

ROBIN CELIKATES

DEMOCRATIC INCLUSION:
CITIZENSHIP OR VOTING RIGHTS?¹

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In California and Switzerland ca. 20% of adult permanent residents lack voting rights and other political rights. Apart from minors, ‘resident aliens’ or ‘resident non-citizens’ in many countries constitute the largest group among those excluded from the political process, especially, but not only, from voting. In this article I address the question in which sense this situation poses a challenge to democratic theory and practice. I first discuss the precise way in which this challenge is to be formulated and then turn to two fundamentally different solutions.

The Problem

Before turning to the precise formulation of the challenge, it seems useful to remember the fundamental ambiguity of citizenship. Citizenship, in its modern understanding, is an essentially ‘divided concept’ (Bosniak 2006: ch. 1; see also Brubaker 1992; Joppke 2010), characterized both by internal

inclusivity (ascribing an equal status and equal rights to all citizens) and by external exclusivity (excluding all non-citizens from this status and these rights). Citizenship is thus always also a ‘mechanism of closure’. This very logic of citizenship might seem problematic for a variety of reasons (see, e.g., Bader 1997). From the point of view of democratic theory, however, another aspect of the exclusionary logic of citizenship is more pertinent, namely the ‘internal exclusion’ of permanently resident non-citizens. The question I’m interested in here can thus be formulated as follows: Does their presence on the territory of a democratic state undermine its claim to democratic legitimacy? The answer to this question obviously depends on how democracy is understood. On a fairly literal and common understanding, democracy consists in the political self-determination of the *demos* or the political community. Accordingly, democracy is often understood as a matter of procedures, and democratic theory mainly focuses on how legitimate decisions are to be made. From the point of view of democratic theory, however, the question of who decides and who has access to these procedures is at least equally important:

‘However democratic the procedures, if the *demos* in question is composed only of white men, the clergy, the rich, or the “best” people in society to the exclusion of others who are equally bound by the decisions (full adult members of the state but not of the *demos*), then we are certainly not in the presence of a democracy’ (López-Guerra 2005: 218).

This turns our attention to the question of how the *demos* is constituted – a question that has been neglected by philosophers for a long time because they have tacitly assumed that we are already in the presence of properly constituted *demoi*. This assumption, however, is clearly untenable (see, e.g., Benhabib 2004). Therefore, we have to ask what an adequate principle for determining the *demos* would be.² In the literature there seem to be at least three candidates: the ‘all affected principle’, the ‘all coerced principle’, and the ‘all subjected principle’. Since the first two run into a variety of problems – from indeterminacy and the risk of fragmenting the *demos* into ‘one-issue *demoi*’ to being too weak to generate participation rights (and not just, say, claims to have one’s interests taken into account) – I will here focus on the third principle. According to the ‘all subjected principle’, all those who are subjected to the authority of the

state and its laws (in a permanent and encompassing way), i.e. all those who are subjects of the state have a right to participation.³ This principle might also be faced with certain problems, e.g. in the form of several limit cases, but its normative force is quite straightforward. This force is also due to the principle's temporal logic: it is not backward- but forward-looking. Hence, the time of residence is, in itself, normatively irrelevant and acquires normative significance only derivatively insofar as it is the best or only indicator of future residence (and thus of fulfilling the criterion of permanent and encompassing subjection). From this it follows that the (currently existing, *de facto*) *demos* has no right to 'democratically' decide on its own composition. This, however, is not an anti-democratic consequence, as some might think, but an expression of the very principle of democratic inclusion itself.

Two Problems?

Now it might seem, from the perspective of the 'all subjected principle', that there are not one, but two problems. This becomes evident when we understand the principle as requiring that all *and only* those who are subjected to the authority of the state (in a permanent and encompassing way) have a right to being included. Then it seems there is both a problem of underinclusiveness (not all who are 'subjected' are citizens) and of overinclusiveness (not all who are citizens are 'subjected'). This second problem raises the question of whether permanently non-resident citizens (say a Mexican citizen who has moved to the United States and spends her life there) should keep their citizenship and thereby their participation rights. According to the 'all subjected principle' ethnicity, original nationality and subjective identification have no independent normative relevance when it comes to political status. Thus one could be led to conclude that 'permanent non-residents should be disenfranchised' (López-Guerra 2005: 217). This seemingly harsh consequence would of course only follow under certain conditions (e.g. on condition that those in question do not end up stateless; for a critique of López-Guerra see Owen 2009). This is not the place for discussing how grave the problem of overinclusiveness really is (although in countries where the percentage of the

the electorate that permanently lives abroad amounts to 8 or even 14 percent, as in the Philippines and Mexico, respectively, there are reasons for taking it seriously). However, one normative consequence from the symmetrical application of the 'all subjected principle' seems to be that there are 'ascending and descending membership entitlements' (Shachar 2009: 165) that at the one extreme require the inclusion of 'resident stakeholders' and at the other the exclusion of merely 'nominal heirs'. Of course, there is also an alternative to the seemingly radical option of 'denaturalization', namely the disaggregation of political participation rights and citizenship (which would allow expats to keep their citizenship while excluding them from elections in which they have no comparable stake). As we will see, these two strategies also structure the responses to the more acute problem of underinclusiveness, upon which I will focus in what follows.

Two Strategies of Inclusion and Their Problems

The first strategy that can be used to address the challenge posed by the problem of underinclusiveness is usually referred to as the strategy of disaggregation, or of enfranchising, and consists in decoupling individual rights from citizenship understood as a status. In this sense, Bosniak (2006) speaks of an 'alien citizenship' which is not identical with national citizenship although its bearers will share a substantial subset of rights with the latter. Despite its seeming attractiveness, this strategy seems to run into a number of serious problems. We should first note that in political reality it is usually limited to traditional basic liberties and some social rights and almost never includes substantial political rights. Furthermore, since the rights granted in the context of disaggregation are usually *not* granted as equal rights, this strategy often leads to a system of stratified, conditional, conceded and reversible (as well as increasingly restricted) rights (see Joppke 2010: 22, 82-96). It also has the effect of strengthening the 'ethnic' and 'identitarian' logic of citizenship, or what remains of it. The fundamental problem with this strategy can thus be described as leading to a re-feudalization of citizenship since it introduces a distinction between first- and second-class citizens or subjects, between privileged full citizens and

proto- or quasi-citizens. This seems incompatible with the very idea of democracy as the self-government of a community of free and equal citizens.

From the perspective of political and legal struggles for citizenship, the strategy of disaggregation presents a setback in at least two respects. Let us assume that political rights are granted to resident non-citizens without most of the other rights that are part of the full package of citizenship: can we really assume that they will be able to exercise their political rights to the full extent and on an equal footing with any other citizen, if they cannot be certain that they will not be thrown out of the country if they hold and advocate unpopular political positions – the unconditional right to stay and to return being privileges of the holders of full citizenship? As neo-republican theorists argue, unequal status in itself compromises freedom independently from any concrete interference (see, e.g., Pettit 2011). In a similar vein, that the exercise of political rights is nowadays seen as depending on social preconditions that have to be guaranteed by means of other, e.g. social, rights is a result of long and hard struggles. The strategy of disaggregation rests on the untenable assumption that the rights bundled together in the status of citizenship can be disaggregated without loss. The way these rights are bundled together, however, is not contingent. They function holistically and not atomistically. To assume that we can ask for every single right (e.g. for the right to vote) under which conditions it should be granted to resident non-citizens is to misunderstand this holistic logic of rights.

This critique of the first strategy leads us to the second, more promising alternative, the strategy of ‘naturalization’, i.e. of opening up the access to citizenship in accordance with the ‘all subjected principle’. This strategy takes the holistic logic of the rights bundled together in the status of citizenship seriously and can be regarded as politically progressive since it builds on and contributes to the process of de-ethnicizing citizenship. It understands citizenship as a genuinely and exclusively political status that is to be allocated on normatively relevant grounds alone. There are two prominent proposals to concretize this strategy. The first is Rainer Bauböck’s notion of ‘stakeholder citizenship’ according to which individuals who have a ‘permanent interest’ in membership and participation

have a claim to citizenship (see, e.g., Bauböck 2005). The second is Ayelet Shachar’s idea of a ‘*ius nexi*’ according to which the (normatively relevant) social fact of ‘actual membership’, expressing ‘choice and consent’, grounds the claim to citizenship (see Shachar 2009). Regardless of their merits, however, both proposals involve problematic requirements and preconditions that should lead us to seek an alternative formulation of this second strategy. What counts as ‘permanent interest’ or ‘actual membership’ and how can they be identified? Are these conditions really normatively relevant from the perspective of the ‘all subjected principle’? As we have seen, according to this principle all those who fulfill the criterion of permanent and encompassing subjection have a claim to citizenship as an equal claim to equal political status. All further criteria are problematic. Furthermore, in contrast to *stakeholder citizenship* and the *jus nexi* the direct application of the ‘all subjected principle’ does not lead to the tricky question of the graduation of political rights according to one’s ‘stake’ or ‘nexus’. Of course, the second strategy faces certain problems as well – think of the problem of regular changes in citizenship due to regular changes in residence, the potential loss of civic solidarity or the implications for the right to asylum – but the problem of underinclusiveness that it solves seems normatively and politically much more significant than those problems that it may create in exceptional cases.

As we have seen, both strategies – the strategy of disaggregation and the strategy of opening up the access to citizenship – have advantages and disadvantages. Overall, however, the second strategy seems to much better fit the basic idea of democratic inclusion. What matters, from this perspective, is not so much that one has the status and the rights associated with citizenship in some country (e.g. in the country in which one was born), but that one has them in the country where one lives one’s life and where one is subject to the laws. Equal citizenship is not a privilege conferred by the state, but a fundamental right that is claimable under the ‘all subjected principle’. This understanding is inscribed in the political struggles for citizenship in which this claim is articulated and fought for. These struggles are always also struggles against the exclusionary logic of citizenship and for its de-ethnicization. As Bonnie Honig (2001: 101, 104) puts it, they are part of a particular story and narrative, ‘*a story of illegitimate demands* made by people with no standing to make them, a story of peo-

ple so far outside the circle of who “counts” that *they* cannot make claims within the existing frames of claim making. They make room for themselves by staging nonexistent rights, and by way of such stagings, sometimes, new rights, powers, and visions come into being. [...] Citizenship is not just a juridical status distributed (or not) by states, but a *practice* in which denizens, migrants, residents, and their allies hold states accountable for their definitions and distributions of goods, powers, rights, freedoms, privileges, and justice.¹⁴ This story, and thus these struggles, are, as it seems, far from over – especially since they are also struggles against the complacency of those who are the officially recognized citizens of the states they live in.

Robin Celikates is Associate Professor of Social and Political Philosophy at the Department of Philosophy at the University of Amsterdam, Vice-director of the Amsterdam School for Cultural Analysis, and one of the editors of *Krisis*.

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¹ A longer German version of this text has appeared in Cassee and Goppel 2012.

² Note that this question does not refer to the ‘original’ constitution of the *demos*, as theorized in classical social contract theories, but to its future (re-)constitution within an already established system of territorially bound political entities that is accepted for the sake of argument. I therefore also leave aside the question of whether it would not be preferable to abolish nationality and citizenship altogether, as suggested by, e.g., Stevens 2009.

³ See Dahl 1998: 78: ‘Full inclusion: The citizen body in a democratically governed state must include all persons subject to the laws of that state except transients and persons proved to be incapable of caring for themselves.’; and Fraser 2009: 65 (her argument, however, seeks to establish ‘moral standing as subjects of justice’ and not political status in the more narrow sense that I focus on here).

⁴ See also Balibar 2004: 76: ‘[I]t is always the practical confrontation with the different modalities of exclusion that constitutes the founding moment of citizenship.’