
Symposium on citizenship: Foreword

Sujit Choudhry and Cheryl Saunders¹,
Symposium guest editors

This symposium explores the extent and constitutional significance of the changes that are taking place in the conception and practice of citizenship in countries throughout the world. The six papers reveal a preoccupation with broadly similar issues in the regions on which they primarily focus: Europe, North America, and southern Africa. At the same time, however, the papers show how sometimes deep contextual differences between states also ground differences in the way questions of citizenship are approached, leading to differences in outcome. In this respect, the symposium also offers useful insight into the challenges of comparative constitutional law.

The symposium comprises papers by Linda Bosniak on the dichotomy between personhood and citizenship, primarily in relation to the United States; Enikő Horváth and Ruth Rubio-Marín on the evolution of citizenship in Germany; Jonathan Klaaren on contested and evolving conceptions of citizenship in southern Africa; Anja Lansbergen and Jo Shaw on the impact of a multilevel Europe on citizenship in member states; Cristina M. Rodríguez on the extension of voting rights along a spectrum of common law countries ranging from the United States to Eire to New Zealand; and Peter J. Spiro on dual citizenship. The papers variously conceive of citizenship narrowly in terms of legal status; more broadly by reference to the incidents of citizenship; or more broadly still by reference to membership of a community, constructed through residence, social cohesion, or otherwise. However citizenship is conceived, there is always an “other,” whose status, entitlements, and relationship to the core community are necessarily the subject of this symposium as well. In addition, as the papers show, there is a symbiotic relationship between the incidents of citizenship, the relative ease of naturalization, and, in some cases, migration policy and practice.

The papers also identify a range of impetuses to change.

One is the creation of a new form of citizenship under the auspices of the European Union. Both the general aspiration for equality of treatment of the citizens of member states throughout the Union and the particular conferral on them of a right to vote in municipal elections in any member state in which they reside on the same

¹Email: sujit.choudhry@utoronto.ca; c.saunders@unimelb.edu.au

conditions as nationals of that state place pressures of various kinds on the theory and practice of national citizenship, as the papers by Horváth and Rubio-Marín and Shaw and Lansbergen show. So far the European Union is the most developed supra-national polity and, thus, the most likely to seek to develop a sense of community in a way that presents a challenge to national citizenship. The phenomenon is not exclusive to Europe, however, and may be prompted by other regional relationships. Thus, Klaaren notes the influence of developments in the southern African region on the relatively open conception of citizenship that has emerged from decisions of the South African Constitutional Court.

A second impetus to change is the sheer volume of population movement among states. One result is that there are significant proportions of people present in many states who do not hold legal citizenship locally while significant proportions of citizens of many states, at any given time, are elsewhere. The extent of population mobility, in turn, is part of the wider phenomenon of globalisation, which is embraced by different states to different degrees. Rodríguez suggests that this may be part of the explanation for the marked difference in the willingness of the United States and New Zealand to extend voting rights to noncitizens.

Spiro identifies a force of a different and less familiar kind. He observes that, historically, there were incentives for states to insist on a conception of citizenship as membership of an exclusive national community. Those incentives have since eroded, to a considerable degree. By way of example, the impact of the international human rights regime on the obligations of states to their own nationals has diminished the significance of the distinction between nationals and non-nationals, paving the way for the growing acceptability of dual or plural citizenship.

Collectively, these papers track a range of implications stemming from these various developments in the theory and practice of citizenship. Of particular interest is their impact on the way in which citizenship is conceived; in other words, on the criteria by which the notion of a national community is built. There have always been substantial differences between states in this regard, as the familiar contrast between, say, the United Kingdom and Germany, explored again in several papers in this symposium, shows. Whatever the earlier conception of citizenship in a state, however, changes are now occurring, creating tensions that, in some instances, emerge through constitutional litigation and, thus, have been thrust onto the constitutional agenda. The papers suggest that the end result of these changes is likely to be greater convergence across jurisdictions, although, at least in the short term, significant differences are likely to remain.

Conceptual change reflects or is reflected by developments in state policies regarding citizenship. Spiro notes the growth in the acceptance of plural citizenship to the point where, he argues, it is emerging as a form of right. Most of the papers draw attention, in one way or another, to the effective broadening of access to rights traditionally confined to legal citizens including, for example, civil and socioeconomic rights and entitlements, although the process is far from complete. More telling still, in this regard, is the extension of political rights, including voting rights to noncitizens resident in the state. For the most part, these are still confined to voting at the local

level, although there are some instances of their extension to the national level as well, either generally or as the result of a reciprocal arrangement. A complementary development is the extension to citizens of extraterritorial voting rights, examined in this symposium by Klaaren.

One result of these changes, to which Bosniak draws attention, is the decline in significance of legal citizenship, leaving core political rights at the national level as the principal point of distinction, in at least some states. There is clear resistance to further erosion of this distinction, which is, however, softened by the growing ease of acquiring legal citizenship. In these circumstances, whether citizenship rights are made more widely available or not, national communities are expanding, albeit with some inevitable loss of cohesion. The papers trace various attempts to reinforce cohesion, from the introduction of citizenship tests designed to encourage assimilation; to more selective migration policies; to speculation about whether and how it might be possible to develop a notion of “primary” allegiance; to the use of the right to vote itself as a means of enhancing integration. Collectively, they suggest that the concept of a national community is in a state of flux in ways that are critical to constitutional law and theory and that merit ongoing attention.

The papers touch only in passing on one other dynamic affecting citizenship from a constitutional point of view; the implications for citizenship of a deeply divided society. Klaaren notes the South African determination to develop an equal citizenship against the backdrop of the experience of apartheid, even if it must also be reconciled with what he describes as “African traditionalism.” The other contributors, also, develop their arguments on the basis of an assumption of equal citizenship. No paper, however, deals directly with the problem of unequal citizenship in states in which the core community is deeply divided, of which there are many examples. We encourage future submissions to I•CON on this question.