty of priority to their fellow citizens. Even though the assigned responsibility argument falls short of the mark for the reasons Mason suggests, we cannot simply replace both instances of ‘citizens’ with ‘long-term residents’ in the previous sentence because long-term residents are not typically empowered to act through the state and its officials in the first place. What Mason’s critique really shows, and the more plausible interpretation of his conclusion, is that if we grant the broad strokes of the assigned responsibility argument, it follows that the citizens of a given state could have a special obligation *qua* citizens for the reasons Goodin suggests, but that such an obligation would be owed to all long-term residents of that state.²¹ That is, the assigned responsibilities argument plausibly shows one way we might argue that citizens have an *asymmetrical* obligation that arises from the relationship in which they stand as ‘governors’ with those over whom they govern.

This does not detract from the force of Mason’s critique. He is correct that the assigned responsibilities argument does not offer a plausible account of the grounds for the special obligation of priority understood as a symmetrical obligation between citizens. And insofar as this is the common understanding of the special obligations of citizenship that we are trying to

²⁰ See Dagger (n 3) 442.

²¹ Or, more generally, all those who are regularly subject to the authority of that state.

explain, the argument comes up short. The purpose of this section has been only to show that by modifying the underlying assumption of the common understanding, the assigned responsibilities model is not so easily defeated.

4. Reciprocity and Fair Play

The second strategy to consider invokes a principle of reciprocity. Richard Dagger argues that we should view the state as a cooperative enterprise for the mutual advantage of all participants in which each member must pull her own weight.²² According to Dagger, those who fail to do so, say, by free-riding on the contributions of others without contributing anything themselves, violate the autonomy of everyone else by treating them merely as means.²³ There is, for this reason, an obligation shared among all involved to ‘play fair’ with respect to those also engaged in any enterprise which is geared towards the mutual benefit of everyone. In the context of a state, this translates into an obligation held by citizens and owed to citizens to contribute to the successful operation of that state. Paying taxes, obeying the law, participating in public life—these are all examples of how we might contribute to a well-functioning state and thereby discharge our duties to fellow citizens. Dagger argues that the principle of reciprocity can also explain why one ought to give priority to the interests of one’s ‘compatriots’. He writes,

Compatriots take priority because we owe it to them as a matter of reciprocity. Everyone, compatriot or not, has a claim to our respect and concern—a claim founded on the right of autonomy—but those who join with us in

²² Dagger (n 3) 443-6.

²³ *ibid.*

cooperative enterprises have a claim to special recognition. Their cooperation enables us to enjoy the benefits of the enterprise, and fairness demands that we reciprocate.²⁴

Dagger goes on to temper the claim to special recognition he argues compatriots have with a *ceteris paribus* clause, acknowledging that in practice the balance of our obligations often will not end up favouring our fellow citizens.²⁵ He qualifies the priority we ought to give our fellow citizens in three ways.²⁶ First, the fair play argument applies to *all* cooperative enterprises, not just political communities. It is not obvious that, in principle, duty of priority arising out of shared citizenship will always win if it comes into conflict with, say, a duty of priority arising out of common membership in a union, or a religious community. Second, it must be plausible to view the political community in question as a genuinely cooperative enterprise. At a minimum this seems to mean that it must not be ruled through terror and violence—i.e. it must have rule of law—and it must be broadly democratic. Wherever citizens are effectively denied access to wealth or political power, he says,

those without access will have little choice but to labor for the benefit of those who dominate their lives, hardly the hallmark of a cooperative enterprise that gives rise to special rights and obligations among its participants.²⁷

Finally, the duty to give priority to our fellow citizens is not absolute. If the choice arises between helping a fellow citizen or helping a foreigner, we

²⁴ Dagger (n 3) 446.

²⁵ *ibid.*

²⁶ *ibid* 446-7.

²⁷ *ibid* 446.

should 'look first' to the claims of the former, but ultimately 'the chief consideration is the severity or extent of the deprivation in question.'²⁸

Dagger is arguably more explicitly concerned than Goodin is with finding something special about the relationship between citizens *qua* citizens (rather than between citizens *qua* their representative officials and those whom they govern) on which to build his account of the special duty of priority that attaches to that relationship.²⁹ However, that citizens take priority 'only when other things are equal' reduces the practical significance of that relationship. In practice other things are rarely equal and so whatever obligations would exist between citizens on a fair play account are as likely as not to be outweighed by other considerations. This is not by any means a conclusive argument against the fair play account. A duty of priority could exist even though the interests of one's fellow citizens never actually win out between conflicting interests. Yet consider other paradigm examples of special obligations, such as those between friends and family—these are an important feature of the moral landscape precisely because they are thought to regularly give us *effective* reasons to act in ways that are partial to the interests of some over others even when other things are not equal. (Friends help you move, good friends help you move a body.) We might wonder whether the putative special obligations of citizenship would be ranked alongside these other paradigm special obligations if we did not also believe that they occasionally made a difference to how we ought to act. To the

²⁸ *ibid* 447.

²⁹ Elsewhere he writes: 'In this way the argument from reciprocity supports the intuition that compatriots—or fellow citizens, to be precise—should take priority.' Dagger, *Civic Virtues Rights, Citizenship and Republican Liberalism* (Oxford University Press 1997) 59 .

extent that the fair play argument succeeds on its own terms, I suggest, it supports only a much diluted version of the special obligation we initially set out to ground, the one that inhabits common sense morality.

That said, my primary concern here, again, is to determine whether, if it succeeds on its own terms, the fair play argument would offer plausible grounds for a symmetrical special obligation between citizens, regardless the effective strength of that obligation in practice. With respect to this question, a number of difficulties arise. One is how a fair play account handles unintentional or circumstantial free-riders. Some citizens live and work abroad, contributing little if anything to their home state but deriving many of the benefits of citizenship.³⁰ There are also citizens who live within a state's territory but are unable to contribute to its successful functioning due to various forms of injury or permanent disability, and yet they might still receive assistance from the state. According to the fair play argument, it would seem that these citizens are less deserving (or even undeserving) of having their interests and their autonomy promoted or protected by their fellow citizens on the grounds of reciprocity.³¹ For some this might be reason enough to reject the account. For our purposes here what matters is that this suggests that on a fair play account at least some people who are citizens might not be owed the duty of priority—i.e. it does not ground the symmetrical obligation we set out to explain.

³⁰ Mason, 'Special Obligations to Compatriots' (n 5) 434.

³¹ Brian Barry, 'Justice as Reciprocity' in Eugene Kamenka and Alice ES Tay (eds) *Justice* (Edward Arnold 1979) 50-78 and 68-69; see also Robert E Goodin, *Political Theory and Public Policy* (University of Chicago Press 1982) 77-79.

A similar problem arises in the case of long-term residents who contribute to the economic, social, and cultural life of the state but who are not themselves citizens. Do citizens owe a special duty to them as well as co-participants, to give their interests equal consideration to that which they owe their fellow citizens? If so, then, again, we do not have the symmetrical obligation we initially set out to ground. If not, then we need some way to satisfactorily distinguish the contributions each make in their respective roles as citizen-participants and non-citizen-participants to the cooperative enterprise of the state. For example, we might say that the cooperative enterprise in which citizens are engaged *qua* citizens is restricted to the cooperative enterprise of democratic self-governance itself. That is, there are a number of ways in which people can participate in and contribute to the cooperative enterprise of the state—to its culture and society, to its economic and intellectual life, etc.—as well as to benefit from it. And we might say that each of these ways constitutes its own ‘sub-enterprise’, such that all participants in the over-arching enterprise of the state, including non-citizens, develop different special obligations to participants in each sub-enterprise, all grounded in a principle of reciprocity. Since only citizens can participate in the sub-enterprise of democratic self-governance and receive the unique benefits of being democratically empowered, whatever obligations arise from this form of co-participation will be held by, and owed to fellow citizens only. We might even go so far as to argue that obligations arising out of the sub-enterprise of democratic self-governance should trump whatever obligations arise out of participation in the other sub-enterprises that make

up the state. After all, the various other sub-enterprises often depend upon the laws and the government of the state. It is of course not necessary to make such an argument—we might allow that special obligations arising from one's participation in other sub-enterprises could in some cases trump the special obligation of priority owed to one's fellow citizens. Though, again, this would involve conceding that the fair play account is able to ground at best a weaker version of the duty of priority than many believe citizenship to involve. Still, this interpretation of the fair play argument would seem to give us what we want—a symmetrical obligation of citizenship.

However, focusing the argument on the sub-enterprise of democratic self-government brings with it similar problems as we encountered with the state. First, not all citizens who are politically empowered actually exercise that power, for one reason or another. What we might call 'political free-riders'—individuals who are citizens, but who do not engage in any political activity to an extent that we would normally think could trigger an obligation grounded in reciprocity—are sadly common in many developed democratic states. Either we exclude them from the duty of priority (which would make it something other than a duty of citizenship), or we deny that they are citizens (which is untenable). We could try to avoid this dilemma by interpreting the meaning of 'cooperative participation' in such a way that merely having a seat at the political table (i.e. possessing the unique political rights of citizenship in that polity) qualifies. This would have the benefit of defining away the problem of free-riders generally—even citizens who contribute in *no* substantive way to the cooperative enterprise of the state could still, in

principle, possess political rights. However it requires highly contorted interpretations of ‘cooperation’, ‘participation’ and ‘reciprocity’ to succeed. For not only does it require the mere possession of a right to count as cooperative participation in activity of democratic self-governance, it also requires denying that certain forms of political activity count as such. Even non-citizens can engage (and be empowered to engage) in various forms of journalism and activism—activities which are plausibly construed as essential to healthy democratic governance.

With respect to the putative duty to participate, it might seem that the fair play account is on stronger footing. Only citizens are empowered to participate, and so only they could be under such a duty. Moreover, many of the benefits that come from democratic self-governance accrue only to those who are entitled to participate. Not all of them, however. Even non-citizen residents can benefit from living in a democratic society. And, again, they too might contribute to that society in ways that support its basic functioning (e.g. through working, paying taxes, etc.) and democratic culture (e.g. journalism, activism, etc.). So it is not clear why a duty to participate would not be owed asymmetrically to certain non-citizens as well.

The general point to draw from this discussion is that if we conceive of the state as a cooperative enterprise for the mutual advantage of its participants, we find that not all who participate cooperatively are (recognized as) citizens and not all who are (recognized as) citizens participate cooperatively to the extent that we would expect their participation to trigger an obligation grounded in reciprocity. One might reply that such cases are

simply outliers and that the reciprocity argument is sufficient to justify acting *as if* we owe a special duty of priority to all of our fellow citizens, because in the vast majority of cases we do. That is, we might say that the fair play argument is sufficient to show why, as a general rule, we ought to give special recognition to the interests of our fellow citizens. Even if this is true it concedes that the feature which grounds the obligation on the reciprocity account is not some characteristic feature of citizenship or the relationship between citizens *qua* citizens. What follows from the reciprocity argument, taken on its own terms, is that participants in the cooperative enterprise of the state owe each other special obligations of priority, whether or not they are citizens, and it just so happens that the majority of participants in the cooperative enterprise of a state happen also to be citizens.

To sum up: the fair play argument plausibly explains a number of special obligations that people might owe each other as participants in various kinds of cooperative enterprise. However, like the assigned responsibilities argument, the fair play argument falls short of explaining why citizens would owe each other a symmetrical special obligation of priority. It might be possible to modify the fair play argument in order to explain the kind of special obligation we are after. However to do so requires that we conceive of the mere possession of the status and political rights of citizenship as ‘participating’ in the cooperative enterprise of democratic self-governance. And it is implausible that such an interpretation of ‘participation’ could serve to ground any sort of obligation in a principle of reciprocity. Finally, it does seem plausible that, taken on its own terms, the

fair play account could justify an asymmetrical duty to participate, one that is owed by citizens to everyone engaged in the cooperative enterprise of the state. I will return to this point in section 6 below.

5. Constitutive Obligations

Mason claims that the problems of over- and under-inclusiveness which we have seen arise for both the assigned responsibilities argument and the fair play argument are in fact characteristic of any strategy that attempts to ground symmetrical special obligations of citizenship in general moral principles. Though he is careful to say that he offers no ‘transcendental argument’ showing why such strategies *must* fail, he nevertheless claims that the alternative strategy he proposes is the ‘only’ way to ground both a duty of priority and also a duty to participate as (symmetrical) duties of citizenship.³² Mason’s strategy, which I call *the constitutive obligations argument*, involves adopting a particular conception of citizenship, according to which the possession of the duties of priority and participation is simply part of what it means to be a citizen. Citizenship, on the conception Mason proposes, is intrinsically morally valuable, and its constitutive obligations are grounded in the good of citizenship itself—a good which the obligations themselves partly constitute.³³ *If* citizens actually have special obligations of the sort we have

³² Mason, ‘Special Obligations to Compatriots’ (n 5) 447.

³³ This, Mason argues, is how citizenship differs from national membership. National membership is only ever instrumentally valuable, e.g. as a source of individual identity or group solidarity. *ibid* 441-2.

been considering, Mason concludes, ‘they can be defended only on the basis of [this] particular ideal of citizenship.’³⁴

The structure of the constitutive obligations argument draws on Joseph Raz’s account of the special obligations of friendship.³⁵ Here is Mason’s reading of Raz’s account:

first, friendship is an intrinsically valuable relationship, that is, it is properly valued for its own sake; second, part of what it is for two people to be friends is for each to be under certain obligations to the other, and these obligations are justified by the moral good of friendship; third, these special obligations are internally related to the good of friendship, that is, they are part of that good.³⁶

To explain why friendship is intrinsically valuable—by which Mason means, following Raz, non-instrumentally valuable—he adds that,

friendship is intrinsically morally valuable because it involves the expression of mutual concern; it allots a central role to altruistic emotions such as sympathy and compassion, and a willingness to give oneself to another.³⁷

Immediately we notice the first important difference between this account of friendship and any plausible account of citizenship. It is doubtful that many (never mind most or all) citizens in a contemporary state could have, let alone express, mutual concern, sympathy or compassion for each and every one of their fellow citizens—i.e. everyone to whom the special obligations of citizenship are owed—on the interpersonal level at which this occurs in the

³⁴ *ibid* 447.

³⁵ Raz (n 6) 118-21. See also Joseph Raz, *Morality of Freedom* (Oxford University Press 1986) 211-12. For an argument against the intuition that friends owe each other special obligations and the analogy here with citizenship, see Christopher Wellman ‘Friends, Compatriots, and Special Obligations’ (2001) 29(2) *Political Theory* 217, 224-30.

³⁶ Mason, ‘Special Obligations to Compatriots’ (n 5) 439.

³⁷ *ibid*.

case of friendship.³⁸ These valuable sentiments might arise between fellow citizens who also happen to be neighbours or residents of the same town or city. In such cases there is no reason to suppose it will be their shared citizenship, rather than a sense of neighbourliness, or hometown pride that gives rise to these altruistic emotions. Any plausible account of the intrinsic value of citizenship must be able to accommodate the unavoidably impersonal aspects of modern citizenship.

Mason's proposal avoids the concern about shared sentiments by focusing instead on citizens' relation to each other as political equals. (The following quotation is long but divides neatly into what I will refer to as 'the first passage' and 'the second passage'.) He writes,

Citizenship has intrinsic value because in virtue of being a citizen a person is a member of a collective body in which they enjoy equal status with its other members and are thereby provided with recognition. This collective body exercises significant control over its members' conditions of existence (a degree of control which none of its members individually possesses). It offers them the opportunity to contribute to the cultural environment in which its laws and policies are determined, and opportunities to participate directly and indirectly in the formation of these laws and policies.³⁹

On this proposed understanding of citizenship, then, we see that its value lies not in citizens' experience or expression of altruistic emotions, but in being included on equal terms in the demos of a democratic polity—in the

³⁸ Wellman (n 35); Igor Primoratz, 'Patriotism and the Value of Citizenship' (2009) 24 *Acta Analytica* 63.

³⁹ Mason, 'Special Obligations to Compatriots' (n 5) 442. While Mason repeats this formula regarding the intrinsic value of *citizenship* in *Community, Solidarity, and Belonging* (n 5)(at 109), he alters it in Andrew Mason, *Living Together as Equals* (n 5). There he begins his proposal: 'The good of *equal membership* has non-instrumental value in virtue of its realization of political and social equality.' (41, my italics.) I will discuss this shift in his argument below. However, since his focus is still the obligations of citizenship, for now I will continue with the language found in the original article.

possession of equal political standing and of the opportunity to affect a high degree of political change. Mason continues,

Part of what it is to be a citizen is to incur special obligations: these obligations give content to what it is to be committed or loyal to fellow citizens and are justified by the good of the wider relationship to which they contribute. In particular, citizens have an obligation to each other to participate fully in public life and an obligation to give priority to the needs of fellow citizens.⁴⁰

There is an immediate and obvious concern that the constitutive obligations argument is viciously circular. It effectively says that, if citizens owe each other a special duty of priority and a special duty to participate, it is because a citizen *just is* someone who owes a special duty of priority and a special duty to participate to her fellow citizens (and it is a good thing that she does). Mason notes how Raz resists this kind of worry by insisting that the justification for the special obligations of friendship must be understood in the 'wider context (i.e., the relationship as a whole) to which they contribute and which is intrinsically valuable.'⁴¹ Special obligations contribute to the wider relationship of friendship both in the sense that they help to specify what friendship is, and in the sense that they are themselves part of what is intrinsically valuable about friendship, i.e. 'they are internally related to the good that justifies them.'⁴² Mason appears to be preemptively invoking this response to the circularity charge with respect to the constitutive obligations argument when, in the second passage, he says that the duty of priority and

⁴⁰ Mason, 'Special Obligations to Compatriots' (n 5) 442.

⁴¹ *ibid.* 440. cf Raz (n 6) 21. In a later version of this argument Mason notes that a special obligation might also need to be considered in the context of 'its contribution to the well-being of parties involved in it.' See Mason, *Living Together as Equals* (n 5) 41.

⁴² Mason, 'Special Obligations to Compatriots' (n 5) 440.

the duty to participate ‘are justified by the good of the wider relationship to which they contribute.’

Even if we grant that this defence is satisfactory in the case of friendship, it is not clear that it does the trick in the case of citizenship. The first question is, what counts as the ‘wider relationship’ of citizenship for the purposes of the constitutive obligations argument? The description of citizenship in the first passage really captures two different relationships. The first relationship is the one that makes someone a citizen *simpliciter* and is the one captured by the core concept of citizenship I identified in Chapter 2. This is the *institutional* relationship in which an individual citizen stands with respect to a state’s legal system and organs of government. It is in the context of this relationship that one is given a ‘status’ and is ‘provided with recognition’ within a ‘collective body’—itself defined institutionally—that ‘exercises significant control’ over the conditions of life for its members. It is no doubt valuable when citizens recognize each other as ‘fellows’ in daily life, but this kind of recognition is not what *makes* one a citizen. Since this first relationship is not primarily a relationship between individual citizens at all, it is hard to see even *prima facie* how the obligations described in the second passage could help to specify or be constitutive of that relationship. Nor, then, is it clear how the possession of those obligations could be constitutive of or internally related to whatever intrinsic value this first relationship

possesses.⁴³ The second relationship captured in the first passage is the one that exists between fellow citizens—i.e. between individuals who stand in the first relationship—and is characterized primarily in terms of their equal standing within the context of the collective body.⁴⁴ Since this relationship exists between citizens, it is *prima facie* plausible that the obligations identified in the second passage could help to specify the nature of that relationship, and therefore could plausibly constitute in part whatever intrinsic value that relationship possesses.

It would seem, then, that in order for the analogy with friendship to hold ‘the wider relationship’ of citizenship Mason has in mind must be the second of the two relationships just described. For not only is it unclear generally speaking how obligations held between citizens could help to specify or be constitutive of a relationship that exists between a person and the institutions of government she is subject to, it is perfectly clear that such obligations are not constitutive of that relationship in a way that is analogous to special obligations of friendship. For instance the existence of the institutional relationship between a citizen and the government of a state—i.e. one’s possession of citizenship *simpliciter*—is in no way dependent on the fulfilment of any special obligations she might owe to her fellow citizens. If a

⁴³ To be clear, I am not suggesting that it is not a *necessary* feature of being a citizen that one is also a fellow citizen. I am pointing out that this is not what *makes* someone a citizen. To be a citizen also entails entering a particular relationship with non-citizen residents of one’s state. This insider-outsider relationship is a necessary feature of citizenship, but it is not constitutive of citizenship in the relevant sense. That is, it is not analogous to the case of friendship in which the relationship between friends *just is* the relationship of friendship. In virtue of being a person’s friend, I am also, necessarily, now in a different (and perhaps normatively significant) relationship with her friends, i.e. they are now ‘friends of a friend’.

⁴⁴ It might also involve their equal moral *claim* to be included in that body. (I discuss such claims in Chapters 6 and 7). However, having a claim to citizenship is neither the same as, nor is it sufficient for having citizenship.

person fails to give priority to the interests of her fellow citizens, or perform whatever other duties we might suppose fellow citizens owe each other, she does not thereby lose her citizenship. In contrast, a consistent failure to fulfill one's obligations towards a friend eventually leads to the dissolution of the friendship.⁴⁵ So when Mason speaks about an 'ideal of citizenship' he has in mind an ideal of the relationship between individuals who stand in the relationship of citizenship with the state—an ideal of 'co-citizenship'.

This is borne out in the slightly altered version of the constitutive obligations argument Mason offers more recently in *Living Together as Equals*. In that book he switches from suggesting we ground the special obligations of citizenship in the good of *citizenship* to grounding them in the good of '*equal membership*'.⁴⁶ The good of equal membership, on this version of the argument, consists not only in the possession of equal political status and political rights. Equal membership is a moral relationship that obtains when those who possess that status and those rights (those who are, in my view, citizens) also *treat* each other as equals, both within the political process (e.g. by behaving respectfully to each in public debate) as well as the many other social arenas in which citizens interact. Equal members are not only political equals, but also social equals—the complex good of equal membership obtains when both political and social equality are jointly realized. It is on their

⁴⁵ Mason acknowledges this point, but does not believe that it undermines the analogy he is trying to draw. The reason, as will become clear, is because the 'wider relationship' of citizenship he has in mind is the moral relationship of equality which is characterized only *in part* by the possession of the legal status, rights, duties etc. that are captured by the core concept of citizenship I defend (and which Mason seems to presume in his discussion of the attempts to ground the special obligations of citizenship he analyzes). See Mason, 'Special Obligations to Compatriots' (n 5) 444 fn 47.

⁴⁶ Mason, *Living Together as Equals* (n 5) 34-42.

contribution to *this* good that Mason suggests we might ground the special obligations of citizenship.

So far, I have highlighted what might be seen as a mere terminological distinction between citizenship, (or the good of citizenship), and the good of equal membership. That is, at most I have shown only that it is misleading to say that possessing the duty of priority or the duty to participate is, on Mason's account, 'part of what it means to be a citizen'. Their possession might be part of what it means to be a co-citizen, but co-citizenship is not constitutive of citizenship in the same way that co-friendship is constitutive of (or, indeed, identical to) friendship. Perhaps, though, co-citizenship is both necessary and sufficient for equal membership, such that anyone (and only someone) who is a co-citizen thereby holds whatever obligations are constitutive of equal membership and which are internal to its goodness. In which case, we might still be able to use the constitutive obligations argument to ground symmetrical obligations of citizenship in the good of equal membership.

It is not clear whether Mason does in fact regard the mere possession of citizenship or being a co-citizen to be sufficient for equal membership. For instance, Mason writes that the special duties citizens have 'give content to, or express, what it is to treat others as equals' and that '[a] good citizen is, in part, someone who complies with these various duties and responsibilities, and *in doing so realizes the good of equal membership*.'⁴⁷ If the good of equal membership requires the performance of certain behaviours then this

⁴⁷ *ibid* 41, my italics. cf Mason, *Community, Solidarity, and Belonging* (n 5) 110, in which we find the 'good of citizenship' formula.

suggests that failing to perform those behaviours would dissolve (or prevent from arising) a relationship of equal membership, and thus the constitutive duties that come with it. A relationship's constitutive duties can only be held by those who are actually in that relationship, as in the case of friendship. In which case, only citizens who actually treat each other as equals would have the special obligations of citizenship. Now, one might point out that only in a seriously dire democratic state would the vast majority of citizens *not* routinely perform the sorts of behaviours that could count as 'treating each others as equals' and thereby at least partly realize the good of equal membership. This is because in most democratic societies, we might suppose, people treat each other as equals to some extent simply in virtue of being decent people, or the kind of people who go in for democratic self-rule. So we might say that, in practice, it is extremely unlikely that the relationship of equal membership will *not* obtain to some degree among the co-citizens of any reasonably healthy democratic state. So while it is perhaps theoretically possible that a community of dastardly citizens might never incur the constitutive duties of equal membership, on this account, the more likely community of citizens who are decent people will by their very decency enter into a relationship of equal membership and incur whatever obligations that entails.⁴⁸

⁴⁸ Equal membership is, in this regard, less voluntary than friendship. Friendships can of course form gradually and without much intent, but one is almost always free more or less to declare an end to a friendship. This option is not open to any individual citizen who is in a relationship of equal membership. Nor can an individual citizen withdraw from equal membership by actively failing to treat her co-citizens as equals—so long as the majority of citizens are decent people it seems inevitable that at least a minimal relationship of equal membership will develop between them. The only way for an individual to actively withdraw from equal membership would be to renounce her citizenship status and rights. This is a high cost indeed.

Let us assume then that any group of decent co-citizens will satisfy the minimum threshold for equal membership. In order to avoid the charge of circularity we must still ask whether it is plausible that, for example, a duty of priority could be constitutive of that 'wider relationship'. Recall that, for Mason, a duty is constitutive of a valuable relationship, rather than a means for realizing that relationship, if the fulfilment of that duty is itself part of the good of that relationship—i.e. the fact that a special obligation is being fulfilled itself brings value to the relationship, independent of whatever value is brought by the behaviour that the obligation requires.⁴⁹ This does not mean that the behaviour required by an obligation is irrelevant to whether discharging that obligation could plausibly be said to contribute to the value of a relationship. For instance an obligation cannot be constitutive of the good of a relationship if the behaviour it requires detracts from or is antithetical to other constituent components of that good. This is a problem for the duty of priority.

Consider, Mason suggests that we can use the idea of equal membership to explain a duty of priority because the former requires fellow citizens 'to give additional weight to each others' needs so that their fellow citizens are in a position to participate fully in the life of the collective, and can truly be said to possess equal standing.'⁵⁰ This duty might even be seen to flow from a more general duty citizens have, 'to promote and sustain social and political equality between them'.⁵¹ At first glance this explanation makes

⁴⁹ Mason, *Living Together as Equals* (n 5) 41.

⁵⁰ *ibid.*

⁵¹ *ibid.* 42.

the duty of priority look more like a means for realizing the good of equal membership than constitutive of it. To test whether or not its contribution can be understood independently from its instrumental contribution, we might imagine an ‘ideal’ situation in which a community’s co-citizens already stand in a relationship of political and social equality and, moreover, that relationship is relatively stable. That is, imagine a community in which giving special weight to the interests of one’s fellow citizens does nothing either to promote or sustain their equal membership. In such a scenario could fulfilling a duty of priority still be said to constitute part of the good of equal membership? Notice that the question is not whether, in such circumstances, the specially weighted interests of fellow citizens should win out against the interests of e.g. non-citizens. Nor is the question whether the duty of priority might be an example of an imperfect duty, such that it need not be fulfilled in *every* instance where it is possible (and, on the balance of reasons, justifiable) to do so. The question is whether or not giving special weight to the interests of one’s fellow citizens can *always* count as an instance of ‘treating them as equals’, even when their equality has, in all the relevant ways, already been secured. Or, is it possible that, in such ideal circumstances, fulfilling that duty could actually undermine their equality?

For example, it is plausible that fulfilling the duty to give special weight to the interests of a friend could always count as an expression of affection, or loyalty, or concern for that friend—things that also partly constitute the good of friendship—even when doing so will have no impact either on their well-being or on the strength of the friendship. Of course, such

an expression of concern could be misguided or inappropriate—e.g., a friend might find it patronizing to have her interests given special weight in some circumstances. So there could be times when fulfilling that duty is not, on balance, justified. However, even if it is done ‘in error’, fulfilling that duty can still be construed as an expression of concern. One can at once express concern *and* be patronizing. In contrast, one cannot at once be patronizing *and* treat someone as an equal. Suppose that in our ideal community a law was enacted that required employers to hire citizens over non-citizens who applied for the same jobs, even when the latter were slightly more qualified than the former. In doing so, legislators are giving special weight to the interests of citizens and requiring employers to do the same, but (we are supposing) the social and political equality of citizens is practically unaffected by this. It seems that in these circumstances giving special weight to the interests of fellow citizens is as likely to be patronizing to them as to be an instance of treating them as equals. This is the problem with viewing the duty of priority as constitutive of the good of equal membership, rather than a means to realizing that good. As we approach realizing that good in its best form, it becomes possible that in fulfilling such a ‘duty’ one would in fact *undermine* the overarching good of the relationship.

Of course we might retreat to an instrumental justification for the duty of priority. That is we might argue that citizens have a duty to give the interests of citizens special weight grounded in the good of equal membership because giving fellow citizens priority promotes or sustains that relationship. However this only reintroduces the kind of problem that Mason rightly

diagnoses in the accounts we considered earlier. Why should citizens have a duty to do that which promotes or sustains only *their* own equal membership—why do they not have a duty to do that which promotes equal membership generally? So, once we recognize that the fulfilment of the duty of priority cannot be constitutive of the ideal of equal membership, it is hard to see how that ideal could help to ground a symmetrical duty of priority.

What about the duty to participate? It is easy to see why participating in public life might help to promote or sustain political and social equality, e.g., because it contributes to a robust democratic system upon which those equalities depend. So participating in public life could help to bring about the good of equal membership. But could it be constitutive of that good? It is not clear that even Mason thinks that an obligation to participate *simpliciter* is constitutive of equal membership. The examples he gives that relate to this duty focus primarily on *the way* in which citizens ought to participate when they do—e.g. to behave respectfully towards each other in public debate. One could argue that if a citizen never participates in public life, if she never votes or engages in debates about public issues, then she can never fulfill the more specific obligations she might have, e.g., to vote in the interest of the common good or to debate public issues respectfully. So in not participating in public life she thereby misses out on important opportunities to treat her co-citizens as equals and develop the good of equal membership.

Even if we accept that these more specific obligations are constitutive of the good of equal membership, it does not follow that the more general duty to participate is constitutive as well. Notice that the former duties

essentially require citizens to be *good* equal members when they act in ways that provide them with an opportunity to do so. The latter duty essentially requires citizens to seek out such opportunities, at least occasionally. The question is whether fulfilling a duty to seek out opportunities to be a good equal member could partly constitute the good of equal membership. Consider how this might work in the case of friendship. Imagine a person who knows that her friend needs help to move some furniture. Were her friend to ask for help, she would (let us suppose) have an obligation to agree, and cancel her plans to watch television. That's what a good friend would do. She could shirk this duty in a roundabout way by avoiding her friend altogether—she is under no obligation to answer her phone, we might think. However in doing so, while she might not violate any particular duty of friendship, she misses an opportunity to do one of things that is constitutive of the good of friendship—fulfilling an obligation to help her friend. Were she to avoid *every* chance to fulfill obligations of this kind—whose fulfillment constitutes being a good friend—then the friendship would dissolve, along with whatever obligations that went along with it. So it is plausible that the duty to seek out (or not to avoid) opportunities to be a good friend is constitutive of friendship and justified by the good of that relationship—i.e. if you want to be friends at all, you *must* be a good friend occasionally.

However, even in the case of friendship, this imperfect duty to take opportunities to be a good friend does not entail even an imperfect duty to take up each and every *kind* of opportunity to be a good friend. I may not be the kind of friend who can be counted on to help you move furniture, but I

might still be the kind of friend you can count on for a sympathetic ear, or to proofread your work, or watch your dog while you're away, etc. Recall that in order simply to stand in a relationship of equal membership a person does not necessarily have to participate in public life. At a minimum all that is required is that she is a citizen and that she treats her fellow citizens as equals at least some of the time. This, I have suggested, she will do simply in virtue of being a decent person. If, then, there are ways of treating one's fellow citizens as equals that do not involve participating in public life, why would the duty to participate *in particular* be constitutive of the good of equal membership? At a more general level we can see how a duty to treat each other as equals might be constitutive of equal membership. And at the level of particular actions we can see how that duty translates into a duty to perform those actions in a particular way. However, it is hard to see why a claim that a duty to perform a particular category of action does not succumb to the circularity charge. Indeed, we can see this too with the duty of priority. Were that duty constitutive of the good of equal membership as Mason suggests, then it would follow that citizens also have a duty to seek out opportunities to give special weight to interests of their fellow citizens, rather than simply give priority whenever they happen to be in a position to do so.

The constitutive obligations argument, then, cannot explain without circularity why citizens have either a duty of priority or a duty to participate.

6. Asymmetrical Obligations and the Concept of Citizenship

If Mason is correct, and the ‘only’ way to justify a symmetrical duty of priority or to participate is by means of the constitutive obligations argument, then it would seem we must abandon this particular aspect of common sense morality. This is too quick. I, too, have offered no ‘transcendental argument’ that any attempt to show that citizens owe each symmetrical special obligations *must* fail. Instead I suggest that the failure of the accounts we have considered here give us sufficient reason to question the picture of the special obligations of citizenship that common sense morality provides as well as the presuppositions about the nature of citizenship that underpin it. In particular, we should reconsider the normative significance of the various *relationships* that exist between co-citizens, between citizens and other long-term residents, and between all long-term residents *qua* residents. In this penultimate section I suggest that a consistent failure to ground symmetrical special obligations actually counts in favour of accepting the core concept of citizenship offered in Chapter 2, and I explain what we can infer about the special obligations of citizenship if we adopt that core concept.

Something that emerges from the discussion of the constitutive obligations argument is that the picture of the special obligations of citizenship that comes to us from common sense morality embodies certain presuppositions about the nature of citizenship itself. It presumes that the relationship between co-citizens is like that between family members or between friends. That is it presumes that the relationship between co-citizens is central to citizenship in the same way that the relationship between family

members is central to what it means to be a family, or in the way that the relationship between friends *just is* friendship. It also presumes that there is something normatively significant about citizenship, i.e. that possessing citizenship has some affect on the duties we owe, or the duties we are owed. Now, if we believe that citizenship is normatively significant, *and* we believe that the central or primary relationship of citizenship is the one between citizens, then it is natural to expect that the relationship between citizens *qua* citizens would be that to which that normative significance attaches. After all, it is the primary relationship that we believe has moral significance in the cases of friendship and family. So, too, then, it seems natural to expect whatever special obligations citizens might have to be owed symmetrically between co-citizens.

In light of the difficulty we have justifying symmetrical special obligations of citizenship, we should reconsider one or both of these beliefs about the nature of citizenship. In Chapter 2 I offered a core concept of citizenship that suggests we should reject the first. According to the core concept, the central or primary relationship of citizenship is the institutional relationship between an individual and the laws and organs of government to which she is subject. Of course the relationship between co-citizens is still a necessary feature of citizenship. However, regardless how we characterize the nature of that relationship, i.e. whether as a relationship of equal membership or something else, its existence is a necessary feature of citizenship only in the way that being 'a friend of a friend' to one's friends' friends is a necessary feature of friendship. One advantage of accepting the core concept of

citizenship, then, is that it comes as less of a surprise that we have difficulty grounding symmetrical obligations of citizenship.

What then of the first belief? Can we maintain the normative significance of citizenship if we reject that co-citizenship is its central relationship? Or must we reject the picture given to us by common sense morality entirely? Recall that in my discussions of the fair play argument and the assigned responsibilities argument I suggested that citizens might possess *asymmetrical* special obligations—i.e. obligations which only citizens hold, and which they owe to some subset of all people that is not identical with the set of their co-citizens. This is what we might expect if we combine the belief that citizenship has normative significance with the belief that the primary relationship of citizenship is the institutional one identified in the core concept. The *prima facie* plausibility of this claim depends on there being something about the possession of citizenship, something that distinguishes citizens from, say, other long-term residents that would explain why the former would have obligations that the latter do not. The most obvious suggestion is that, unlike long-term residents, citizens are empowered by their political rights of participation, rights which give them influence over the conditions of life in the polity. However, it might not be clear why or to what extent this difference is normatively significant. For instance, we might think that citizens simply have a greater range of opportunities to fulfill duties that, on the accounts like the fair play argument or assigned responsibilities argument, are really just symmetrical duties held between *all*

long-term residents, including but not limited to citizens.⁵² That is, on this view, citizens' possession of political rights is not a source of any distinct (asymmetrical) obligations to participate in public life or give priority to the interests of their fellow long-term residents. Rather, all long-term residents have the same symmetrical duty to participate or give priority to the needs of their fellow residents, and citizens' political rights simply allow them to fulfill these obligations in different, but normatively similar ways.

It is doubtful that we should hold this view. We may allow that long-term residents in a democratic state can participate and contribute to society in all sorts of ways, including ways that are important to a flourishing democratic society, e.g. through journalism, or political activism. However we should not deny that the rights to this kind of participation have a different normative character from the rights to vote, run for, or hold public office. The reason is that the latter rights give citizens a hand in *governing* whereas the rights to participate in other areas of civil society do not. Governing involves relationships of authority and power between the governed and the governors which carry a distinct moral significance—the activity of governing is different in kind from participation in civil society. It is implausible to think that the normative implications of having a hand in governing are no different than those of the many ways a non-citizen might participate in or contribute to the life of the community. Of course the actual contribution to a community's governance of any individual citizen is usually vanishingly small. Any

⁵² Mason seems to downplay the importance of this difference in just this way when says that proponents of the views he critiques 'might deny that the distinction between citizens and residents does have any moral significance (except perhaps in so far as the two groups have different opportunities to participate in a polity, created by different sets of legal and political rights).' Mason, *Community, Solidarity, Belonging* (n 5) 108.

citizen's vote might have less actual influence on public policy than, say, a non-citizen's contribution to a political demonstration undertaken by a combined group of citizens and non-citizens. However, so long as we recognize that governing is a different kind of activity, from a normative standpoint, from those in which all long-term residents might engage, then we have the conceptual space we need for citizens to possess obligations that other long-term residents do not.

This also explains why, if we adopt the core concept of citizenship, we would expect the special obligations of citizenship to be owed both to citizens and non-citizen residents. This is because the primary relationship of citizenship is contiguous with another relationship, that between the laws and institutions of governance and everybody who is normally subject to them. What connects a citizen *qua* citizen to her fellow citizens is not primarily their co-citizenship, but her fellow citizens' status as *subjects*. In this respect, from the perspective of any citizen *qua* citizen, there is no normatively significant distinction between citizen-residents and non-citizen residents. As residents, citizens and non-citizens are all similarly subject to the power and authority of the laws and the organs of government.

7. Conclusion

My overall aim in this chapter has been to show what happens when we bring the core concept of citizenship to bear on one of the central questions of citizenship theory. Accepting the core concept means adjusting one element of the picture of citizenship that comes to us from common sense morality.

Insofar as we ought to try our best to accommodate what common sense morality provides, this counts against accepting the core concept. The flip side to this is that if our best explanations of what common sense morality provides us consistently come up short, then this counts in favour of making adjustments. The adjustment I have proposed has the advantage of preserving the idea that citizenship is morally significant vis-à-vis our obligations. And it does so in a way that brings those 'failed' explanations of the special obligations of citizenship we considered back into play. If our best explanations of the special obligations of citizenship cannot explain symmetrical obligations between co-citizens, but can plausibly explain asymmetrical obligations held by citizens and owed to all long-term residents (which, we have seen, they do), then perhaps it is time to shift the terms of the debate.

6 Claims to Citizenship I

1. Introduction

In the preceding chapters I considered how we conceptualize what it means (and what it does not mean) to be a citizen of a political community. I argued that to be a citizen of a polity, one must have a particular kind of recognition from the government of that polity (or from the community acting through its government). Typically, a person acquires this recognition when she satisfies some set of criteria that has been set by the polity's lawmakers. It is they, the lawmakers, who ultimately decide who gets to have citizenship with respect to a given polity. Part of what it means for a community to be *self-determining* is that it has the power to determine who will constitute its own 'self', and to exercise that power free from the interference of others. This does not mean, however, that there are no constraints whatsoever on how this power should be used. Some people have moral claims to citizenship in a given polity even

though they neither have citizenship in that polity, nor satisfy the criteria the polity has set for the ascription of citizenship therein. In this chapter and the next I will focus on identifying the grounds for such claims to citizenship.

I divide the discussion into two chapters because, as we will see, a claim to citizenship actually involves two distinct claims. On the one hand, a claim to citizenship involves a claim to what I have called *democratic membership* or full membership in the demos of a democratic polity. On the other hand, a claim to citizenship also involves a claim to what I call *basic membership* in the polity, which comprises the legal rights to live and work in the territory of the polity for an extended or indefinite period of time—i.e. the sort of rights which attach to a number of different ‘resident’ statuses. The distinction between these claims is not always obvious in practice. The reason is that in many states, both historical and contemporary, a person need only satisfy a single criterion in order to qualify for a legal entitlement to citizenship, i.e. to both basic membership and democratic membership. Citizenship does not typically come to us in parts. This does not mean, however, that the parts are not there. As basic membership and democratic membership are conceptually distinguishable, there is no reason to assume at the outset that the grounds for moral claims to either will be the same.

My primary focus in this chapter will be claims to democratic membership. I approach the topic through the lively contemporary debate surrounding what is often called ‘the boundary problem of democratic theory’. This is the problem of using the resources of democratic theory itself to provide the principle by which to correctly constitute the demos of a

democratic polity i.e. such that it can be rightly be described as ‘democratic’. I begin, however, in the following section by offering a general analysis of what it means to have a moral claim to citizenship and the basic conditions under which such claims can arise. This analysis will set the terms by which the remainder of the discussion in both this chapter and the next proceed.

In section 3, I turn to the boundary problem itself and defend a version of what I will call the *coercion principle* for establishing moral claims to democratic membership of the sort required for a claim to citizenship. This principle is derived from Robert Dahl’s well-known principle of democratic inclusion, *the all subject principle*.¹ As such, the coercion principle stands in contrast to a different interpretation of the all subject principle which has become prominent in recent years: *the affected interests principle*. Using an argument recently offered by David Owen regarding the correct place of the affected interests principle within democratic theory, I explain why the latter is not the correct principle for establishing claims to democratic membership.²

In the penultimate section I consider some of the practical implications of the coercion principle and whether they represent challenges to it. In particular, I consider what the coercion principle entails with respect to visitors or transients, expatriates, and the children of expatriates. My conclusions are largely conservative. I argue that while none of these groups

¹ I rely primarily on the account offered in Robert Dahl, *Democracy and Its Critics* (Yale University Press 1989).

² David Owen, ‘Constituting the polity, constituting the demos: on the place of the all affected interests principle in democratic theory and in resolving the democratic boundary problem’ (2012) 5(3) *Ethics and Global Politics* 129.

will have moral claims to democratic membership with respect to the polities they are visiting, have left, or been born outside of—and thus cannot have claims to citizenship in those polities—it is not entailed by the coercion principle that they ought necessarily to be excluded. A democratic polity's right to determine for itself who it will include among its democratic membership is not (or, least, not always) constrained by the values that constrain who it can exclude.

2. Claims to Citizenship

The general picture

The picture of citizenship I am defending in this thesis is one of an institutionally recognized relationship between an individual and the institutions that govern a political community. This recognition comes in the form of a legal status, accompanied by the range of political rights necessary for full and equal democratic participation in the political governance of that community. I have argued that we should maintain a clear awareness of the distinction between, on the one hand, the concept of citizenship with respect to a political community and its government, and, on the other hand, that of membership in a political community. Rather than identify citizenship with political membership generally, such that many and varied instances of political membership constitute 'degrees', 'kinds' or 'classes' of citizenship, the concept of citizenship should be understood as capturing a particular (and comparatively narrow) kind of political membership.

Nevertheless, citizenship is still a kind of political membership. So in addition to the rights and duties that characterize citizenship as a distinct form of membership, citizens must also possess, at a minimum, the rights and duties of what I call *basic membership*. These include the legal rights to live and work in the territory of a polity, as well as duties, e.g., to pay taxes, to obey the law, etc.—in short, the rights and duties involved in participating in the daily life of the community. While the possession of these rights and duties is both necessary and sufficient for basic membership, it is necessary but not sufficient for citizenship.

As discussed in Chapter 2, the conception of democratic governance implied by my description of democratic membership should be understood as minimalistic, by which I mean largely procedural. For a polity to have citizens, it is necessary only that those who have the power to govern do so using what we would normally recognize as democratic procedures. (Assuming they also possess basic membership, those who have that power would comprise the citizenry.) In other words, it is not necessary that the polity as a whole realizes a ‘thicker’ normative conception of democratic community in order for that polity to be ‘democratic’ in the sense required for it to have citizens or the institutional relationship of citizenship. Even if it is the case that not everyone who has a moral claim to citizenship in a given polity actually possesses citizenship there, such that the polity is therefore less ‘democratic’ according to a richer normative conception of democracy, those who *do* possess both basic membership and democratic membership in that polity can nevertheless be conceived of as its citizens.

Again, these remarks largely repeat what I have defended in earlier chapters. From them however we can extract a general picture of what it means to have a claim to citizenship in a given community. First, a claim to citizenship with respect to a given polity actually involves two conceptually distinguishable claims: a claim to basic membership and a claim to democratic membership. In analyzing claims to citizenship, then, we do well to treat these claims separately, because they are claims to different things and may therefore have different normative grounds. The conditions under which a person has a moral claim to citizenship are the conditions under which there are moral reasons both for a person to have basic membership and for her to have democratic membership.

Second, we see that in order for it to be possible to have a claim to citizenship in a given polity, the polity itself must satisfy three conditions. The first is that it must be a legal community—i.e. a community governed by a system of laws. This is for the obvious reason that only a legal community can legally recognize or protect the characteristic rights of citizenship. The second is that the community must be territorially bounded. The reason is that a claim to basic membership is a claim to live *somewhere*. It is possible for a political community to have jurisdictional boundaries which encompass a particular group of people rather than a territory, such that its members live within the jurisdictional territories of a number of other communities. It is also therefore possible to have a claim to democratic membership in a non-territorial legal community. However, since one cannot have a claim to basic membership with respect to non-territorial polity, there is no possibility of a

claim to citizenship with respect to that kind of polity. The third and final condition a polity must satisfy in order for there to be the possibility of a moral claim to citizenship with respect to it is, again, that it must be governed (minimally) democratically (i.e. it need not satisfy the conditions for a wholly democratic community).

Legal and moral claims to citizenship

While my primary focus in this chapter and the next is *moral* claims to citizenship, a person can also have a legal claim to citizenship. A person has a legal claim to citizenship in a polity if he satisfies whatever criteria the laws of that polity say entitle one to the legal status, rights and duties of citizenship there. As I noted in the introduction, it is often sufficient to satisfy only a single such criterion, typically having to do with facts about the place of one's birth or about one's parentage. I will call criteria of this sort *ascription criteria*. Even if one does not satisfy the ascription criteria of a given polity, in many cases one can still acquire a legal claim to citizenship if he satisfies certain *naturalization criteria*. These criteria typically have to do with facts about the length of one's residence within the polity and the extent of one's integration into and contribution to the community. Again, what ascription criteria and naturalization criteria have in common is that they are the product of decisions taken by the lawmakers of the polity in question, and do not necessarily correspond with whatever moral reasons there are for granting citizenship either to those who are legally entitled to it or to those who are not. That is, the facts about where one is born, or who one's parents are, or how long one has been resident in the territory of the polity etc., might

ground one's legal claim to citizenship in a given polity without having any role in the grounds for one's moral claim to citizenship. One can have a legal claim to citizenship or, indeed, be a citizen in a polity without having a moral claim to it at all.

Despite the conceptual space between legal and moral claims to citizenship, states sometimes treat their ascription and naturalization criteria as though they reflect genuine moral reasons to grant citizenship to those who satisfy them—i.e. they act as though those who have legal claims to citizenship have also moral claims to citizenship and for the same reasons. So, for example, they speak as though the legal principles of *jus soli* (which says that those who are born within the territory of the polity are entitled to citizenship) and *jus sanguinis* (which says that those with a particular parentage are entitled to citizenship) are also moral principles. Similarly, a familiar attitude towards naturalization criteria is that they represent the *only* claims to citizenship that immigrants, for example, have with respect to their receiving countries; they have no moral claims independent of whatever legal claims the lawmakers of the receiving country have seen fit to grant them.

However, there is a substantial literature dedicated to showing that the most common ascription and naturalization criteria for establishing legal claims to citizenship do not adequately track the moral claims of those who have them.³ Moreover, that literature can be divided along the lines of the two claims I have said a claim to citizenship involves. On the one hand there are those who worry that contemporary ascription and naturalization criteria

³ From here on, 'claims to citizenship' will refer to moral claims to citizenship unless otherwise noted.

fail to track those who have moral claims to democratic membership grounded in fundamental democratic values. On the other hand are those who worry that contemporary ascription and naturalization criteria fail to track those who have moral claims to basic membership in a given polity grounded in a principle of global justice. Again, I will consider only arguments that pertain to worries of the first sort in this chapter.

Scope and democratic membership

In the remainder of this chapter I will focus on identifying grounds for claims to democratic membership. I do this through a discussion of what is often called the ‘boundary problem’ of democratic theory. This is the problem of identifying who must be included in the demos that governs a polity in order for that polity to be ‘truly’ democratic—i.e. to be democratic according to a normative conception of democracy. Put differently, it is the problem of identifying democratic grounds for claims to inclusion in a given demos.

The boundary problem is also a problem about the *scope* of demoi, i.e. about the territory or people or issues over which a demos should exercise political power. It is not always easy to keep apart questions of inclusion and of scope. Nevertheless, it is my intention to focus primarily on the question of inclusion. Before setting aside the question of scope, however, I want to distinguish between three kinds of claim which may all be said to fall under the broad heading of ‘the boundary problem’. The first are claims to be included in an established demos with an established scope; the second are claims to the establishment of a new demos with a particular scope; the third

are claims to be included in a demos that (we think) ought to be established with a particular scope.

What is important to note is that a claim to citizenship only involves claims of the first kind. That is, one can only have a claim to citizenship if she has a claim to be included in the existing demos of an established polity. Claims of the second kind are not about membership at all, but about the establishment of new political institutions. Such claims, then, do not factor directly into claims to citizenship. Claims of the third kind, in a sense, are combinations of the first two. They have both an indicative and a subjunctive element. They refer to claims of the first kind which a person *would have* once an existing claim of the second sort has been fulfilled. So, when we say that someone 'has' a claim to democratic membership of the third kind, we are saying that there *are* moral reasons for her that the conditions be brought about under which there *would be* moral reasons for her to have democratic membership. For example, if someone says that people of Quebecois descent have claims to democratic membership in an independent Quebec, he is saying two things. He is saying, first, that people of Quebecois descent *have* a claim to the establishment of an independent and democratic state of Quebec

and, second, that people of Quebecois descent *would have* a claim to democratic membership in such a state, if and when it were to come about.⁴

The analysis of the first kind of claim will of course be applicable to the second half of the third kind of claim. That is, the analysis of the reasons there are for a person to have citizenship in an established polity will apply to the reasons for a person to have citizenship in a hypothetical polity. The point I want to make here, simply put, is that if the demos referred to in a claim to democratic membership does not exist, then one can only metaphorically be said to ‘have’ a claim to democratic membership in that demos. Similarly, a claim to citizenship in a democratic polity that does not exist, but which (we think) should exist, is best understood as a metaphorical claim.

3. Democratic Membership: The Boundary Problem

Problems defining the demos

I have said that the possibility of citizenship in a polity depends on that polity’s being governed in a minimally democratic way. Again, by this I mean only that the polity is governed according to what would normally be described as democratic procedures, e.g. those who have the power to govern

⁴ Claims of the second and third sort need not be about the establishment of new polities either. There are cases in which there are reasons to establish a demos whose scope is a single issue or range of issues. The point here is that even if one has a claim to membership in such a demos it would not factor in a claim to citizenship. For example, imagine a proposal for a North American Carbon Emissions Reduction Initiative. We might think that the decision whether or not to adopt such a plan requires, on democratic grounds, a plebiscite of all residents of North America. We might then say that residents of North America have a claim a) that a demos be established which is empowered to address the question and b) that they be included in it. This would not factor into a claim to ‘North American citizenship’ because the demos would not be empowered to recognize or protect the full range of rights necessary for citizenship.

share that power equally, debate over agendas and courses of action, vote on which action to take, etc. I do not mean that those who are included in such a demos are necessarily the same as those who have a claim to be included. In other words, for a polity to have citizens, it is not necessary that the polity or its government are 'truly democratic'.

This minimal conception of democratic governance applies quite broadly. It applies as well to a polity with a universal franchise as to a polity ruled autocratically by a 'collegial elite' who use democratic procedures amongst themselves to decide which laws to hand down to their subjects.⁵ This is one problem with regarding a procedural conception of democracy as a complete theory of democracy—it is not very useful in distinguishing between different kinds of political governance, since most of them could be democratic in this sense.⁶ As distinguishing a unique form of political governance, the idea of democracy is meaningful primarily when it is understood normatively.

Understood normatively, the idea of democracy is usually thought to capture an especially (and perhaps uniquely) legitimate form of government. The idea is that when a community is governed truly democratically, its laws are thought to be legitimately binding on those who are subject to them. This in turn helps to legitimize the enforcement of those laws. Since the enforcement of a polity's laws is an inevitable feature of political governance,

⁵ See Robert Dahl's critique of Joseph Schumpeter's conclusion that it is democratic procedure alone that determines whether or not a polity is democratic. (Schumpeter himself appears willing to embrace the consequences to which Dahl objects.) Dahl (n 1) 121-122; Joseph Schumpeter, *Capitalism, Socialism and Democracy* (Routledge 2003 [1943]) 243-45.

⁶ Dahl (n 1) 122.

it seems crucial that we know the conditions under which a polity is truly democratic.

This reveals another problem with the minimal conception of democratic governance. Not only does it apply too broadly to be useful, but it appears to apply perfectly well to governments whose laws we do not normally think are legitimately binding for those who are subject to them, such as, again, the autocratic rule of collegial elites. The problem is not the procedures those in power use to determine the laws of the community, it is the constitution of the demos that is empowered to make those laws. The worry is not that the collegial elite have been selected at random or in some unprincipled way; They may have acquired their position in the demos by satisfying a principle of wealth, or birth, or merit, etc. The question is whether the principle by which the demos is constituted is itself 'democratic'.⁷

As is often noted, we cannot turn to democratic procedures themselves to provide the principled democratic basis by which we constitute the demos. For, in order to use a democratic procedure to answer the question 'who ought to be included in the demos?', we would need a demos to participate in that procedure. In that case, though, we would need first to know who ought to be included in *that* demos. This would, in turn, require a demos to decide who is to be included in the demos that decides who is to be included in the demos.

⁷ For reasons why we should care that democratic theory itself can provide an answer to the boundary question, see David Miller, 'Democracy's Domain' (2009) 37(3) *Philosophy & Public Affairs* 201, 203.

And so on. This is what is sometimes called the paradox of the self-constituting demos: the demos, it appears, must be prior to itself.⁸

Nor can we simply put our foot down at some point in the regression and say 'Let *this* demos decide the constitution of the demos!' For the outcome of any decision taken using democratic procedures will depend largely on who is included in those procedures in the first place. Different demois are likely to return different answers to the same question. This is why we need a principled way of constituting the demos in the first place. Otherwise, any decision the demos yields will have a disturbing arbitrariness about it. This then, in brief, is the boundary problem of democratic theory: by what democratic principle might the demos be constituted?

It is worth noting that while this is a problem *of* democratic theory, there is a misleading sense in which it has been described as problem *for* democratic theory. Fredrick Whelan argues that constituting the demos is a problem for democratic theory because, on the basis of considerations like those mentioned in the preceding paragraphs, democratic *theory* can furnish us with no solution to it. However, this is plausible only if we think that a theory of democracy begins and ends with a description of democratic procedures. As others have pointed out, this is simply too narrow a view of

⁸Rousseau notes the problem of relying on the consent of a newly formed 'people' to whom the law applies for its legitimacy when it is the law that makes them 'a people': 'For a nascent people to be capable of appreciating sound maxims of politics and of following the fundamental rules of reason of State, the effect would have to become the cause, the social spirit which is to be the work of the institution would have to preside over the institution itself, and men would have to be prior to laws what they ought to become by means of them.' Jean-Jaques Rousseau and V Gourevitch (ed), *The Social Contract and Other Later Political Writings* (Cambridge University Press 1997) 71. See also Frederick Whelan 'Prologue: Democratic Theory and the Boundary Problem' in RJ Pennock and JW Chapman (eds) *Liberal Democracy* (New York University Press 1983) 13–47.

democratic theory.⁹ At the very least, democratic theory extends to include accounts of those values and principles that are thought to justify and motivate the use of democratic procedures in the context of political governance in the first place. All that is needed for a ‘democratic’ solution to the boundary problem, then, is a principle of inclusion that is grounded in these.

The all subject principle

A common starting point for contemporary discussions of the boundary problem is the principle of democratic inclusion defended by Robert Dahl.

Call this

the all subject principle (ASP): the demos should include all adults subject to the binding collective decisions of the association.¹⁰

For Dahl, part of what it means for a decision to be made democratically is that it respects a core liberal value, what he calls ‘the Idea of Intrinsic Equality’: everyone is, in some fundamental way, equal to everyone else.¹¹ This is done, first, by giving equal consideration to the interests of everyone included in the demos, as in the idea of one person, one vote. Second, members of a demos stand in a relation of what Dahl calls ‘Strong Equality’: everyone who is included in the demos is assumed to be equally

⁹ See e.g. Miller, ‘Democracy’s Domain’ 204; Gustaf Arrhenius, ‘The Boundary Problem in Democratic Theory’ in Folke Tersman (ed) *Democracy Unbound: Basic Explorations I* (Stockholm Filosofika Institutionen 2005); Claudio Lopez-Guerra, ‘Should Expatriates Vote?’ (2005) 16(2) *The Journal of Political Philosophy* 216, 218.

¹⁰ Dahl (n 1) 120. See also: Robert Dahl, *On Democracy* (Yale University Press 1998) 78. In his later formulations, Dahl explicitly excludes both children and what he calls ‘mentally defective’ adults. Such exclusions raise a number of issues which, while important, I will not discuss here. Dahl also excludes ‘transients’, which I discuss in section IV below.

¹¹ Dahl (n 1) 97-99.

well-qualified (or not obviously less qualified than anyone else) ‘to participate in making the collective decisions binding on the association that significantly affect their good or interests.’¹²

While membership in the demos is characterized by equality amongst members, the right to be included in the demos requires a further grounding in what Dahl calls ‘The Presumption of Personal Autonomy: In the absence of a compelling showing to the contrary everyone should be assumed to be the best judge of his or her own good or interests.’¹³ Dahl describes the presumption of personal autonomy as a prudential rule, rather than an epistemological principle—it is not itself a moral axiom, but a ‘a mix of moral and empirical judgments’.¹⁴ Empirically we know that any relationship of authority, including that of political authority, runs the risk of veering into paternalism. Morally, it is widely held that paternalism can be justified only in special cases, given the importance of people’s ability to choose their own goods or interests (or, in terms suggested by Joseph Raz, to have some degree of control over their own destiny).¹⁵

However, there is some ambiguity in what it means ‘to be subject to the binding decisions of the association’. Let us consider three senses in which one could ‘be subject to the binding decisions of the association’.

The first is the idea that one is subject to the binding decisions of the association if those decisions—in this case, the laws of the community—are

¹² *ibid* 98.

¹³ *ibid* 100.

¹⁴ *ibid* 100-101.

¹⁵ Joseph Raz, *The Morality of Freedom* (Oxford University Press 1986) 6-17.

addressed to her. That is, one might be thought to be bound by the decisions of a demos that *claims political authority* over her, and regards her as having a moral obligation to comply with those decisions, (regardless of whether or not she in fact has such an obligation).¹⁶ The second is the idea that one is subject to the binding decisions of the association if, having been included in the demos, she actually has a moral obligation to comply with its decisions. In this case, we may say that the demos *has democratic authority* over her. Third, there is the idea that one is subject to the collective binding decisions of the demos if she is *liable to the coercive enforcement* of those decisions (again, regardless of whether or not she has a moral obligation to comply). A person may be subject to the collective binding decisions of the demos in fewer than all three senses. It is therefore worth considering the consequences for someone's personal autonomy when she is subject to the demos' decisions in different combinations of these, and what claims to inclusion in the demos ASP might thereby ground.

For example, it is possible that someone who is included in the demos—i.e. someone over whom the demos both claims political authority and has democratic authority—is not liable to the coercive enforcement of the demos' decisions. This could be, as David Owen suggests, 'either because the coercive apparatus of the polity has ceased to be operative or because the person concerned is so much more powerful in all relevant respects than the polity in question.'¹⁷ Owen correctly notes that, since the person is a member of the

¹⁶ I am tacitly endorsing here the view that one may have a legal obligation without having a corresponding moral obligation, but that from the perspective of 'the law' one always has a moral obligation to fulfill one's legal obligations.

¹⁷ Owen (n 2) 145.

demos, she has moral reasons to comply with its decisions.¹⁸ However, this fact is not sufficient to ground a claim to membership in the demos. She is ‘subject to the binding decisions of the demos’, such that she ought to comply with its decisions, but this because she is *already included* in the demos. Her autonomy is not threatened by the fact that she has a moral obligation to comply with decisions she has had an equal hand in making, or which have been justified to her through her inclusion in the democratic process.

Consider, then, someone who is not liable to the coercive enforcement of the demos’ decisions and who is also not included in the demos, but is someone over whom the demos nevertheless claims political authority. For example, the demos of Canada might decide to claim political authority over the population of the United States. This seems unlikely to generate any claims for residents of United States to democratic membership in Canada, if for no other reason than because the Canadian demos’ claim does nothing to threaten the personal autonomy of residents of the United States. The same thing is true of someone who is a resident of Canada, and over whom the Canadian demos claims authority, but who is not liable to the coercive enforcement of the latter’s decisions for the kinds of reasons mentioned in the previous example. I am not suggesting that she would not have reasons—even strong reasons—to comply with the demos’ decisions. What I am suggesting is that in the absence of a liability to coercion, she would be free to (autonomously) decide whether or not to act on those reasons. She might also have reasons for *wanting* democratic membership. For instance, if the

¹⁸ *ibid.*

decisions of the demos actually do give her strong reasons to act one way or another, it is plausible that she would want a say in what those decisions are. Of course this does not generate an autonomy-based claim to democratic membership. The decisions of the Canadian demos could also give a citizen of the United States who manages a large investment portfolio in Canada strong reasons to act one way or another and, for that reason, generate a desire to have democratic membership in Canada. She does not, however, have any autonomy-based claim to it on those grounds.

Now consider a slightly different scenario in which the subject is not a member of the demos but someone over whom the demos claims political authority with respect to *some* decisions but not to all or even the majority. Moreover, she is liable to the coercive enforcement of those decisions for which the demos claims political authority over her. Arash Abizadeh argues, for instance, that would-be immigrants are liable to the coercive enforcement of the border policies of the states they would enter and, for that reason, have a claim to democratic inclusion.¹⁹ The claim is of course controversial.²⁰ However, even if it is true, at most this would seem to ground a claim to inclusion in the demos for decisions pertaining to that particular domain of law, i.e. immigration law. Here it is helpful to distinguish between *inclusion* in the demos—i.e. for a particular decision or a limited subset of all decisions the demos takes—and *membership* in the demos. A member of a demos is

¹⁹ Arash Abizadeh, 'Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders' (2008) 36(1) Political Theory 37.

²⁰ See, e.g., David Miller, 'Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh' (2010) 38(1) Political Theory 111. For a reply, see Arash Abizadeh, 'Democratic Legitimacy and State Coercion: A Reply to David Miller' (2010) 38(1) Political Theory, 121.

someone who is included for *all or most* decisions that demos takes. A citizen, I have said, is someone who has full inclusion the demos or democratic membership, and so someone who has a claim only to limited inclusion in the demos will fall short of having the sort of claim required for a claim to citizenship.

What emerges from these reflections on the meaning of ‘being subject to the binding collective decisions’ of a demos is that the normative force of ASP as a principle of democratic inclusion comes primarily from the idea of being liable to the coercive enforcement of the decisions of the demos, since neither of the other two senses appear to significantly threaten or undermine one’s personal autonomy. Given this, we may derive from ASP as a principle of democratic inclusion a slightly different principle for establishing claims to democratic membership of the sort needed for a claim to citizenship. Call this

the coercion principle (CP): All those who are normally liable to the coercive enforcement of the decisions of a demos, and whose personal autonomy is thereby threatened, have a moral claim to membership in that demos.

By establishing moral grounds for claims to citizenship, the coercion principle represents a constraint on whom a demos can justifiably deny democratic membership to. In other words, it has implications for the sorts of criteria polities may legitimately set down for establishing legal claims to citizenship within them. I will consider some of those implications in Section 4.

Affected Interests and Democratic Inclusion

I must note that CP is *not* offered as a solution to the boundary problem. The reason is that it presumes the existence of an established polity

with an established demos that regular makes and coercively enforces its decisions. It cannot tell us who ought to constitute a demos *ab initio*. Given the analysis I offered in Section 2, this itself is not a problem for CP. A claim to citizenship involves a claim to democratic membership in established polities only, and this is all I mean CP to establish. However, if an interpretation of ASP that puts its normative force in the liability to coercion is the incorrect principle for constituting the demos *in the first place*, then it might appear that CP rests on a faulty premise. Here, then, we must consider an alternative to the interpretation of ASP I have been using.

If the presumption of personal autonomy reflects a concern for the integrity of a person's capacity and ability to identify (and act upon what she believes to be) her own 'goods and interests', then perhaps what matters is not whether she is coerced into obeying the decisions of others, but whether her *interests are affected* by the actions of others. It is true that the interests of someone who is normally liable to the coercive enforcement of the decisions of its demos, will be affected by those decisions. However, the decisions of a given demos can also affect the interests of people beyond those boundaries. A popular way to illustrate this is to point out, for example, that if the demos of one state, A, authorizes the construction of a coal-fired power plant near their border with a neighbouring state, B, then residents of B will be affected by the environmental and health ramifications of A's decision. Similarly, if A relies heavily on food imported from B, say, to feed its residents during the winter months, then the interests of residents of A are deeply affected by decisions made by the demos of B regarding international trade. These

examples are laughably simplistic when compared to the vastly more complicated political, economic and environmental interconnections that exist between contemporary states. These sorts of considerations have brought a different principle of inclusion into prominence.²¹ Call this

the affected interests principle (AIP): all those whose interests are affected by the decisions of a demos have a claim to be included in that demos.²²

Along with a surge in its popularity, a lively debate has arisen over the correct formulation of AIP. One reason for this is that, since AIP is not presumptively confined to those over whom the demos claims political authority, as CP is, it faces an apparent circularity problem. For example, it has been argued that the principle cannot be coherently formulated such as to ground claims to inclusion in the demos for people whose interests are *actually affected* by the actions of a demos. The reason is this. Any decision to act involves a choice between at least two options (i.e. to act or not to act), and often more than two. In many cases, the people whose interests are actually affected by the demos taking one course of action are different than the group of people whose interests would be actually affected if the demos took another. So, even in a decision between only two courses of action, it appears that that we cannot know for certain who has a claim to inclusion in the demos until we know which course of action the demos ultimately decides to take. And which

²¹ Sophia Näsström calls this the ‘diagnostic’ function of the affected interests principle within political theory. Sophia Näsström, ‘The Challenge of the All-Affected Principle’ (2011) 59 *Political Studies* 116, 123-125.

²² In his earlier writings, Dahl himself uses something like this formula. See e.g. Robert Dahl, *After the Revolution? Authority in a Good Society* (Yale University Press 1970) 64; He writes: ‘everyone who is affected by the decision of a government should have the right to participate in that government.’

course of action the demos decides to take will of course depend on who is included in the demos to begin with.

A number of theorists have tried to avoid this circularity by qualifying the interests to which the principle applies in more or less expansive ways. Robert Goodin, for instance, argues that the only plausible interpretation of AIP is one that says that inclusion in a given demos should be extended to ‘all [whose interests are] possibly affected by any possible decision under any possible agenda.’²³ The implication of this is that we should give ‘virtually everyone everywhere a vote on virtually everything decided anywhere.’²⁴ While Goodin acknowledges that this ideal might not be practicable, he maintains that it is ‘the best principled basis upon which to constitute the demos.’²⁵

An implication of Goodin’s formulation is that AIP establishes not only claims to inclusion in every demos for a handful of decisions that affect one’s interests, but claims to membership in every demos for all persons. The reason, again, is that a claim to democratic membership is a claim to be included for most or all of the decisions taken by given demos. While AIP in its most general formulation is, like ASP, a principle of inclusion, the more expansive a formulation of it one adopts, the more likely it is that it will also

²³ Robert Goodin, ‘Enfranchising All Affected Interests, and Its Alternatives’ *Philosophy & Public Affairs* (2007) 35(1) 40, 55. cf Robert Dahl, *After the Revolution* (Yale University Press 1990) 67. See also Robert Goodin ‘Enfranchising the Earth, and its Alternatives’ (1996) *Political Studies* 835. There Goodin argues that the affected interests principle is not even restricted to the interests of human beings. Other interpretations of the principle can be found in e.g. Ian Shapiro, *The Moral Foundations of Politics* (Yale University Press 2012); IM Young, *Inclusion and Democracy* (Oxford University Press 2000); Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge University Press 2004); Owen (n 2).

²⁴ Goodin (n 25) 64.

²⁵ *ibid.*

ground claims to membership in *demos* for people who are not normally liable to their coercive power.

In defence of AIP, Goodin suggests that the traditional view on which national, historical, or territorially bounded communities are seen as ‘appropriate units for collective decision-making’ is appealing in part because ‘typically if not invariably, the interests of individuals within those groups are affected by the actions and choices of others in that group’.²⁶ Such communities are, in other words, what he calls communities of ‘interlinked interests’. He goes on to point out that criticisms of constituting the *demos* along national, historical or territorial boundaries characteristically involve counterexamples designed to show,

that each of those ways [of] constituting the *demos* is either (or both) over- or under- inclusive, wrongly conferring membership upon people whose interests are not affected by the decisions of the *demos* or wrongly denying it to people whose interests are affected.²⁷

He continues,

Notice, however, that that is just to say that the ‘all affected interests’ principle is the principle that is being implicitly employed in judging all those methods of constituting the *demos*, on the basis of territoriality, nationality, history, or whatever. The ‘all affected interests’ principle is the standard by which the adequacy of those other approximations is invariably assessed.²⁸

Similarly, we might conclude that since principles like ASP and CP are also ultimately grounded in a concern for the personal autonomy of those whose interests are affected by their being subject to the binding collective decisions

²⁶ *ibid* 48.

²⁷ *ibid* 49.

²⁸ *ibid*.

of the demos, they are attractive only insofar as they are useful (but imperfect) heuristics for identifying claims that are actually grounded in AIP.

However, David Owen argues persuasively that it does not follow from these observations about communities of interlinked interests that claims grounded in AIP are necessarily claims to inclusion or membership in the demos of an established polity.²⁹ Owen's key insight is a distinction between what he calls 'political' and 'pre-political' demoi. An example of a political demos would be the existing demos of an established polity. A pre-political demos, in contrast, is composed of people who make up a community of interlinked interests but which may or may not have any corresponding institutional, political, or legal instantiation.

Owen argues that the existence of a pre-political demos—that is, one that does not correspond to any existing political demos—does not itself entail that existing political demoi *must* be reconstituted to correspond with that pre-political demos; nor does it entail that a new polity be constituted, with the members of the pre-political demos constituting the demos of this new polity. Owen shows that what members of a pre-political demos have, in the first instance, is a right to have their interests 'impartially considered'³⁰ in a decision about *how* their interests will be taken into account at the political level. It is not a foregone conclusion that this requires a form of impartial governance. The interests of some—e.g. those who are excluded from the demos of an established polity whose interests are affected by a decision

²⁹ Owen (n 2) 136-140.

³⁰ A right to 'impartial consideration of interests' appears to be Owen's gloss on the claim to 'equal consideration of interests' that factors into Dahl's idea of Strong Equality.

taken by that demos—might be taken into account by means of a process of public consultation, or a compensatory payment. If it is decided that a form of impartial governance is required, Owen says,

[this] could take the form of legal governance, that is, the joint subjection of those whose interests are interlinked to a judicially sanctionable regime of legal rules that all those whose interests are interlinked can rationally endorse.³¹

That is, the members of a pre-political demos can be impartially governed without becoming members of an existing political demos, or without the constitution of a new polity whose political demos is constituted by the pre-political demos.

If, at this stage, the pre-political demos does decide (unanimously)³² that a new polity must be constituted, even then they would only have a claim to membership in the polity itself, not its demos. This is as far as AIP takes us. For in deciding to form a new self-governing polity, Owen argues, the pre-political demos are, in essence, consenting to be ‘bound by the collective decisions of the polity, being subject to its coercively-enforceable authority, insofar as this can be justified to them in terms consistent with their autonomy.’³³ The presumption seems to be that members of the new polity could only consent to be governed democratically, since this is the only way a government could justify its coercively-enforceable authority to those subject to it ‘in terms consistent with their autonomy’.

³¹ Owen (n 2) 137.

³² Owen argues that if a minority of the pre-political demos do not want to constitute a new polity, then they are not bound by the majority’s decision. Consent is required by everyone who is to constitute the membership of the new polity. *ibid* 143-144.

³³ *ibid* 145.

The democratic justification principle

Owen goes on to conclude that the correct principle for the constitution of the demos of a polity newly established under AIP must therefore be a version of ASP. For, as he notes,

[the] appropriate form of justification for a democratic polity is that the law is democratically legitimate but this can only be the case if all those who are subject to coercively-enforceable laws are entitled to inclusion within the demos and, thereby, co-author(ise) the laws to which they are subject.³⁴

In a newly established polity, i.e. one established by a pre-political demos, this just means that every member of the polity has a claim to membership in the demos. It also means that as new members join the polity, they too will have a claim to membership in the demos. Finally, while membership in the demos is available only to those who are members in the polity, inclusion in the demos is available to anyone who is subject to a particular range of coercively-enforceable laws of the polity.

Owen gathers these ideas into what I will call:

*the democratic justification principle (DJP): ‘any person subject to potentially autonomy-violating forms of political power, whether coercive or not, by a polity in respect of a given domain of law is entitled to inclusion within the demos with respect to the relevant domain of law since only such inclusion renders the exercise of political power compatible with autonomy.’*³⁵

Notice that DJP incorporates the idea implicit in AIP that claims to be included in a demos may not depend one’s liability to the coercive exercise of

³⁴ *ibid* 146.

³⁵ *ibid*.

that demos' power. The reason, Owen suggests, is that someone who is a member of a democratic polity, and who is therefore subject to the demos' claim of political authority, but who is neither a member of the demos herself nor liable to the coercive enforcement of the demos' decisions, may nevertheless *accept* as legitimate the authority the demos claims over her e.g. because she has been influenced by 'non-coercive mechanisms of ideological persuasion'.³⁶ Such a person would be *de facto* subject to the will of another, which is sufficiently autonomy-violating to trigger the need for justification and thus her democratic inclusion.³⁷ If Owen is correct, then it would appear that CP must be modified such that claims to democratic membership could likewise be established on the grounds that one is normally liable to either coercive or non-coercive autonomy-violating exercises of power.

We should resist this feature of Owen's interpretation of ASP. In order for a person to have a claim to inclusion in a demos on the grounds that she is liable to a potentially autonomy-violating non-coercive exercise of power by that demos, it must be the case that her inclusion actually addresses the violation or restores her autonomy vis-à-vis the exercise of power. However, at least in the example Owen gives, it is not at all clear how this could be the case. Consider again the case Owen describes: someone who is a member of a polity but not of its demos has come to believe in the legitimacy of the demos' claim of political authority over her by means of non-coercive mechanisms of ideological persuasion. She is *de facto* subject to the will of the demos. If she is included in the demos then she may be said to co-authorize whatever

³⁶ *ibid.*

³⁷ Owen (n 2) 145-146. Owen here draws on Abizadeh (n 19).

decisions the demos takes. While this gives her a reason to comply with the demos' decisions, it does not restore her autonomy vis-à-vis the original violation, since inclusion in the demos does not entail that she will learn the truth about the demos' claims to political authority over her when she was excluded. Put another way, when someone's autonomy is threatened because she has been persuaded to hold a false belief that subjects her to the will of another, what she actually has a claim to is to have that belief corrected (or at least to learn the true nature of the persuasion that led her to hold it). This is not to say that including her in the demos is normatively insignificant. It would still give her a legitimate reason to do what she falsely believed she already had legitimate reason to do, namely, to comply with the demos' decisions. However, since her autonomy could be preserved without her being included in the demos (i.e. she could be told the truth: that the demos' claim of authority is illegitimate, and then decide for herself whether or not to comply with the decision of the demos) and since her being included in the demos itself does not address the root of the violation (since she would be under the false belief that the demos had a legitimate claim to authority over her whether she is included in it or not), it cannot follow that being liable to this kind of non-coercive exercise of power grounds a claim to democratic inclusion.

If there are other examples of non-coercive exercises of power that could ground a claim to democratic inclusion, Owen does not offer them. While I concede the possibility of such examples—I have offered no overarching argument against Owen's general point—until they are produced

I suggest that we can safely set aside the idea that something other than the liability to the coercive enforcement of a demos' decisions could establish a claim to inclusion in that demos grounded in the value of personal autonomy. We may safely conclude, in other words, that it is normal liability to such coercion that establishes moral claims to democratic membership.

4. Implications of the Coercion Principle

In this section I consider some of the implications of CP and whether or not they might undermine its plausibility. A straightforward implication of CP is that everyone who is present within the jurisdictional boundaries of an established democratic polity at any given time will have a claim to membership in the demos of that polity. This is, again, because they will be liable to the coercive enforcement of the full range of the demos's decisions. This is not itself sufficient to show that everyone present within the jurisdictional boundaries of a democratic polity has a moral claim to citizenship in that polity. It must still be established that they have a claim to basic membership there. It does mean that the vast majority of people who acquire citizenship in a polity by means of either ascriptive or naturalization criteria will have a claim to democratic membership, since we know empirically that most people reside in the countries in which they were born, and those who successfully naturalize in a new country typically do so by integrating into the receiving community in ways that make it reasonable to assume they will remain resident. However, it also means that those who become 'merely' residents of the polity by immigrating—i.e. those who acquire

basic membership through immigration policies, but do not satisfy the community's ascriptive criteria for citizenship and have yet to naturalize—will have a claim to democratic membership. While extending democratic membership remains a live political debate, the basic philosophical point, that long-term residents have a moral claim to democratic membership with respect to the polities they inhabit, regardless their formal status, is largely uncontroversial among democratic theorists.

There are, however, two other cases in which the close connection between being present in a polity's territory and having a claim to democratic membership might raise eyebrows. I will take them one at a time.

Excluding short term visitors

The first is the case of short term visitors. During the time in which they are present in a polity's territory, visitors are liable to the coercive enforcement of at least a good number of that polity's laws. So it appears that they too could have a claim to democratic membership through CP. In practice, however, short term visitors are universally excluded, and few would argue that this is unjustified. The first question, then, is whether short term visitors actually do have a claim to democratic membership under CP.

A common reason to think visitors *can be* excluded from democratic membership without thereby subjecting them to autonomy-violating coercion is that their entry into the polity constitutes an act of implied consent i.e. to comply with the decisions of the demos without being included in it.³⁸ This is plausible in the short term and even, perhaps, in the medium term, since it is

³⁸ Dahl (n 1) 355 fn 11.

plausible to think one could consent to comply with all laws that are currently in force, as well as those that are currently under consideration. The plausibility of this argument breaks down when the decisions one is 'consenting' to comply with include *possible* decisions that have not yet been imagined or are not yet under consideration by the demos. One cannot give blanket consent to comply with *whatever* decisions the demos might make in the future without thereby subjecting oneself to the will of another, which is to undermine one's autonomy.³⁹ This is partly why the consent-based account could not apply to long-term residents.

The point to note here is that if visitors' consent to comply with the decisions of a demos prior to or upon their becoming liable to the coercive enforcement of those decisions, the fact of their liability to that coercion no longer represents a threat to their autonomy, but a function of its exercise.⁴⁰ That is, the consent-based account of visitors shows not just that it is permissible to exclude visitors on balance, but that they have no claim to democratic membership to begin with. CP presumes that one's autonomy is *actually threatened* by one's liability to the coercive enforcement. So it does not follow from CP that short-term visitors (or, perhaps, even medium-term visitors) have a claim to democratic membership.

³⁹ For analysis of the ways in which one's autonomy can be violated see e.g. Joseph Raz (n 15) 370-90. cf Grant Lamond, 'The Coerciveness of Law' (2000) 20(1) Oxford Journal of Legal Studies 39.

⁴⁰ This is not to say that one can consent to comply with *any* decision the demos has made. One cannot consent to be coerced to comply with a patently immoral law, e.g. a law that requires all residents to kill someone at noon each Tuesday. The idea is that one can consent to comply with a reasonably just system of laws.

Nevertheless, a second question we might ask is whether or not it is ever justifiable to extend democratic membership to short-term visitors, even though they have no claim to it. CP, as I have presented it, only tells us who *must be* given democratic membership. It does not explicitly state that democratic membership should *only* be given to those who have a (democratic) claim to it. It constrains the right of self-determining polities to ‘self-determine’ who will actually be given democratic membership only with respect to who can be legitimately *denied* it.

One reason to think visitors should not be given democratic membership is that the consequences of decisions taken by the demos are greater for resident-members than for visitors, and so the former should be entitled to a greater share of political power. This does not necessarily mean that visitors should be excluded entirely, however. Owen suggests that it is possible to conceive of political equality such that ‘an equal right of participation’—i.e. an equal claim to membership in the demos—does not necessarily amount to ‘a right of equal participation’.⁴¹ For example, a polity might extend a right to vote to both resident-members and also to visitors, but recognize the imbalance in the relative consequences of those decisions to each of them by weighting their votes differently.

Even if we adopt this scalar conception of political equality within the demos—and I am not arguing that we should—we still run into a different problem. Even if the votes of visitors count for less, it could still be said that they have co-authored whatever laws result from the demos’ decision-

⁴¹ Owen (n 2) 146-47.

making.⁴² In which case, there is a sense in which resident-members would be subject to laws (partially) co-authored by persons who will not themselves be subject to those laws.⁴³ After all, the reason that the consequences of the demos' decisions are greater for resident-members than for visitors is because the former will have to live with them long after the visitors have returned home. We can imagine a worst-case scenario in which, the day before an important vote that pollsters have measured as a dead heat, an interested party brings visitors into the polity who are sympathetic to their cause and whose numbers are enough to tip the scales.⁴⁴ This sort of worry is more prominently connected to the second case I wish to consider, that of expatriated citizens. Let me introduce that case, then, before considering the objection as it applies to both cases.

Excluding expatriates and their children

While visitors are universally excluded from democratic membership, those who possess citizenship status in one country often keep the rights of democratic membership when they take up permanent residence in a different country. Moreover, in the many countries that include a *jus sanguinis* criterion

⁴² Owen's proposal is meant to offer a way to justify the potentially autonomy-violating enforcement of the demos' decisions that does not rely on e.g. the consent-based argument. So his proposal is plausible only if we conceive of visitors as co-authors.

⁴³ Dahl does explicitly exclude 'transients' in some formulations of his principle of inclusion, though he was not at all explicit as to why. However, he might have had something like this in mind. For example, he writes, 'laws cannot rightfully be imposed on others by persons who are not themselves obliged to obey those laws...[this] would violate the self-determination of all those subject to the laws.' Dahl (n 1) 108.

⁴⁴ In fact we need not imagine it. Lopez-Guerra cites the 1978 parliamentary election in the Cook Islands as an example of non-residents significantly affecting the outcome of a democratic decision. Claudio Lopez-Guerra (n 9) 227.

among their ascriptive criteria, the children of expatriates born abroad often have legal claims to citizenship (and thus to democratic membership) in the countries their parents left without having ever set foot there themselves.

Normative theorists both criticize and defend such practices. As I said above, the criticism comes from two directions, each applying to one of the two claims involved in a claim to citizenship. Keeping our focus on the concern of this chapter, it looks to be a straightforward implication of CP that citizens who take up permanent residence in a new country lose whatever claims they may have had to democratic membership with respect to the countries they leave. Even if expatriates return to their former countries on occasion, they would do so as short or medium term visitors, and so can be viewed as consenting to comply with the decisions of the demos taken in their absence. The children of expatriates, who have never been liable to the coercive enforcement of the decisions of the demos of the countries their parents left, appear to have no claim to democratic membership whatsoever.

As with visitors, then, we should conclude that no polity is under any obligation, for democratic reasons, to extend democratic membership to visitors, expatriates, or their children. But, as with visitors, this leaves open the question of whether or not there are democratic reasons for why they should be denied democratic membership. It also leaves open the possibility that some expatriates might have claims to democratic *inclusion*, i.e. to be included in the demos for some decisions, but not all or most. For example, expatriates might be subject to tax laws that apply to property or long-term business interests they maintain in the countries they leave behind. In which

case, it is plausible that they could have a claim to democratic inclusion for decisions regarding tax law in their former countries. However, it is implausible that non-residents could ever be subject to enough of the decisions of the demos of their former country to ‘accumulate’ *normal* liability to the coercive enforcement of those decisions, and thus a claim to democratic membership. Claims to democratic inclusion are of course relevant to debates about what sort of rights expatriates should have with respect to their former countries of residence, but they are not our primary concern here, and may be set aside. Finally, if there are no democratic reasons for denying democratic membership to expatriates or their children, or none that are conclusive, then we may ask whether there are other sorts of reasons to extend democratic membership to expatriates—or, at least, to *some* expatriates. Such reasons need not be moral reasons (e.g. they could be practical or diplomatic reasons), so they need not ground moral claims to democratic membership for expatriates.

Regarding the first question, I now return to the objection I mentioned above—that those who are not permanently resident in a polity *should not* be given democratic membership in that polity, because doing so would effectively subject the polity’s permanent residents to laws created by those who are not themselves subject to those laws. What needs to be determined is whether or not this claim is expressing a democratic reason to deny expatriates democratic membership—whether polities ‘should not’ because it would be undemocratic to do so. The contrary view is that it would not be undemocratic to extend democratic membership to expatriates just so long as

the decision to extend it to them has itself been made democratically, i.e. using democratic procedures and including all those who have a moral claim to be included in the decision.

So, can a demos, properly constituted, democratically decide to extend democratic membership to expatriates? A prominent advocate for disenfranchising expatriates, Claudio Lopez-Guerra, argues that they cannot.

He suggests that this case

holds some resemblance to the case against voluntary slavery: voting by people exempted from obeying the law, it could be argued, contravenes in a way the logic of political liberty, no matter how those individuals became enfranchised.⁴⁵

Of course, when we imagine someone volunteering themselves into slavery, we do not think of them as ‘keeping a vote’ for themselves. So the resemblance holds best when compared to cases in which a polity extends democratic membership *only* to people who will not themselves be subject to the laws—a polity cannot democratically decide to repeal all of their legal rights and elect an absolute monarch, for example. The resemblance holds somewhat in situations where a polity grants democratic membership to a very large number of non-residents—such that the non-residents would effectively have the majority vote on any issue before the demos. We might imagine a country following a significant diaspora, or a newly sovereign, self-determining ethnic national group opting to offer citizenship to all those who share in their ethnic background regardless of where they reside. The resemblance holds slightly in the kind of worst-case scenario imagined above.

⁴⁵ *ibid* 226.

Lopez-Guerra cites some historical cases in which enfranchised non-residents come to a polity just long enough to have a noticeable affect on a particular vote, only to return to their countries of permanent residence afterwards.⁴⁶

What the cases Lopez-Guerra cites do not show however is that there is an *absolute* democratic constraint on extending democratic membership to non-residents. There is certainly an absolute democratic constraint on giving up on democracy altogether in favour of absolute monarchy. There is probably a democratic constraint on extending democratic membership to a group of people a) who have no claim to democratic membership and b) who outnumber those who have a claim to democratic membership. The point is that if we are worried that including in the demos people who will not themselves be subject to its decisions, numbers matter, from a democratic perspective. In other words, it is an empirical question whether it would be undemocratic for a polity to extend democratic membership to non-residents. A polity *cannot* democratically extend democratic membership to a group of people who have no claim to it if that group could consistently out-vote those who do have a claim to it. A polity *should* alter their policies on expatriate political rights if the latter's numbers get too high. And a polity that fails to do so in time—i.e. before expatriates outnumber resident citizens—can be deemed, at the very least, *less* democratic than it was before.

In fairness to Lopez-Guerra, he notes that the worry about the slave-like subjection of resident citizens is 'inconclusive'. He himself does not develop the argument much beyond the passage I cited above.⁴⁷ He even

⁴⁶ See (n 44).

⁴⁷ Lopez-Guerra (n 9) 226.

suggests that what this argument really shows is not that there is a democratic constraint *prohibiting* a decision to extend democratic membership to expatriates or non-residents, but that the rules for making that decision should be especially strict, ‘perhaps even stricter ones than those required for other constitutional reforms.’⁴⁸ Nevertheless, he is explicit that he takes himself to be defending the claim that, ‘democratic principles ban the extension of voting rights to permanent residents of other states, regardless of any opinion to the contrary by rightfully enfranchised individuals.’⁴⁹ Since ‘the logic of political liberty’—i.e. the idea that the self-determination or personal autonomy of residents would be undermined by their own decision to enfranchise non-residents—itself does not appear to support this conclusion, we must understand Lopez-Guerra to be making a slightly different argument. Namely, the enfranchisement of even a single non-resident is *unfair* to residents.

This aspect of Lopez-Guerra’s argument hangs on a section of Dahl’s *Democracy and its Critics* entitled ‘Assumptions for Justifying a Democratic Political Order’. In that short section Dahl mentions two distinct ‘elementary’ principles of fairness, both of which Lopez-Guerra draws upon. The first principle Dahl mentions is the one we have been considering:

Binding decisions are to be made only by persons who are subject to the decisions, that is, by members of the association, not by persons outside the association. No lawmaker is, in the familiar expression, above the law. The assumption rests on the elementary principle of fairness that *laws cannot rightfully be imposed on others by persons who are not themselves obliged to obey those laws...for laws and rules*

⁴⁸ *ibid.*

⁴⁹ *ibid* 225-226.

*imposed by an outsider would violate the self-determination of all those subject to the laws.*⁵⁰

My strategy so far has been to put pressure on the move from the uncontroversial claim that no lawmaker is (or, rather, should be) above the law, to the claim that expatriates are *always* lawmakers in the relevant sense i.e. capable of *imposing* on others laws to which they are not themselves subject.⁵¹ While anyone with democratic membership can be said to be a co-author, it is only when non-residents make up a substantial portion of the demos that they become the maligned ‘absentee lawmakers’. So, insofar as having one’s self-determination undermined is unfair, it is only contingently true that it is unfair for a demos to extend democratic membership to non-residents.

The second elementary principle of fairness Dahl mentions says,

in general, scarce and valued things should be fairly allocated. Fairness need not require equality in allocations; it might, for example, require allocation according to desert. Even when fairness does require equality...fair equality might not require equal lots or shares. But in certain circumstances fairness does require that each person should receive an equal share or, if that is impossible, an equal chance to gain the scarce item.⁵²

We can see that contingent factors play a more prominent role in establishing claims grounded in this principle of fairness. So we should be wary at the outset of concluding that such a principle of fairness would be sufficient to ground either an absolute claim to anything for anyone, or *an absolute*

⁵⁰ Dahl (n 1) 108. My italics.

⁵¹ One might reply that even a single vote is an imposition of one’s will on others. (see e.g. Adam Przeworski, ‘Minimalist conception of democracy: a defense’ in Ian Shapiro and Casiano Hacker-Cordón (eds) *Democracy’s Value* (Cambridge University Press 1999) 23, 47.

⁵² Dahl (n 1) 108. My italics.

prohibition. Lopez-Guerra offers a thorough set of (often persuasive) arguments against various proposals for grounding expatriates' claims to democratic membership in either fairness-as-equality or fairness-as-desert.⁵³ Rather than rehearse them all here, let me offer instead an illustrative example.⁵⁴

Some expatriates argue that they have a right to retain their citizenship with respect to their home countries, including their political rights, on the grounds of desert, because they contribute economically to the country by sending significant remittances. Lopez-Guerra argues, first, that this is far from true for all expatriates, even all from a single country. So this argument fails to justify a *general* claim for all expatriates. At best such claims would have to be considered on a case by case basis. He also argues that such a principle might have the implication of effectively offering votes for sale: 'On this reasoning, perhaps Bill Gates, if he wanted to, could elect the next President of Mexico.' Finally, he wonders whether the amount of money should matter—why should even a small remittance home not ground a claim to maintain one's citizenship?

Even if we are persuaded by these arguments, they establish only that expatriates have no claim to democratic membership in the countries they have left grounded in a principle of fairness-as-desert. They show that it would not be unfair to deny democratic membership to expatriates who send home large remittances, *not* that it would be unfair to do so. Nor do they show why it would be undemocratic for a demos to decide for itself to do so.

⁵³ See Lopez-Guerra (n 9) 227-234.

⁵⁴ *ibid* 229-230.

I mean here only to challenge the claim that Lopez-Guerra suggests (more than once) that he is defending, not the claim his arguments actually support. Nor have I tried to argue against his conclusion that states which currently allow non-residents to have democratic membership 'need to reconsider their conditions for enfranchisement.'⁵⁵ I have tried to show only that he offers nothing conclusive to support the claim that 'democratic principles ban the extension of voting rights to permanent residents of other states, regardless of any opinion to the contrary by rightfully enfranchised individuals.'⁵⁶

I conclude this section, then, by suggesting that there is, in fact, no compelling reason to think that a properly constituted demos could not democratically decide to extend democratic membership to non-residents, including visitors or ex-patriates, *except* when including them will amount to the genuine subjection of residents to their will. This is no absolute prohibition on extending democratic membership to non-residents, but a question to be decided on a case by case basis.

5. Conclusion

I began this chapter by offering a general analysis of claims to citizenship. I argued that a moral claim to citizenship involve two claims: a claim to basic membership in a polity and claim to democratic membership. I have tried to show that what matters for establishing moral claims to

⁵⁵ *ibid* 234.

⁵⁶ See (n 49).

democratic membership is an individual's liability to the coercive enforcement by the demos of all or most of its decisions. I defended this against the competing view that a claim to democratic membership could depend on whether or not one's interests are affected by the decisions a demos takes. I considered some of the implications of the coercion principle for how citizenship—especially its political rights—are given in practice. I argued that, while there may be a number of unconvincing arguments for why non-residents, such as expatriates, have claims to democratic membership in the countries they left behind, there are no democratic reasons for why they *must* be denied it in all instances.

With respect to this final point I have only one thing to add. In granting that a demos which is properly constituted according to the coercion principle may democratically decide to extend democratic membership to those who have no claim established in this way, I mean to leave a possibility defended by David Miller.⁵⁷ In his treatment of the boundary problem, Miller suggests that the contested nature of the idea of democracy is itself responsible for democratic theory's apparent ambivalence with respect to providing a concrete solution.⁵⁸ He suggests that there is a very real sense in which each democratic polity must decide for itself what it is to be a democratic polity, normatively speaking. In which case, each polity might also determine for itself that some people *must* be included beyond those who have claims grounded in a concern for personal autonomy.

⁵⁷ David Miller (n 21) 201.

⁵⁸ *ibid* 204.

I believe that the account I have offered here is compatible with Miller's account up to a point. I accept that some democratic polities might take themselves to be bound, for democratic reasons, to extend democratic membership to people other than those who have a claim through the coercion principle, and that it is not up to some 'external committee of experts' to determine whether or not these inclusions make the polity more or less democratic.⁵⁹ I have only sought to defend a kind of principled minimum threshold that no polity which seeks to be democratic can cross. I accept, for instance, the possibility that a polity might take itself to be morally obligated to include all members of a certain ethnic or cultural tradition, and that not I nor any other theorist are in a position to tell them otherwise. What I do not accept is that people who have claims under the coercion principle can be excluded for failing to meet such criteria (or any other criteria pertaining to things like gender, ethnicity, education, wealth, etc.). Democracy may be a contested concept, but there are some claims that we must accept without contest.

⁵⁹ *ibid* 228.

7 Claims to Citizenship II

1. Introduction

In the previous chapter I explained that a moral claim to citizenship in a given polity actually comprises two different claims.¹ Namely, it comprises a claim to basic membership in that polity (i.e. to the legal rights to live and work within its jurisdictional boundaries) and a claim to democratic membership in that polity (i.e. to full inclusion in the demos of that polity for all or most of the binding decisions it takes).² I argued that the coercion principle tells us who, on democratic grounds, has a claim to democratic membership. The existence of such claims places a moral constraint on whom a self-governing polity can legitimately exclude from its demos for all or most of the decisions

¹ Unless otherwise stated, all claims referred to in this chapter are moral claims.

² As I am using it here, the idea of basic membership is meant to include all forms of *long-term* but not necessarily *unrestricted* rights to live and work and work within the community. That is, a person can be a basic member of a polity even if, for example, she does not have an unrestricted right to return to that polity should she leave it.

it takes. Once a demos has been constituted in accordance with the coercion principle, I concluded that there are no universal democratic constraints on who else it can decide to extend democratic membership to, provided it uses democratic procedures to do so—i.e. it is permissible for a properly constituted demos to extend democratic membership to those who do not, under the coercion principle, have claims to it.

My first task in this chapter will be to identify the grounds for claims to basic membership *of the sort that factor into a claim to citizenship*. A person has a claim to basic membership with respect to a particular polity, if that polity has a moral obligation to extend to that person the legal rights to live and work in that polity's territory. However, not every claim to basic membership with respect to a particular polity will necessarily factor into a claim to citizenship with respect to that polity, since one can conceivably have a claim to basic membership without also having a claim to democratic membership. That is, a person could have a moral claim to the legal rights to live and work within the jurisdictional territory of a particular polity, while at the same time having no claim to membership in the demos of that polity, because she does not (or does not yet) satisfy the conditions of the coercion principle. So, for example, a very young child who has not yet reached an age where she has a claim to democratic membership with respect to the polity in which she lives—i.e. because that claim depends on a capacity for personal autonomy she does not yet have—might nevertheless have a claim to have the legal right to live in that polity's territory. Given that a claim to citizenship involves both claims to basic membership and to democratic membership, my

primary concern in this chapter is to explain the claims of basic membership of those who also hold claims to democratic membership with respect to a given polity.

This, I suggest, is a relatively straightforward matter. In section 2, I argue that the fact that one has a claim to democratic membership with respect to given polity is itself sufficient to establish that one also has a claim to basic membership with respect to that polity. The general shape of the argument is this. Those who have a claim to democratic membership in a polity have a claim to be treated as politically equal with other members of that polity's demos, in accordance with value of fundamental equality discussed in the previous chapter. To be politically equal, members of the demos must all share in the legally protected political rights necessary for full participation in the democratic governance of the polity. However, they must *also* share certain non-political rights, namely, those which affect their capacity to effectively exercise those political rights. The rights of basic membership are rights of this kind, and so a claim to membership in the demos entails a claim to basic membership.

While this sketch of the argument needs filling out, the conclusion itself, and the steps taken to reach it, are not especially controversial. Since my primary goal in these two chapters is to explain claims to citizenship, we might think that the discussion of basic membership can be left at that. However, even once it is established that anyone who has a claim to democratic membership in a polity will, for that reason, also have a claim to basic membership (and thus a claim to citizenship) in that polity, there is a

further point worth considering. Whether or not someone has a claim to democratic membership with respect to a given polity, in the vast majority of cases, will depend on whether or not that person already possesses the rights of basic membership there. That is, a person does not typically become normally liable to the coercive enforcement of the decisions of the demos of a polity without *first* having the legal right to live and work in that polity. So it is worth asking on what grounds a person might have a claim to the rights of basic membership in the first place, i.e. prior to (and thus independent of) her developing a claim to democratic membership.

Most people today acquire basic membership and, indeed citizenship, by means of *birthright ascription*, the practice wherein a state extends basic membership or citizenship automatically to individuals who are either born within that state's territory, or descended from members of that state—i.e. people who satisfy criteria informed by the 'birthright principles' of *jus soli* and *jus sanguinis*. However, though the practice of birthright ascription is ubiquitous, it is not at all clear that a person's satisfaction of birthright criteria with respect to a particular state reflects any genuine moral claims she has with respect to that state. How might a newborn have a moral claim to be given even basic membership in any *particular* state, such that that state has an obligation to extend it to her? In sections 3 and 4 I consider two ways we might try to show that people are born into moral claims to basic membership in a particular state in virtue of their satisfying birthright criteria, an argument from *statelessness* and an argument from *constitutive ties*. Both, I suggest, ultimately come up short.

2. Political Equality and Basic Membership

As I suggested in the introduction, not all claims to basic membership will factor into a claim to citizenship, but only those held by individuals who also have claims to democratic membership. To be a member of the demos of a polity, one must possess a certain set of legally protected political rights, namely, those necessary for someone to participate fully in the processes and institutions that make up the democratic governance of that polity. While the range of political rights that members of a demos must possess can be defined generally, the precise set of political rights that must be shared by members of the demos in any given polity will vary depending on the specific type of democratic governance the polity uses. So, for example, in a direct democracy, every member of the demos must have equal rights to vote directly on all or most decisions that the demos takes, while in a representative democracy every member of the demos must have equal rights to vote in elections and to run for political office. What matters irrespective of the precise form of democratic governance used by a polity is that all members of the demos have the same set of legally recognized and protected political rights. In this way the members of the demos are treated as equals in accordance with the principle of fundamental equality discussed in Chapter 6.³

However, the demands of the principle of fundamental equality go beyond this narrow sense of political equality—i.e. the one achieved simply by the equal possession of political rights. It also requires that members of the

³ See above pp 204-5.

demos are politically equal in a wider sense. This wider sense of political equality is characterized by the equal possession of certain non-political legal rights, specifically those that affect a person's ability to *effectively exercise* her political rights. For example, suppose a person has been extended democratic membership in a polity, but does not reside in that polity's territory. Her ability to effectively exercise her right to vote in an election will be affected by whether or not she has a legal right to enter that polity's territory in order, e.g, to cast her vote. Similarly, if she does reside within the territory, but is generally liable to deportation, then she might be effectively prevented from exercising her political rights by being deported prior to a vote. Finally, if she lacks the legal right to live and work within the polity's territory then her opportunities to run for or to hold a political office are effectively nil, since campaigning requires a continued presence within the polity's territory and holding political office is, after all, a job.

These examples involve the kinds of rights associated with basic membership. Other kinds of non-political rights might also affect a person's ability to effectively exercise her political rights. The possession of certain 'social rights'—e.g. to education or to health care—which have been included in many normative conceptions of citizenship at least since the publication of T.H. Marshall's 'Citizenship and Social Class', might also be said to affect one's ability to exercise her political rights.⁴ In order for the possession of any given non-political right to be required for political equality in the wider sense I am considering, it must satisfy two conditions. First, obviously, it

⁴ TH Marshall, *Citizenship and Social Class: and other essays* (Cambridge University Press 1950).

must be true that the possession of such rights (or duties) actually affects one's capacity to effectively exercise her political rights.⁵ This might be an empirical question, such that we must consider each non-political right in its particular context to assess whether or not it has any bearing on the wider political equality between members of a demos. That is, in order to know which non-political rights affect one's ability to effectively exercise her political rights in a given polity, we need to know what precisely those political rights are, which depends in part on the particular form of democratic governance the polity uses.⁶ Or, it could be that all non-political rights will in principle have *some* affect on one's capacity to exercise her political rights, regardless what precisely those rights are. This might explain why citizens typically have, and are sometimes thought to be entitled to have, the full range of political and non-political legal rights that are available within those states with respect to which they have citizenship. It might be the case, then, that members of any demos must have *every* legal right that is (widely) available within their polity, if they are to be politically equal in the wider sense.

Importantly, this does not mean that citizens must all have every right that could *conceivably* affect their capacity to exercise their political rights in order for them to be politically equal in the wider sense. We might imagine

⁵ Such an effect could be either an increase or a decrease in one's capacity. Political equality in the wider sense might be compromised, for example, if only some members of the demos are subject to legal duties that interfere with their capacity to exercise their political rights.

⁶ So, for example, a right to public transit might greatly affect the ability of citizens in a direct democracy to exercise their right to participate in regular assemblies held at a central location, whereas the same right might have no affect on the ability of citizens in a representative democracy to exercise their right to vote in elections, which take place only periodically, and which are conducted at reasonably well-dispersed polling stations.

any number of non-political legal rights that would greatly improve the capacity of the democratic members of a given polity to exercise their political rights, but which are not currently available in that polity. While this might mean that the members of that demos are less effectual than they could be, it does not mean that they are not politically equal in the wider sense. They could be equally ineffectual. This, then, is the second condition that a non-political right must satisfy if its equal possession by members of the demos is to be considered necessary for there to be political equality among them in the wider sense: the right must actually be available in the polity and possessed by at least some members of its demos.

It is easy to see that the rights of basic membership satisfy these conditions. With respect to the first condition, the examples I gave above show how the possession (or lack) of basic membership will affect a person's ability to effectively exercise her political rights. Moreover, it does not especially matter what precisely those political rights are. The possession of the rights to live and work in a polity's territory will affect a person's capacity to exercise her political rights regardless of the particular nature of democratic governance in that polity. Even if it is not the case that, in general, *all* non-political rights have some affect on the exercise of one's political rights, the rights to live and work within the polity surely will.

With respect to the second condition, basic membership is something we find in every democratic polity. It is more or less a prerequisite for the existence of what we would recognize as a political community that it has at

least *some* basic members.⁷ Compare this, say, to a right to health care, or to education. It might be true that an ideal liberal democratic polity would include these rights, and in states where they exist, it is probably correct to say that the political equality (in the wider sense) of that state's democratic members depends in part on the latter's equal possession of those rights. However, the existence of such rights is not necessary for the existence of a political community *simpliciter*, nor for democratic governance—i.e. a polity could be democratic without offering its members rights to health care or to education.

Unlike the rights to education and health care, the rights of basic membership satisfies these two conditions in such a way that makes it possible to formulate a general rule that, for any democratic polity, if the members of the demos of that polity are to be politically equal in the wider sense, then they must possess basic membership in that polity. What follows from this is not, as one might expect, that all members of the demos have a claim to basic membership. What follows is that anyone who has *a claim* to

⁷ 'More or less' because it is not inconceivable for a political community to have no basic members. We might describe a community that has no territory, for example, as a political community. So the distinction I am trying here to draw between the rights of basic membership and, say, the right to education or to health care is not a bright line. Even so, the primary point still holds. For any democratic polity, if at least some members of the demos possess basic membership in that polity, and if the possession of basic membership is thought to affect the capacity of members of the demos to effectively exercise their political rights with respect to that polity, then basic membership must be extended to all members of that demos in order for them to be politically equal in the wider sense. Since, in the vast majority of democratic communities that are known to us, at least some people do have basic membership, we can safely conclude, as a general rule, that anyone who has a claim to democratic membership has, for that reason, a claim to basic membership in that community. Moreover, for the purposes of this chapter, those exceptional cases that are not captured by the general rule do not matter anyway, since citizenship requires a claim to both basic membership and democratic membership. Suppose we imagine a democratic political community in which no one has basic membership because, e.g., it is a non-territorial community. In that community a claim to the former would not *entail* a claim to the latter. However, such a community would also not have citizens, on my account, nor could anyone have a claim to citizenship with respect to it.

democratic membership thereby has a claim to basic membership. As I have argued, it is not necessarily true that everyone who has membership in the demos of a democratic polity has a claim to that membership. A properly constituted demos might choose to extend democratic membership to a person who does not satisfy the conditions of the coercion principle. The mere fact that someone has been extended membership in the demos does not mean that she thereby has any claim to it. Such a person is, we might say, a member of the demos only at the pleasure of the demos itself. Since the polity is under no obligation to extend democratic membership to those who have no claim to it—i.e. it would not be undemocratic for the demos to exclude such a person—it is likewise under no obligation to extend to her whatever non-political rights would make her politically equal in the wider sense, including the rights of basic membership. In contrast, if someone has a claim to membership in the demos, then she has a claim that the state treat her as a political equal vis-à-vis other members of the demos, i.e. to be politically equal in both the narrow and wider senses we have discussed. So, anyone who has a claim to democratic membership in a given polity has, for that reason, a claim to basic membership in that polity.

Strictly speaking, we now have all we need to identify who has a claim to citizenship with respect to a given polity. We saw in Chapter 6 who has a claim to democratic membership with respect to a given polity, and we have now seen that the same people will have a claim to basic membership in virtue of having the first claim. Since these two claims make up a claim to citizenship, we might be content to leave the matter there. However, one does

not typically come to satisfy the conditions of the coercion principle with respect to a given polity without *already* possessing basic membership in that polity. So, in the remainder of this chapter I will consider whether or how one might have a claim to basic membership *prior* to developing a claim to democratic membership, one which is grounded in something other than her claim to be treated as a political equal vis-à-vis other members of the demos.

3. Birthright Ascription

Consider how people typically acquire basic membership in a given state in the first place. The overwhelming majority of people automatically receive either basic membership or citizenship in at least one state at birth because they satisfy what are known as ‘birthright criteria’ with respect to that state—i.e. they were born within that state’s territory (*jus soli* criteria) or they are descended from members of that state (*jus sanguinis* criteria). (For brevity, I will call individuals who satisfy the birthright criteria of a given state *insiders* with respect to that state.) The precise formulation of birthright criteria varies between states, but the general practice of birthright ascription is ubiquitous. Those who do not acquire basic membership or citizenship in a state via birthright ascription—i.e. those who are *outsiders* with respect to that state—might still acquire it through a process of immigration and naturalization.⁸ Here too we find some variety among the policies that different states adopt regarding the extension of basic membership or citizenship to outsiders. However, in general, these policies tend to be more

⁸ Outsiders can be either residents or non-residents of the state.

rather than less restrictive. That is, when it comes to extending either basic membership or citizenship to outsiders, states are usually fairly (and often highly) selective.

Birthright Ascription and Claims to Citizenship

Does the fact that someone is an insider or an outsider with respect to a given state tell us anything about whether she has a claim to basic membership or to citizenship in that state? It should already be clear that a person's satisfaction of birthright criteria is not sufficient for her to have a claim to citizenship, because it is not sufficient to establish that she has a claim to democratic membership. A person who receives citizenship in a polity under a *jus soli* regime might later emigrate, and thereby lose any claim she might have had to democratic membership in her birth polity under the coercion principle. Or, a person who has never set foot in a polity's territory, who never had any claim to democratic membership under the coercion principle, might nevertheless receive citizenship in that polity via *jus sanguinis*.

Some argue that the possibility of such cases show that the birthright ascription of citizenship is unjustified in a world where international migration is a common (or, least, not uncommon) occurrence. Their concern is that the democratic legitimacy of a demos' decisions is compromised when that demos contains members who have no claim to their democratic

membership.⁹ I argued in the previous chapter that the inclusion of such people is not necessarily a problem, democratically speaking, since there is no reason to think that a properly constituted demos—i.e. one that *includes* all the right people under the coercion principle—cannot democratically decide to extend citizenship even to those who have no claim to democratic membership. Doing so becomes problematic (on democratic grounds) only if the number of ‘claim-less’ citizens gets high enough that we might plausibly construe their participation as effectively ‘ruling’ over those who do have a claim to democratic membership. So there is no reason to think that the birthright ascription of citizenship is *necessarily* unjustified, even in a world where migration is fairly common. Either way, the point is that being an insider with respect to a given state is not sufficient to establish that one has a claim to democratic membership in that state, nor, therefore, a claim to citizenship.

Nor is it necessary that one satisfy the birthright conditions of a given state to possess a claim to democratic membership or, therefore, citizenship in that state. A person who is born an outsider with respect to a given state might have basic membership extended to her later in life, and subsequently become normally resident in that state’s territory. In which case, she too

⁹ So, for example, for Rainer Bauböck, only those who are stakeholders in a community, who have a stake in that community’s future, ought to be extended citizenship. For Ayalet Shachar, the correct normative principle is what she calls *jus nexi*—only those who have a meaningful connection to the community should be given citizenship there. See Rainer Bauböck, ‘Stakeholder Citizenship: an Idea Whose Time Has Come?’ in *Delivering Citizenship: The Transatlantic Council on Migration* (Verlag Bertelsmann Stiftung 2008); Ayalet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press 2009).

might develop a claim to democratic membership in that state.¹⁰ So whether someone is an insider or an outsider with respect to given state does not on its own tell us whether or not she has a claim to democratic membership in that state under the coercion principle nor, therefore, whether or not she has a claim to citizenship in that state.

The Statelessness Premise

Setting aside questions about democratic membership or citizenship, we can now focus again on our primary concern, claims to basic membership: is being an insider with respect to a particular state either necessary or sufficient for one to have a claim to basic membership in that state? To answer this question, there are two broad groups of people worth considering. The first group consists of children who are insiders with respect to a state, but who are too young to have developed a claim to democratic membership. Newborn insiders in particular are a good test case for determining whether or not being an insider with respect to a particular state is sufficient to establish that one has a claim to basic membership in that state. The second group consists of anyone (including both adults and children) who is a non-resident outsider with respect to a state. People in the second category will generally have no claim to democratic membership under the coercion principle and, as outsiders, provide a good test case for determining whether or not *being* an

¹⁰ While the case of resident outsiders remains a politically live issue, there is general agreement amongst democratic theorists that such individuals do have moral claims to citizenship. One issue that remains theoretically controversial is the extent to which various naturalization processes are justified. I will not address this issue here, though see, e.g., Linda Bosniak, *The Citizen and The Alien: Dilemmas of Contemporary Membership* (Princeton University Press 2006).

insider with respect to a particular state is necessary to establish that one has a claim to basic membership in that state.

As I mentioned above, most states today maintain their membership using a combination of birthright ascription, and restrictive immigration and naturalization, i.e., a policy of *closed borders*.¹¹ Implicit in these practices is what we might call ‘the conventional view’: states have a more or less unconditional moral right to exercise their power to determine their membership.¹² On this view, both birthright ascription and closed borders are morally permissible—they are simply two examples of the state exercising their morally unconstrained power. With the exception of those who worry about the democratic implications of birthright ascription, (which, in any case, apply only to citizenship, or to democratic membership, and not to basic membership), the idea that birthright ascription is morally permissible is uncontroversial. Especially when it comes to democratic states, few doubt that states are within their rights to ascribe basic membership using birthright criteria. The same cannot be said about policies of closed borders. A number of authors argue against the permissibility of closed borders on the grounds of international or global justice. The current shape of the debate over this claim owes much to Michael Walzer’s defence of the conventional view on communitarian grounds in *Spheres of Justice*, and Joseph Carens’ subsequent

¹¹ This, again, is for brevity. It would more accurate to say ‘mostly closed borders’, since few states are *completely* closed off to those seeking to immigrate.

¹² ‘More or less’ because many states recognize that in certain exceptional circumstances they have an obligation to grant admission and perhaps even to extend basic membership to persons in dire need of it.

critique of that defence.¹³ Carens argues that all three dominant conceptions of liberal justice in fact demand that states adopt policies of *open borders*. However, I will not discuss the case of open borders here. Rather, in the remainder of this section I want to focus on one possible source for the claims of newborn insiders.

Again, while it is usually taken for granted that it is morally permissible to extend basic membership at birth to those who satisfy either *jus soli* or *jus sanguinis* criteria, this does not mean that is morally required. One way we might try to show that it is by means of a premise that tends to operate in the background of discussions of this kind:

the statelessness premise: where it is impossible for a person to live outside of the jurisdictional boundaries of at least one political community, each person has a moral claim to basic membership in at least one political community.

We should of course accept this premise. The world we inhabit is one in which it is impossible (or near enough) to live outside the jurisdiction of a state. It is more or less a necessary condition of being alive today that one occupies space that is controlled by one government or another. Without the legal rights to reside in and to make one's living in at least one state, one exists in a precarious condition. 'Statelessness,' as Walzer puts it, 'is a condition of infinite danger.'¹⁴ Given that people have a fundamental interest not to live in a condition of 'infinite danger'—and I am assuming that they do—it follows that a person cannot be legally excluded from *every* political community

¹³ Michael Walzer, *Spheres of Justice A Defense of Pluralism and Equality* (Basic Books 1983); Joseph Carens, 'Aliens and Citizens: The Case for Open Borders' (1987) 49(2) *The Review of Politics*.

¹⁴ Walzer (n 13) 32.

without this interest being threatened or undermined. People should not have their fundamental interests threatened or undermined in the absence of compelling reasons why they should, or without some form of justification to them if they do. So, in a world in which it is impossible to live outside the jurisdictional boundaries of a political community, in the absence of compelling reasons for why someone cannot be extended basic membership in *any* political community, that person has a legitimate moral claim to basic membership in *at least one* such community.

On its own, the statelessness premise does not tell us very much. It does not tell us who in particular is responsible for ensuring that any particular person has basic membership in one polity or another, or who is morally culpable if someone ends up stateless. There are a number of policies which, if adopted by all states, would ensure that nobody is left stateless, but none of these are strictly entailed by the statelessness premise alone. For example, every state could extend basic membership to every person born everywhere. Or, every state could have a policy according to which it extends basic membership to anyone who asks for it (or whose guardian asks for it on her behalf). The present system of birthright ascription, it could be argued, does a decent job of ensuring that most people are not stateless, at least initially, but it is by no means perfect.¹⁵ Since the statelessness premise alone does not entail any particular way of ensuring that individuals have basic membership in at least one polity, it does not offer us any reason to think that

¹⁵ Against the argument that the use of birthright principle is justified because it is 'an efficient way to assign people to states', Ayalet Shachar highlights a number of cases in which this has proven not to be the case. Shachar (n 9) 140-46.

any particular individual has a claim to basic membership in any particular state. At most, it seems to entail only that the international community as a whole has a vaguely specified collective responsibility to ensure that no one is ever stateless or, should someone become stateless, that she does not remain that way for long. Indeed, contemporary international norms reflect a commitment to this idea.

On its own, the statelessness premise is indifferent with respect to how each person's claim to have basic membership somewhere is satisfied, or where each person is assigned initially. Nevertheless it can be used to show how an individual could have a claim to basic membership in a particular state *that has already extended it to her*. For instance, we might view the extension of basic membership as a kind of aid, and that the collective responsibility of all states to ensure that no one is stateless falls under a general duty to aid those in a 'condition of infinite danger'. Conceived in this way, it is plausible that when a state does extend basic membership to someone, that state now stands in a different or 'special' relationship to that person vis-à-vis her claim to basic membership somewhere, as compared with other states in the international community. That is, once a state has opted to extend basic membership to someone, that person might *then* have a claim to basic membership in that particular state—i.e. to keep the basic membership she has been given—for just as long as no other state extends her basic membership, or the state is no longer able to protect her rights of basic membership, e.g. because the state fails.

The idea here is that the situation of the stateless person is comparable to one in which a person starts to choke in the presence of two or more medics who (let us assume) are each equally well-positioned to help her.¹⁶ The choking victim has a claim that at least one of the medics help her, and the medics have a corresponding responsibility to help her, but it does not initially matter which medics acts. However, once one medic begins to help her, we normally think it would be impermissible for that medic to stop helping unless either another medic takes over, or the first medic is unable to continue, either because he was physically unable, or because it would be unsafe for him to continue. In other words, having come to her aid, the medic now has a special obligation to the victim to continue if he is able to, and this obligation lasts just as long as no one else offers to take over. Similarly, then, we might derive a person's claim to basic membership with respect to a particular polity from the statelessness premise in a situation where a polity has already extended basic membership to her, and no other polities have done the same. So, while this does not show that it is morally required for states to ascribe basic membership using the birthright principles, if they do, then many newborns will acquire claims to basic membership more or less immediately.

Of course, the choking case does not track the case of basic membership perfectly. In the choking case, for example, it is sufficient that if another medic is willing to take over from the first medic then the first medic

¹⁶ That they are medics and not merely by-standers allows us to assume that they are equally well-qualified to help a choking victim and that their obligation to help in this kind of situation is a professional one, and thus stronger than that of mere 'good Samaritanism'.

can permissibly relinquish his role as aid-provider—i.e. the choking victim has no claim that the first medic continue to aid her if another medic steps in to take over. The same is not obviously true in the case of statelessness and basic membership. Imagine a person, p , is extended basic membership at birth in a polity, A . Assume that A is a democratic polity, and so, upon coming of age, p will develop a claim to democratic membership and thus (following from the argument in section 2) a claim to basic membership in that polity. If we follow the choking example, then even before p comes of age, p might still be said to have a claim to basic membership in A , since A has already extended it to her, and thus entered a special relationship to p with respect to her general claim to have basic membership somewhere. However, if another polity, B , extends or offers to extend basic membership to p at any point prior to p 's developing a claim to democratic membership in A , then it would follow (on the above line of reasoning) that p would no longer have any special claim to basic membership in A . From the perspective of p 's claim to have basic membership somewhere, the change from basic membership in one polity to basic membership in another polity is irrelevant.¹⁷

Here, the analogy falters. The fact that B extends or offers to extend basic membership to p will strike many as decidedly *insufficient* to negate her particular claim to basic membership with respect to A . The concern over the

¹⁷ So, for example, from the perspective of the statelessness premise, it is permissible for a state to make a person's basic membership in that state conditional upon her not having basic membership in any other state. Things are more complicated if she has an additional claim to basic membership in virtue of her having a claim to democratic membership in the first state e.g. if she is a resident citizen. In order for it to be permissible for a state to revoke the basic membership of a resident citizen, it must true *both* that she has been extended basic membership elsewhere *and* that she no longer satisfies the conditions under which she has a claim to democratic membership e.g. she takes up permanent resident in the new state which extended her basic membership.

possibility of *p*'s statelessness, some might argue, is not the only normatively relevant consideration. Indeed, it may not even be the primary consideration. When I say that the statelessness premise operates in the background of discussions about the ascription of political membership, it is because it usually represents a kind of 'if all else fails' reason for why a person might have a claim to basic membership with respect to a particular polity. The reasons we usually turn to first when explaining why someone in *p*'s situation has a claim to basic membership in *A* have to do with the interpersonal connections *p* has to *A* and its members—her 'horizontal' relationships within the community rather than her 'vertical' relationships to the state and its governing institutions. Joseph Carens advances an argument of this sort in favour of the claim that states are morally required to ascribe citizenship according to the birthright principles.

4. Constitutive Ties

All of us live within complex social networks that we depend upon to support our well-being in various ways. These consist in our relationships to our family and friends, as well as to our communities and various institutions of the states within whose jurisdictions we live. These networks also serve to inform our personal identities. They partly constitute for us who we are as individuals. As Carens puts it, 'who we are depends in large part on how we see ourselves in relation to others, and how they see us.'¹⁸ These form what Carens calls our *constitutive ties*. Carens argues that the nature and value of our constitutive ties are such that it is morally obligatory for democratic

¹⁸ Joseph Carens, *The Ethics of Immigration* (Oxford University Press 2013) 24.

states to confer citizenship at birth to, at the very least, the children of resident citizens. Indeed, he says, '[it] would be unjust to do otherwise.'¹⁹ As an explanation of why certain people might have claims to the basic membership they already possess, even in a situation where losing it would not leave them stateless, Carens' account of constitutive ties is certainly plausible, though it raises a number of questions about the breadth of its application.²⁰ However, as an explanation of why it is morally required for a polity to extend even basic membership (to say nothing of citizenship) to someone at birth in virtue of her parentage or where she was born, it is less convincing.

The Claim to Keep One's Membership

Our ability to participate and maintain our relationships within the social networks that make up our constitutive ties depends in no small measure on our freedom to exist among and interact with the people involved in them. If a person's well-being and personal identity is deeply connected to her relationships with the residents of a state in whose jurisdiction she has no (legal) right to live and to make a living, then her well-being and sense of self are likely to suffer. Given the importance of these social networks to our well-being, it is easy to see why the state should take them seriously. Indeed, the

¹⁹ Carens (n 18) 25. See also Joseph Carens, 'Who Belongs? Birthright Citizenship in the United States' (1987) *University of Toronto Law Journal* 13, 414-444. On the importance of relationships in discussions about rights and justice generally, see Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy and Law* (Oxford University Press 2011).

²⁰ For example, are friendships 'constitutive' enough to ground a moral claim to membership? Could my having close friends in a country other than the one I live in ground a claim to membership there?

state itself, including its laws and governing institutions, play a number of roles in mediating and maintaining them—‘the state structures, secures, and promotes [one’s] relationships with other human beings, including [one’s] family in various ways.’²¹ And the state’s ability to extend basic membership to someone who has constitutive ties to its community is one of the most fundamental ways it can secure and promote those relationships.

For a person who has been normally resident in a state for a period of time, who has developed deep relationships to that state and its members, and whose well-being and self-identity are intricately connected to and dependent upon the continuation of those relationships, it is plausible that her constitutive ties ground at least a *prima facie* claim to basic membership in that state. Since normal residency in most cases presupposes at least some form of basic membership, this means that one’s constitutive ties provide plausible independent grounds for her *to keep* basic membership if she already has it. That is, even if she would not be left stateless by having her basic membership revoked, (e.g. because she also had citizenship somewhere else), all else being equal, it is plausible to hold that it would be morally impermissible for the state to revoke her basic membership if doing so would undermine or threaten her constitutive ties to the community. This is because, regardless of the particular legal status of someone living within the state’s jurisdiction, for as long as she is resident there, the state has, at the very least, duties to her as a moral person. So long as we accept that a

²¹ Carens (n 18) 25. Note that this is not an argument in favour of, or against any particular level or degree of state involvement—it is a statement of the realities of living in a political community structured along the lines of the contemporary state.

person's constitutive ties are important factors in her well-being and personal identity, then any action taken by the state that would undermine those ties could be construed as the state's failing in its duties to her as a moral person.

Of course, all else might not be equal. Further argument would be required to determine how a *prima facie* claim to have one's constitutive ties respected by the state in which one happens to be resident fares when other factors (including, for instance, the state's ostensible right to choose its members) are considered.²² However, granting that our constitutive ties matter morally, then a state in whose jurisdiction a person is normally resident must take those ties into consideration when considering whether or not to maintain or revoke her basic membership.

Now the question is whether or not people have any such constituent ties at (or near) the time of their birth. Or, supposing that they do, whether these ties could be strong enough to ground a claim to basic membership in a particular state.

The Constitutive Ties of Newborns

Relationships, and especially those which inform our personal identities, typically develop and deepen over time. So the degree to which one is actually 'tied' to a community, and thus the strength of one's constitutive ties, depends to some extent on how long she has actually had a relationship

²² An example would be if her normal residency was not, in fact, predicated by her possessing basic membership. If she is an 'unconventional' normal resident, having entered and remained in the community with no official permission to do so, then this might count against whatever *prima facie* claim she has to receive basic membership in virtue of her constitutive ties.

to that community, and perhaps the extent to which she has engaged in developing relationships with other members or shaping her identity (actively or passively) in relation to it. (It might also depend on whether she has any ties previously developed to another community. A person with strong ties in one community and who moves to a new community might spend a good deal of time there without ever really developing constitutive ties there if she maintains her ties to the first.) Conversely, if the state's duty to protect a person's constitutive ties—e.g. by granting her basic membership—is grounded ultimately in the importance of those ties to her well-being, then the strength of that duty would appear to correlate to the strength of the ties she actually has. Now, in practice it is probably impracticable for the state to assess the strength of its duty to protect the constitutive ties of each and every person to whom it owes (or might owe) that duty. So, as a prudential matter, we might think that states should err on the side of caution and use a very low bar when setting policies about e.g. the length of time a person needs to live within its territory before it should be assumed that her ties are strong enough to generate a moral duty for the state to extend her basic membership. However, the fact that someone might meet a prudential standard of that kind does not itself mean that she would actually possess the corresponding moral claim.

The primary difficulty with using the idea of constitutive ties to ground claims to basic membership for newborns is its self-identity aspect. It is true of course that *other members* of the social networks into which a child is born might immediately incorporate that child's existence into their own self-

identity. (Indeed, they may have done so prior to the child's birth.) The effect of a newborn on the self-identities of her parents, siblings, extended family, primary care givers, etc., can be immediate and long-lasting. We might use this fact to explain why *they* have claims that the child be allowed to remain in the territory, and show that the state has a duty to extend her basic membership. This does not show that the child herself has any claim to it. While it may be that children develop immediate, deep, and, perhaps, lasting emotional bonds with those to whom they are exposed at an early age, without continued exposure to such people those bonds are as likely to be forgotten by the time the child starts to form a self-identity as they are to become a part of that identity. If the child is given basic membership in the expectation that she will remain a part of the community into which she is born—even though initially she has no claim to it—then by the time she begins to develop a self-conception, she may very well have begun to develop sufficient constitutive ties to the community and its members for her to have, at that time, a claim to it. But this only reinforces the conclusion reached above—i.e. the existence of constitutive ties offer a plausible explanation for why someone has a claim to basic membership in a given polity when she already has it, and when she has taken advantage of it by living in the polity's territory for an extended period of time.

Consider a straightforward case of birthright ascription, that of a child born in the territory of a state in which her parents are both citizens. Carens acknowledges that if such a child moves from the state in which she was born at a young age, and takes up permanent residence elsewhere, she may not

have developed the kind of ‘deep connection’ to her birth state that would provide the best case for a claim to citizenship in that state, grounded in constitutive ties.²³ However, he argues that this is not itself a good reason for her birth state *not* to extend her full citizenship at birth, or, more generally, for states to make only ‘tentative commitments’ to children born within their jurisdiction to parents who are citizens.²⁴ The reason, he suggests, is that it is reasonable for states to expect or assume that such children *will* stay and live their lives within the state’s jurisdiction, developing deep connections to the community along the way. There is no downside to making this assumption, either—‘No great harm is done to the community or to any individual if a state grants citizenship to someone whom it expects to live within its boundaries on an ongoing basis but who, for whatever reason, turns out not to do so.’²⁵ All this may be true, but the fact that a policy causes the state no great harm says nothing more about whether that action is morally required than would the fact that that policy is, say, in the state’s interests, or administratively convenient.²⁶ For that matter, it isn’t even enough to show that such a policy is morally permissible. Even in this straightforward case, then, it seems that, when it comes to newborns, the most we can infer from the significance of constitutive ties is that the onus is on others to show why citizenship or basic membership should *not* be ascribed at birth.

²³ Carens (n 18) 23.

²⁴ *ibid* 25.

²⁵ *ibid*.

²⁶ That the practice of birthright ascription is often in the state’s interests or administratively convenient are reasons that Carens sets aside as beside the question he wants to consider—i.e. why is the state morally obligated to extend citizenship at birth to those who satisfy birthright criteria.

Less straightforward cases raise further questions about the constitutive ties approach generally. For instance, what happens when a person who has developed a claim to basic membership grounded in her constitutive ties leaves the community and those ties erode? Again, we might think that there is little or no cost to the state in assuming that anyone who grew up in that state will continue to identify with and depend on her relationships with its members for the rest of her life, even if she moves away. Or we might think that this is just a risk states must take. But this does not change the fact that people's constitutive ties can and do erode over a lifetime, and it would therefore seem to follow that their claims against their birth-states must diminish accordingly. We might also wonder what sort of relationships will qualify as constitutive enough to ground a claim to basic membership. If my closest friends live across the border in a neighbouring state, and I have no family in the state in which I live, might I have a claim to basic membership or, indeed, citizenship next door?²⁷ In today's world it is not even clear that physical proximity should matter. With contemporary telecommunications technology, is it inconceivable that one could develop genuinely constitutive ties in communities virtually anywhere?

Non-Constitutive Ties

Perhaps we do not need to appeal to predictions about a newborn's future identification with a community to show that she might nevertheless have a claim to basic membership in the state in which she is born, and in

²⁷ Shachar notes a number of 'socially conservative' biases that affect how we might define the sorts of relationships that could count towards constitutive ties. Shachar (n 9) 152-9.

which her parents are both citizens, grounded in something *like* constitutive ties. Even if the social networks into which a child is born are not necessarily the same social networks that will factor meaningfully into her self-identity later in life, they will still be immediately important to her well-being. She will depend on the state into which she is born to recognize her as a moral person under the law and to protect her basic human rights. She will depend on her immediate family and their friends, her extended family, or, in some cases, the state itself to help her meet her immediate physical and emotional needs. We might argue that she has a claim to remain connected to whatever social networks initially take on the job of securing her well-being, regardless of what happens to her relationship to those networks later in life, and that the state has a duty to promote or secure this connection by extending her basic membership.

There are a few things to note with this strategy. First, by setting aside the identity aspect of the child's ties to the community into which she is born, we leave behind much of what makes those ties 'constitutive'. We are all dependent on a number of things for our individual well-being, but not all of our relationships to those things are constitutive of us as individuals. (My dependency relationship to food, water, breathable air, etc. might be constitutive of my being an organic life form, and to that extent constitutive of who I am as a person who is also an organic life form. It is not necessarily constitutive of who I am as an individual.) The second is that by focusing on her well-being, this strategy starts to look similar to the argument from statelessness considered in the previous section. For example, from the

perspective of a newborn child's well-being, if there are a number of established social networks that are equally willing and able to take on the job of securing her well-being at the moment of birth, it is not clear that it matters which one actually does. Suppose that at the time of child's birth, her parents have the choice to raise her themselves or to let her be taken immediately to be raised by her grandparents who happen to be resident citizens of a different state. If her grandparents are willing and able to meet the child's immediate physical and emotional needs, and are well-positioned to do so, then from the perspective of her well-being it does not seem to matter which state among those she is connected to via her social networks gives her membership. That is, from the perspective of the child's well-being, there is no reason to think that she *must* be given basic membership in her birth state, if there is no reason to think that her well-being could not be equally well served by her being extended membership in her grandparents' state. Third, as in the case of statelessness, it also does not seem to matter if the network of 'other human beings who feel an interest in and a responsibility for her well-being' changes during the child's pre-identity-forming stages of life.²⁸ Suppose her birth parents initially decide to care for the child themselves, but shortly thereafter decide to let her grandparents raise her (or become themselves unable to continue to secure her well-being). Whatever claim she has to basic membership grounded in the fact that a particular social network has taken on the responsibility of securing her well-being would seem to follow her if that social network changes from the

²⁸ Carens (n 18) 23.

context of one state to another. So, a claim grounded in this kind of non-constitutive tie would seem to have no necessary connection to one's satisfaction of the birthright criteria.

However, the example of the foreign grandparents differs from the case of statelessness in one important respect. While a person can simultaneously hold basic membership with respect to more than one state (and, for that reason have no particular claim to it in either state grounded in the statelessness premise), the well-being of a newborn child typically cannot be simultaneously secured by social networks in more than one state.²⁹ The mere opportunity for the child to have her well-being secured in the social networks of another state is not enough to shake loose her claim to basic membership in the state in which she actually being cared for. In contrast, from the perspective of the statelessness premise, the fact that one is given basic membership in a second state would be enough to shake loose her particular claim to basic membership in whatever state originally granted it.

Let me sum up the discussion of the constitutive ties argument. If we grant that constitutive ties are normatively relevant, such that the state has a duty to consider them when deciding to whom it will extend basic membership, then it is most plausible that they would ground claims to basic membership in a particular state for people who *already have it* in that state,

²⁹ We might imagine a case in which the child's grandparents live just across the border of a neighbouring state, and so she is actively cared for by networks that cross state lines. If the networks in either state are each sufficient to secure her well-being, then she would probably have no particular claim to membership in either state. Of course, some calculation might be done to rank the contributions of each social network considered separately, and determine a particular claim that way. Or, it might be that the networks in either state are severally insufficient to secure her well being, in which case there might be a case for the child having a claim to basic membership in both.

and who are normally resident in its territory. For an adult in a democratic state, this might add to or reinforce the claim she has to basic membership via her claim to democratic membership, but it will not explain why she had a claim to basic membership in the first place. It might explain why a youth who has not developed a claim to democratic membership might nevertheless have a claim to basic membership, but, again, only if she had it to begin with. When a child is born into social networks which are integrated into a particular state, *other members* of those networks might have claims that the child remain connected to them, and so the state might have a duty to extend the child basic membership grounded in *their* constitutive ties to her. A newborn might have her own claim to basic membership in a particular state grounded in her membership of whatever social networks, as a matter of fact, secure her well-being. However, even if she did, that claim would not necessarily attach to her birth state or that her parents. Nor, if it did, would it remain if her care is taken over by social networks that were integrated into a different state. For the vast majority of people then, the primary explanation for why they have a claim to basic membership in a particular state is that that state has *already* extended it to them. So while the practice of birthright ascription might be justified on other grounds, there is little to suggest that it is the claims of those who themselves satisfy birthright criteria which ultimately justify it.

5. Conclusion

In this chapter and the last I explored what the core concept of citizenship tells us about the conditions under which a person might have a claim to citizenship. I argued that while a claim to basic membership always follows from a claim to democratic membership, claims to democratic membership arise typically only for those who have already acquired basic membership. And while most of us acquire basic membership at birth via the practice of birthright ascription, it proved difficult to establish any grounds for newborns to have claims to the basic membership they are given.

8 Conclusion

1. Summary of the Thesis

We should welcome the level of attention that the idea of citizenship currently enjoys, both in theoretical and political discourse. However, we must also attend to the ways in which purportedly novel applications of that idea or the language in which that idea is commonly expressed can stretch or distort the meaning of the underlying concepts involved. The primary aim of this thesis has been to offer and defend a definition of the core concept of citizenship, one that captures what is central to our common understanding of a particular feature of the world that is worth distinguishing from its many neighbouring phenomena. A secondary aim has been to show how that definition might help us to frame our discussion of certain key issues within citizenship theory.

The first hurdle to overcome was a general scepticism towards the very idea of ‘the’ core concept of citizenship. I considered whether the term

‘citizenship’ has too many meanings to be encapsulated by a single concept, and whether even those meanings that we might agree are most central to it in fact refer to a kind of concept whose very nature renders it resistant to the kind of conceptual description I propose. I argued in Chapter 2 that neither of these worries are justified—that it is possible to identify a core meaning around which the many meanings of ‘citizenship’ might be oriented, and which could be defined without taking a stand on the kinds of debates over fundamental values that give rise to (the appearance of) ‘essential contestability’ in concepts generally. At its core, I argued, citizenship is primarily a relationship between an individual and a polity’s laws and organs of governance. That relationship is characterized partly by the individual’s possession of the legal rights and duties of *basic membership* in the polity—this establishes citizenship as a kind of political membership. As a *particular* kind of political membership, it is characterized by the possession of the legal rights and duties of *democratic membership*. Finally, the relationship is fully realized only when the rights of basic and democratic membership are recognized and protected by the polity’s organs of governance through its officials. That is, the relationship is *institutionally recognized*.

In Chapter 3 I considered an argument that takes the sort of approach to the idea of citizenship that stands in contrast to the one I advocate. In their argument that citizenship and citizenship theory can and should be extended to include certain non-human animals, Donaldson and Kymlicka embrace the expansionist tendency within citizenship that the core concept I defend is meant, to some extent, to resist. In discussing their treatment of the

idea of citizenship and how it might apply to non-human animals we saw, on the one hand, the problem with holding certain understandings of 'citizenship' as genuine instances of the concept at all, and, on the other hand, the conceptual costs of interpreting citizenship's characteristic political aspect in a way that could in principle apply to animals.

Perhaps the most controversial feature of the core concept is the fact that it places the institutional relationship of citizenship over the relationship *between* citizens, and in particular their *moral* relationship to each other as co-citizens. In Chapter 4 I argued against two ways in which we might try to identify the moral relationship between citizens as central. On the one hand, I considered the ethical cosmopolitan idea of 'world citizenship' that could exist even in the absence of the kind of system of global governance that would be required for institutional citizenship on a global scale. I argued that the cosmopolitan claim to being 'a citizen of the world' amounts to nothing more than a negative claim about the difference between citizens *qua* citizens and human beings *qua* human beings. As a philosophical position this is by no means indefensible. As an account of citizenship it is expansionary to the point of meaninglessness. On the other hand, and in contrast to the ethical cosmopolitan claim, I considered whether it might be central to the notion of citizenship that citizens stand as co-members in a *particular* (i.e. non-universal) morally bounded community, such as a national community. I argued that even if it were the case that a morally bounded national community is the most feasible locus in which to foster certain attitudes and behaviours we would like citizens to have or to demonstrate, it is not

conceptually necessary that they be morally bound in this way. More importantly, it is not at all clear that such behaviours and attitudes, which might constitute one interpretation of what makes a *good* citizen (or, rather, a good co-citizen) should be part of the core concept of citizenship anyway. So even it were conceptually necessary that good co-citizens were also co-nationals, this would not, strictly speaking, undermine the core concept of citizenship I defend.

Related to this last point, I also considered one of the central issues of citizenship theory, whether or not citizens owe special obligations. I discussed two traditional attempts to ground such obligations in general principles, as well as Andrew Mason's constitutive obligations argument. The analysis revealed that none of the accounts considered could successfully ground *symmetrical* special obligations of citizenship—i.e. obligations held by and owed to only citizens. Moreover, I argued that this conclusion should be neither surprising nor disappointing since the idea that citizens might owe each other special obligations *qua* citizens is premised on a misunderstanding of the central relationship of citizenship. Once we recognize that the central relationship of citizenship is the institutional one set out in the core concept, we see that the primary relationship in which a citizen stands *qua* citizen to her fellow citizens is in fact no different from the one she stands in, *qua* citizen, to non-citizen members of the political community.

Lastly, I brought the core concept to bear on the question of who has a moral claim to citizenship in a given state. In Chapter 6 and Chapter 7 I argued, first, that the primary source of a claim to citizenship in a given polity

is one's normal liability to the coercive enforcement of that polity's laws. Second, I argued that a claim to basic membership could be derived from a claim to democratic membership—i.e. anyone with a claim to the latter would for that reason have a claim to the former. Thus a claim to citizenship could be established for anyone who had a claim to democratic membership. However, since a claim to democratic membership arises only in the case of *normal* liability to the coercive enforcement of a polity's laws, this means that to have a claim to democratic membership one must usually *already possess* basic membership. For that reason, I also considered the possible grounds for which someone might have a claim to basic membership independent of whatever claim she might have in virtue of possessing a claim to democratic membership. In particular, I considered whether or the traditional means by which individuals come to possess basic membership, the practice of birthright ascription, actually reflected any genuine claims held by the individual to whom that membership is ascribed. I argued that while common sentiment holds that we have a claim to membership in the communities to which we are born this is in fact difficult to ground, at least for newborns. This is not deny that states should for other reasons (such as the claims of families) immediately grant at least basic membership to those born into their territories.

2. Final Thoughts

Where do we go from here? This thesis addressed only a small handful of issues that make up contemporary citizenship theory. One question that I have not addressed, but whose answer I have hinted at indirectly throughout,

is how we are to understand the increasing array of ‘citizenships’ that are being offered by theorists. What are we to make of theories of ‘economic citizenship’, or ‘sexual citizenship’, or ‘ecological citizenship’ or the other ‘citizenships’ I mentioned in Chapter 1? The simple answer is that in order for these to be understood as genuine conceptions or theories of citizenship at all, it must be possible to construe them as interpretations of the core concept I have defined. If they bear only a passing resemblance, in the way that, for instance, the moral idea of ‘world citizenship’ we considered in Chapter 4 does, then they are at best metaphorical applications of the concept of citizenship, and we should be wary of any rhetorical slight of hand (intended or not) such theories might involve.

There is one possible implication of accepting the core concept of citizenship as I have described it, and the stricter limits I have argued it places on how we ought to employ the language of citizenship in theoretical discourse, that I believe is worth exploring. If it turns out that the core concept of citizenship cannot accommodate the many ‘novel’ uses to which it is being put, then perhaps what we need is a greater diversity in how we conceptualize political membership generally. Perhaps the solution is not, as many seem to suppose, to try to reimagine citizenship in myriad new ways that can accommodate the changing political realities of an increasingly interconnected world with an increasingly mobile population, and doing so risk losing what is central to citizenship as it has evolved to this point. Rather, perhaps we ought to develop the other concepts at our disposal, concepts like that of permanent residency or denizenship. Indeed, perhaps we should be

looking to create entirely new categories of membership to accommodate the changes in the political landscape, rather than trying to place the burden entirely at citizenship's feet.

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