Review Commentary

Towards a Deeper Understanding of 'European Citizenship'

Willem Maas (2007)
Creating European Citizens
Lanham, MD: Rowman & Littlefield

Jo Shaw (2007)
The Transformation of Citizenship in the European Union
Cambridge: Cambridge University Press

Dora Kostakopolou (2008)
The Future Governance of Citizenship
Cambridge: Cambridge University Press

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Since European Union (EU) citizenship was created by the Maastricht Treaty in 1993, debates about citizenship have been firmly established within the EU studies community. This commentary discusses three recent contributions, which demonstrate that this dynamic topic still contains many open questions but also that our understanding of citizenship in the context of European integration has become historically, analytically and normatively much more sophisticated and nuanced. In addition to highly relevant insights into the current state of citizenship and of European integration in general, these books demonstrate – sometimes in an impressive manner – the richness and the potential of a citizenship perspective, which combines the investigation of diverse empirical data, rich conceptual frameworks and normative-critical reflection.

In his *Creating European Citizens*, Willem Maas provides a concise political history of the institution of citizenship within the EU. Since citizenship rights had always been closely connected to processes of state formation, sovereignty and territoriality, his main question refers to the conditions supporting the emergence of citizenship beyond the state. The author further assumes that grand theories of European integration, in particular neo-functionalism and intergovernmentalism, are problematic for a number of reasons and cannot explain the complex evolution of citizenship in the EU. Therefore, he opts for a historical and much more contextualised analysis which allows tracing the contested development of citizenship from the very beginning of European economic and political integration, long before a citizenship of the Union was formally introduced by the Maastricht Treaty. Conceptualising citizenship mainly in terms of rights, he focuses on the provision of freedom of movement for persons as "the bedrock upon which the entire construction of European rights has been built" (Maas 2007: 5). In fact, Maas finds that proposals for certain limited rights connected with the free movement of "market citizens" had been discussed even before the signing of the Rome Treaties.

Maas argues that the emergence of EU citizenship is best explained by the political will of the key players to establish free movement in the common market in terms of individual rights. Moreover, he claims that a shared "European idea" was the central driving force behind this determination. In other words, throughout the history of European integration, European leaders across the political spectrum have shared a belief in transforming a divided Europe of nation-states into a unified and novel political entity (though sometimes drawing on diverse additional motivations and goals). The author even claims that already by "the mid-1960s, the idea of a common European citizenship had thus been firmly entrenched in the imaginations of Europe's political leaders" (Maas 2007: 21-22). This ideal became manifest in successive treaty amendments, in particular the constitutional moment of the Maastricht Treaty. As a consequence, the introduction of individual rights also implied the political creation of European citizens as new subjects participating in and shaping European integration. Yet, despite this emphasis on the (largely intergovernmental) high politics of constructing individual rights at the EU level through leaders sharing some European idea, Maas concedes that this crystallisation of transnational citizenship could not be fully understood without reference to the (supranational) 'low politics' between the major turning points. The latter phases are particularly crucial for specifying the exact contents and meanings of European citizenship rights as well as for setting the agenda for the respective next steps. Yet, his careful long-term analysis of successful and unsuccessful proposals also shows that the development of citizenship is always fragmented and volatile.

This is a very compact monograph grasping the development of citizenship and the creation of European citizens over a long historical period and covering a broad number of events. At the same time, thanks to Maas' perspective on the contested and reversible nature of citizenship, his concise account does not lend itself to theoretical over-generalisations of the messy world we are living in. His main achievement lies in utilising the citizenship perspective to gain more fundamental insights into European integration beyond historical explanations of European citizenship itself. According to this study, the historical search for citizenship reflects the political quest for and the shaping of a transnational political community beyond an integrated economy. Thereby, it also shows how this endeavour is neither entirely determined by the market nor completely detached from the latter. Rather, the history of individual rights and the creation of a nascent European political community of citizens can only be fully understood against the background of increasing market integration as the most crucial opportunity structure within which the quest for the European citizen is embedded.

However, the brevity of this volume also implies that some issues remain unaddressed. For example, the book pays only little attention to 'less central' developments beyond free movement, such as the (limited) voting rights for EU citizens residing within another member state, anti-discrimination rights granted by Article 13 EC Treaty, or the adoption of gender mainstreaming in Article 3(2) EC Treaty as key constitutional principles. Nevertheless, this would hardly change the direction of the main narrative about individual rights and free movement. However, and more importantly, this book could have established much stronger connections with the thriving citizenship debates that can be found beyond the narrow focus on citizens' rights within the EU. Lacking this broader context, a thorough evaluation of this historical development remains difficult. The emergence of citizenship within the EU might be remarkable from an analytical point of view, but what is its true value for the citizens (and non-citizens) of an integrated Europe?

Jo Shaw's *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space* takes a different route. Not seeking an explanatory account of the political innovation of EU citizenship, she adopts a "constitutional ethnography", which aims at comprehending how the constitutional norms of a polity intersect with the lived politico-legal experience in specific sites. Questions about how

national polities are nested in and linked to the legal and political context of European integration are of central importance in this context. Shaw generally aims at exploring "some of the relationships between the contested concepts and practices of citizenship and membership, of nation and nationality, and of states and 'state-like' polities, such as the European Union" (Shaw 2007: 3). Such an approach requires, but also allows for, a substantially very rich and comprehensive notion of citizenship, which exceeds traditional (liberal) notions of citizenship in terms of individual rights only. In contrast, the author conceptualises citizenship as both a formal legal status and as all issues of practical access to the benefits of membership. Since the former does not simply imply the latter, this more sophisticated concept also provides perspectives on the exclusionary elements of citizenship. In general, citizenship is not only about individual rights but about "the distribution of life opportunities" (Shaw 2007: 19), which differ significantly even among formally equal citizens. Moreover, moving beyond mobility rights, Shaw takes electoral rights for non-nationals as the empirical lens through which those issues are investigated.

One of the key puzzles behind the focus on electoral rights for non-nationals consists in the paradox that these entitlements constitute key-preconditions for political participation which are very closely connected to nationality (the access to which mostly remains strictly limited). However, the populations of today's polities are increasingly composed of mixed nationalities. In fact, this development leaves people living and often born within a state unable to participate in its democratic government. Against this background, Shaw's monograph particularly focuses on the limited provisions of Article 19 EC Treaty which grants the right to vote and stand in local elections and elections to the European Parliament in their state of residence to EU citizens, but not to third country nationals. However, since every interference in the boundaries of the suffrage, in the practices and definitions of political membership provokes contestations and since European law always operates in interconnection with national laws, Shaw also devotes a substantive part of her study to developments at the level of the member states.

Although Article 19 excludes third country nationals, Shaw finds that the boundaries of suffrage have become fuzzier and that the limits of the electoral rights conferred upon EU citizens and, therefore the limits of EU citizenship, are potentially elastic. In theory, the latter could even be extended towards greater political inclusion of third country nationals. This claim is based on the careful analysis of the most important political initiatives, legal provisions and judgements of the European Court of Justice. In practice, however, electoral rights are meeting a wide array of contestations in the different member states. Interestingly, in addition to conflicts between the EU and member state governments, conflicts about extending the suffrage to non-nationals are also visible within member states, for example, between regional governments, central governments and constitutional courts. Moreover, some member states already grant electoral rights to all third country nationals, some only to certain groups and some strictly reserve electoral rights to nationals and EU citizens. In general, not only against the background of the hesitant implementation of EU electoral rights, Shaw demonstrates that incremental institutional changes and the diverse debates and contestations of polity membership are of much higher relevance for understanding the meanings and developments of (EU) citizenship than the major political junctures.

It is extremely difficult to do full justice to the richness and detail of this volume and it is impossible to condense all arguments and findings within this very limited space. The book provides significant and illuminating insights about EU citizenship as a set of institutions, practices and concepts. Thereby, the fragile and gradually developing entity of EU citizenship perfectly reflects the political dynamic of European integration as a whole. Moreover, its approach goes a long way beyond purely explanatory research interests and therefore allows for a whole set of contributions to different debates concerning citizenship. For example, it can provide new and original knowledge about more general transformations

of today's political community in relation to connected processes and concepts, such as migration, nationality, community, stateness or globalisation. In this context, especially the careful consideration of actual institutional and discursive changes guided by the orientation towards a constitutional ethnography is a key strength. This detailed account of political and legal practice clearly distinguishes the study from arguments of a stronger normative nature or operating at a level of more aggregated data and fewer conceptual parameters. Finally, and this is particularly interesting, this exceptionally thoughtful survey fully grasps the ambivalent nature of citizenship – national, European or post-national in general. Shaw teases out different exclusionary patterns in a very nuanced manner beyond the fundamental separation of members from non-members. She also shows that citizenship can contain contradictory dynamics that include and exclude at the same time (for example, discourses about extending electoral rights and increasing use of citizenship tests). Against this background, all developments of citizenship of the Union have to be evaluated against the ambivalent link of citizenship with nationality and the increasing diversity of populations. Does this new form of transnational membership interfere with this connection and, if yes, in what way? Yet, despite the many empirical and conceptual issues illuminated by Shaw, her book refrains from far-reaching political or normative claims for the future (except from proposals to make the European Parliament elections more inclusive). Yet, this is the central aim of the next book to be discussed.

The *Future Governance of Citizenship* by Dora Kostakopoulou departs from the main themes of the present discussion in two ways: first, looking beyond the specific institution of citizenship of the Union, it primarily addresses the tension arising from the close coupling of citizenship with nationality. Secondly, the enquiry adopts a much stronger normative tone. Like Shaw, Kostakopoulou departs from the problem that the close connection between citizenship and nationality constitutes a major source of undemocratic exclusion. In this context, the emergence of new post-national elements of citizenship in the course of European integration reflects an ongoing and fundamental transformation of citizenship and the unsettling of a notion of political membership which was strictly based on ideas of nationality combined with territorial sovereignty. At the same time, EU citizenship constitutes a crucial conceptual and institutional challenge to this conventional notion of national citizenship. Hence, the former could provide openings to promote institutional alternatives.

Following a sophisticated analysis which leads Kostakopoulou to dismiss the close link between citizenship and nationality as a main source of exclusion and the key problem to be overcome by redefined notions and practices of citizenship, she goes on to survey two groups of responses to this challenge. She finds that arguments reformulating patriotism as constitutional, 'rooted' or republican patriotism, as well as attempts to redefine citizenship as post-national, transnational or multicultural, are still tied much too closely to the concepts of nationality and the nation and cannot overcome the basic problem of exclusion. Neither can provide reliable and sustainable institutional innovations meeting the challenges of today's culturally pluralist and highly mobile societies. Therefore, Kostakopoulou develops an alternative civic registration model which would confer citizenship on the basis of domicile (i.e. residence combined with the intention to reside within a state for an indefinite period) rather than nationality. She further elaborates this idea by outlining its conceptual building blocks, demonstrating that citizenship has always been differentiated and never truly homogenous, providing concrete policy proposals that should foster inclusion and by anticipating potential criticisms.

Overall, this volume convinces by the detail and the accuracy of its theoretical discussion. Moreover, the author manages to outline a normative vision of citizenship which is nevertheless oriented towards the opportunity structures, the practices and discourses of today's politics and contains very concrete institutional proposals. This well thought-out and excellently presented study therefore complements the two books discussed above with

indispensable and valuable normative reflections and proposals for institutional innovation. Although its arguments are formulated more broadly and primarily seek alternatives to the nationality model of citizenship and although the interest is to a lesser extent on understanding EU citizenship as a specific institution, the latter is put in the context of ongoing large-scale transformations of citizenship and the search for alternative meanings and practices of political membership which could help to eliminate exclusion.

Each of the discussed volumes can be recommended to a specific readership among all students of citizenship – Maas' as a concise historical overview, Kostakopoulou's as a broader legal-normative discussion, while Shaw's should provide food for thought for nearly everyone. Moreover, while Maas might rather appeal to students of European integration only, Shaw and especially Kostakopoulou also contribute significant insights to debates about migration, constitutionalism, cultural diversity, democracy or additional aspects of citizenship. Even more importantly, however, the combined discussion of those monographs provides vital insights about the potential richness of citizenship studies as a comprehensive perspective on socio-political relationships between citizens and a specific polity, as well as among citizens themselves (the situation of resident non-citizens is a further aspect of crucial importance). Therefore, it has become clear that studies of citizenship in the context of European integration need – and indeed should – not be only about explaining specific institutional changes. In most cases, they also facilitate a deeper understanding of the dynamics of European integration in general. European integration represents a massive challenge to traditional notions of sovereignty, territoriality, nationality and membership. Studies on 'European' citizenship help to understand the essentially contested and open-ended character of this dynamic process. Moreover, they facilitate locating the individual citizens and non-citizens within this broader context. On this basis, citizenship studies can eventually provide new perspectives for normative-critical evaluations of European integration and its interplay with the conditions of political community. For this purpose, however, it is necessary to exploit all analytical and normative opportunities of a citizenship perspective and to connect them with two further issues: first, with current broader transformations of political membership including their empirical manifestations, normative challenges and institutional implications; secondly, including the exclusionary elements of citizenship in the analysis allows for locating the individual within this broader context and, therefore, for normative reflections based on sound empirical evidence. In other words, due to its thick relational perspective, a mature citizenship approach facilitates the analysis of complex political developments in relation to broader questions about the conditions of today's political communities, on the one hand. On the other hand, it allows for critical accounts of the actual situation of the individual in this context in terms of inclusion and exclusion from rights and from practical access to the benefits of membership.

All in all, the richness of the field of citizenship studies is not based on an unconnected plurality of parallel lines of enquiry, but results from a dense web of interdependent and interconnected empirical, analytical and normative problems and discourses. Therefore, embedding specific accounts of citizenship more deeply in the discursive space spanned by citizenship studies seems vital for evaluating particular historical citizenship formations. At the same time, the latter can only become fully understandable within the broader context of current concepts and practices of political membership. All monographs discussed in this review make clear that citizenship in the EU is neither a merely symbolic act nor a revolutionary change, whereas this polarisation was especially characteristic of earlier assessments. In contrast, it is a new opportunity that has constantly to be filled with meaning, put into practice and developed further. However, there is no inherent logic beyond its conflictive nature and its open-endedness.

On a final note, while Maas remains closer to conventional comparative political science, the monographs by Shaw and Kostakopoulou stand out since their comprehensive citizenship

perspectives are additionally supported by truly interdisciplinary approaches. Those often take a legal view, but are instructive and comprehensible for all students of (European) citizenship from a wide range of disciplines and perspectives.
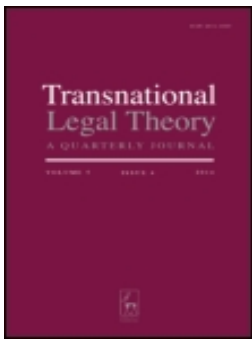
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Citizenship and Injustice in Immigration

Colin Grey

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A review of Seyla Benhabib and Judith Resnik (eds), *Migrations and Mobilities: Citizenship, Borders, and Gender* **(New York University Press, 2009) 505 pp, Pbk ISBN 9780814776001; and Dora Kostakopoulou,** *The Future Governance of Citizenship* **(Cambridge University Press, 2008) 240 pp, Hbk ISBN: 9780521877992, Pbk ISBN: 9780521701785.**

1. INTRODUCTION

Are immigrants bound to suffer when justice flourishes among citizens? According to an old, resilient claim, an inverse correlation obtains between justice in immigration and citizenship law. As the rights, virtues and communal identities that attach to citizenship become more robust, immigrants find themselves subject to ever greater forms of oppression.[1] More are excluded, expelled or detained based on a calculus that neglects their judgement and interests in order to preserve a set of social entitlements, group identifications, or a political culture considered somehow essential to the receiving country's national project.

Versions of what I shall call the inverse correlation thesis surface in different ways in the two books under review. Catherine Dauvergne affirms something like it in her

1   'Citizen', 'immigrant', 'alien', 'migrant' and so on are all unsettled terms and usage is often extremely confusing. It becomes more so when one tries to account for the technical terms employed in different legal systems. I therefore rely here on a stipulated three-fold division: (1) 'citizens' will refer to individuals who have formal citizenship status, unless otherwise made clear by context; (2) 'noncitizen residents' ('permanent residents' or 'aliens') will refer to noncitizens authorised to live and work in a country indefinitely; (3) 'immigrants' will refer to nonresident noncitizens, that is, either those who are not in a country's territory but want to be or those who live in a country but without indefinite or any authorisation, such as foreign students, temporary workers, or the unauthorised. I prefer 'immigrant' to 'migrant' because the latter term seems to me to embrace immigrants, emigrants, and persons in transit wherever they are. Both books under review, however, largely deal with citizenship and migration from the perspective of receiving countries, within which 'migrants', having entered, become '*im*migrants'. Nothing turns on this terminology, and the reader is invited to make his or her own substitutions.

contribution to the edited collection *Migrations and Mobilities*: '[I]mmigration law and citizenship law have long had a dichotomous relationship in which the liberal discourses of equality and inclusion are left to citizenship law while immigration law performs the dirty work of inequity and exclusion' (*Migrations*, 333).[2] On the other hand, Dora Kostakopoulou effectively denies it when she says, in *The Future Governance of Citizenship*, that '[c]itizenship is capacious and the entry of additional participants, and of more connecting lines, often increases the benefits other users draw from [it]' (Kostakopoulou, 108). In this review, I do not aim to decisively defend or refute the inverse correlation thesis. I do, however, consider it coherent and plausible enough to be taken seriously and will argue that Kostakopoulou neglects it to the detriment of her overall argument.

The Future Governance of Citizenship is an ambitious work offering theoretically-motivated prescriptions for reforming the laws and institutions of citizenship. The centrepiece of the book is a model of 'anational citizenship', consisting of four planks: (1) citizenship eligibility based on domicile, defined in terms of a person's subjective intention 'to make a country the hub of his/her interests' (113) after a period of two to three years' residency (86, Table 3.1); (2) assumption of citizenship through a freely available process of 'civic registration', as opposed to naturalisation, without an oath of allegiance or other trappings (84–88); (3) a set of differential rights and duties accorded to minority groups under a model that Kostakopoulou calls the 'variable geometry of citizenship'; variable geometry policies would include, for example, special representation schemes in politics and education (167–8); and (4) incorporation policies that she deems 'pluralist', guided by the ideal of making new citizens equal political participants; in practice, this would mean providing a range of public services like education, health care and low-cost housing to ensure that structural inequalities do not discourage any citizens from engaging in politics (177–94).

Kostakopoulou argues that anational citizenship will further the values of egalitarianism, democracy and inclusion by divorcing citizenship from 'nationality', that is, from belonging and allegiance to a nation.[3] I aim to evaluate anational citizenship's capacity to achieve egalitarian justice, a term that I will take here to mean freedom from oppression, where oppression denotes institutional conditions that arbitrarily stifle the

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2   Catherine Dauvergne, 'Globalizing Fragmentation: New Pressures on Women Caught in the Immigration Law-Citizenship Law Dichotomy' in *Migrations*.

3   Kostakopoulou does not define 'nationality' precisely in *Future Governance*, but it seems to encompass a spectrum that runs from nasty forms of ethnic nationalism to the 'liberal' nationalism of authors like David Miller. According to Miller, 'nationality' has five aspects: (1) nations are constituted by a belief in their existence and in the shared characteristics of their members; (2) nations embody historical continuity and are communities of obligation; (3) national identity is an active identity; (4) national identities connect a group of people to a particular place; and (5) nations possess a common public culture. (David Miller, *On Nationality* (Oxford University Press, 1995) 22–25.)

use and enjoyment of important human capacities.[4] Examples of oppression include exploitation, marginalisation and arbitrary violence.[5]

My evaluation will be guided by issues raised in *Migrations and Mobilities*, whose 15 chapters are largely critical and therefore serve as a good platform from which to assess the anational citizenship model. This manner of proceeding risks some unfairness to Kostakopoulou, but it does her the honour, I hope, of taking her reformist proposals seriously. What emerges is a set of concerns about the oppressive potential of anational citizenship, especially in the realm of immigration law, which she does not do enough to allay. My main goal is to urge clarification of certain details of her proposals that might reveal whether such concerns are warranted.

I will begin in section 2 with some remarks about citizenship and immigration. Section 3 examines some of the exclusionary aspects of citizenship and immigration law, as these are presented in *Migrations and Mobilities*; it also spells out the implications of the inverse correlation thesis in more detail. Section 4 then turns to Kostakopoulou's arguments for anational citizenship. Section 5 is a conclusion.

2. INJUSTICE IN CITIZENSHIP AND IMMIGRATION

Citizenship is on its face a deceptively simple object of study. Citizenship laws govern the manner in which people assume (by birth or naturalisation) or lose (by expatriation or denaturalisation) the legal status of citizen. This law has international dimensions, but the question of who is a citizen is largely within the discretion of a given state, subject to the constraints of its constitutional law.[6]

Most scholarship on citizenship quickly accelerates past formal status to focus on the composite of opportunities, expectations, rights, duties, practices, virtues, group identifications and so on overlain (or not) on top of such status. Descent into this messy reality usually yields three sorts of descriptive claims thought to pose a problem for a traditional unitary model of citizenship that presumed a culturally homogeneous citizenry territorially contained within a single nation-state.

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4 Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, 1990) 39ff. Arbitrary stifling refers to coercive acts that do not track an individual or group's interests or judgement. (Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford University Press, 1999) 55.)

5 I am drawing from Young (*ibid*) 48–53, 53–55, 61–63.

6 Article 15 of the Universal Declaration of Human Rights (GA res 217A (III) (10 December 1948)) states that '[e]veryone has the right to a nationality' and that '[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'. Article 24.3 of the International Covenant on Civil and Political Rights (GA res 2200A (XXI), 21 UN GAOR Supp (No 16) at 52, UN Doc A/6316 (1966), 999 UNTS 171 (entered into force 23 March 1976)) states that '[e]very child has the right to acquire a nationality'. The excellent introduction to *Migrations* summarises the international law of citizenship and immigration: Seyla Benhabib and Judith Resnik, 'Introduction: Citizenship and Migration Theory Engendered' in *Migrations,* 5–11. Kostakopoulou discusses constraints on loss of citizenship at 132–8.

First is the unsurprising but depressing truth that equality among citizens remains an aspiration; there is a great deal of inequality of rights and burdens once we probe the actual practices of citizenship.[7] Variation among citizens prompts a second observation, that some of the rights and burdens of citizenship are enjoyed and shouldered by those without citizenship status; noncitizens, therefore, can enjoy a kind of citizenship, and this too varies in content.[8] With these two kinds of variation before them, scholars have labelled contemporary citizenship 'disaggregated'[9] or 'flexible'.[10] And since this disaggregation is associated with various phenomena gathered under the heading of globalisation—economic integration, digitisation, freer trade flows, diversified migration, international human rights, and the development of the European Union—citizenship of the late-twentieth and early twenty-first century is said to be 'postnational',[11] 'transnational',[12] or 'partly denationalized'.[13]

A third type of claim is that the line separating citizen from noncitizen may itself be an axis of injustice: the imperfect equality that obtains among citizens depends, somehow, on maintaining noncitizens in a state of subjection.[14] Just how citizenship's supposed disaggregation affects this subordinating dynamic is murky. The idea that citizens as such benefit from the subordination of noncitizens seems to imply some means, common to some or all citizens, of profiting from that subordination. But if the rights and burdens of citizenship are fragmented beyond a certain point, such common means may not be available. And if the means are not common, then citizens do not profit *qua* citizens. This equivocal conclusion should not mask the new exploitative possibilities opened up by institutional flexibility. Variation in the rights and burdens of citizenship can be used to

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7   The touchstone for challenges to the 'ideal of universal citizenship' over the past two decades is Iris Marion Young's work. See Iris Marion Young, 'Polity and Group Difference: A Critique of the Ideal of Universal Citizenship' (1989) 99(2) *Ethics* 250–74 and Young, *Justice and the Politics of Difference* (n 4).

8   See eg Linda Bosniak, 'Citizenship, Noncitizenship, and the Transnationalization of Domestic Work' in *Migrations,* 143: 'Status citizenship is ... not always a precondition for the enjoyment of essential elements of equal or democratic citizenship as they are conventionally understood.'

9   See Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge University Press, 2004) 171–6.

10   See Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* (Duke University Press, 1999).

11   Yasemin Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (University of Chicago Press, 1994); David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Johns Hopkins University Press, 1996).

12   Rainer Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Edward Elgar, 1994).

13   Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton University Press, updated edn 2008).

14   Bosniak (n 8) 127; see generally Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton University Press, 2006). Nor is exclusion simply a dilemma of contemporary membership: JGA Pocock, 'The Ideal of Citizenship Since Classical Times' in Ronald Beiner (ed), *Theorizing Citizenship* (State University of New York Press, 1995) 31.

address inequities—that is the goal of many proposed redesigns of citizenship, including Kostakopoulou's—but they can also become the tools for creating new forms of injustice.

The exploitative potential of flexibility is easier to discern in the domain of immigration governance. Where citizenship law purports to govern accession to and loss of a single status, immigration law governs access to a country by creating a regime of multiple statuses, in which unauthorised entrants, asylum seekers, refugees, guestworkers, economic migrants, students, family migrants, and the various subdivisions thereof, are all given different rights and burdens.[15] As with citizenship law, this regime is constrained by international law,[16] but here the claims of domestic discretion are stronger.[17] Governments develop their own sets of immigrant statuses, which among other functions regulate access to the prerequisites for citizenship,[18] and which are thought justified wholesale by claims of sovereignty. When Dauvergne asserts that 'immigration law performs the dirty work of inequity and exclusion', what she has in mind is this multiple-status regime in which the treatment and mistreatment of migrants is thought to be justified by the totalising claims of sovereign discretion.

Potential for injustice, then, grows as we move outward through the circles of belonging from citizens to resident noncitizens (aliens) to nonresident noncitizens (immigrants). Moreover, as we move outward, such distinctions are thought to be more easily justified and so are more likely to be enshrined in positive law. Injustice among those with formal citizen status must operate *sub rosa*; the ideal of equal citizenship delegitimises expressly unequal regard for any citizen's interests. Unequal regard of migrants' interests is, on the other hand, built into the DNA of immigration law.

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[15] This is illustrated by the European Court of Human Rights' decision in *Abdulaziz, Cabales and Balkandali v UK* (App no 9214/80; 9473/81; 9474/81) (1985) Series A no 94. As Angelia Means notes in *Migrations*, the ECtHR held that the right to family life protected by Article 8 of the European Convention on Human Rights applied to non-European citizens, but the content of the right depended on a person's status—'legal residents, naturalized immigrations, and (native) citizens had different rights, ranging from partial to full rights'. See Angelia K Means, 'Intercultural Political Identity: Are We There Yet?' in *Migrations,* 392.

[16] A good summary of the international law constraints on domestic immigration law is found in Susan Martin, 'The Legal and Normative Framework of International Migration' (2005) Global Commission on International Migration research paper, www.gcim.org/attachements/TP9.pdf (accessed 1 April 2010). Useful edited volumes include Vincent Chetail and T Alexander Aleinikoff (eds), *Migration and International Legal Norms* (TMC Asser Press, 2003); and Ryszard Cholewinski, Richard Perruchoud and Euan MacDonald, *International Migration Law: Developing Paradigms and Key Challenges* (TMC Asser Press, 2007).

[17] 'Classically states have been considered to have complete sovereign authority over a defined territory and population. International human rights law and other treaty obligations, both bilateral and multilateral, have made inroads into the sweep of this sovereign authority ... The underlying principle or default rule remains, and the restrictions on state authority arise by way of exception': David A Martin, 'The Authority and Responsibility of States' in Chetail and Aleinikoff (n 16) 31–32.

[18] See Dauvergne (n 2) 336: 'The group of permanent residents that is eligible to become new citizens is a group recruited and constituted by immigration law.' And again at 341: 'Access to the citizenship debate about participation, representation, and equality is conditioned for these people on their prior acceptance through the much more rigorous and personal screening of immigration law.'

3. INVERSE CORRELATION

Migrations and Mobilities is a rich, somewhat uneven volume that largely succeeds in its stated goal of bringing out many of the gendered dimensions of 'the laws, policies, moralities, and theories of citizenship, as well as of sovereignty, jurisdiction, family life, and migration' (*Migrations*, 5). Any attempt at summation of an interdisciplinary collection must be very general, but the overriding lesson that I take from its various chapters is the considerable adaptability and resourcefulness of the legal regimes of citizenship and immigration in developing techniques and rationales of exclusion.[19]

This comes out with special force through the many discussions of matters of family reunification.[20] Reunification raises pointed issues for immigration and citizenship law because, on its face, government disruption of family relationships—certainly marital and parent-child relationships—presents straightforward cases of oppression. Immigration and citizenship laws that separate spouses or parents and children face a heavy burden of justification for interfering with a core aspect of human flourishing. Yet governments routinely separate families or use the threat of separation as a wedge to deny other interests.

Although *Migrations and Mobilities* offers many examples, I will present only one.[21] The 1985 European Court of Human Rights case *Abdulaziz, Cabales and Balkandali v*

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[19] The closest articulation of this in *Migrations* is found in Linda K Kerber, 'The Stateless as the Citizen's Other: A View from the United States' in *Migrations*: '[Statelessness] is continually produced by new and increasingly extreme forms of restriction and by the creation of new categories of stateless human beings' (106). Kerber's point can be generalised to all means of exclusion through immigration and citizenship law.

[20] This is an unsurprising convergence given that, as Benhabib and Resnik say in their introduction, women usually migrate as 'nodal points in a network of relationships' and seldom as isolated individuals: Benhabib and Resnik (n 6) 13.

[21] There would have been others to choose from. In terms of parent-child relationships, Jacqueline Bhabha describes how the immigration laws of several countries render citizen children 'constructively deportable' when their noncitizen parents face expulsion. To avoid deportation, illegal immigrant parents of US-citizen children, to use the harshest case, in the past had to prove 'extreme hardship', a term interpreted to rule out the expected hardships of either separation or forced relocation from the child's native country; since 1996, the extreme hardship standard has been raised even higher. (Jacqueline Bhabha, 'The "Mere Fortuity of Birth"? Children, Mothers, Borders, and the Meaning of Citizenship' in *Migrations*.) Sarah K van Walsum provides an account of how the Dutch government until 2005 applied a standard of 'effective care', according to which a legal bond is recognised between parents and children based on a relationship of actual caregiving, to prevent noncitizen or naturalised citizen parents from bringing their non-Dutch children to the Netherlands. (Sarah K van Walsum, 'Transnational Mothering, National Immigration Policy, and European Law: The Experience of the Netherlands' in *Migrations*.)

　　Government interference with marriage also arises in several chapters. Cynthia Patterson tells the story of Neaira, an ex-slave and former prostitute, charged in ancient Athens with the crime of posing as a citizen and thereby having 'corrupted the moral integrity of the citizenship body'. (Cynthia Patterson, 'Citizenship and Gender in the Ancient World: The Experience of Athens and Rome' in *Migrations,* 47.) In her contribution, Linda Kerber recounts the American history of stripping women of their citizenship upon marriage to a foreigner (Kerber (n 19)).

United Kingdom challenged a British law preventing lawful noncitizen resident women from bringing their husbands or fiancés to the United Kingdom. The Court held that the law violated the European Convention on Human Rights, in part because it included no equivalent prohibition for noncitizen resident men and in part because noncitizen residents of either gender had at least a limited right to family life (*Migrations*, 389). Among other qualifications, the Court held that a law that looked askance at arranged marriages would, as Angelia K Means puts it, 'not *necessarily* be discriminatory, as long as the limitation on arranged marriages was implemented in order to reduce the incidence of bogus marriages for immigration purposes' (389).[22]

The government responded to its loss by making it equally hard for noncitizen residents of either gender to bring their spouses or fiancé(e)s to the United Kingdom. Moreover, British immigration judges subsequently made it extremely difficult for couples with arranged marriages to reunite: both highly traditional arranged marriages in which the couples had not previously met and idiosyncratic arranged marriages that departed from custom were deemed suspect (391). In particular, where it was the woman 'who was settled with a job and a home, and who sought to bring in a man who would probably be unemployed and dependent, immigration officials assumed the marriage was not real' (391–2). British immigration policy thus adjusted to the Court's decision by becoming blunter in one respect and more insidious in another.

Such instances of exclusion raise difficult empirical and normative questions. The empirical questions have to do with explaining how or why such exclusion strategies are developed and implemented. Where does the impetus to exclude come from? Often, as in many of the chapters in *Migrations and Mobilities*, the preservation of the power to exclude (a 'logic of exception'[23]) seems to provide its own rationale. The inverse correlation thesis provides an alternative account.

Inverse correlation is actually a collection of empirical the*ses* that say that as justice improves among citizens, the rules and methods of citizenship and immigration law become less just. Conversely, as citizenship and immigration law become less oppressive, justice will tend to decline among citizens. The plural theses result from the many different meanings that can be given to justice on either side of the correlative relationship, as well as the different underlying causal theories available to explain it.[24] Easiest to grasp, and

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22 See *Abdulaziz* (n 15) [85(b)].

23 Aihwa Ong, 'A Bio-Cartography: Maids, Neo-Slavery, and NGOs' in *Migrations,* 159. Ong is sceptical that there is such a thing as a straightforward logic of exception, under which 'zones of indistinction' are created in which 'power confronts nothing but pure life, without any mediation'. (Giorgio Agamben and Daniel Heller-Roazen (trans), *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 1998) 170–1.)

24 The inverse correlation thesis can be adapted to conceptions of justice among citizens that focus on virtues or group identifications, rather than social rights or rights in general. If proper citizenship becomes associated with a more demanding set of civic virtues, individuals thought unlikely to acquire such virtues—for example, because they do not share a language or political sensibilities with native citizens—are liable

most relevant to anational citizenship, is a social-rights version of the thesis. All public entitlements are, in a sense, expensive. As they swell and multiply, countries become charier of granting citizenship because they believe that new members will allow for fewer entitlements. This version of the thesis was propounded 250 years ago by Adam Smith in discussing ancient Athens, where citizens enjoyed handouts of money and corn and were given allowances to attend courts, political assemblies and the theatre. 'Had they been very free in communicating the citizenship, the share of the publick stock which fell in this way to each of the old citizens would have been proportionally diminished; and they therefore allways opposed the admitting of any new members into the city.'[25] It may be no accident that at the end of the grand progression and expansion of British citizenship rights described by TH Marshall, from civil rights in the eighteenth century to political rights in the nineteenth to social rights in the twentieth, a series of highly restrictive immigration laws was imposed.[26] On this reading, the expansion of citizenship rights described by Marshall led to these laws, hence to the challenge to them in *Abdulaziz*, and the government's exclusionary response.

Two chapters in *Migrations and Mobilities*, both dealing with migrant domestic workers, lend the social-rights version of the thesis a bit more depth. Linda Bosniak traces how the seizure by Western women of 'economic citizenship', through workforce integration, has depended on the availability of domestic workers divided from their employers along lines of race, class, and citizenship and immigration status. Such workers may be ineligible for welfare and, especially in the case of illegal immigrants, vulnerable to the threat of deportation (*Migrations*, 136–7).[27] The vulnerabilities of foreign

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to be excluded. And if just citizenship is thought to depend on ethnic, cultural or national bonds, that would also tend to encourage prohibitions or restrictions on the entry of migrants who do not share such bonds. Michael Walzer's influential view, that a country may restrict immigration in order to preserve the 'shared understandings' that allow for political deliberation, combines these two versions of the thesis. The danger of immigration is that it would sever shared understandings, incapacitate citizens' deliberations, and so undermine civic virtue. (Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic Books, 1983) ch 2.)

25 Adam Smith, *Lectures on Jurisprudence* (Liberty Press, 1978) 305 and 431–2.

26 TH Marshall, 'Citizenship and Social Class' in *Citizenship and Social Class, and Other Essays* (Doubleday, 1964). Marshall's work is discussed in Kostakopoulou, 28–30.

27 The exact nature of their vulnerability will vary by country. In the United States, the country Bosniak seems to have in mind, it arises from the general vulnerability of all domestic workers, compounded in the case of noncitizens by their vulnerability to the vicissitudes of immigration law. Unlike in the Asian case discussed just below, it does not result from specific restrictions imposed under a special admissions program. In the United States, noncitizen domestic workers have generally entered under family reunification provisions or illegally. When these immigrants or noncitizen residents choose to become domestic workers, they enter an industry excluded from several federal workplace protections provided under legislation such as the Fair Labor Standards Act (which excludes 'casual' employees such as babysitters and companions for the sick or elderly), the National Labor Relations Act (which excludes domestic workers from the definition of 'employees' who have the right to organise), or the Occupational Safety and Health Act (which does not apply to persons who privately employ others to perform domestic services in their home). Meanwhile, their noncitizen status limits their access to the federal, state and local public benefits that provide some

domestics in the West, however, pale in comparison to those faced in Asia, as described by anthropologist Aihwa Ong. In cities such as Hong Kong, Kuala Lumpur and Singapore, middle class families have come to expect one or two foreign maids as 'a social right, like access to good schools, housing, shopping malls, and leisure' (164). While foreign maids are covered by Hong Kong's generally applicable labour laws, Singapore and Malaysia offer only a patchwork of protections, many of them in the form of soft law such as guidelines, standardised employment contracts, or international memoranda of understanding.[28] Ong lists a number of well-publicised cases of abuse and provides the shocking statistic that, over a five-year period, about one hundred foreign maids in

cushion for citizen domestic workers. They are further, especially in the case of illegal immigrants, subject to the threat of deportation: see William J Banks, 'The Domestic Worker Debacle: The Need for Domestic Worker Visas in the United States' (2006) 80 *Florida Bar Journal* 28; Adam J Hiller and Leah E Saxtein, 'Falling through the Cracks: The Plight of Domestic Workers and their Continued Search for Legislative Protection' (2009) 27 *Hofstra Labor & Employment Law Journal* 233.

There have been some efforts at the state and local levels to offer the protections missing from the federal regime, but progress has been slow. Attempts to pass a Domestic Workers Bill of Rights in New York State, for example, have been ongoing for several years. The Bill of Rights would guarantee overtime pay, a day off per week, and a minimum wage of US$14, nearly double New York State's general minimum wage of US$7.15. It is this last provision that has proved most contentious: Steven Greenhouse, 'Legislation Pushed to Require Minimum Wage for Domestic Workers' *New York Times*, 1 June 2007, www.nytimes.com/2007/06/01/nyregion/01nanny.html?scp=1&sq=new+york+"domestic+workers"&st=nyt (accessed 8 April 2010).

[28] Singapore has made efforts to improve the conditions of foreign maids in recent years. The government has prosecuted cases of abuse more aggressively and in 2008 and 2009 collected unpaid wages on behalf of foreign maids in hundreds of cases. It has established minimum age and educational criteria for foreign maids and requires that maids and employers undergo mandatory training sessions. Legislation prohibits employers from recovering employment-related costs, such as mandatory health insurance, from their maids. Employers are prohibited from confiscating their maids' passports. The government also imposes a monthly levy for each foreign maid hired and employers must post a security bond to cover repatriation costs. Maids still work extremely long hours. Under a standard employment contract used by accredited recruitment agencies, maids are given only one day off per month or cash compensation. Also under this contract, maids must be provided with 'suitable accommodation ... with a reasonable amount of privacy', but such accommodation may include a room shared with employers' children. The 2009 United States State Department Human Rights Report for Singapore noted: 'Although the great majority of the approximately 180,000 foreign domestic workers (mainly from the Philippines and Indonesia) worked under clearly outlined contracts and reported no complaints against their employers or employment agencies, their low wages, dependence on their employers for food and lodging, and relative isolation made some of them vulnerable to mistreatment, abuse, and labor conditions that in some cases could amount to involuntary servitude.' (US Department of State, *2009 Human Rights Report: Singapore* (11 March 2010), www.state.gov/ g/drl/rls/hrrpt/2009/eap/136008.htm (accessed 7 April 2010).) A further concern raised by human rights groups is the amount of wages that go toward repaying recruitment agencies. Recruitment fees can consume eight to eleven months' wages out of a two-year contract. (Human Rights Watch, *World Report 2010* (Human Rights Watch, 2010) 346, www.hrw.org/en/node/87401 (accessed 7 April 2010).)

Protections are weaker in Malaysia. A former memorandum of understanding between Malaysia and Indonesia on the recruitment and placement of Indonesian domestic workers contained reasonable accommodation provisions, but did not specify a right to privacy nor time off. In response to continuing incidents of abuse, Indonesia in June 2009 imposed a moratorium on temporary labour migration to Malaysia and suspended the memorandum. At the time of writing, a new memorandum of understanding

Singapore died after falling from their employers' high-rise apartments (158).[29] Employers as a matter of practice confiscate passports and work papers, and maids are frequently confined to the home. Routine police harassment serves as a reminder of the threat of expulsion.[30] Foreign maids are not allowed to marry citizens. If found pregnant during mandatory bi-annual pregnancy tests, expulsion results (164, 171). In both Western and Asian contexts, then, the case of foreign domestic workers provides an example of how the broadening of citizen 'rights' is made possible by immigration on terms that make immigrants vulnerable to more or less extreme forms of exploitation.

Although it is at bottom empirical, the inverse correlation thesis raises serious ethical issues regarding immigration policy. In contemporary discussion, the thesis figures in debates over whether welfare state imperatives can justify curtailing immigration. Stephen Macedo, for example, argues that the immigration of large numbers of unskilled workers to the United States will adversely affect domestic distributive justice by lowering unskilled citizens' wages, making goods and services cheaper for the well off, and reducing support for social entitlement programs.[31] Macedo endorses a policy that limits entry of those prospective immigrants, the unskilled and otherwise disadvantaged, who have the most to gain by immigrating but who are most likely to compete with the domestic poor. He favours admitting the comparatively better off, that is, those with money, education and marketable skills.[32] Preservation of the welfare state in this way is thought to justify an immigration policy that is steeply inegalitarian.

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was being negotiated. It is reported that it would, among other things, guarantee workers time off and give them the right to hold onto their passports: Ulma Haryanto, 'Migrant Worker MoU Between Indonesia, Malaysia Close at Hand' *Jakarta Globe,* 9 March 2010, www.thejakartaglobe.com/ national/migrant-worker-mou-between-indonesia-malaysia-close-at-hand/362942 (accessed 7 April 2010). See also: US Department of State, *2009 Human Rights Report: Malaysia* (11 March 2010), www.state.gov/g/drl/rls/hrrpt/2009/eap/ 135998.htm (accessed 7 April 2010); Human Rights Watch, *Indonesia/Malaysia: Proposed Labor Pact Lacks Key Reforms* (4 March 2010), www.hrw.org/en/news/2010/03/04/indonesia malaysia-proposed-labor-pact-lacks-key-reforms (accessed 7 April 2010); *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia* (Human Rights Watch, 2004), www.hrw.org/en/ reports/2004/07/21/help-wanted (accessed 7 April 2010).

29 Human Rights Watch puts the figure at 147 for the period 1999–2005. See Human Rights Watch, *Maid to Order: Ending Abuses against Migrant Domestic Workers in Singapore* (December 2005), www.hrw.org/en/ reports/2005/12/06/maid-order (accessed 7 April 2010).

30 Nor does expulsion necessarily mean a return home: 'In Malaysia, campaigns such as "Operation Get Out" pushed migrants to nearby Indonesian islands that act as holding stations. There, migrant women survived by providing sexual services to tourists from Singapore and Malaysia.' (Ong (n 23) 167.)

31 Stephen Macedo, 'The Moral Dilemma of US Immigration Policy: Open Borders Versus Social Justice?' in Carol M Swain (ed), *Debating Immigration* (Cambridge University Press, 2007). For other political-philosophical discussions of immigration and the welfare state, see Joseph H Carens, 'Immigration and the Welfare State' in Amy Gutmann (ed), *Democracy and the Welfare State* (Princeton University Press, 1988); Loren E Lomasky, 'Liberalism Beyond Borders' (2007) 24 *Social Philosophy and Policy* 206; Lea Ypi, 'Justice in Migration: A Closed Borders Utopia?' (2008) 16 *Journal of Political Philosophy* 391.

32 See Ayelet Shachar, 'The Race for Talent: Highly Skilled Immigrants and Competitive Immigration Regimes' (2006) 81 *New York University Law Review* 148.

Such inegalitarianism may itself be thought oppressive, as it furthers the marginalisation of the global poor; although if one subscribes to a strong form of ethical statism (as does Macedo[33]), this marginalisation can be discounted. Other oppressive knock-on effects are difficult to ignore, however, even for the ethical statist. Inegalitarian immigration policies tend to channel migration pressures into routes, such as smuggling, that leave poor immigrants more vulnerable to exploitation, violence and death; they can result in oppressive methods of enforcement, for example through prolonged or indefinite detention; and they can lead to the admission of disadvantaged migrants on exploitative terms. Nor are these mere speculations; they pretty much capture the current state of play of immigration regulation worldwide.

4. THE EXCLUSIONARY POTENTIAL OF ANATIONAL CITIZENSHIP

The social-rights version of the inverse correlation thesis therefore implies a choice, between the welfare state and inegalitarian immigration policies with considerable oppressive potential. This implied choice suggests a possible causal explanation for the correlation. The perception that relatively free immigration threatens social entitlements leads to pushback the other way. Belief in inverse correlation in one direction (that is, the belief that just immigration policies lead to unjust terms of citizenship) generates an actual inverse correlation in the other direction (when the desire to defend just terms of citizenship leads to immigration restrictions).[34]

The high stakes must be kept in mind because of the long list of social entitlements Kostakopoulou believes anational citizenship requires. A sampling includes 'special courses and training schemes for disadvantaged members of ethnic communities' (Kostakopoulou, 167); grants 'to make the literature of under-represented groups available in libraries or to support arts from cultures around the world' (168); 'social assistance benefits for the low paid' (168); a public education system with a wide range

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33 The debate between ethical universalism and statism has led to a mammoth body of literature on global justice, which is now generating a cottage industry in edited collections. Two useful volumes are: Thomas Pogge and Darrel Moellendorf (eds), *Global Justice: Seminal Essays* (Issues in Philosophy Series, Paragon House, 2008); and Thomas Pogge and Keith Horton (eds), *Global Ethics: Seminal Essays* (Issues in Philosophy Series, Paragon House, 2008). Discussions of immigration and citizenship in the context of the debate between ethical universalism and statism are to be found in: Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press, 2009); David Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007); Thomas Nagel, 'The Problem of Global Justice' (2005) 33 *Philosophy and Public Affairs* 113; and Brian Barry and Robert E Goodin (eds), *Free Movement: Ethical Issues in the Transnational Migration of People and Money* (Pennsylvania State University Press, 1992).

34 As Loren Lomasky has put it: 'It is no wonder that residents of well-off states in which taxation supports extensive welfare functions are disinclined to welcome impoverished entrants likely to be net subtractors from the pie to be carved up. Professionals and investors, yes; poor, tired, huddled masses, no.' Lomasky (n 31) 227.

of services for disadvantaged groups (184–6); 'provision of adequate low-cost housing' (186); sweeping reforms to ensure access to adequate health care for all (187–8); and public support for 'civic associations operating in the social field and … organisations seeking to combat discrimination and human rights abuses' (192). Many or all of these programs are aimed at making politics more democratic and inclusive. If the inverse correlation thesis holds, they may also create new pressures to exclude.

Kostakopoulou is aware of the danger that minority citizens, noncitizen residents and immigrants will find themselves subject to injustice.[35] Her idea is to eliminate this injustice by radically decoupling citizenship from nationality or nationhood. Such a decoupling begins by making domicile plus the absence of a serious criminal record the sole prerequisites for citizenship, which may be assumed through a simple process of civic registration. It is completed by the raft of policies aimed at eliminating structural inequalities and at incorporating new citizens. Once all these proposals are in place, politics itself will be transformed.[36] The new politics will be one in which an 'ethos of respect and responsibility' is promoted and 'trust in public institutions' prevails (177). Belonging will be defined 'in terms of being together in a common adventure' (177). Citizenship will retain 'the capacity to turn strangers into fellows and residents into associates in an ongoing quest for just democratic institutions and for improved symbiosis' (4) but the line between citizen and noncitizen will no longer be an axis of injustice.

Kostakopoulou confronts the charge of utopianism that she quite reasonably anticipates anational citizenship will attract. She says that she is pursuing a critical form of utopianism, one that seeks to propose an important set of ideals but nonetheless tries to be 'attentive to what exists and the forces that have shaped [citizenship's] historical evolution' (7; see also 125–6, 199–201). What, then, does she have to offer in response to the inverse correlation thesis? Chiefly the claim that participants in a politics transformed by severing nationality from citizenship would come to see citizenship not as an 'oligarchic' good but as a 'network' good; not as something unitary and exclusive, but as a web of relationships (108). Once anational citizens come to conceive of citizenship in this way, they will realise, to return to the passage quoted in the introduction, that '[c]itizenship is capacious and the entry of additional participants, and of more connecting lines, often increases the benefits other users draw from the network good. …

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35 One of her recurring arguments against previous proposals to reform citizenship is that they all remain rooted in nationality—that is, nationalism, even if it is just a liberal, thinned-out nationalism—and so will be prone to revert to restrictionist, exclusionary policies during periods of reaction against the strains of multiculturalism or when security concerns become heightened (30–35, 83, 97–98).

36 '[M]aking citizenship an affair primarily of being together, doing things together, and taking part in decision-making as equal and respected members ... opens up fruitful possibilities for a transformation of politics' (198).

[T]he utility of social rights is raised for all participants owing to the increased resource base and the risk spreading function of extended participation' (108–9). Anational citizens will reject the supposed tension between immigration and the welfare state, and in so doing falsify the inverse correlation thesis.[37]

Assessment of this argument depends on at least two elements: first, whether there is in fact a tension between relatively open immigration and the welfare state; second, whether we believe in the political transformation Kostakopoulou foresees. These are related since, as the actual or perceived tension between immigration and the welfare state increases, the prospects for relatively open immigration will depend more on altruism among those citizens who determine policy. Demanding too much altruism would seem to distort human nature unduly, an indication of an objectionable form of utopianism.[38] Now, the impact of immigration on the welfare state is extraordinarily controversial,[39] suggesting that in any open political debate there would be some who oppose more liberal immigration policies. And a chapter in *Migrations and Mobilities* offers reasons for a more sober assessment of the transformation of politics that might follow implementation of anational citizenship. After examining two Canadian case studies of immigrant politicking—debates on the criminalisation of female genital mutilation and on whether Islamic faith-based family arbitrations should be recognised by law—Audrey Macklin concludes that the foreign-born women who participated in these debates were ultimately relegated to the role of 'particularized' citizens (*Migrations*, 276–7). That is, they were listened to only insofar as what they said had to do with their own communities. They had to frame their arguments in terms of dominant liberal values. Finally, to the extent that their arguments invited a wider discussion of societal values, they were ignored. Macklin concludes that law reform in either case ultimately had more of an effect within each immigrant group than on the broader values of Canadian society (295).

A critical utopianism, then, must suppose that opposition to immigration will continue to generate arguments like that provided by Macedo—cogent, persuasive, though not necessarily correct. Such arguments, in turn, may generate oppressive

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37   This vision of politics bears some resemblance to a claim by Means in *Migrations* that Western countries are on the cusp of choosing whether to revert to traditional forms of democratic politics or evolve into 'strong democracies'. Such democracies are 'self-confident and self-reflexive'; 'Instead of assimilating others, strong democracies can recognize the right to be different in ways that are fundamental and constitutive of identity, provided immigrants are willing to "fit" difference into the discourse of individual rights.' (Means (n 15) 381, 382.)

38   Thomas Nagel, *Equality and Partiality* (Oxford University Press, 1991) 21ff.

39   A useful discussion is Alan O Sykes, 'The Welfare Economics of Immigration Law: A Theoretical Survey with an Analysis of US Policy' in Warren F Schwartz (ed), *Justice in Immigration* (Cambridge University Press, 1995). Kostakopoulou has elsewhere rejected the idea that immigration leads to the decline of the welfare state: Dora Kostakopoulou, 'Is there an Alternative to "Schengenland"?' (1998) 46 *Political Studies* 886, 900–1.

immigration policies. This potential is especially troubling since immigrant oppression is incipient in four aspects of anational citizenship.

First, already belaboured, is the expansion of social entitlements. Second is the claim made by Kostakopoulou that 'citizens do have special duties toward the polity and their fellow citizens' (198). We have already seen how such ethical statism can support arguments for restriction.

Third is the retention of domestic jurisdiction over the application of the principles of anational citizenship (127).[40] Fourth and last is that, with respect to immigration law, Kostakopoulou makes only vague proposals.[41] What she says is that anational citizenship is 'consonant' (119)[42] with a more liberal regime of immigration than is currently in

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40 The passage reads: 'The acquisition, loss and the legal consequences of citizenship will continue to fall within the jurisdiction of states and any disputes that may arise will be adjudicated by domestic courts and tribunals in the first instance, in accordance with domestic, international and European Community laws.'

41 She does not entirely ignore immigration law. She offers for example what amounts to a code of deportation that represents a major change to international law, including: (1) an absolute prohibition on expulsion of persons of 'longstanding residence' (which I take to mean those who have not registered as citizens, since citizens enjoy an absolute bar on expulsion in international law); (2) a 'strong presumption' against the expulsion of domiciled residents who have lived in a country for more than one but less than three years; such persons could be expelled 'only for quite serious breaches of public order and security' and only so long as expulsion does 'not infringe on their right to family and private life'; and (3) the availability of deportation 'as an act of punishment' for serious offences or as a security measure for those who have lived in a country for less than one year (141–2).

These proposals go beyond existing constraints on the power to deport in international law, which are limited though still significant. International human rights law may indirectly limit the substantive grounds of deportation, since its protections in most cases are not restricted to citizens. So, for example, deportation could not be carried out on discriminatory grounds. Directly, international human rights law specifies that expulsion must be in accordance with the law, must comply with due process, and cannot be discriminatory. (See UN Human Rights Committee, General Comment 15, 'The position of aliens under the Covenant' (Twenty-Seventh Session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.6 at 140 (2003) [1–2, 9–10]; ICCPR (n 6) Art 13.) Further, both international and European human rights law provide protections against deportation that would interfere with family life. Jacqueline Bhabha in *Migrations* canvasses European human rights case law under Article 8 of the European Convention on Human Rights. According to her, the European Court of Human Rights 'has articulated a demanding standard for states, insisting on a robust enforcement of the right to respect for the family life of deportable aliens' (Bhabha (n 21) 202). The UN Human Rights Committee has also held that deportation cannot arbitrarily or unlawfully interfere with the right to family life and in case law has examined challenges to deportations to see whether the effects on the separated family 'would be disproportionate to the state's objectives in removing the individual'. Bhabha's piece makes clear that some countries disregard the spirit of this international jurisprudence. (See General Comment 15 [5, 7]; Kate Jastram, 'Family Unity' in Chetail and Aleinikoff (n 16) 191. Jastram is citing, eg, *Canepa v Canada*, UN Doc CCPR/C/59/D/558/1993 (20 June 1997) and *Winata v Australia*, UN Doc CCPR/C/72/D/930/2000 (16 August 2001).)

42 See also 125, n 53: 'The issue of migration policy falls outside the scope of this discussion. But I should mention here, that my arguments are compatible with both liberal migration policies, entailing soft migration controls, and more porous borders.' Kostakopoulou has discussed immigration policy in two previous works: Kostakopoulou (n 39); and Theodora Kostakopoulou, *Citizenship, Identity, and Immigration in the European Union* (Manchester University Press, 2001) 127–52.

place in most states. This suggests that anational citizenship may succeed without putting in place a liberal immigration regime and may succeed even with a restrictive regime in place.

These four elements can work together to oppressive effect even in applying the central principle of anational citizenship—domicile. Longstanding residence creates a presumption of the subjective intention to establish domicile (ie 'to make a country the hub of his/her interests' (115)), which may be tested by looking at factors such as 'family ties and the existence of a matrimonial home; social ties; acquisition of property; a professional career; schooling; participation in local politics; the purchase of a burial ground; and membership in associations, churches, and clubs' (115). Domicile is said to differ from 'ordinary residence', ie living in a place with some degree of continuity, and from 'habitual residence', ie voluntary settlement in a country as part of the regular order of one's life for the time being (113). So the indicia of subjective intention must establish more than mere continuity and that one was living in a place for more than the time being.

There are several ways to deploy domicile, so defined, to make immigration law more oppressive, specifically with respect to the least advantaged migrants. Take the case of refugees. Kostakopoulou writes that 'refugees do not establish domicile, unless they decide to settle in the host country for an indefinite period. A refugee, for instance, who decides to remain in the host country even though he can return home, could establish domicile' (114). The implication is that refugees who do not have the option of returning home will face a more difficult evidentiary burden of establishing domicile, arguably making it easier for refugees to remain in protracted legal limbo.[43] Or take guestworkers. Kostakopoulou says in passing that 'posted workers' would not be able to establish domicile (114). The definition of domicile in terms of residence plus subjective intention in fact suggests a way to craft temporary work schemes to avoid citizenship eligibility. For example, the incarcerated, harassed maids discussed by Aihwa Ong in *Migrations and Mobilities* would not meet the requirements. A less punishing form of guestworker program need only ensure that immigrants do not remain in a country for longer than two or three years at a stretch. Finally, one can easily imagine states creating a presumption against inferring domicile in the case of illegal entrants. Had they wanted to stay indefinitely, it might be said, they would have entered legally. Kostakopoulou, however, says nothing about illegal immigrants at all, other than that their children should not be denied birthright citizenship (117, 120). All of these more specific concerns flow from the general omission

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43 Contrary to Article 34 of the Refugee Convention: 'The Contracting State shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.' (Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.) For discussion, see James C Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005) 977–90.

of any details as to how countries ought to regulate the legal right to move to a country so that domicile may be established.

Countries would therefore be able to employ immigration law to exclusionary effect consistent with the principles of anational citizenship. This suggests that Kostakopoulou's faith in the transformational power of anational citizenship needs to be supplemented by flinty thinking about institutional design to prevent new forms of oppressive restrictions. The historical record demonstrates the enduring tendency of citizenship and immigration law to remain a site of unjust exclusion and exploitation. To combat this enduring tendency, it is not enough to think like a philosopher; loopholes must be closed; one needs to think like a lawyer.[44]

5. CONCLUSION

Kostakopoulou's reform proposals are not pejoratively utopian in the sense of being excessively demanding or practically unfeasible. The issue that emerges from *The Future Governance of Citizenship* instead is whether they would end the oppression that she takes to follow from the association of citizenship with nationality. While Kostakopoulou is alert to the potential exclusionary effects of formal citizenship status on noncitizen residents, she is relatively inattentive to anational citizenship's potential to lead to oppression in the realm of immigration law. Having proposed that citizenship be made easy to acquire for those who establish domicile, she says little about the rules for allowing access to domicile in the first place. Having set out to 'think the impossible' (7) she has settled for the possible.

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44 Benhabib and Resnik point out in their introduction to *Migrations* that 'gaps, generalities, and silences are part of what discussions of migration, mobility, and citizenship must take into account': Benhabib and Resnik (n 6) 11.

Citizens of the World

SAGE

Universal Human Rights in a World of Difference by Brooke A. Ackerly. Cambridge, UK: Cambridge University Press, 2008. 373 pp. $90.00 (cloth), $34.99 (paper).

The Global Commonwealth of Citizens: Toward Cosmopolitan Democracies by Daniele Archibugi. Princeton, NJ: Princeton University Press, 2008. 298 pp. $29.95 (cloth).

Ethics of Global Development: Agency, Capability and Deliberative Democracy by David A. Crocker. Cambridge, UK: Cambridge University Press, 2008. 416 pp. $99.00 (cloth), $43.00 (paper).

The Future Governance of Citizenship by Dora Kostakopoulou. Cambridge, UK: Cambridge University Press, 2008. 230 pp. $120.00 (cloth), $48.00 (paper).

What is the appropriate scale of community for considering questions of justice? For some time political theory has been preoccupied with membership in subnational groups, arguing that recognition should be given to communities within national borders and that citizenship is too homogenous an identity if we are to respect difference among groups. This trend sought to correct the neglect of questions of ethnicity and culture and the assumption of the unproblematic nature of a single political order within a given territory. Such philosophical debates were mirrored by politics in the real world, which gave rise to a host of demands, some violent, for accommodation of groups within the nation-state. The arbitrariness of national borders is difficult to deny, particularly in the face of a myriad attachments that overlap and crisscross national boundaries. It was thus understandable that issues of ethnic identity, multiculturalism, and rights for minority cultures took the fore in political philosophy.

However, once the arbitrariness of national identity for the pursuit of justice is on the table, the question inevitably arises as to why identities, cultural membership, and group affiliation of any kind should determine one's entitlement to the means of life. Should justice be accorded not just to

Britons, Canadians, and Spaniards, nor even to the Welsh, Quebecois, or Catalonians, but rather simply be a right of persons regardless of ethnicity or national group? It is increasingly argued that a genuine egalitarianism indicates the irrelevance of territorial boundaries, not to retreat to small-scale groups within but rather to push for our obligations to those without.[1] Thus, the egalitarian interest in the claims of minorities has spawned an enormous growth in literature on global justice, where the call for remedy of disadvantage demands we attend to people on the other side of the world.[2] Indeed, the influence of the cosmopolitan turn is such that some are taking the view that institutions of the nation-state, such as rights of citizenship or democratic assemblies, should be extended in a global context.

The books under review provide excellent examples of this literature. All four works argue for a global approach to political institutions, and they have in common a number of interesting themes: the relation between political principles and political reality and in particular the role of activism and grassroots movements for theories of cosmopolitanism, the extent to which global justice builds on the idea of nationality or supplants it, and whether applying democracy on a global scale involves a commitment to universal liberal values. They share with much of the literature in global justice an effort to blend the normative with the empirical—to be "realist" in both the moral philosophy sense of affirming the idea of objective ethical principles and the international relations sense of appreciating the real-world constraints of political action.

Two of these books imaginatively propose that we enlarge the political unit beyond national states as we know them. Dora Kostakopoulou and Daniele Archibugi both make a case for expanding our political ambit to such an extent that even citizenship and democratic participation go global. In *The Future Governance of Citizenship,* Kostakopoulou calls into question the idea of "bounded national communities" that exclude "foreigners" and "aliens." She contends that the original ideal of democracy as rule by the people was transformed by the nation-state into an "ethnarchy" that undermined its original egalitarian principles. The nation-state is a mere "contingent consequence of the historical model of citizenship" that took root in a "modern national statist world" and that must give way to a new paradigm of community, that of "anational citizenship," the focus of a "transformative politics" that grants citizenship rights on the basis of domicile in the territory of a state (pp. 196-98).

Kostakopoulou contends that the politics of difference bolsters her view. The difference critique finds the idea of a unified, homogenous state untenable in light of the multiplicity of identities and cultures within the state. Thus, the nation-state, unable to achieve internal unity, lacks the integrity to withstand

the pressure to extend its obligations and entitlements either within its borders or beyond them. In sum, the territory-based state is a political entity well past its sell-by date and in drastic need of revision.

The strategy is compelling: Scottish nationalists, too, appealed to both the local and the global with their slogan "Scotland in Europe" to suggest that the pull of particular identities was more at home with cosmopolitan ambition than that dinosaur, the (multi)national state such as Great Britain. Moreover, it is not hard to agree with Kostakopoulou's contention that citizenship should not "reflect patterns of prejudice and supremacist ideologies" or be "used by hegemonic groups as a basis for discrimination, exclusion or subordination" (p. 198). But Kostakopoulou supposes that the nationality model of citizenship is inevitably thus, unable to "deepen democracy, create inclusive political communities and make the distribution of resources and opportunities more equal" (p. 200).

This seems like hyperbole. It is worth underscoring that internationalist ideals in fact underlay nationalist republicanism in the first place. Kostakopoulou's idea of national affiliation merging into "wider moralities" was at the heart of the nationalist ideals of such nineteenth-century thinkers as Giuseppe Mazzini, for example, who envisaged the "brotherhood of man" as the basis for the brotherhood of Italians. As Mazzini put it, "The question of *Nationalities,* rightly understood, is the Alliance of the Peoples."[3] Moreover, Mazzini's idea of Italianness is sufficiently porous to be easily revised so that national citizenship could be understood as multicultural, religiously diverse, and linguistically varied. Kostakopoulou's rejection of "civic nationalist" models (pp. 73-74) overlooks the history of New World societies that have achieved precisely the kind of open understanding of nationality that can easily be conceived as even more inclusive to address her concerns.

In any case, there is a serious tension between insisting that local and fragmentary identities undermine national unity and yet calling for a universal political order that can transcend the arbitrary boundaries of nationality. Politicians might shrug off such tensions, but political theorists cannot, and it is unfortunate that Kostakopoulou does not give this problem more consideration. Kostakopoulou resists dismissal of her ideal of "anational citizenship" as mere utopianism (pp. 125-26), arguing that political philosophy should not be too tethered by questions of short-term feasibility. There is an interesting conceptual point here about the relation between ideals of justice and empirical questions and constraints. G. A. Cohen has made a significant contribution to our understanding of the parameters of political theory in his argument for distinguishing between rules of regulation and principles of justice, however much the former might in fact prevail over the latter in the real world.[4]

However, Kostakopoulou's contention that the cause of global justice must ward off naysayers who confuse political theory with political practice is somewhat disingenuous. After all, much of the thrust of Kostakopoulou's argument is that it is the real world, its global patterns of trade, immigration, and culture, that shows us the moribund nature of existing national institutions. Indeed, many of her proposals are practical and particular and involve working with institutions established by national governments, somewhat at odds with her extravagant philosophical claims about the tainted history of the nation-state. In fact, ultimately when it comes to policy, Kostakopoulou does not stray too far from states as we know them in her proffered alternative. She proposes a "variable geometry" approach that allows for the ideal of equal respected membership in a political society to be achieved by means of flexible arrangements for "pathways of inclusion" in education, housing, health, antidiscrimination legislation, and political participation. An example is the recommendation that existing policies of inclusion in labor markets in various European countries should be strengthened: "Regular reviews of existing regulations and practices to ensure that minority groups have the same opportunities as other groups to set up and develop businesses would promote the advancement of disadvantaged groups" (p. 193).

Kostakopoulou closes with the hope that we might create "political communities in which all domiciled persons, without discrimination, seek and enjoy the benefits of cooperation in ways that are consonant with their dignity and worth as human beings" (p. 199). This noble ideal will elude us unless we understand how the principle of inclusion is grounded in the national idea, which for all history of narrow chauvinism and xenophobia is at its best grounded in the principle of rising above tribe and clan to build societies united by principles of social justice.[5] That Kostakopoulou herself calls for policies within the institutions of existing states perhaps reflects her recognition of the importance of these principles.

In his diagnosis of the ills of national sovereignty and arguments for a cosmopolitan alternative, Archibugi, in *The Global Commonwealth of Citizens*, stresses the dynamic between the cosmopolitan and the national. Although Kostakopoulou suggests the nation-state is essentially unjust and moribund, Archibugi regards it as an ideal to be retrieved and its potential unleashed. Invoking the idea of democracy as an "unfinished journey" (p. 21), he begins with affirming democracy's instrumental value for national polities. Noting the correlation between democratic institutions and indices of quality of life, equality, and important liberties, he argues that extending democracy to the interstate system would have similar benefits. In particular, democratizing the global order would empower the global system to control the use of

force, foster the acceptance of diversity, strengthen the self-determination of peoples, monitor internal affairs to ensure the protection of human rights, and allow for participatory management of global problems (pp. 88-89). In contrast to Kostakopoulou's hostility to nation-states, Archibugi affirms their value but takes issue with their "schizophrenia," where citizens of democratic countries shirk from sharing the benefits of their institutions with other parts of the world (p. 275).

Archibugi is alive to the difficulties that beset such a project, and he notes the salutary contributions of critiques of global democracy, be they realist, Marxist, or communitarian, the force of which stems from the important egalitarian achievements of welfare and socialist states in sovereign territories. The cause of democracy in international relations has had a checkered career in the history of American foreign policy, a system enjoyed within the borders of that nation and a pretext for imperial domination without (p. 277). This is a phenomenon with ancient roots, since, as he notes,

> Today the privileged position of Athens is occupied by the United States, and often, as had already happened when the Athenian democracy was at its acme, the conviction of being a society in which progress and freedom flourish is sufficient justification in the eyes of the citizens for a foreign policy that would revolt their conscience if carried out on the interior. (p. 74)

For Archibugi, the task is to build on the internal successes of Western states to institutionalize the ideal of a global ethics drawing on the important though limited achievements of organs such as the United Nations. He proposes a cosmopolitan democracy that is a union of states "more centralised than the confederal model but less centralised than the federal model" (p. 109). We should strengthen existing institutions such as the General Assembly and Security Council of the United Nations and the International Criminal Court and Court of Justice and create new institutions such as a World Parliament to enable the globalization of democracy (pp. 282-83).

Archibugi also confronts the utopianism demon that besets writings on global justice. Heeding the warnings of Machiavelli to be mindful of the constraints of the real world (p. 274), Archibugi's approach of "dialogue and inclusion" is grounded in his sense of the progressive potential of existing political orders; it is on that basis that he urges that we foster global democratic institutions with the ultimate goal of enabling the democratic nation-state model to flourish in other, more benighted parts of the world (p. 277).

In contrast to the European cosmopolitans, the two American voices in this debate are decidedly more reticent about a universalist stance. Although

the cosmopolitan approach of Kostakopoulou and Archibugi considers democratic citizenship as an ideal to be generalized, Brooke Ackerly and David Crocker find democracy to be attentive to the relative and particular. They are attracted to the potential for democratic institutions to respond to local conditions and the interests of participants in particular contexts. Their guardedness about a global ethical view may be a manifestation of the historic tradition of American isolationism, which saw reluctant participation in global conflicts in the past. More likely, perhaps, is that it is a timidity borne of discomfort by the imperial moral order wrought by the Bush era and the Iraq war. In any case, the two works both seek to engage in ethical reflection that grounds global ethics in the imperatives of local interests and institutions.

In *Ethics of Global Development*, Crocker seeks a development ethics that is responsive to the ideals of deliberative democracy to combat global crises in the supply of food and instances of bloody conflict. This is to be achieved, he argues, while avoiding the perils of imposing a single moral view on a diverse world. For Crocker, the capabilities approach of Amartya Sen is the best prospect for a development ethics that enables people in communities to be self-governing and to consider the demands of local culture and context. Crocker focuses on the differences between Sen's more open-ended approach to what constitutes capabilities to function and the Aristotelian conception of well-being that animates the capabilities approach of collaborator Martha Nussbaum. For Crocker, Nussbaum's approach, in contrast to that of Sen, is insufficiently democratic. True, she concedes that democratic institutions have a role in specifying and implementing capability norms, but she prefers to constitutionally entrench the requirements of human functioning so that the rights of minorities and the protection of basic needs are not vulnerable to majoritarian politics. For Crocker, the result is an approach that, in contrast to Sen's agnosticism about capabilities, gives insufficient scope to the idea that "people have the right and responsibility to form collective values and decide practical politics together" (p. 209).

Conceiving of Sen as the harbinger of a democratic development ethics that counters Nussbaum's universalism is problematic, however. True, Sen does not sign up for Nussbaum's list of capabilities, preferring to leave the precise content of capabilities more general. Nonetheless, there is an unavoidable perfectionism at the heart of the capabilities approach that exists whether owned up to or not.[6] Sen draws a distinction between functioning, an actual achievement, and capability, the opportunity for functioning, opting for the latter as his egalitarian metric. Capability, rather than functioning, has the advantage of leaving people free to decide what capabilities to realize. The idea of capability focuses on the accessibility of

x, y, and z, even if people opt only for x.[7] Interestingly, Nussbaum emphasizes this point, arguing that "respect for people and their choices" means that "capability, not functioning, is the appropriate political goal." Indeed, Nussbaum, for all the accusations about objectivism, is most concerned to find her approach congenial to Rawls's political liberalism and agnosticism about the good.[8]

A culture of fatalism and low expectations can be transmitted across generations—particularly in societies where the majority has historically achieved only low levels of functioning—so that people fail to flourish even when they have capabilities available to them that they lacked before. This suggests that capabilities depend on functioning; indeed, often we need to do things to be able to do them. This is in part because we cannot determine whether or not there is genuine equality of opportunity without reference to the extent to which outcomes are in fact equal; as Sen admits, functionings have at least a data-collection advantage in that they are more easily observed.

But further, Nussbaum admits there are cases when "the absence of a function is really a sign that the capability itself has been surrendered."[9] It thus makes sense to zero in on flourishing or functioning itself as the object of egalitarian policy. As Richard Arneson notes, there are clear cases where we should seek achieved well-being over opportunity for well-being if the result is a higher quality of life.[10] This is especially obvious for certain functionings, such as health, which are valuable irrespective of people's choices.[11] This is not to say that the state should eliminate the possibility of failure; this would violate the autonomy aspect of flourishing. Moreover, flourishing involves struggle, not effortless success. But where there are trends of failure to achieve flourishing, we should design social policy to target and repair any environmental causes.

The appeal to democracy to ward off imposing a single set of objective criteria on diverse parts of the world is double-edged. The argument cannot escape suggesting a view of democratic institutions as universally valid and even, perhaps, that a democratic way of life is in some sense objectively valuable. Crocker argues his focus is the freedom to participate rather than the intrinsic value of participation; it is precisely to enable people to choose for themselves that we seek democracy (pp. 300-303). Of course, there is a particular conception of value—that of the autonomous life—underlying this claim too. Some democratic theorists, concerned to forge global consensus in the face of varying commitments to liberal political institutions, thus shy away from universal claims such as a human right to democracy.[12] Archibugi, in contrast, is helpfully unabashed about the universal value of democratic participation:

> The struggle for democracy, which has mobilised such huge masses both in the West and elsewhere, is perhaps showing for the first time that democracy has been a universal system of values not just in treatises on political philosophy but because there has been an explicit request for democracy by the only subjects that can legitimize power– the world's inhabitants. (p. 34)

Crocker in fact, for all his criticism of approaches insensitive to cultural context, is committed not just to democracy but to a particular conception of democracy. In his endorsement of deliberative democracy, he sets out constituents of collective decision making where proposals are formulated, argued for, agreed upon, and translated into decisions (pp. 322-27). A number of deliberative ideals are in place: reciprocity, publicity, and accountability, to enable that "each critically engages with the others, making accommodations and sometimes deep compromises in order to fashion something all or most can endorse" (p. 313). With this set of ideals in mind, Crocker cannot avoid the problem of peoples who refuse the democratic option. As he admits, "To decide autonomously not to express group agency in deliberation is itself a manifestation of agency or autonomy" (p. 362). Cosmopolitan justice ends up vulnerable to the vagaries of political decision making, inevitable whatever one's theory, but suggesting that philosophers are best advised not to leave the content of cosmopolitan justice to that fickle arbiter, the ballot box.

In *Universal Human Rights in a World of Difference*, Ackerly aims to provide a feminist theory of human rights applicable to societies around the globe. Ackerly is concerned that the particular remain in view in our pursuit of global justice and that Western political theory not fall prey to universalist assumptions. She recasts the discourse of human rights to insist that it engage with the politics of difference. Since its institutionalization in the international order after the Second World War, the human rights tradition has been perhaps the preeminent example of an ethic beyond borders, which seeks a universal morality that transcends local cultures, ideologies, and practices. Thus, Ackerly, for all her radical feminist and postmodern convictions, has in fact helped herself to the most traditional of all tools in arguing for global justice. Small wonder she is at pains to emphasize her revisionist approach.

Ackerly argues that the idea of human rights can be sensitive to diversity in three ways. First is the method of "immanent critique," a philosophical strategy that identifies the motivation of a position to critically assess the position by its own lights. For Ackerly, immanent critique is "a form of relativism that offers a more muted essentialism about cultures than the relativist stance." Her version, she argues, enables the transcendence of particular circumstances and conditions "without relying on a transcendent authority" (pp. 92-93).

A second way to enable a rapprochement between universal human rights and sensitivity to diversity is derived from appreciating how the seemingly unique perspective of a particular disadvantaged group in fact generates an appreciation for a wider vulnerability. This is a nice point. In what Ackerly dubs "curb cut feminism" an ethical demand that arises in light of a particular group's needs can generate a response that has broad benefits; thus, disabled persons can call for curbs that accommodate wheelchairs only to find that parents pushing prams, elderly people with shopping trolleys, cyclists, and furniture movers all appreciate the innovation. "By becoming aware of mobility privilege, we can become aware of design that enables the freedom of movement of all" (p. 134).

Finally, Ackerly urges that human rights can respond to the particular in ways that are congenial to their fundamental ideals by bridging practice and theory. In particular, she urges we keep open the channels of communication between human rights advocates in the global arena and local activists and grassroots movements. This is a way of instantiating the promising idea of an "immanent" approach, though the upshot is somewhat vague. Her book is peppered with references to particular activists, victims of human rights abuse, heroic advocates, and social movements as well as much personal anecdote and autobiographical reflection. The result is a heartfelt but at times baggy account where the difficult questions facing cosmopolitan political philosophy—such as Nussbaum's understandable unease with assuming the moral authority of local leaders in beleaguered parts of the world—are sidestepped.

Western liberal political philosophers occupy an ambivalent place in the debate about global ethics. On one hand, our efforts to move beyond our borders to enable greater equality around the globe mean extending our privileged perspective to the benefit of "have-not" others, particularly, as Kostakopoulou notes, when those others live among us. Yet on the other hand, attending to the perspectives of distant others also entails challenging ideals and practices that we take for granted. Conceiving of our global obligations as tied to a far-reaching democratic project that enables local communities to be self-determining, within their own institutions, and within the institutions of a new global political order, is thus attractive. However, oftentimes the egalitarian imperative that attends to disadvantage elsewhere arises precisely because of poor political leadership in such places. If that is so, simply deferring to the ways of life and political representatives of local communities, as implied by Crocker and Ackerly, is no solution. After all, heeding grassroots organizations can simply be a euphemism for the rule of local demagogues, particularly in societies where institutions of democratic governance have had a poor history (oftentimes made worse by misguided foreign policies on the part of the West).

To try to correct for the flaws in local democratic institutions by reference to deliberation, as Crocker expounds, is a problematic strategy, however. There has been something of a democratic turn in political theory, in which it is argued that theories of justice should be anchored in the political participation of a voting public. These political philosophies seek to avoid the foundational problems that beset traditional theories, grounding political principles in the decisions of a democratic process rather than relying on improbable metaphysical premises such as a state of nature, social contract, or concept of the person. Of course, the difficulty with invoking the will of the people is that the people don't necessarily vote for justice. Thus, political philosophers end up positing idealized democracies—deliberative, authentic, fully informed, and so on—and one suspects that the ultimate aim is to arrive at the theories of justice philosophers had already independently formulated. It is as if political ideals are offered up as somehow the deliverances of the people when the people are let in only on the condition that they agree with the philosophers.[13]

Better to separate the project of democratization from that of the constituents of well-being sought by cosmopolitan justice, not because the two are unrelated, since it is clear that democratic participation is a feature of well-being and that democratic participation can be, as Sen argues, a promising route to its achievement. Rather, philosophers cannot abdicate their responsibility for conceptualizing what it is we are trying to make more equal, at home or in the world, in terms of capacities, activities, states of being, and pursuits. It is a sleight of hand to ventriloquize these ideas through idealized procedures of democracy.

Moreover, when we seek to enlarge our perspective to heed the imperatives of cosmopolitan justice, we should not regard our own national projects as regrettable embarrassments, obstacles to a truly egalitarian perspective, as Kostakopoulou suggests. Rather, there is a fruitful dialectic between the global and the national, and it is important to appreciate the history of national projects, oftentimes beset by chauvinism, for sure, but also inspired by liberating ideals such as that of a brotherhood of humanity seeking unity, as Mazzini intended. After all, our national projects are precisely the models that other societies seeking institutions of social justice and political representation hope to replicate, as Archibugi argues in his case for the social and economic benefits that correlate with democratic institutions.

The argument that the national community is to be jettisoned for a conception of international citizenship relies on the idea that nations inevitably tend to be ethnically exclusive. But it is an interesting fact that those societies with the most developed sense of a national community in the form

of obligations to members by means of progressive social policy, such as far-reaching programs of socialized medicine, child care, pensions, and welfare entitlements, are also the nations with the most generous policies of foreign aid. Western European countries such as Norway and Denmark are prime examples.[14]

The nationalist political theorist David Miller has defended the idea of the nation in terms of its entitlement to "compatriot preference" given that nations, their institutions, and their citizens should be understood as primarily responsible for themselves, arguing against "the cosmopolitan view that our responsibilities to the world's poor are in principle exactly the same as our responsibilities to our fellow-citizens."[15] For Miller, though nations are responsible for wrongdoing to other nations, this follows from the special relationships within nations of "identifying with compatriots, sharing their values, and receiving the benefits that national communities provide."[16]

Yet affirming the idea of a national community need not entail, as Miller supposes, rejecting the cosmopolitan view. Rather, the link between what we might call "global givers" and robust welfare state democracies suggests that cosmopolitan justice does not supplant national justice but builds on it. It is a false polarity to say either we look after our own or use those resources to look after needy others beyond our borders. We look after the weak and vulnerable in our societies because of egalitarian principles that generate a sense of obligation, a conviction about our duties to fellow human beings that extends to those in need of care, within and beyond our borders. And a robust sense of the constituents of well-being that prompts us to go beyond biological needs at the local level, to resource local libraries, swimming pools, and parks, will also underwrite initiatives to help provide the means of life abroad, be it clean drinking water or, again, more ambitiously, schools, libraries, and recreational facilities.

Whether or not this sense of a general humanity could also generate a universal political order, with representative institutions, rights of citizenship, voting, and so forth, remains to be seen. There are many ways in which the larger setting threatens to replicate the worst shortcomings of the national—voter apathy, excessive bureaucracy, and so forth. Why should we expect that the short-comings of national citizens will be corrected at the "anational" or global level? Kostakopoulou and Archibugi are hopeful, of course. Both Europeans, they have the example of the European Union to draw on, where national identity must jostle with a pan-national identity. The European model has had an impressive record of commitment to foreign aid, but it has had difficulty winning the hearts and minds of its newfound electoral body. With voter turnout as bad as 45 percent,[17] the idea of a political entity beyond the nation that can command allegiance from diverse peoples is a hard sell. Nonetheless,

it is clear that we must build political institutions to facilitate international cooperation on a democratic and fair basis for us to achieve global distributive justice. To this end, Kostakopoulou and Archibugi are particularly helpful.

Finally, I cannot help but note the diversity of style of the four books under review. The prevalence of charts and diagrams in the European texts, particularly Archibugi's, suggests the impact of Brussels and the European Commission bureaucrat's cheerful enthusiasm for distilling the complex into simple schema. The result is both helpful and at times oversimplifying of theoretical nuance. The Americans, for their part, go in for stereotypical self-revelation and autobiographical frameworks—a style that also has its costs and benefits. True, knowing the author's experiences often sheds light on philosophical difficulties, but rigor can also be the loser when the personal is at the forefront. In any case, that the four books have such different modes of presentation is certainly suggestive; perhaps appeal to explanation by reference to national identity is not moribund after all!

In sum, all four books illuminate the challenges that beset the idea of cosmopolitan justice when we link it to the project of reconceiving existing models of citizenship. The ideas of global citizenship and global democracy are trapped in a real-world/utopian impasse that is best solved by recourse to what prompted the idea of cosmopolitan justice in the first place: the universal ideals of human flourishing that have been established in the national political orders of self-governing peoples. These works are at their most illuminating when they shed light on the complex relationships between real and ideal, national and global, particular and universal. They are at their most disappointing when they suggest cosmopolitan democracy can simply dispense with its ambivalent past in the liberal enlightenment project of nation building.

Acknowledgments

Notes

1. For a stimulating radical formulation of this argument, see Joseph Carens, "Aliens and Citizens: The Case for Open Borders," in *Theorizing Citizenship*, ed. Ronald Beiner (New York: State University of New York Press, 1995), 229-55.
2. For a collection of such views, see Gillian Brock and Harry Brighouse, eds., *The Political Philosophy of Cosmopolitanism* (Cambridge, UK: Cambridge University Press, 2006).
3. Giuseppe Mazzini, "Europe: Its Condition and Prospects," in *Essays: Selected from the Writings, Literary, Political and Religious of Joseph Mazzini,* ed. William Clark (London: Walter Scott, 1880), 266.

4. G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008).

5. Even contemporary separatist movements in the West (e.g., Quebec) tend to be at pains to emphasize their progressive social policies and inclusion of newcomers. For an interesting collection of essays sympathetic to this point, see Joseph Carens, ed., *Is Quebec Nationalism Just? Perspectives from Anglophone Canada* (Montreal: McGill-Queen's University Press, 1995).

6. I make this argument in "Cosmopolitans, Cosmopolitanism and Human Flourishing," in *The Political Philosophy of Cosmopolitanism*, ed. Gillian Brock and Harry Brighouse (Cambridge, UK: Cambridge University Press, 2006), 55-74.

7. Amartya Sen, *Inequality Re-examined* (Oxford, UK: Oxford University Press, 1992), 51-53.

8. Martha Nussbaum, *Women and Human Development* (Cambridge, UK: Cambridge University Press, 2000), 87.

9. Ibid., 93.

10. Richard Arneson, "Perfectionism and Politics," *Ethics* 111, no. 1 (2000): 62-63.

11. Nussbaum, *Women and Human Development,* 91.

12. Joshua Cohen, "Is There a Human Right to Democracy?" in *The Egalitarian Conscience: Essays in Honour of G.A. Cohen*, ed. C. Sypnowich (Oxford, UK: Oxford University Press, 2006), 226-48.

13. I take this argument from my "Ruling or Overruled? The People, Rights and Democracy," *Oxford Journal of Legal Studies* 27, no. 4 (2007): 1-18.

14. This is based on "official development assistance" as a percentage of gross national income. See Larry Nowells, "Foreign Aid: Understanding Data Used to Compare Donors," *CRS Report for Congress* (January 19, 2005): 6, http://www.worldhunger.org/articles/05/us/nowels.pdf.

15. David Miller, *National Responsibility and Global Justice* (Oxford, UK: Oxford University Press, 2007), 231.

16. Ibid., 265.

17. The 2004 elections were particularly poor (see http://www.euractiv.com/en/future-eu/european-parliament-elections-2004-archived/article-117483).

Bio

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