Stakeholder Citizenship: An Idea Whose Time Has Come?

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Introduction

Democracy is government accountable to its citizens, and states are territorial jurisdictions. International migration creates a tension between these two basic facts about our world because it produces citizens living outside the country whose government is supposed to be accountable to them and inside a country whose government is not accountable to them. The result is a mismatch between citizenship and the territorial scope of legitimate political authority. In response to this challenge, political theorists have occasionally considered how to redraw the boundaries of political community, a problem that has rarely troubled policymakers or voters.

But times have changed. Citizenship policies, which used to be fairly stable and supported by cross-party consensus in many countries, have become thoroughly politicized and volatile. In immigrant-receiving democracies, citizenship policies are now driven by anxieties over security risks and failed integration of newcomers, while a growing number of sending countries are actively reaching out to their expatriates by offering them dual citizenship and absentee-voting rights.

The new emphasis on citizenship as a shared core identity in democratic polities should be welcomed. It adds an important political dimension to past debates about the economic and cultural impacts of migration. However, the interests and ideologies that drive current public concerns are often extremely myopic in three ways: they do not rely on principles that take into account all interests affected; they do not look across borders; and they disregard the counterproductive effects of the policies advocated.

This paper addresses such deficits by proposing a stakeholder principle that should guide citizenship policies in Europe and North America. This principle applies to both immigrants and emigrants. Stakeholders in this sense are those who have a stake in the polity's future because of the circumstances of their lives. The paper begins with a definition of democratic citizenship and a discussion of the link between human rights and citizenship. It then considers alternative principles for determining a polity's citizens and argues that stakeholdership is the most attractive concept. After laying these foundations, the paper explores how this principle applies to the acquisition of citizenship at birth and through naturalization. It suggests that a residence-based status of "denizenship" cannot fully substitute for access to citizenship. Finally, it argues that European countries can make a politically acceptable argument for the reform of citizenship laws that could be supported from a stakeholder perspective.

Defining Democratic Citizenship

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.

While we cannot define the concept's boundaries, it is possible to define its center. At its core, citizenship is about equal membership in a self-governing political community. Four

interpretations of citizenship are directly connected to this core meaning and spell out its implications in the context of modern democracies. Citizenship is

1. a formal legal status that links individuals to a state or another established polity (such as the European Union or a federal province);
2. a bundle of legal rights and duties associated with this status, including civil liberties, rights to democratic representation, and social rights to education, health care, and protection from poverty risks;
3. a set of responsibilities, virtues, and practices that support democratic self-government;
4. a collective identity that can be shared across distinctions of class, race, gender, religion, ethnic origin, or way of life.

Taken together, these four aspects make up democratic citizenship; taken separately, they also apply to other political formations. For example, in international law, the legal status of citizenship is usually called nationality and refers equally to the subjects of authoritarian regimes and the citizens of democratic ones. Nationality in this sense is a thin form of citizenship that does not entail any normative principles. By contrast, a more comprehensive notion of democratic citizenship requires specific answers to the question: who has a claim to protection of his or her rights and by which political authority?

However, the link between the four elements is not a straightforward one, even in democratic states. The status of long-term resident foreign nationals who live in democratic countries provides an illustration. Their rights are derived from residence rather than from formal membership, creating quasi-citizenship ("denizenship"). As a result, historic privileges of citizenship, including the right to vote in local elections in 12 Member States of the European Union, have been extended to long-term resident third-country nationals. More recently, some states have also experimented with offering quasi-citizenship status to emigrants who have lost or renounced their citizenship or to ethnic-kin minorities living in neighboring countries.

A second important distinction must be drawn between the formal/legal and informal aspects of citizenship. As the core definition implies, democratic citizenship is produced by citizens themselves and only indirectly by the state authorities who act on their behalf. It is therefore important to realize that states can regulate some dimensions of citizenship but not others.

Legislators decide on the norms that govern citizenship as a legal status and a bundle of rights and duties. Yet they should not try to legislate the ethical responsibilities, virtues, and practices of good citizenship or the collective identities that citizens share as members of the polity. Important as these dimensions are for sustaining democracy over time, political authorities can only promote them indirectly by building institutions that allow individuals to develop the habits and identities of good citizenship. Where state institutions try to do this directly, either by enforcement or exclusion, democracy becomes illiberal and ultimately tyrannical. This is a historic lesson that should have been learned from the French Revolution. It applies to contemporary efforts in several European countries, such as the Netherlands or Great Britain, that test immigrants with regard to their civic virtues and attitudes before granting them citizenship.

This text focuses specifically on citizenship as a legal status. It explores what the core meaning of citizenship as equal membership in a self-governing political community implies for the question of who ought to be included and who can legitimately be excluded from the status of citizenship.

A Human Right to Citizenship

A starting point for this inquiry is the human right to citizenship. Analyzing the plight of refugees and stateless people in the wake of World War II, political theorist Hannah Arendt called citizenship "the right to have rights." In her view, there was a paradox at the heart of the idea of universal human rights: the most fundamental of these rights could only be effectively protected once a state had recognized a human being as his or her citizen.

The paradox could in principle be resolved by including a right to citizenship in the catalogue of human rights. This is what the Universal Declaration of Human Rights of 1948 accomplished. Article 15 states that "everyone has a right to a nationality" and "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." Yet the protection of individuals against statelessness and coercively imposed citizenship does not obligate states to offer their citizenship to individuals whom another state recognizes as citizens.

The Stakeholder Principle of Citizenship

To respond to the mismatch between territorial borders and boundaries of membership, we need to know which individuals have claim to which citizenship. If we define citizenship as equal membership in a self-governing political community, then the most plausible answer to this question is that all those, and only those individuals, who have a stake in the future of a politically organized society have a moral claim to be recognized as its citizens and to be represented in democratic self-government.

The individual rights and wellbeing of stakeholders are tied to those of other members because they all depend on the protection and public benefits provided by the same political institutions. Stakeholdership in this sense is not a matter of individual choice, but is determined by basic facts of an individual's biography, such as having grown up in a particular society, being a long-term resident there, or having close family members in another country where one does not presently reside.

Three Alternatives to the Stakeholder Principle

A stakeholder principle for determining who has a claim to citizenship differs in important ways from alternative answers to the question: who ought to be included and who can be legitimately excluded from citizenship? A first response says that the decision whom to admit as a citizen is not a moral question. Rather, it is a matter of sovereign self-determination for each state. According to this logic, becoming a citizen is similar to joining a club: just as a club can adopt its own statute for admitting new members, so every state can choose its new citizens.

However, this view is implausible because, in liberal democracies, even social clubs may no longer discriminate in their admission policies on grounds of race, gender, or ethnic origin. Since states are responsible for protecting much more fundamental interests and rights of individuals under their jurisdiction, they cannot claim powers to make arbitrary decisions in matters of citizenship — even when these decisions reflect the preferences of a majority of current members.

The implications of the stakeholder view become clearer when we contrast it with two more plausible alternatives: (1) that everybody subjected to the laws should also be represented in the making of the laws, and (2) that democracies must offer citizenship to all whose interests are affected by their legislation.

The first of these two principles requires that all current residents (and maybe even temporary visitors) must be included, while those who leave the territory for an extended period have no further claim to retain citizenship status or to participate. This idea includes too many inside the territory and wrongly excludes all those outside the territory. It is also at odds with current laws in all democratic states, which permit emigrants to retain their citizenship and even to pass it on to a next generation born abroad. Moreover, since World War II, the vast majority of democratic states have introduced external voting rights for expatriates, which would seem clearly illegitimate under a strict principle of territorial inclusion.

The second "all affected interests" principle could easily account for emigrants' citizenship. Many expatriates have ongoing ties and are interested in returning to their country of origin at some point, so political decisions taken there affect some of their fundamental interests. However, the principle would also provide native populations of distant countries — whose interests are affected by policies on foreign relations, trade, or industrial emissions of another state — with a claim to citizenship in that country.

Even within the domestic territory, democratic legitimacy of decisions is not achieved through representing the interests affected, since this would require constantly modifying the composition of the legislature, depending on which citizens would be affected by a particular piece of legislation. Instead, representative democracy means that citizens empower elected legislators to vote on a broad range of issues that affect various groups in different ways.

Why the Stakeholder Principle Makes Sense

The stakeholder principle differs from alternative views of democratic inclusion because it applies to individuals who have a permanent interest in membership and political participation rather than in particular decisions. All long-term residents can be seen to share such an interest because of their permanent subjection to a territorial political authority. But first-generation emigrants and minor children born abroad can also claim a stake in the polity's future if their life prospects depend on that country's laws and political course.

This interpretation of stakeholder citizenship leads to a straightforward conclusion: if resident foreigners enjoy a claim to be admitted as new citizens and emigrants a claim to retain their citizenship of origin, then, as is increasingly the case, both receiving and sending countries ought to tolerate dual citizenship.

However, the problem of mismatch cannot be resolved by simply turning every migrant into a dual citizen. Article 15 of the Universal Declaration of Human Rights supplements the principle of stakeholder inclusion with an element of individual choice. Emigrants must be free to renounce their citizenship provided they acquire another one abroad, and immigrants cannot be forced to become naturalized as long as they have another citizenship.

In liberal democracies exposed to migration, the consequence is that many people are not fully included although they have an individual claim to citizenship. This means that the stakeholder principle must apply beyond the allocation of citizenship as a legal status. In a more general sense, denizens are dual citizens, too, because their overall bundle of rights and duties is jointly produced by the laws of two independent states.

The short answer to the problem of boundary mismatch is therefore that citizenship status and rights ought to be extended to all persons whose personal fate is tied to the long-term prospects of a particular polity. Migration generates overlapping sets of persons to whom this principle applies. If the states connected through migratory chains are liberal democracies, they ought to include immigrants as well as emigrants in their conception of political community while respecting individual choices of primary affiliation.

Furthermore, since more than one state is involved in migrants' citizenship status, governments should coordinate their citizenship policies so as to avoid unjustified exclusion or inclusion. Coordination would also prevent conflicts between their respective territorial jurisdictions over residents and personal jurisdiction over emigrants.

Citizenship and Global Justice

The United Nations classifies less than 4 percent of the world's population as migrants. Most individuals acquire citizenship at birth and retain it all of their lives. From a global perspective, the most fundamental moral question to ask about citizenship policies is how birthright citizenship determines the opportunities of human beings worldwide.

Political theorist Joseph Carens has suggested that in today's world, citizenship is like feudal status in medieval societies. The citizenship that people are born with pervasively determines their prospects in life; through immigration control, rich and secure states are able keep out those born as citizens of poor, authoritarian, or violence-ridden countries.

This is a morally troubling analogy. Yet its implications are not obvious. Should liberal states open their doors to free immigration? Or do they instead have a responsibility to improve the lives of citizens in the worst-off countries? If one accepts a positive answer to the latter question as being the more plausible, do rich countries have to redistribute their wealth until opportunities have been equalized worldwide? Such a demanding standard for global justice would be hard to reconcile with the fact that citizens and their representatives are committed to improving opportunities in their own countries. The British political theorist David Miller has suggested, therefore, that global justice does not require the equalizing of opportunities through immigration or the redistribution of wealth, but rather through assisting

disadvantaged societies to achieve the minimum standards of decency that enable them to secure all their citizens' basic needs.

Moreover, unlike feudal status, citizenship in democratic countries is an institution that supports important moral values of individual liberty, equality, and collective self-government within a territorially bounded society. Birthright citizenship specifically secures the continuity of democratic polities across multiple generations. Sustainable democracy requires not merely stable institutions, but also a stable core population whose members have been raised as citizens and who conceive of their future and that of their children as being linked with this particular country.

Territorial democracy, as we know it, could not work in nomadic societies. A society composed of individual nomads of different origins, but without shared citizenship, would be anarchic, socioeconomically unequal, and violent. In our world, migrants enter or leave state territories. They can stretch their affiliations across international borders, but they cannot carry their own political authorities with them and establish them wherever they go.

Acquiring Citizenship at Birth

Birthright citizenship can be acquired through descent (*jus sanguinis*) or birth in the territory (*jus soli*). These rules are complementary rather than alternative. Virtually every country in the world applies *jus sanguinis*, which was first introduced into Europe with the French Revolution. In a much smaller number of countries, such as the United States, Canada, and Australia, birth in the territory is the dominant principle, and citizenship by descent applies there only to children born to expatriates.

Several European states have modified their *jus sanguinis* regimes by a conditional form of *jus soli*. In some countries, acquisition through birth in the territory depends on the parents' legal status or length of residence (Germany, Ireland, Portugal, the United Kingdom); in others, such as Belgium, France, the Netherlands, Portugal, and Spain, a parent must have been born in the country for the child to become a citizen at birth. In several European states (Belgium, Finland, France, Italy, the Netherlands, and the United Kingdom) citizenship for the second generation is generally not acquired automatically at birth but depends on parental decision after birth or is granted at the age of majority.

In the absence of international migration, the difference between *jus sanguinis* and *jus soli* does not matter. Both secure the intergenerational reproduction of a territorial citizenry. It is migration across state borders that makes a pure regime of *jus sanguinis* exclusionary. The children of settled immigrants who grow up in the receiving country are clearly stakeholders in that society's future. From this perspective, denying them citizenship or even requiring them to undergo a procedure of naturalization is indefensible. They are members of society from birth and ought to be recognized as such. However, the US model of nearly unconditional *jus soli*, embedded in the 14th Amendment to the Constitution, is not necessarily the best alternative. First, its historic roots go back to post-Civil War Reconstruction, when the government was concerned with making sure former slaves and their children were granted citizenship; the constitutional amendment had nothing to do with immigration. Second, it attributes citizenship to children whose birth in the territory is

accidental. That child's parents may raise the child to adulthood in another country, but the child will have a lifelong right to live, work, and vote in the United States. Third, American *jus soli* does not include those who arrive with their parents at a very young age. Such children must wait until age 18 before they are eligible to become naturalized and in the meantime their residence status remains insecure.

Today, there is no prospect of introducing the American model to any European country. Ireland, the only European state that had adopted it (also for reasons unrelated to immigration) abandoned it in 2004, after voters overwhelmingly passed a referendum that eliminated an Irish-born child's automatic right to citizenship when the parents are not Irish nationals. Today, such children will be Irish citizens by birth only if one parent has been a legal resident for three out of the last four years.

Combining automatic acquisition at birth for children of settled immigrant parents with the Swedish model — which offers unconditional citizenship to minor children after five years of residence — best captures the idea of stakeholder entitlements. Recent reforms in Germany and Portugal show that such ideas can also win sufficient political support.

In Western Europe, public attention is currently focused on selecting the right kind of immigrants who are "worthy" of naturalization. Only extreme anti-immigrant forces argue openly, however, that children born in the country should be excluded because of their descent. Political efforts to introduce or extend an appropriate form of *jus soli* could therefore have a reasonable chance of success even under current conditions.

The Proliferation of Multiple Citizenship

Birthright citizenship, rather than lenient conditions for naturalization, is also the main cause for the proliferation of multiple citizenship. Children are born as dual citizens when their parents are of different nationalities or when a foreign citizenship acquired by descent is added to a domestic one obtained through *jus soli*. In this way, inclusive rules for birthright citizenship produce overlapping memberships.

Yet several European states still cling to the idea that dual citizenship is an irregularity. The German case illustrates the absurd effects of attempts to adopt liberal rules for citizenship while constraining dual nationality. Currently, Germany has three categories of dual citizens: descendants of parents of different nationalities, those born in Germany to long-term resident foreign parents, and those who were granted permission to retain a previous nationality when they became naturalized, because renouncing it would have been impossible or unreasonably hard. The first and third categories can keep their two citizenships indefinitely, while those born in Germany to long-term resident foreign parents have to choose a single citizenship status when they are between age 18 and 23. Because of a retroactive application of the *jus soli* reform of 2000, there will soon be cases of young adults who have spent all their lives in Germany but will be stripped of their German citizenship unless they return their second passport.

While a regime of pure *jus sanguinis* is exclusionary in immigrant-receiving societies, it becomes over-inclusive in source countries of emigration. Seven of the 15 old EU Member States and all 12 countries that have joined since 2004 permit their emigrants to transfer their

nationality from generation to generation without any residence requirement in the country of origin. A number of states also offer extraterritorial naturalization to persons whom they consider ethnic kin because their ancestors emigrated from that country or because their homeland was once part of the state territory.

Individuals claiming citizenship in these ways are often mainly interested in acquiring a European Union passport that gives them visa-free access to the United States and all EU Member States rather than in "returning" to a country of distant origin. A stakeholder criterion suggests, therefore, that *jus sanguinis* should not apply automatically beyond the first generation born abroad, and that naturalization should generally require a prior period of residence in the country.

Testing for Citizenship: Europe's Problematic Approach to Naturalization

Although the acquisition of citizenship at birth raises important questions, naturalization is at the center of current political debates. The background for these debates is a widespread perception, which is stronger in Europe than in the United States, that the integration of newcomers is not working as it should. There are good reasons to be concerned about long-term unemployment, low educational achievements, and segregated housing for groups of migrant origin. In Europe, immigrant integration is rightly seen as a public policy concern rather than as a problem that civil society can take care of without state support and interference. But a strange discrepancy has emerged between a laissez-faire regime of free movement for EU citizens — which has surged since the 2004 and 2007 enlargements despite labor-market restrictions in most Member States — and the heavy-handed control approach toward third-country nationals. EU citizens migrating in large numbers from Poland and Romania to Britain, Ireland, Italy, and Spain face similar social, economic, linguistic, and cultural challenges of integration as third-country nationals from outside the EU. For this latter category of migrants, a growing number of European countries have introduced integration courses and tests as a condition for access to citizenship, permanent residence, and even for family reunification in the host society. None of these conditions apply to EU citizens.

What purpose is served by such tests? Are they meant to encourage immigrants to acquire linguistic skills and general knowledge about the history and public institutions of their society of residence? Or is their goal to select those worthy of becoming citizens and keep out the rest? Current European governments differ in how they regard the contribution of naturalization to immigrant integration. Some countries, such as Sweden, see it as a step or tool to achieve this larger goal, whereas others, such as Austria or the Netherlands, regard naturalization as the endpoint and ultimate reward for individual success in this process.

These two views are hard to reconcile. Raising the hurdles for access to denizenship and citizenship will exacerbate the problems of socioeconomic or cultural integration if the groups who are excluded remain in the country in an insecure legal status. Forced mass return to countries of origin is not only morally indefensible but, for the time being, also politically unfeasible. Therefore, exclusion from citizenship contributes to the very problems that harsher integration tests are meant to address.

The opposite policy of actively promoting naturalization does not rule out using tests as incentives for acquiring additional skills rather than as deterrents from applying. What is needed in this regard is not merely a fine-tuning of conditions for naturalization, but a general change in public philosophies of citizenship.

So far, all European countries regard naturalization as a legal procedure by which an individual attempts to improve her or his legal status, while state authorities — in selecting who gets membership in the polity — have the task of ensuring that the applicant meets criteria determined by public interests. The mismatch between the citizenry and the permanent residents subjected to the laws suggests, however, that democracies also have a public interest in promoting naturalization to avoid a growing deficit of democratic legitimacy.

This consideration of democratic legitimacy makes integration tests problematic, especially when their deterrent effects result in declining numbers of naturalizations, as has been the case following the recent reforms in Austria and the Netherlands. The same critique applies also to a host of other conditions for naturalization, including very common ones, such as proof of independent income and absence of any criminal record. In the 19th century, most European democracies excluded from voting those adults who did not have enough income or property to pay taxes. Immigration countries may want to make sure that persons initially admitted for employment purposes do not end up on public welfare. But if such individuals later become welfare recipients and meet the permanent residence conditions for naturalization, how can one justify denying them political representation?

Similarly, most democracies deny voting rights to prison inmates. However, once they have served their sentence, former criminals must be readmitted to full citizenship. In many European states, immigrants who commit even minor offenses are never permitted to become naturalized. The rationale behind this exclusion is that citizenship status protects immigrants from deportation. But if the crime is not severe enough to justify deportation before the individuals become naturalized, how can it be severe enough to exclude the person from becoming a citizen? And how does retaining such people in a noncitizen-resident status improve domestic security?

The principle of stakeholder inclusion is therefore incompatible with viewing citizenship as a special reward for individual achievements and with selecting those candidates whose contributions will yield the greatest public benefits. European countries cast aside these criteria when they gradually expanded citizenship to previously excluded domestic groups, such as women, former slaves, and paupers. There is no reason why these criteria should still be regarded as legitimate when applied to immigrants.

Why Denizenship Cannot Replace Citizenship

One objection to the line of reasoning given in the previous section is that immigrants can be excluded from citizenship as long as they are offered the alternative status of denizenship, which includes most of the rights of citizens. This argument fails for two reasons.

First, there are only four countries (Chile, Malawi, New Zealand, and Uruguay) that offer all long-term residents voting rights in national elections, and even in these cases various restrictions apply. So the democratic representation deficit persists in the absence of high naturalization rates. It is also not plausible to claim that granting denizens voting rights in national elections is a matter of democratic justice. If they are entitled and encouraged to become naturalized, then rejecting this offer amounts to much the same thing as not exercising their right to vote.

Second, denizenship depends on living in the territory and is lost with taking up residence elsewhere. An extraterritorial denizenship would be a contradiction in terms. Former denizens may be able to retain for a while the right to return to their country of settlement, but they cannot pass on their status to the next generation born abroad. Denizens are citizens of external countries who enjoy domestic rights derived from residence. They are not stakeholders in an indefinite future of the domestic polity and lifelong members of its intergenerational people.

Denizenship is therefore always only a supplement and never a full substitute for citizenship. This is true for individual migrants, who would be stateless without external citizenship, and for the political community as a whole, which could not generate joint commitments towards a long-term future if it consisted only of denizens.

Prospects for Stakeholder Citizenship

Stakeholder citizenship is not a utopian idea. It was already spelled out in the 1955 Nottebohm judgment of the International Court of Justice in which the court stated that "nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments." The same principle is in many ways reflected in current policies of both immigrant-receiving and emigrant-sending states as well as in evolving norms of international law. We find evidence in the growing number of countries tolerating dual citizenship at birth and through naturalization; in the rapid proliferation of voting rights for expatriates and the more modest spread of the local franchise for third-country residents; and in the growing number of EU Member States that have made birth in the territory a criterion for citizenship entitlement.

Yet even in democratic states this principle is still far from being universally respected. Resistance comes, on the one hand, from old notions of state sovereignty and self-determination and, on the other hand, from new fears about security threats and integration failure in immigrant-receiving countries.

Political theorists may argue that restricting access to citizenship for immigrants and their children creates a growing legitimacy deficit for democratic governments. However, this argument is unlikely to impress policymakers who are not accountable to foreign nationals excluded from the franchise through tough citizenship laws. The case for stakeholder access to citizenship must therefore be strengthened by other reasons that will resonate more strongly in the public arena. In the United States and Canada, it is not difficult to find such reasons in their histories as nations built by immigrants. The appeal to national history is less

likely to win broad popular support in European countries whose national identities are still perceived as ancient and territorially rooted.

In Europe, the case for liberal citizenship regimes must be made with a view toward the future rather than the past. Europe is not only an aging continent that needs new immigration for demographic and economic reasons: it has also formed a unique supranational union of states with a common citizenship, whose core is a right to free movement across state borders. EU citizenship is derived from Member State nationality. Therefore, each country in the European Union produces EU citizens with a right to admission into all other states. This should be sufficient reason for the different states to coordinate their citizenship policies and adopt common standards.

Of course, such pressure towards harmonization may result in either more liberal or more restrictive legislation. But moving current debates on citizenship reforms to a European level could at least weaken the idea that citizenship is primarily a matter of national self-determination rather than of international cooperation.

On both sides of the Atlantic, there are good conditions for publicly debating the principles that should guide citizenship policies. The idea outlined in this paper can therefore also be defended in the political arena: citizenship should be offered to all those (and only those) who have a stake in the future of the political community.

About the Author

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Further Reading

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