

A Free Movement Paradox: Denationalisation and Deportation in Mobile Societies

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Abstract:

This epilogue to the special issue of Citizenship Studies reflects on the connections between states' powers to deport foreigners and to denationalise citizens and asks how both powers ought to be hedged in by liberal and democratic constraints. The article argues that citizenship revocation powers are ultimately at odds with a democratic principle that governments are collectively authorised by citizens. It suggests also that the protection of long-term foreign residents from deportation is due to emergence of a quasi-citizenship status for denizens in liberal democracies. Finally, the article raises a question about the future of the power to expel in increasingly mobile and interconnected societies. Could the proliferation of multiple citizenships and the increasing number of people with multiple residences in different countries undermine the justifications for strong constraints on the state power to expel proposed by the contributions in this volume?

Keywords: denationalisation, denaturalisation, citizenship revocation, deportation, domicile, denizenship, dual citizenship

Paraphrasing Max Weber's famous definition of the modern state as a monopoly of legitimate means of violence, John Torpey claims that it has also established a monopoly of legitimate means of movement (Torpey 2000). This entails that states aim to control not only who enters their territory and takes up residence, but also who has a right to stay there. Only citizens enjoy an unconditional right to (re)enter and stay. At the same time, states also claim a right to determine for themselves who their citizens are; they are not only free to award or deny citizenship to immigrants but also have considerable powers to deprive citizens of their status, turning them thereby into foreigners whom they can deport or keep out of their territory. Although each of the articles in this special issue focuses on either the deportation of foreigners or the denationalisation of citizens, the state powers to expel from the territory and from membership are thus closely connected.

This epilogue will reflect on the connections and ask how both powers ought to be hedged in by liberal and democratic constraints. It will also raise a question about the future of the power to expel in increasingly mobile and interconnected societies that has not yet been addressed. Could the proliferation of multiple citizenships and the increasing number of people with multiple residences in different countries undermine the justifications for strong constraints on the state power to expel proposed by the contributions in this volume?

1. Is there a right to retain citizenship?

International law on citizenship combines two contradictory norms. A right of states to determine themselves who their nationals are¹ and a set of human rights to have a nationality, to change it and not to be arbitrarily deprived of it.² These universal rights are supposed to constrain state self-determination in matters of citizenship, but they are themselves strongly circumscribed.³ Probably the most progressive interpretation of the right not to be arbitrarily denationalised can be found in the 1997 European Convention on Nationality, which presents an exhaustive list of possible grounds of citizenship revocation.⁴ As pointed out by Honohan (in this special issue), there are two broad rationales underlying these grounds. Revocation can be a sanction for certain actions (fraud in the naturalisation procedure, voluntary acquisition of a foreign citizenship, or actions expressing disloyalty and harming vital public interests) or a confirmation of a changed situation (lack of a genuine link due to habitual residence abroad or changing circumstances that warrant correcting an initial attribution of citizenship for minor and adopted children). Let me consider both reasons in turn.

The most debated recent policy changes concern citizenship revocation as a sanction for engaging in terrorist activities or participating voluntarily in armed conflicts abroad. In the current literature, these are mostly considered as punishment of those who, through their actions, disavow fundamental constitutional values and thereby undermine the very foundations of the political community (Barry and Ferracioli 2015; Lavi 2010; Joppke 2016). However, it is not at all clear that depriving terrorists and foreign fighters of their citizenship is in any way an effective punishment. Instead of putting them on trial, it removes the offenders from the territory or keeps them outside. The purpose of the sanction seems thus more like that of ostracism in Athens: enhancing public security by expelling potentially dangerous citizens, with the important difference that ostracism targeted political opponents and was a temporary measure, whereas states consider terrorist suspects as a security threat that needs to be removed forever.

As Gibney (in this issue) argues, sending citizens into exile has become largely impossible because – apart from egregious exceptions such as Guantanamo Bay – states no longer run penal colonies outside their territory and must assume responsibility for their nationals vis-à-vis other states. In a system of equally sovereign states, governments can no longer simply dump their bad apples on other countries. Yet, the new provisions on citizenship stripping for suspected terrorists do exactly this via the detour of denationalisation (Macklin 2018). International legal norms do not prevent states from taking this route as long as those deprived of citizenship possess another one and thus do not become stateless. The norm against arbitrary deprivations hardly applies in the case of individuals that have engaged in terrorist activities. However, can such laws really be justified on grounds of public security?

¹ Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930), Art. 1; European Convention on Nationality (1997), Art. 3(1).

² Universal Declaration of Human Rights, article 15.

³ The general right to a nationality proclaimed in the UDHR in 1948 was reduced to a right of children to acquire a nationality in the 1966 International Covenant on Civil and Political Rights (Article 24.3). The right to change a nationality leaves states free to impose conditions for naturalisation as well as renunciation of their citizenship.

⁴ European Convention on Nationality, article 7.

This might seem plausible if one considers domestic terrorism of the Brigade Rosse, Red Army Faction, ETA and IRA kind that operates essentially within national arenas and would lose most of its clout if its activists were cut off from access to the national territory. At the same time, the responsibility for putting on trial and punishing such national terrorists lies plainly with the respective nation-state and its citizens have a legitimate expectation to see the perpetrators punished. Denationalisation would thus be an entirely inappropriate response.

The idea that citizenship stripping is an effective response to international terrorism of the Al Qaeda and IS kind is equally flawed. The refusal of European states to take back and put on trial their IS fighters from camps in Northern Syria where they are currently imprisoned has most likely enhanced the risk of terrorism not only in the Middle East but eventually also in Europe. If organisations are composed of terrorists from many countries operating in many countries, it could be appropriate to set up international tribunals that ensure uniform judicial standards, but where these don't exist and cannot be quickly created, states must assume responsibility for their citizens vis-à-vis other states. This is a core function of nationality in the international system that states undermine at their own peril.

Citizenship revocation on grounds of lack or loss of genuine ties has been much less discussed. The contributions by Lepoutre and Honohan in this issue provide interesting insights from historical, legal and normative perspectives. Here again, there seems to have been an important change in state attitudes that has affected the role of citizenship in the international state system. The American and French Revolutions were a turning point in the fight for a universal right to emigration (Zolberg 2007; Green and Weil 2007). However, until the mid-20th century, citizens who took up permanent residence abroad were often regarded to have implicitly renounced their citizenship of origin.⁵ Especially naturalised immigrants who returned to their countries of origin were deemed to have forfeited their citizenship, which had been awarded based on an expectation of permanent settlement. As discussed by Lepoutre, the 1961 Convention on the Reduction of Statelessness even allows for turning naturalised citizens stateless after seven years of residence abroad. A large majority of countries that currently have provisions on loss of citizenship due to long-term residence abroad apply these only to naturalised citizens. Such differential treatment falls foul of a norm enshrined in the European Convention on Nationality (Art. 5.2) that each state "shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently".

The very term "naturalisation" refers to individuals acquiring a status that is like that of a "natural" citizen, i.e. a citizen by birth. If citizens by birth have a right to retain their citizenship after emigration, it is hard to see why those who have successfully met the conditions for naturalisation should lose it. States may be concerned about strategic naturalisations, but there are also strategic possibilities to acquire citizenship at birth based on *ius soli* or ethnic ancestry provisions (Harpaz 2019). Singling out naturalised citizens for

⁵ For a discussion of the case law of the U.S. Supreme Court, see (Weil 2013)

deprivation on grounds of territorial absence introduces a conditional, probationary citizenship for migrants that undermines the fundamental equality of citizenship status.

The more difficult question is whether – independently of how they acquired their status – citizens who take up long-term residence abroad and have acquired another citizenship there should at some point lose their membership. Honohan (in this issue) proposes a very high threshold: “...only those who have never been territorially subject to the jurisdiction of the state might be considered to come under such provisions.” Honohan’s recommendation is based on her normative conception of citizenship as membership in an interdependent community of individuals subjected to a common territorial political authority. What I want to point out here is that this view leaves ample scope for different interpretations. In the 19th century it was probably not unreasonable to assume that past subjection no longer supports a claim to ongoing membership after several years of territorial absence. Today, citizenship has become more strongly deterritorialised and mere absence no longer implies that one cannot function as a citizen. Although emigrants are not subjected to most of the laws of their country of origin, they remain in many ways members of an interdependent political community and have a stake in its future destiny. Even long-term emigrants can frequently visit their country of origin, they can in most countries vote in national elections from abroad and they often have plans for returning there at some point in their lives. Sending countries themselves actively promote links with their diasporas by setting up special government institutions and services (Gamlen 2008). This is the background against which Honohan’s prescription becomes compelling: states should not have the power to deprive first generation emigrants of their citizenship.

This conclusion can also be supported from a slightly different perspective, according to which the validity of norms regulating inclusion does not only depend on the strength of individual claims (for admission to or retaining of membership) but also on the nature of the community (Bauböck 2017). Democratic nation-states are always imagined as intergenerational communities of citizens. This explains why citizenship is invariably acquired at birth, presumptively held over a whole life and passed on to a next generation. Taking up residence does therefore not lead to automatic acquisition of citizenship but is voluntary and requires an application.⁶ Symmetrically, taking up residence abroad must never lead to withdrawal or automatic loss of citizenship but can be a legitimate condition for voluntary renunciation.⁷

What about generations born abroad who have inherited an extraterritorial citizenship by descent and who have never lived in the corresponding territory? For those arguing from a principle of inclusion based on (territorial) subjection to the law, current state practice is hard to explain and justify. All states, including those whose citizenship law is based on *ius soli*, award citizenship by descent to at least the first generation born abroad. The

⁶ For contrary argument in favour of mandatory naturalisation see (Rubio-Marín 2000; de Schutter and Ypi 2015).

⁷ As of 2016, twenty-six out of 175 states in the GLOBALCIT database require residence abroad as a general condition for voluntary renunciation of citizenship. Thirteen of these states are European, with the other half being rather evenly distributed across world regions (see <http://globalcit.eu/loss-of-citizenship/>).

explanation cannot be a desire to avoid statelessness, as transmission to this generation generally happens also where children acquire the citizenship of their country of birth.⁸ Even for the intergenerational conception of citizenship outlined above, it would be coherent to apply birthright only to those born in the country in order to prevent the emergence of a citizen population that lacks any biographical connection with the territory.

If states do not limit citizenship transmission in this way, it must be because they consider first generations born abroad as still having genuine links to their parents' countries of origin by default. This assumption can be easily supported for minor children whose lives are shaped by their parents' patterns and plans of mobility between home and host states. It becomes less plausible when such children reach the age of majority and have not taken up residence in their country of external citizenship for an extended period of time. At this point, a democratic concern kicks in: Should people who have never been present in the territory be able to vote in elections the outcomes of which will affect them only in marginal ways? As analysed by Lepoutre (in this issue), Nordic states and some others consider the first foreign-born generation's age of majority the right moment in the generational sequence for withdrawing a citizenship acquired at birth outside the territory.

This rule, which is not widespread, does not raise deep concerns about potential injustice, as long as citizenship is in these cases not lost automatically and individuals have sufficient options to retain it by demonstrating their links and interests. Nevertheless, from a non-domination perspective, it seems more prudent to stop citizenship acquisition at birth for the second foreign-born generation (i.e. those born abroad to national parents themselves born abroad) than to give governments the power to strip the first foreign-born generation of its citizenship around the age of majority. Legitimate concerns about their voting rights can similarly be addressed by making the acquisition of such rights at the age of majority conditional upon prior residence in the country instead of depriving expatriates of their vote after a certain time of residence abroad. Both proposals avoid giving states the power to expel from the citizenry and the demos those who had previously enjoyed a membership status and voting rights.

To express this in the terminology introduced by Lepoutre (in this issue), liberal states should use a preventive approach to stop the proliferation of citizenship and voting rights across generations born abroad. An alternative corrective model discriminating against naturalised citizens is unacceptable as it undermines the equality of status inherent in citizenship. A domicile model for which long-term residence abroad is a sufficient reason for status deprivation is not discriminatory in this way, but it is also corrective in the problematic sense of giving states a dangerous power to correct an initial attribution of citizenship status and rights to individuals.

The reasons why states should not have this power are not limited to preventing potential political abuse. The more profound reason is that in democracies citizens are those who

⁸ Only some Asian countries with *ius sanguinis* regimes that want to strictly avoid dual citizenship limit the transmission of citizenship by descent outside their territory in cases where another citizenship is acquired at birth.

authorise the government to rule and towards whom it is accountable (Weil 2013). In contexts of migration, decisions have to be made about who has a claim to citizenship and who does not. But these decisions should be determined as much as possible by individual entitlements that minimise state discretion. And once citizenship statuses have been rightfully awarded⁹ – by birthright or naturalisation – individuals should be considered lifelong members of the community from which legitimate state power emanates. Granting governments powers to revoke this status potentially undermines the foundation of their democratic legitimacy – the principle that the citizens themselves are the ultimate source of government authority.

Once we accept, however, that in the real world states exercise these powers, the goal of minimising state discretion becomes problematic. While acquisition by declaration or entitlement strengthens the position of individuals vis-à-vis states, rules that lead to automatic loss of citizenship or that leave state authorities with no discretion are likely to violate a principle of proportionality that requires examining the circumstances of each case and balancing individual interests against state interests in citizenship revocation.¹⁰

2. Who should be protected from deportation and why?

In contrast with citizens, who have to be admitted to and cannot be deported from the territory, foreign residents do not enjoy a similar level of protection. While, as Leerkes and van Houte (in this issue) explore, the practical deportability of such foreigners varies significantly between national contexts and across different categories, such as asylum seekers and various kinds of regular and irregular migrants, all foreign residents are in principle exposed to the risk of deportation precisely because they lack citizenship status. Of course, this does not mean that they are without rights. Apart from universal human rights (including the right of free movement inside a state and emigration from a state to which they have been admitted) they also acquire special rights as long-term residents. And the latter do include a certain level of protection against deportation. For example, under EU Law, third country nationals with an EU long-term residence status, which can be obtained after five years of legal residence in an EU member state, can only be expelled if they constitute “an actual and sufficiently serious threat to public policy or public security”.¹¹ In other words, long-term unemployment, receiving social welfare benefits or a criminal record of minor offences are no longer sufficient reasons for terminating the legal residence of such a foreign national.

Historically, whatever protection foreign residents enjoyed was considered a privilege granted by a sovereign to the subjects of another sovereign in a context of friendly relations between these. Later on, the idea that foreigners have rights precisely because they are the

⁹ A plausible exception to this norm is when citizenship has been acquired by fraud, but even in this case there should be limited time period within which such citizenships can be annulled (Bauböck and Paskalev 2015).

¹⁰ See the *Tjebbes et al* judgement of the Court of Justice of the European Union (Case C-221/17, decided on 12 March 2019), in which the court requires a proportionality test whenever citizenship revocation entails the loss of EU citizenship.

¹¹ Directive 2003/109/EC Concerning the Status of Third-Country Nationals who are Long-Term Residents, Article 12.1 .

citizens of another country became a principle of international law.¹² The notion that such rights could instead be derived from foreigners' relations to their host state as residents who are subjected to its laws, contribute to its economy and society and develop social ties with its citizens seems to be of relatively recent origin. Authors who have tried to explain the emergence of 'denizens' as rights-bearing subjects after World War Two have pointed to various possible and not mutually exclusive explanations, including the universalistic norms promoted by the human rights revolution (Soysal 1994) or the power of courts and the "epistemic community of lawyers" to constrain national governments and legislators through an expansive constitutional regime of individual rights (Joppke 1999). Examining the case of German guest workers, Jannis Panagiotidis (in this volume) interprets the strengthening of protection from deportation as the outcome of a long process of contestation by civil society actors, such as the German *Wohlfahrtsverbände* (non-profit organisations providing welfare services) and churches.

The gradual strengthening of denizenship as a protected status under domestic and European law has not led to the point where citizenship would no longer make a difference. Only citizens are exempt from deportation on grounds of public security and after committing serious criminal offences. And only citizens enjoy an unconditional right to return and be readmitted that does not depend on the duration of their absence or of their previous stay.¹³ Finally, although not all democratic states grant their citizens extraterritorial voting rights, there is a strong global trend to attach national voting rights to citizenship and to disconnect them from residence (Collyer 2014; IDEA and IFE 2007). Denizens enjoy national voting rights in only five countries (Chile, Ecuador, Malawi, New Zealand and Uruguay) but cannot stand as candidates in elections there. Moreover, they lose their franchise when they abandon their residence in the country. None of the states that have introduced statuses of external quasi-citizenship with entry and property rights for certain categories of non-resident non-citizens, such as Turkey or India, grants them voting rights (Bauböck 2007). Is there a normative framework within which we can justify both the non-deportability of denizens and the additional protection and rights enjoyed by citizens?

Birnie (in this volume) provides a novel argument for the former. People are spatial creatures. A secure place of residence is crucial for their autonomy; they are hampered in their live plans and projects if their right to stay is insecure. Moreover, they are mostly emotionally attached to the place where they live and expelling them from there harms them in serious ways. Birnie is critical of arguments that focus exclusively on social ties or contributions and for which long-term residence is only a proxy rather than a sufficient reason for non-deportability. On his view, time of residence is a self-reinforcing justification for the right to continued residence: the longer one lives in a place, the stronger the right to

¹² "We may treat our fellow citizens arbitrarily according to [our own] discretion. To aliens within our national territory, however, we must afford their persons and property protection 'in accordance with certain standards of international law'..." (Oppenheim 1955, quoted in Goodin 1988: 669).

¹³ As discussed in the previous section, there are strong reasons why citizens should not be deprived of their status in order to circumvent their special protection.

stay there becomes (Carens 2013: 89). Somewhere on that timeline, a threshold must be set beyond which foreign residents can no longer be deported.

How can this argument be reconciled with the apparently quite different one why citizens cannot be deported? One way of connecting the two is to consider the rights of denizens more comprehensively. As first analysed by Tomas Hammar (1990), denizenship in liberal democracies has come to include not only enhanced protection from deportation, but also equal treatment with citizens with regard to social welfare rights and, in a significant number of European and South American countries, voting rights in local elections (Arrighi and Bauböck 2017). This development can be interpreted either as a postnational disconnect between citizenship rights and status or as the emergence of a residence-based quasi-citizenship. The latter interpretation is strengthened where denizenship includes also an entitlement to acquire citizenship by naturalisation. In settler states such as the US, Canada, Australia or New Zealand, (white) immigrants have been historically regarded as future citizens with a strong expectation that they will also take up the naturalisation offer. More recently, however, a status of quasi-citizenship has emerged also in countries where naturalisation rates are rather low, partly because of higher legal hurdles but often also because more immigrants prefer permanent residence status to naturalisation. Consider the case of Germany, where foreign nationals have a right to naturalise after 8 years and where foreign parents must have resided in the country for at least 8 years for their German-born children to acquire German citizenship *iure soli*. There are many additional conditions required for naturalisation (such as renunciation of a previously held non-EU country nationality) that are hard to justify from a liberal perspective and the time of eight years for naturalisation and conditional *iure soli* may be criticised as too long, but it seems plausible to say that foreign residents become German quasi-citizens when passing this threshold, independently of whether they apply for naturalisation.

Birnie's justification for a right not to be deported can also be applied to ground a residence-based right to citizenship. Migrants are subjected to the laws of their countries of transit or destination from day one. This is not sufficient to ground a claim to citizenship. The longer they stay, however, the more their autonomy and identity are impaired if they are kept in a dependent status of subjects and excluded from access to citizenship. The same reasoning applies to children born to immigrants. Liberal states are not obliged to adopt American-style unconditional *iure soli* for children of tourists born on their territory, but they ought to introduce *iure soli* for the children of long-term resident foreigners for whom their country of birth must be assumed to be their home country. Conditional *iure soli* still does not address the inclusion claims of children born in the territory whose parents fail to miss a prior residence condition or those of the "generation 1.5" who enter the country as minors and who have to wait until age 18 before they can naturalise in most *iure soli* countries. For them, a domicile principle grounds strong entitlements to naturalisation, e.g. through a simple declaration of their parents after a five-year period or residence, as is the case in Sweden.

Birnie's domicile account of non-deportability and liberal citizenship norms are thus not just compatible with each other but rely also on similar justifications: domicile grounds a right to

stay as well as a right to citizenship. Moreover, both of these rights are held by individuals who are free to exercise or waive them: domiciled migrants are free to leave and they are equally free to stay on as denizens instead of taking up the citizenship offer.¹⁴

If domicile is a sufficient condition for both non-deportability and a right to naturalisation, is it always a necessary one? Consider the case of foreign residents who are offered naturalisation after a much shorter period of residence, e.g. because they are spouses or civil partners of citizens. If such a reason qualifies a foreigner for naturalisation, then it must also entitle her to the same protection against deportation as that enjoyed by fully domiciled immigrants. It would be perverse if a person were entitled to become a citizen but could still be deported.¹⁵ This does not mean that we can replace a domicile criterion with a right-to-citizenship criterion, since the right to citizenship must itself be derived from some other morally relevant condition that signals a sufficiently strong link, be it domicile, family ties or something else.

This argument still does not fully close the gap between a domicile and a citizenship account of non-deportability, as it cannot explain why non-domiciled citizens should have an unconditional right to return and be protected from deportation when they take up temporary residence in their country of citizenship. In this regard, Birnie provides a separate argument that citizens have rights to return and stay as members of a collective that has legitimate rights to occupancy of a territory. There are, however, two ways how to interpret the notion of occupancy rights and they have quite different implications. The first one regards occupancy rights as analogous with collective property rights. If I join a cooperative that collectively owns a plot of land on which fruits and vegetables are grown that can be harvested by each member, then I have a right to enter that land independently of how much time I have spent there previously.

The notion of collective territorial ownership of a state entails, however, awkward consequences not just for liberal state's duties to admit certain immigrants (such as refugees or family members of denizens); it could also undermine the domicile-based reasons for non-deportation. Regarding a state territory as the object of occupancy rights of citizens only rather than of residents could lead to denying denizens precisely the right to stay that Birnie defends. We can escape this conundrum if we regard state territory not through the lens of property rights but as a geographically bounded space within which a people has a claim to collective self-government. On a second interpretation, legitimate occupancy gives rise to claims of jurisdiction instead of exclusive ownership. Birnie is therefore careful to avoid the language of collective property rights. Normatively speaking, citizenship is a status of full and equal membership in a politically self-governing people and territorial boundaries define the limits within which the laws adopted by a polity apply. All those who reside in the territory for long enough – unless they have invaded it and thus

¹⁴ The argument about free choice obviously does not apply to immigrants' children who should acquire citizenship at birth automatically, just as the children of native citizens do.

¹⁵ This argument only applies to those entitled to citizenship, not to foreigners whom states may grant citizenship on a discretionary basis after examining their individual claims, such as second foreign-born generations of emigrant origin residing abroad.

undermine its self-government – have claims to stay and pursue their life plans there. They are not collective owners but rather rightful users of the territory.

The special rights of non-domiciled citizens not to be deported need to be explained in a different way. They follow from citizens' rights of movement in the international state system and corresponding state duties. Citizens' right to return would be hollow if they could subsequently be expelled from the territory. This right to return is not only grounded in expatriates' relation to their country of origin, it also involves the responsibility of states for their nationals vis-à-vis other states discussed in the previous section. The right to return creates a corresponding duty of states to admit their citizens to their territory – even in cases where return is not voluntary but brought about through deportation. States who refuse to let their citizens enter or who send them back to other states disavow their responsibility towards other states.¹⁶

Long-term foreign residents may be regarded as quasi-citizens in this respect, too. They ought to enjoy a right to return after some time of absence. But states do not have duties to grant short-term resident foreigners a right to return, nor are they obliged to take back denizens if these are expelled from another state after some time of residence there.

Denizenship remains thus a mere *quasi*-citizenship in these respects because it is entirely derived from an internal relation between a migrant and a host state. By contrast, full citizenship involves both a domestic relation and an external one between states. It is for this reason that citizens have additional rights to return and non-deportation that foreign nationals cannot claim. This does not imply an unjustifiable inequality of status and rights between denizens and citizens, since all denizens (apart from stateless people) are also citizens of another country where they enjoy exactly the same rights of admission and stay that emigrant citizens of their host country enjoy in relation to that state.

3. Multiple citizenship and residence: a free movement paradox

Most normative theories of migration and citizenship assume that at any point in time people have a single citizenship and place of residence. Multiple citizenship has cropped up in section 1 above as potentially enabling citizenship revocations because it does not leave the person stateless. But this hardly explains why multiple citizenship is so much in demand and why a majority of states now accept it. In a recent survey of 175 states, 82% were found to tolerate dual citizenship for their citizens who acquire a foreign nationality, for non-citizens who naturalise or for both of these categories.¹⁷ Among the remaining 18% that object to dual citizenship in both outgoing and incoming naturalisations, an unknown but certainly significant number still accept dual citizenship when it emerges at birth through the combination of *ius soli* and *ius sanguinis* provisions or when children have parents with different (and potentially also multiple) nationalities.

¹⁶ Countries of origin of irregular migrants sometimes do not collaborate with deportation efforts by refusing to issue return certificates or by denying that the deportees are their nationals. In the case of unjust deportations, this might be regarded as a justifiable act of resistance. However, such policies turn nationals into de-facto stateless people, which can never be justified.

¹⁷ GLOBALCIT data for 2016. See <https://migrationdataportal.org/themes/citizenship-and-migration>.

States have reasons to tolerate dual citizenship if they want to retain ties with their emigrants, if they want to facilitate naturalisation by their immigrants or if they realise that their efforts to prevent multiple citizenship are costly and mostly futile, since they cannot control to whom other states grant citizenship status. For individuals, dual citizenship may be attractive because it reflects their sense of belonging to more than one country and provides them with opportunities to participate politically in both. More important as an incentive is the benefit of free movement that comes with being a citizen of two or more states. Since citizenship entails unconditional rights to return and stay, multiple citizenship creates individualised free movement corridors between states that otherwise control immigration from the other states involved. Given the widespread toleration of dual citizenship and the significant incentives for taking it up, this is a major source of free movement alongside the geographically more restricted but demographically more generalised free movement rights of EU citizens.¹⁸

The normative case for toleration of multiple citizenship is straightforward. If the allocation of citizenship among states ought to reflect genuine links between individuals and states, then international migrants generally qualify for dual citizenship in their countries of origin and settlement, provided that their duration of residence indicates that their ties to the latter are strong enough to qualify them for naturalisation entitlements. A requirement to renounce a nationality of origin and involuntary loss of this nationality are unacceptable as a condition or consequence of naturalisation because such laws fail to treat migrants' life projects with equal respect compared to those of sedentary native citizens. The objection that migrants with access to dual citizenship gain an unfair advantage over the latter who enjoy only a right to return and stay in a single country is misguided because it wrongly assesses migrants' citizenship rights and duties by using non-migrant citizens as a template. The apparent advantage of free movement between two states is what allows migrants to preserve ties to their family, maintain cultural attachments and pursue job opportunities that native citizens can generally enjoy within their country of birth and permanent residence. And if that country does not provide them with sufficient opportunities, they are free to become migrants themselves, with access to dual citizenship in due course.

Yet there remains a nagging doubt: How many citizenships should any person be able to hold simultaneously? Can anyone have genuine links to three or more states that are sufficiently strong to warrant the attribution of full citizenship status and rights? We have already considered above the argument for stopping the intergenerational transmission of citizenship with the first foreign-born generation. A recent count finds that 41% of 175 countries examined do not limit *ius sanguinis* transmission across generations in any way.¹⁹ Unconditional extraterritorial *ius sanguinis* is probably the largest source of triple and quadruple citizenship. Another source are policies by some states to attract persons whom they regard as desirable citizens (investors, famous athletes, artists or scientists) and for

¹⁸ There is no serious estimate of the number of multiple citizens in the world population, since most states count only their residents and their citizens abroad if these register with a consulate, but do not know how many in both categories possess another nationality.

¹⁹ See (Bauböck, Honohan, and Vink 2018) and GLOBALCIT 2019 <http://globalcit.eu/databases/global-birthright-indicators/>.

whom they are ready to waive not just requirements to renounce a previous citizenship but often residence conditions too (Hirschl and Shachar 2014; Džankić 2018).²⁰

Here is the paradox: Toleration of multiple citizenship is the most important source enabling free international movement and it is a normatively required response to international migration. However, the easier it becomes to accumulate multiple citizenships, the weaker the normative justification is for allocating free movement rights on the basis of citizenship. If the allocation of citizenship in the international state system is no longer grounded on a plausible assumption of genuine links between individuals and particular states, then free movement rights are likely to become less secure. States might well start to question that they have an unconditional duty to admit their nationals, that they cannot deport them to another country of which they also hold a nationality, and that they should not revoke their citizenship on grounds of some public interest.

Some legal scholars claim that under international law states may already expel their own nationals from the territory if their nationality is not based on a genuine link and if another country of dominant nationality is obliged to take them back (Worster 2009: 499). Having a single nationality provides full protection against deportation even if that nationality is not based on a genuine link, because deporting one's nationals to another state where that person is a foreigner infringes on the latter state's sovereignty. By contrast, for multiple nationals protection from territorial expulsion depends on having genuine links to their countries of citizenship.²¹

A multiplication of citizenships also weakens the case against citizenship revocation. My argument in section 1 emphasised that governments should not have the power to expel individuals from membership in the political community that authorises them in the first place. Yet here again, there is clearly a limit to how many such communities any individual can be meaningfully a member of.

The other side of this coin is the harm done to individuals who are deprived of a citizenship that is important for their life projects. For a person who has inherited several passports at birth and purchases some more in the market for investor citizenship, losing one of these does not cause any serious harm as long as it is not that of the country of habitual residence.

For some authors, the proliferation of multiple citizenship and the emergence of a market matching desirable citizens with desirable passports is just one indicator for an inevitable lightening (Joppke 2010) or decline (Spiro 2007) of citizenship in contexts of globalisation and enhanced mobility. Even if this diagnosis were correct,²² it does not provide a normative answer to how public policies should react to the paradox. This answer is quite obvious: liberal democracies ought to attribute citizenship to those and only those who have

²⁰ See Canales and Nowakowski (2019) for data on the number of states permitting multiple citizenship on nine different grounds.

²¹ As noted by Worster (2009: 494), the 1992 Micheletti decision of the European Court of Justice has established a stronger principle of mutual recognition of member state nationalities for purposes of free movement in the EU even if a third country nationality is considered to be the dominant one.

²² For some doubts see (Bauböck 2018).

sufficiently strong links to the political community. Such policies would still support toleration of dual citizenship but stop overinclusive citizenship attributions. They would aim to preserve the internal integrity of democratic communities as well as a fair allocation of responsibilities for the protection of individuals within the international state system. Instead of penalising ordinary migrants who have solid claims to multiple citizenship, they would close opportunities for global elites and sanction states that game the international system of citizenship allocation in a way that subverts state responsibilities.

Let me conclude by considering how the free movement paradox affects the argument for constraining the deportation powers of states. Birnie's case for the non-deportability of denizens refers to domicile rather than residence. Domicile is a legal concept that qualifies a certain place and country as that of habitual residence. Domicile is thus meant to filter a single place out of a potential plurality of places of residence. Just as an individual can be physically present in only one place at any given point in time, the concept of domicile tries to identify a single place of residence for the purpose of assigning certain rights and duties. In contrast with the ephemeral nature of mere presence, the concept of domicile also attributes temporal stability to the relation between the individual and a particular place.

How should we think about non-deportability if this legal construct becomes fictional because individuals have multiple residences none of which can be easily singled out for purposes of a right to stay? It is certainly possible to introduce some purely numerical criterion, as laws on income taxation do when they identify the country where a person has spent more than 183 days per year as her tax domicile. But is it equally acceptable that migrants who are members of transnational households and engage in circular patterns of movement might lose their right to stay in that country where they have spent less time?

In order to avoid this problematic implication of a domicile account of non-deportability,²³ it seems again wise to combine it with a citizenship account. If such migrants have dual citizenship, then the singular domicile criterion no longer matters for protecting them from deportation when they return to their previous host country after having relocated their domicile to the country of origin. Dual citizenship thus provides protection for migrants with two places of residence and, vice versa, sufficiently long times of dual residence provide them with claims to dual citizenship.

This rationale is, however, undermined once the number of places of residence increases so that none of these can count as grounding a domicile-based right to non-deportation. Wealthy people purchasing several vacation or retirement homes in global beauty spots mostly enjoy high levels of de facto protection from deportation because they are seen to contribute to fiscal income and economic growth. So we need not worry much about their security of residence. They may also consider whether getting the passport of the country

²³ In contrast with a legal conception of domicile as being by definition singular, Birnie's account does allow for multiple domicile and could support non-deportability rights in more than one country. However, since the threshold for domiciliation is much higher than for residence, this would not apply to most circular migrants and other highly mobile populations.

would enhance the protection of their property and residence rights.²⁴ However, imagine that patterns of hypermobility spread beyond the tiny elites on top of the global income pyramid. If middle- and lower-income people have to hunt for education and temporary job opportunities across international borders over long stretches of their lives, they might never acquire genuine-link based claims to another citizenship or domicile-based claims to non-deportability.

In such a scenario, the protection of mobile people could still be secured through free movement within regional unions of states (as in the European Union) or based on reciprocal agreements among non-contiguous states. Notice that free movement and protection against deportation are in these scenarios still based on citizenship instead of becoming universal human rights. It is only the citizens of particular states that enjoy these rights in the other associated states.

4. Conclusion

I have argued in this epilogue that the right to citizenship and the right to stay are very closely connected. While both can and ought to be expanded in response to enhanced levels of international mobility, it is important to retain these links. A universal right of free movement is a worthy goal, but the path towards this goal leads through expanding citizenship-based free movement. Along that path, global free movement utopians must remain alert about the danger of overinclusion that threatens to undermine the responsibility of states for their citizens in the international state system as well as the integrity of democratic self-government.

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²⁴ Doing so may also diminish their protection since, under international law, foreign nationals enjoy better protection against expropriation than citizens do. See note 12 supra.

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