

It takes a bold thinker to introduce a new term into the thicket of contemporary discussions of citizenship, migration and belonging. Tendayi Bloom does this with her ambitious concept of noncitizenism. She presents noncitizenship as a unifying analytic category that describes a particular relationship between individuals and States. Her claim is that the relationship deserves attention because of its special consequences for the rights of affected individuals, irrespective of their particular type of noncitizenship. Cogently argued and lucidly written, this impressive book is both a valuable addition to the literature on one of the major political challenges of our times, and a stimulating provocation for constituencies actively engaged in contesting the many injustices it describes.

Jacqueline Bhabha, *Harvard University, USA*

By documenting critical social movements this book illustrates how the rights of noncitizens are being constituted as a site of political struggle. It is a brilliant book that restores political agency to noncitizens in (liberal) theory – something that states resist in (illiberal) practices.

Engin Isin, *Queen Mary University of London, UK*

This book is a timely challenge to ‘methodological citizenism’ – the assumption that all political thinking has to be structured around citizenship. Against this, it poses the idea of noncitizenship, rather than non-citizenship. Drawing on a wide range of resources, it points the way forward, offering a vision of what liberal theory and practice could look like if they were to break out of the state-citizen relationship. And it stands as an urgent warning that, if they are to remain relevant to the project of social justice, then they must embrace the category of the noncitizen as an essential part of the liberal framework. It is essential reading for anybody concerned with the contradictions of national membership and global justice.

Phillip Cole, *University of the West of England, UK.*



# Noncitizenism

Noncitizens have always been present in liberal political philosophy. Often hard to situate within traditional frameworks that prioritise citizenship, noncitizens can appear voiceless and rightsless, which has implications for efforts towards global justice and justice in migration. This book proposes an alternative.

*Noncitizenism* identifies an analytical category of noncitizenship. While maintaining the importance of citizenship, noncitizenship is another form of special individual-State relationship. It operates far from a State, at its borders, and within its territory, providing a tool for examining the continuity between sites of engagement and the literatures, questions and conclusions relating to them. The book argues that an accurate liberal theoretical framework, and one which can address contemporary challenges, must acknowledge the political relationship of noncitizenship between individuals and States.

This book is for students and scholars of political philosophy and for those interested in noncitizenship and how it can inform the response of liberal theory, citizenship, global justice, migration studies, political theory and policy work.

**Tendayi Bloom** is Lecturer in Politics and International Studies at The Open University, UK.

## **Routledge Studies on Challenges, Crises and Dissent in World Politics**

Series editors: Karoline Postel-Vinay

*Centre for International Studies and Research (CERI), France*

and

Nadine Godehardt

*German Institute for International and Security Affairs, Germany.*

This new series focuses on challenges, crises and dissent in world politics and the major political issues that have surfaced in recent years. It welcomes a wide range of theoretical and methodological approaches including critical and post-modern studies, and aims to improve our present understanding of global order through the exploration of major challenges to inter/national and regional governability, the effects of nationalism, extremism, weak leadership and the emergence of new actors in international politics.

For more information about this series please visit: [www.routledge.com/Routledge-Studies-on-Challenges-Crises-and-Dissent-in-World-Politics/book-series/CCDP](http://www.routledge.com/Routledge-Studies-on-Challenges-Crises-and-Dissent-in-World-Politics/book-series/CCDP)

### **1 Empires of Remorse**

Narrative, Postcolonialism and Apologies for Colonial Atrocity

*Tom Bentley*

### **2 Crisis and Institutional Change in Regional Integration**

*Edited by Sabine Saurugger and Fabien Terpan*

### **3 Violent Non-State Actors**

From Anarchists to Jihadists

*Ersel Aydinli*

### **4 Power-Sharing**

Empirical and Normative Challenges

*Edited by Allison McCulloch and John McGarry*

### **5 Hegemony and Resistance around the Iranian Nuclear Programme**

Analysing Chinese, Russian, and Turkish Foreign Policies

*Moritz Pieper*

### **6 Noncitizenism**

Recognising Noncitizen Capabilities in a World of Citizens

*Tendayi Bloom*

# **Noncitizenism**

Recognising Noncitizen  
Capabilities in a World  
of Citizens

**Tendayi Bloom**

 **Routledge**  
Taylor & Francis Group  
LONDON AND NEW YORK



First published 2018  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge  
711 Third Avenue, New York, NY 10017

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

© 2018 Tendayi Bloom

The right of Tendayi Bloom to be identified as author of this work has been asserted by her in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

The Open Access version of this book, available at [www.taylorfrancis.com](http://www.taylorfrancis.com), has been made available under a Creative Commons Attribution-Non Commercial-No Derivatives 4.0 license.

*Trademark notice:* Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

*British Library Cataloguing in Publication Data*

A catalogue record for this book is available from the British Library

*Library of Congress Cataloging in Publication Data*

A catalog record for this book has been requested

ISBN: 978-1-138-04918-5 (hbk)

ISBN: 978-1-315-16973-6 (ebk)

Typeset in Times New Roman  
by Wearset Ltd, Boldon, Tyne and Wear

# Contents

<i>List of illustrations</i>	viii
<i>Acknowledgements</i>	x
1 Introduction	1
2 Noncitizenism	10
3 Theoretical error, real-world problems	26
4 Introducing ‘unwanted’ noncitizens	42
5 Banal dehumanisation	61
6 Unwanted and ambivalent citizenship	80
7 Noncitizens overseas and migration	100
8 Activating noncitizenship	118
9 Dynamic capabilities	138
10 Learning from feminism	156
11 Global challenges to citizenism	170
<i>References</i>	191
<i>Index</i>	214

# Illustrations

## Figures

2.1	Home (Asti Maria, Lensational, 2013)	18
3.1	Stateless (Gohar Dashti)	41
4.1	Elena and Ramadan outside their caravan (Denis Bosnic, 2015)	59
5.1	Curtain, Still Human Still Here (Abbie Trayler-Smith, 2013)	69
5.2	Cooker, Still Human Still Here (Abbie Trayler-Smith, 2013)	69
5.3	James (Siyabonga Melongisi Shibe), still from the film <i>James Journey to Jerusalem</i> (Ra'anan Aleixandrowicz, Lama Productions, Zeitgeist Films, 2003).	75
6.1	Iroquois national lacrosse player Marty Ward, of Syracuse, looks across the harbour to the Statue of Liberty National Monument from the dock of Battery Park in New York (Mike Greenlar, Advance Media, New York, 2010)	83
7.1	Bikini Atoll Nuclear Test Site (Marshall Islands) (Copyright UNESCO/Ron Van Oers)	103
7.2	Marchers in NYC, USA, October 2013 (Tendayi Bloom, 2013)	113
8.1	Butcher in Dadaab Camp (Khadija Farah)	135
9.1	Fijian high-jumper, Iliesa Delana, wins gold in the 2012 Paralympic Games (Matt Dunham, Associated Press, 2012)	147
11.1	Domestic workers lower banner in 2011 (International Labour Organization, 2011)	176
11.2	Domestic workers celebrate in 2011 (International Labour Organization, 2011)	176
11.3	Domestic worker protester in India (International Labour Organization, 2011)	178
11.4	Exhausted woman, child and others on the dinghy (Zakaria, #RefugeeCameras, Kevin McElvaney, 2015/2016)	180
11.5	A Greek fisherman escorts and guides the boat to a safe harbour (Zakaria, #RefugeeCameras, Kevin McElvaney, 2015/2016)	181



11.6	Overcrowded dinghy: the view looking forwards (Zakaria, #RefugeeCameras, Kevin McElvaney, 2015/2016)	181
11.7	Looking backwards at the motor (Zakaria, #RefugeeCameras, Kevin McElvaney, 2015/2016)	182

**Table**

9.1	The three types of noncitizen capabilities	145
-----	--	-----

# Acknowledgements

Throughout the almost nine years I have spent working on this book, many wonderful people have given generous support, guidance and insight. This acknowledgements section is my inadequate token of thanks to them.

The kernel for this project arose from my doctoral work at, and with funding from, Queen Mary University of London (QMUL) School of Law from 2008 to 2012, where the inclusive and dynamic academic community and the fantastic supervision of Richard Ashcroft made it a great place to begin the research. I am also grateful for the encouragement of Jonathan Glover and the additional support particularly from Prakash Shah and Kate Malleson, and the QMUL PhD community, the Centre for the Study of Migration at QMUL and the LSE migration studies graduate reading group. Working at the UNU Institute on Globalization, Culture and Mobility in Spain from 2012 to 2015 provided exciting opportunities for engagement in political processes and colleagues with whom to discuss the questions presented here: Megha Amrith, Valeria Bello, Tatiana Diniz, Anna Franzil, Parvati Nair, Janina Pescinski, Regina Salanova and Francesco Vacchiano.

As a Postdoctoral Associate and Lecturer at the Global Justice Program at Yale University in the US in 2015 and 2016, I met interesting and challenging scholars and enjoyed writing and thinking time. I am particularly grateful to Shmulik Nili, Thomas Pogge, Daniel Putnam, Alex Sayegh, and to Seyla Benhabib who also gave generous encouragement. I also thank students who attended my seminar class for providing an opportunity to put the book to a critical and fresh audience. The mutual support of fellow book-finishers Jess Melvin and Daniele Botti has been invaluable and their comments have been transformative. In 2016, during the final throes of this project, I took up a lecturer position at The Open University, UK. The welcome and support of my new colleagues have made it possible for me to finish the writing process.

Collaboration with Katherine Tonkiss has been important to the formation of my ideas over the years. Feedback on the work presented in this book was also provided by participants at workshops and panels that she and I have organised, in particular the 'Non-Citizen'ship' workshop at the University of Manchester in 2013, and panels at the ECPR general conferences in 2014 and 2015 at the Universities of Montreal and Glasgow respectively. I also gained much from

colleagues' comments on parts of chapters that I have presented at the ECPR Joint Sessions at the University of Warsaw, the 'Migration and Human Safety' event convened by Yale University's Fox Fellowship, and Clarkson University's David A. Walsh Arts and Sciences Seminar Series. Engaging with everyone involved in a range of organisations doing important work in this area, including the Hackney Migrant Project and Kalayaan, has also helped me to keep questioning my approach – and to maintain my commitment that a new way to think about noncitizenship is urgently required.

Many others have given their time and insight in reading sections of the manuscript, helping me to talk through ideas, providing encouragement, or supporting in other ways. There are too many to thank everyone by name, but particular thanks go, in alphabetical order, to: Christopher Adams, Rothna Begum, Silaja Birks, Gerry Bloom, Rebecca Brown, Theodora Christou, Jessie Codner, Phillip Cole, Agnes Czajka, Vessela Daskalova, Mohamed Elfar, Helena García Alónso, Ken Bell, Mary W. Gani, Belachew Gebrewold, Gervase Hood, Sara de Jong, Mandeep Kaur, Andrew Kaye, everyone at *Koffee?*, Daniel Lowe, Luke McDonagh, Vinod Mishra, Mba Nmaju, Micheál Ó Floinn, Lisa Propst, Narissa Ramsundar, Jan Scrimgeour, Shifra Sharlin, David Sorkin, Daniel van Gelder, and everyone at *Yumchaa Camden*. I am particularly grateful to Susan Williams for her singular help, support and unfailing confidence in me and in the project.

Some writers, artists and organisations have kindly allowed me to reproduce their work in this book. I thank, in alphabetical order: Ra'anán Aleixandrowicz, Associated Press, Gohar Dashti, Denis Bosnic, Elena, Khadija Farah, Granta Magazine, Mike Greenlar, ILO, Engin Isin, Lawyers for Human Rights South Africa, Lensational, Asti Maria, Kevin McElvaney, Thomas Pogge, Ramadan, Refugee Action UK, Abbie Trayler-Smith, UNESCO, WEIGO and Zakaria. Finally, I also want to thank Andrew Taylor at Routledge for his confidence in the project from the beginning, and his patience and encouragement throughout the process. He, Sophie Iddamalgoda, Hannah Riley, Fergus Paton, and their team have been fantastic to work with.

There are several people from whom, while they lived, I learnt much about the meanings of citizenship and noncitizenship and about the central importance, above all, of humanity. Now their memories bring blessing and it is to them that I dedicate this book. I hope they would have supported the thinking that I present here. Natalia Blinder passed away while I was working on this project. She taught me much. The last time we met we spoke for several hours over countless cups of tea. As ever, she challenged my thinking. Then we turned up the music and she tried to teach me to dance. I showed little aptitude and we laughed a lot. I hope she would think that I have made a better job of this book than I made of the Polka.

Tendayi Bloom, 5 May 2017, London



# 1 Introduction

It is no longer possible, if it ever was, to ignore noncitizenship. Liberal democratic analyses till now have largely been citizenist. That is, they have focused on citizens, or people insofar as they relate to States as citizens. Efforts to address problems of global justice, including with regard to migration, have mostly focused on expanding citizenship's scope. This fails to account for the reality of another sort of special relationship, that of 'noncitizenship'. This book argues for the recognition of noncitizenship as an analytical category as fundamental to the liberal State as citizenship. The two are not mutually exclusive, and individuals may well relate with a particular State both as citizens and as noncitizens.

When noncitizenship is not dormant, but 'activated', this book presents how there arises a specific State obligation not to impair, and sometimes to facilitate, individuals' capabilities. This includes their dynamic capabilities to affect their own circumstances and the conditions for justice. The form of this obligation depends upon context. From afar, this may relate primarily to obligations to refrain from internal and foreign policies with deleterious effects far away. A State's activities should not impair the capabilities of those who relate to it as noncitizens, including from a distance. When noncitizens are in transit, noncitizenship challenges strong restrictions on movement and the impediments to capability to which these give rise. Sometimes it may even require actively facilitating a person to move. Within a State, it relates directly to the production of conditions which enable noncitizens to flourish.

These various instantiations of noncitizenship are not distinct, but rather flow into each other. Crucial to understanding the implications of noncitizenship is the role of noncitizens themselves in helping to construct their world, through what will be defined in this book as 'dynamic capabilities'. The purpose in this book is to examine noncitizenship and the obligations to which activated noncitizenship gives rise. This will require both the introduction of new terms and the re-examination of existing ones, which will be picked up and explored throughout the book.

## **Introducing noncitizens**

People relate to a State as noncitizens for different reasons and to different extents, from those who have never visited the State in question, to those who

## 2 Introduction

have always lived there or are even its formal citizens. There are those individuals who have *moved* into a State's territory, such as: permanent residents, short-term migrant workers, diplomats, tourists and other visitors, longer-term migrants, asylum seekers, those with refugee status, and other displaced persons. Such people might also be en route to that State or at its borders. There are those who lack citizenship where they live, though never having moved. This includes stateless persons, and minorities within a State whose status is disputed or undetermined. It includes formal citizens who suffer discrimination and exclusion, or who contest the State, and so are unable to make full use of their citizenships. Also included are people who relate to States from afar: the colonised, the conquered, and those with more subtle connections, resulting from global and multi-lateral systems, or global phenomena like climate change, for example. While these can often be addressed as distinct contexts with special challenges, understanding them in terms of what they have in common – a noncitizen relationship with the State(s) concerned – can help to locate the phenomena as part of a much larger and interconnected challenge.

In liberal political thinking, the concern addressed in this book is commonly considered in one of two ways. On the one hand, there is the work of global justice theorists and cosmopolitans who present an expanded liberal theory that, broadly speaking, uses thinking that is usually done on a State level and applies it on the global level.<sup>1</sup> On the other hand, there is work specifically directed towards migration, either focusing on the rights of migrants, or on who has access to citizenship or other statuses (including 'denizenship'). Some do both.<sup>2</sup> The notion of unhyphenated noncitizenship can bring these discourses together by providing a unifying analytical category and mode of analysis. Whereas hyphenated 'non-citizenship' includes an assumption of lack, a relationship derivative from citizenship, unhyphenated noncitizenship here refers to an individual-State relationship in its own right.

'Methodological citizenism' here refers to the assumption that thinking about politics and individual-State relationships must be structured around citizenship. This book interrogates methodological citizenism, suggesting how it may have come about. What I call 'noncitizenship' is, then, one response to this. It advocates recognition of the reality of liberal noncitizenship as a way in which to understand the circumstances of those individuals (including formal citizens) who are experiencing some form of (non-consensual, vulnerable and challenging) noncitizen relationship with a State.

1 Many examples are examined in this book, but some key texts include: Charles Beitz (1979) *Political Theory and International Relations*, Harvard University Press; Thomas Pogge (2008) *World Poverty and Human Rights*, 2nd Edition, Polity Press.

2 For example, and in different ways: Seyla Benhabib (2004) *The Rights of Others: Aliens, Residents, and Citizens*, Oxford University Press; Linda Bosniak (2006) *The Citizen and the Alien: Dilemmas of Contemporary Membership*, Princeton University Press; Joseph Carens (2013) *The Ethics of Immigration*, Oxford University Press; Saskia Sassen (2000) *Guests and Aliens*, New Press.

This book sits within a liberal context. It uses Seyla Benhabib's form of immanent critique<sup>3</sup> to examine how liberalism can be truer to its own foundations, and more internally just. The focus is on liberal democracy and States built upon these principles, as well as the language that has been used within this framework to justify global rules. Other theoretical systems are not addressed. This includes those with increasing influence in global governance. Though such an analysis would be worthwhile, there is not scope to include it here. This is a book situated within the liberal discourse, critical of it, and responding to it.

As it is understood here, unhyphenated noncitizenship, like citizenship, is not a characteristic that is essential to any individual, but rather emerges as an individual-State relationship within liberal democratic State construction. Noncitizenship is not a problem *per se* for a liberal State. Far from it. Noncitizenship is essential to a liberal political position. However, when it is neglected, constructed as (hyphenated) non-citizenship, or inappropriately activated, then it challenges the liberal democratic State structure and those State(s) built upon liberal democratic principles. Noncitizenship does not undermine solidarity movements responding to one or another mode of discrimination (gender, class, race, sexuality, age, nationality, for example). Instead, it brings them together as parts of a much broader relationship of noncitizenship.

Noncitizenship engages specifically with that sphere of political reality that references the State directly. It argues that just as the theoretical and real-world creation of a liberal State system produces the citizen-State relationship, the noncitizen-state relationship is also produced. For the most part, this relationship may be dormant, but this book explores how noncitizenship is activated, impacting on the capabilities of affected individuals, and what this means in terms of the obligations of the States concerned. In this book, then, I start with the noncitizen.<sup>4</sup>

### More than a theoretical problem

Reframing the parameters of debate is urgent. While monetary wealth is not all there is to well-being, it is indicative – and particularly at its extremes. At the time of writing, an estimated 10.3 per cent of the world's population is living on less than US\$1.90 per day.<sup>5</sup> Wealth is concentrated in a small number of States. Of the 20 States with the highest by per capita GDP in 2015, most can be loosely

3 Seyla Benhabib (1986) *Critique, Norm and Utopia: A Study of the Foundations of Critical Theory*, Columbia University Press.

4 There are other works that have started in this way, notably Heather Johnson (2014) *Borders, Asylum and Global Non-Citizenship: The Other Side of the Fence*, Cambridge University Press. However, her use of the hyphenated 'non-citizenship' is different from my understanding of unhyphenated 'noncitizenship'. Another work that starts in this way is Katherine Tonkiss and Tendayi Bloom (2015) 'Theorising Noncitizenship: Concepts, Debates and Challenges', pp. 837–852 in *Citizenship Studies* 19(8), which opened a volume in which alternative approaches to the noncitizenship and non-citizenship were elaborated.

5 The World Bank (2016) *Taking on Poverty: Poverty and Shared Prosperity 2016*, International Bank for Reconstruction and Development/The World Bank, pp. 5, 6.

#### 4 Introduction

defined as being constructed on liberal democratic principles.<sup>6</sup> Meanwhile, of the 20 States with the lowest per capita GDP, all but two has been a colony or a ‘protectorate’ of one or more of those States that are now wealthy and ostensibly liberal democratic.<sup>7</sup> Their former colonisers are all now in the top 40 States by per capita GDP.<sup>8</sup> The history of the world’s States is closely interconnected and so is the reality of the individuals living in and moving between them today. Part of understanding this will need an examination of how today’s liberalism came about and what this implies today. This will be the focus of Chapter 3.

Globally, inequality is growing. In 2016, eight men owned the same amount as the poorest half of the world’s population.<sup>9</sup> Between 1988 and 2011, the incomes of the poorest 10 per cent increased by less than US\$3 a year, while the income of the richest 1 per cent increased by 182 times as much.<sup>10</sup> Even amongst formal citizens within those States built upon liberal democratic principles, inequality, poverty and violence can make it difficult to enact their citizenship fully or at all. Such persons may well flourish despite, rather than because of, the State. That something is amiss can also be seen in the number of people migrating involuntarily. Reportedly, forced displacement and exclusion today has reached a level not seen since the Second World War.<sup>11</sup> At the time of writing, UNHCR estimates that 65.3 million people have been forcibly displaced globally. The Second World War is estimated to have displaced around 40–60 million people, the Partition of India a further 14 million. Many of those individuals are unable to participate as citizens within the system of States.

Saskia Sassen characterises these phenomena within a more general phenomenon of ‘expulsion’, so that individuals (as well as institutions) are being systematically expelled from core economic orders.<sup>12</sup> In turn, her expulsion can be seen within a much longer-running and wider noncitizen exclusion. In theory, the human rights of all persons are legally protected, both internationally and

6 From highest to lowest: Luxembourg, Switzerland, Macao SAR China, Norway, Qatar, Ireland, Australia, USA, Singapore, Denmark, Sweden, Iceland, Netherlands, UK, Austria, Canada, Hong Kong SAR China, Finland, Germany, United Arab Emirates. From The World Bank (2017) *World Development Indicators*, updated 1 February 2017, data for 2015.

7 The exception is Ethiopia, which was occupied by Italy, but not colonised. Liberia’s colonial history is also more complicated.

8 From lowest to highest: Burundi, Central African Republic, Niger, Malawi, Madagascar, Liberia, Democratic Republic of Congo, The Gambia, Mozambique, Guinea, Somalia, Togo, Guinea-Bissau, Burkina Faso, Afghanistan, Ethiopia, Sierra Leone, Rwanda, Uganda, Comoros. Those colonisers not already listed in the note above include Belgium at 21, France at 23, Italy at 27 and Portugal at 37.

9 Oxfam calculations using wealth of richest individuals from Forbes Billionaires listing and wealth of the bottom 50 per cent from Credit Suisse Global Wealth Databook 2016, cited in Oxfam Briefing Paper January 2017.

10 D. Hardoon, S. Ayele and R. Fuentes-Nieva (2016) ‘An Economics of the 1%’, Oxfam.

11 UNHCR (2016) *Global Trends: Forced Displacement in 2015*, UNHCR.

12 Saskia Sassen (2014) *Expulsions: Brutality and Complexity in Global Economy*, Harvard University Press.



within liberal States.<sup>13</sup> In reality, though, some individuals are excluded from human rights frameworks, often because a duty-holder is not adequately designated. The noncitizen claims examined in this book are not general. They are special obligations, generated from the special relationship of noncitizenship. As such, the obligations are assigned, even if sometimes they are shared between States. In order to ensure everyone's rights are secured, this book will address the logics of expulsion directly – and the logics of both hyphenated non-citizenship and unhyphenated noncitizenship. People do not only relate to States from within their borders, and an individual may relate with a particular State in several ways. Noncitizenship provides a mechanism by which to examine the continuity between various sites of engagement.

Today, then, those in noncitizen relationships with powerful States, wherever they live, may have to fight to be taken into account, even conceptually.<sup>14</sup> This arises at the level of theory and it will need to be addressed at this level. At the time of writing, the discourse of fear is increasingly common in popular and policy debate in States built upon liberal democratic norms, and security concerns are used to justify increasing exclusions and expulsions.<sup>15</sup> This book does not rule out exclusions but argues that discrimination and expulsion cannot be the default. Noncitizens are not anathema to a liberal political framework (on both State and global levels), but are fundamental to it. Noncitizens are in a special relationship with States and have claims upon them as a result. Noncitizens and their claims become challenging when their reality goes unacknowledged or is inappropriately activated. This book, then, identifies a theoretical problem with significant real-world implications that urgently need to be addressed.

Rather than start from and then qualify an ideal theory, this book begins from the world as it is now and draws attention to a form of relationship that really exists, albeit ignored. On the one hand, it builds upon the theoretical approach of Phillip Cole, who warns that liberal theory as we know it is necessarily an 'insider theory', constructed by and for those on the inside of it, who are then blinded to realities outside a framework that is serving them well.<sup>16</sup> On the other hand, it develops a historical approach, examining deeply problematic elements of the roots of contemporary liberal political philosophy and considering how to move away from them. This includes the role of key liberal theorists in the

13 Benhabib 2004 *ibid.*; David Weissbrodt (2008) *the Human Rights of Non-citizens*, Oxford University Press. See also, for example, Laura van Waas and Amal de Chickera (2017) 'Unpacking Statelessness', in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.

14 This problem for liberalism was already famously pointed out by Hannah Arendt.

15 Valeria Bello (2017) *International Migration and International Security: Why Prejudice Is a Global Security Threat*, Routledge.

16 Phillip Cole (2017) 'Insider Theory and the Construction of Statelessness' in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge. An important aspect of this is who is able to be heard within the dominant discourses; see for example, Anke Graness (2015) 'Is the Debate on "Global Justice" a Global One? Some Considerations in View of Modern Philosophy in Africa', pp. 126–140 in *Journal of Global Ethics* 11(1).

## 6 Introduction

realities and the theories of colonisation and slavery, for example. Examining these roots is crucial to understanding and addressing the blind spots in liberalism today, and will be the focus of Chapter 3.

As with citizenship, an individual might well be pretty much unaware of her/his noncitizen relationship with a State. As will be shown in Chapter 8, this relationship can be ‘activated’ when a person is made to feel particularly vulnerable – and this vulnerability is challenging both to the individual and to the State. Activated noncitizenship can challenge the legitimacy of a State built upon liberal democratic principles. It can also be practically challenging to the State’s functioning. It can even represent an existential challenge to a liberal State. The way this plays out is best seen at the extremities. From one side, there are irregular migrants and stateless persons as presented in Chapter 4. This includes people who are physically present within a State that denies a relationship with them and obligations towards them. Coming from the other direction, situations of colonisation give rise to unwanted and ambivalent citizenship, and poverty and discrimination mean that formal citizenship can be unfulfilled. The individuals involved across these situations are not only not acting as citizens. They can be seen to be in positive relationships with States. ‘Noncitizenship’ gives us a way in which to examine the form of that relationship, not as an absence, but as an individual-State relationship in its own right.

Noncitizens, then, have claims upon States, *qua* noncitizens. The obligations generated by activated noncitizenship can be understood through the tool of ‘dynamic capabilities’. The framework of ‘dynamic capabilities’ uses the core notion of capabilities developed by Martha Nussbaum and Amartya Sen, that what is important is what a person can do and be.<sup>17</sup> The notion of ‘capabilities’ is co-opted in this book in order to identify the sorts of claims arising from noncitizen-vulnerability. It will not be possible to delineate a universal list of obligations or claims for all people in all contexts for all time. Instead, a dynamic approach can take into account the changing nature of individuals’ capabilities and associated needs, the States and societies that may or may not facilitate them, and crucially, the role of the actors involved in framing the context within which this takes place. But the idea of ‘dynamic capabilities’ goes further than this. It also includes an examination of how the individual and the State can be part of crafting the context within which capabilities can be realised.

### Locating noncitizenship within liberalism

Given liberalism is such a broad church (and note, ‘liberal’ here refers to the philosophical tradition rather than colloquial or party-political uses of the term), it is worth sketching briefly what it means here. Individualism, equality, and liberty are core elements of liberalism. I include also solidarity which, though

17 Note, for example, Martha Nussbaum and Amartya Sen (1993) *The Quality of Life*, Oxford University Press; Martha Nussbaum (2003) ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, pp. 33–59 in *Feminist Economics* 9; Amartya Sen (2005) ‘Human Rights and Capabilities’, pp. 151–166 in *Journal of Human Development* 6(2).

sometimes ignored by liberal theorists, is present in liberal State discourses and beyond – and, in reality, it is important to how people construct their lives. According to liberalism, individual humans are the ultimate units of concern. That is, if you divide up a person you do not get smaller political units. This is not to discount important goods that emerge only amongst groups of individuals living together, such as a feeling of shared pride, or the value in interactions within special relationships of families or communities. But these are valued *insofar* as they are good for individual humans. Another important aspect is universalism – that this approach and its corollaries apply for all people for all time. These elements are often seen as being in tension, but they need not be.

A core challenge within the liberal project is to address what should be done both when freedom for some implies oppression and constraint for others, and when freedom comes into conflict with equality. This is particularly relevant here since the freedoms associated with citizenship have often relied upon the loss of freedoms associated with unacknowledged noncitizenship – not least, for those colonial subjects constructed at modern liberalism’s founding. The tension between freedom and equality has long been seen as a key problem in liberal thought even without considering noncitizenship. This is because in its simplistic form, enforcing material equality seems to require a breach of liberty, and enforcing liberty in its simplest form will most likely lead to material and other inequality.<sup>18</sup> A common response to this is to see liberty as necessarily intertwined with equality, such that there is an equal right of all persons to be free.<sup>19</sup> For this to make sense, ‘equality’ must be seen beyond the notion of ‘sameness’. Rather, equality is about removing *hierarchy*.<sup>20</sup> The pre-political scope of a liberal theory must include everyone.

While much work has been done reconciling liberty and equality, attempts to balance liberty and solidarity have often been neglected.<sup>21</sup> Often sidelined in mainstream liberal discourses, solidarity is more commonly taken up instead by nationalisms and communitarianisms on the one hand and socialisms on the other.<sup>22</sup> Yet, a sometimes-implicit commitment to solidarity obscures implicit commitments of the theorists themselves, as well as ignoring a key element of human society. In this book, solidarity and togetherness in some form are

18 This tension has been central to the development of libertarianism, which prioritises liberty over equality and argues that freedom will inevitably lead to acceptable inequality. For a classic presentation, see Robert Nozick (1974) *Anarchy, State and Utopia*, Basic Books.

19 Ronald Dworkin (1991 – first published 1977) *Taking Rights Seriously*, Duckworth, London, p. 266; Attracta Ingram (1994) *A Political Theory of Rights*, Oxford University Press; HLA Hart (1955) ‘Are there any Natural Rights?’ pp. 175–191 in *Philosophical Review* 64. See also, for example, John Mackie (1984) ‘Can there be a Right based Moral Theory?’ pp. 168–181 in Jeremy Waldron (ed.) (1984) *Theories of Rights*, Oxford University Press, p. 177.

20 See, for example, Catharine MacKinnon (1987) *Feminism Unmodified: Discourses On Life and Law*, Harvard University Press.

21 Attracta Ingram (1994) *A Political Theory of Rights*, Oxford University Press, p. 13. Note that the word ‘solidarity’ is used, rather than ‘fraternity’, which is traditionally located within the triumvirate. This is to avoid the inherent sexism and paternalism in the terminology of fraternity.

22 Yael Tamir (1995) *Liberal Nationalism*, Princeton University Press; David Miller (1995) *On Nationality*, Clarendon Press; Gerry Cohen (2009) *Why Not Socialism?* Princeton University Press.

## 8 Introduction

recognised as being important to individuals' capabilities, but this is dynamic and, as such, need not lead to communitarianism or nationalism, for example.

Finally, this book adopts a background assumption of 'modest cosmopolitanism'. Liberalism's core commitments to equality, liberty, and solidarity, alongside universalism and individualism, neither entail nor are entailed by 'cosmopolitanism'. Instead, cosmopolitanism is a matter of scope. For example, some key liberal theorists narrow the scope of the equality, liberty, solidarity, even of the universalism, so that they function only within a limited group. For others, this represents a major problem,<sup>23</sup> while still others see it as trivial.<sup>24</sup> *Structural* cosmopolitanism is the position that it is necessary to promote a world State.<sup>25</sup> *Empirical* cosmopolitanism, meanwhile, argues that the world in fact is (or could be) run as a world State.<sup>26</sup> This book adopts a *moral* cosmopolitan stance. That is, it holds that if a liberal metric is to be adopted, then absolutely all people must be included within it, while recognising that people may relate to the liberal framework(s) in different ways including through noncitizenship. Moral cosmopolitanism need not translate to either structural or empirical cosmopolitanism.

To be useful, any such approach must be empirically accurate about how the world is and adopt a realistic picture of how it *could* be. However arbitrary they may be, national States are important to people. Flag-waving at sports matches and 'national' events, mobilisation around national politics, and self-identification with national States, all demonstrate that people currently do care about national States, and often associate themselves with them emotionally, even fighting for them when they are threatened or still to form. The State (and the nation-State, when it is so defined) is privileged by the power it has to reinforce commitment. Acknowledging the importance of nations and States to people must come alongside a critical re-examination of nations' apparent necessity, their connection with States,<sup>27</sup> and the implications of this for noncitizenship.

The world *just is* currently divided into States. Resources, political representation, social services, *just are* currently largely organised along State lines no matter how arbitrarily or unjustly they arose. This neither means that they should be organised this way, nor that this way of the world should not be contested, but it

23 Phillip Cole (2000) *Philosophies of Exclusion*, Edinburgh University Press, at p. 154; Lea Ypi (2008) 'Justice in Migration: A Closed Borders Utopia?' pp. 391–418 in *Journal of Political Philosophy* 16(4).

24 John Rawls (1999) *The Law of Peoples*, Harvard University Press.

25 Luis Cabrera (2010) *The Practice of Global Citizenship*, Cambridge University Press. This could also be a way to understand Seyla Benhabib's approach, as presented in Seyla Benhabib (2004) *The Rights of Others: Aliens, Residents, and Citizens*, Cambridge University Press, though in a later book she shows how the seeds of this are perhaps already there; see Seyla Benhabib (2011) *Dignity in Adversity: Human Rights in Troubled Times*, Polity.

26 Andreas Bummel (2010) *The Composition of a Parliamentary Assembly at the United Nations*, Committee for a Democratic U.N.

27 Benedict Anderson (2006) *Imagined Communities: Reflections on the Origin and Spread of Nationalism* New Edition, Verso; Katherine Tonkiss (2013) *Migration and Identity in a Post-National World*, Palgrave Macmillan.

means that this is how things are at present. Based on this fact about the world, any attempt to develop a just society will need to make use of State and interstate institutions, or else disband them and start from whatever results. It is within the context of the system of States that international organisations like the UN have been created. They ostensibly try to mitigate the ill-effects of having States, to control their power and to ameliorate human life globally. Such organisations function *because of* an underlying respect for the institution of the State. Irrespective of whether States (including those self-defining as nation-States) are ideally beneficial or necessarily existent, and irrespective of what one feels about the existing international organisations, theory must take them into account. This book, then, adopts a moral cosmopolitan account within the empirical context of a society-of-States. This forms an important part of the backdrop here.

There are many ways to understand what is meant by a ‘State’ and indeed one may draw upon different aspects of States at different times. This book mainly refers to the State *qua* institutional structure (though this is in fact often tightly tied to territorial jurisdiction and citizen-membership, for example). The analysis here focuses on the institutional structure in order to examine directly the nature of the political relationships of individuals with systems of institutional power and organisation. This is not the only, or even the most, valid approach, but it is the one taken here. There are places in this book where person-to-person or intra-group relationships play a more central role, or where the relationships between noncitizens and citizens, or the noncitizenry and the citizenry, are considered. In such cases this is made explicit. The common convention of using the upper case ‘State’ is adopted throughout. This book also adopts the wording ‘s/he’ and ‘her/im’ for example. This is to avoid assuming binarity, while retaining the plural use of ‘they’ and ‘them’ which can sometimes be made difficult to express when these latter are adopted to refer to singular individuals. Her/im is used rather than her/him to avoid binarity. Some read this phonetically, others pronounce it ‘ze’ and ‘zer’. The book draws upon a range of text-based and other sources. This includes the work of visual artists and photographers. The images that have been selected either challenge or illustrate what is being discussed in the text and are used as sources alongside those text-based sources which are cited or discussed.

This book is intended to speak specifically to the considerations of States and multi-State institutions arising out of liberal frameworks. This is not because it would not be a useful exercise to address other frameworks, but because that is something for another book and another project. Liberal democratic thinking has been important globally in the development of the contemporary assumption of citizenship. As such, addressing a liberal democratic audience addresses more than the local jurisdictional concerns in ostensibly liberal democratic States and groupings. It also speaks to those international institutions for which these ways of talking have traction. This book argues for the recognition of noncitizenship as a fundamental liberal concept, coexistent and intertwined with citizenship, and suggests a basis for identifying the obligations that arise as a result. This is what I refer to as noncitizenism.

## 2 Noncitizenism

‘Noncitizenism’ refers to the move away from what we can call ‘methodological citizenism’, and towards a theory that recognises the noncitizen relationship. For the most part the story told in liberal political theory is the story of citizens, or people insofar as they relate as citizens. Noncitizens have always been there in the background. This is because the creative process that gives us the State and citizenship also produces noncitizenship. Today, some noncitizens are on the territory of the States with which they have noncitizen relationships, while others are found at their borders or in lands far away. In order to examine the nature of the relationships such individuals have with those States, we need to look for their commonalities. Left unacknowledged, noncitizenship today can make individuals destitute,<sup>1</sup> detained,<sup>2</sup> and even left to die<sup>3</sup> with impunity in and by States ostensibly built on liberal democratic principles. The failure to acknowledge noncitizenship makes people seem rightsless,<sup>4</sup> excludable, and

1 Prevented from working and unable to claim State welfare, refused asylum seekers in the UK may be left destitute; see Tendayi Bloom (2015) ‘London’s role in the policy of destitution of asylum seekers: The “Ghosts” in the British migration infrastructure’, in Anne Kershen (ed) (2015) *London The Promised Land Revisited*, Ashgate.

2 Again, this can be seen most easily in the migratory context. In the US, women and children from Honduras, El Salvador and Guatemala who have been apprehended at the US-Mexico border are put immediately into, and often kept indefinitely in, administrative detention. Given the acknowledgement that these persons have been, for the most part, fleeing violence and cannot be deported, this detention often lacks a defined end point. For example, Inter-American Commission on Human Rights (2015) ‘Human Rights Situation of Refugees and Migrant Families and Unaccompanied Children in the United States of America’, Organisation of American States OAS/Ser.L/V/II.155 16 24 July 2015.

3 This phrasing comes again from the migration context, from that of the ‘Left-to-Die boat’, see for example Eftymios Papastavridis (2013) ‘The “Left-to-Die Boat” incident of March 2011: Questions of International Responsibility Arising From the Failures to Save Refugees at Sea’, Refugee Law Initiative Working paper No. 10, School of Advanced Study, London. See also Tara Brian and Frank Laczko (eds) (2014) *Fatal Journeys: Tracking Lives Lost During Migration*, IOM.

4 Some people’s recognised relationships of citizenship are undone in order to make them deportable. The most extreme example of this in recent years has been the mass denationalisation of Dominican Republic citizens identified as being of Haitian descent, making thousands of those who used to have formal citizenship stateless. See for example, Jillian Blake (2017) ‘Race-based Statelessness in the Dominican Republic’, pp. 102–116 in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.

worse.<sup>5</sup> Liberal theory, though various in interpretation, is based upon a commitment to the dignity of the individual and the notion that justice requires equality of liberty and respect (as well as solidarity). Yet, so long as a person needs citizenship, or quasi-citizenship (explained below), in order to be recognised, it looks like liberal theory is doomed to the inconsistency of excluding some ‘featherless bipeds’ from its scope.<sup>6</sup> This book does not deny the special relationship of citizenship. It draws attention to another special relationship, that of noncitizenship, which has been ignored for too long.

### **What noncitizenship is and what it is not**

Central to the position in this book is that the construction of States upon liberal democratic principles gives rise to two relationships, neither more basic than the other. It is impossible to create a liberal State in a world of States without also creating citizenship and it is just as impossible to do so without creating noncitizenship. That is, in coming into being, the liberal State makes some people dependent upon it as citizens, and some dependent in what we can call a ‘noncitizen’ manner. In the way the world currently functions, this often puts great burdens upon such individuals. Yet, both citizenship and noncitizenship are foundational – they are both needed for the creation of the liberal State. The noncitizen-vulnerability and challenge are harder to mitigate *qua* noncitizenship, partially because we have so little experience of thinking about what an appropriate conception of noncitizenship would look like.

While much theoretical work examines the relationships between citizens and States, this book addresses the noncitizen-State relationship directly. It recognises noncitizenship as an often active and dynamic relationship between an individual and a State, wherever on the planet s/he is. In a globally connected world a person can have a noncitizen relationship both from afar and from within the State in question, and this relationship may well intertwine with aspects of citizenship. Noncitizenship can be dormant, but it can also be ‘activated’ in various ways. Activated noncitizenship is easiest to trace when a person has migrated. As such, migration-activated noncitizenship features heavily in this book.

When a person is in a noncitizen relationship with the State in whose territory s/he is currently located, this can be referred to as ‘noncitizenship *in situ*’. Some noncitizens *in situ* have quasi-citizen relationships, symbolised for example by migrant worker or student visas, or by internationally protected statuses as in the case of refugees or stateless persons.<sup>7</sup> Insofar as these statuses themselves are

5 The recent release of the Nauru Papers by UK newspaper *The Guardian* has shown the extent of the maltreatments considered acceptable towards migrants Australia has relocated to its offshore detention centre on the island.

6 This phrase is attributed to Plato. It derives from (but does not appear in) *The Statesman*, in which Socrates dialogues with a ‘stranger’ who distinguishes between bipeds and quadrupeds and then identifies humans as being those bipeds that are not birds, that is, which do not have feathers. Julia Annas and Robin Waterfield (eds) (1995) *Plato: The Statesman*, Cambridge University Press.

7 Some of those experiencing noncitizen vulnerability may even officially be citizens of their countries of noncitizenship. This is introduced below.

relevant, they are in a continuum with (but not quite reaching) citizenship. These are not noncitizen statuses, though such individuals may well *also* be experiencing activated noncitizenship. Some individuals experiencing noncitizenship in a State may in fact also be formal citizens of that State. Still other noncitizens may lack any such recognised citizen or quasi-citizen relationship.

Noncitizenship is also essential to liberal political thought and reality. Engin Isin writes: '[c]itizenship and otherness are then really not two different conditions, but two aspects of the ontological condition that makes politics possible.'<sup>8</sup> For Isin, it is necessary to revisit the meaning of contemporary citizenship. He sees citizenship and otherness as 'conditions of politics'. The approach here is similar, but differs in an important way. It advocates *noncitizenship* as an analytic category in its own right within liberal theory and politics. That is, noncitizenship and citizenship are both essential to the creation of the State, and represent two modes of relating to it. This does not interfere with Isin's notions of citizenship that go beyond State and other formal institutions. Yet, with regard to the State, some persons might relate overridingly as citizens or as noncitizens, while for others the relationship will be more mixed. This book develops the concept of liberal unhyphenated noncitizenship. It argues that this noncitizenship needs to be acknowledged and begins to examine its implications, including in terms of the resultant State-noncitizen obligations.

### **Now I turn to what this book is not**

First, this book does not argue directly for a change in law. Instead, it advocates a refocusing of theoretical and political discourse. It seeks to develop a revised understanding of existing individual-State relationships and of the resulting obligations. The principal aim is to change the terms of debate – and for a theoretical, cultural and political recognition of noncitizenship and the obligations to which it gives rise.<sup>9</sup> In fact, most of the obligations attributed to States in relation to noncitizens in the following chapters already exist under Human Rights frameworks. Legally, States already have these duties. They remain unfulfilled for cultural and political, amongst other, reasons. As such, it is principally this theoretical, cultural and political assumption that is addressed here rather than starting with law or policy. Twentieth-century liberal thinking arose partly as one alternative to fascisms and exclusionary narratives.<sup>10</sup> The proposal here is to continue in this tradition, but to be aware of, and to challenge, liberalism's

8 Engin Isin (2002) *Being Political: Genealogies of Citizenship*, University of Minnesota Press, at p. x.

9 Innocent Asouzu argues that 'the ultimate aim of any authentic philosophising subject subsists [...] in changing ideas such that through the possession of new and better ideas, human beings can affect changes in the world through their actions.' Innocent I. Asouzu (2004) *The Method and Principles of Contemporary Reflection in and Beyond African Philosophy*, University of Press, p. 6.

10 Jonathan Glover (2012) *Humanity: A Moral History of the 20th Century*, 2nd Edition, Yale University Press.



longer history in the construction of, and legitimisation of, colonialism and enslavement – and the impacts of this upon how the world is today, and how liberalism functions within it. The intention is to use this particularly to respond to the difficulties raised by theorists of global justice and of migrant rights.

Second, the arguments in this book do not deny the vast inequalities within the relationship of citizenship, and amongst citizenships.<sup>11</sup> Some citizens of States ostensibly built upon liberal democratic principles may be unable to make full use of their citizenships, because of discrimination on the grounds of ethnicity, gender, social class, sexuality, physical ability, age, former migration, place of residence, and economic status, for example. Formal citizens may also suffer noncitizen-vulnerability as a result.<sup>12</sup> Citizenship and noncitizenship are not mutually exclusive. Some have argued for a recognition of solidarity across citizenship and hyphenated non-citizenship according to one or another of these dimensions of discrimination.<sup>13</sup> A robust understanding of *noncitizenship* can help to explain how this might work. That is, noncitizenship can occur for multiple reasons and in multiple dimensions. Whether this happens overtly or implicitly, and whether because of race, class, gender, ability, or some other factor, or an intersection of factors, this can be interrogated through the lens of noncitizenship. The focus in this book is primarily and overwhelmingly on the special nature of the State-noncitizen relationship, and these other elements insofar as they relate to the individual-State relationship.

Third, this book is not an argument, an excuse, or a reason to deprive or to deny access to formal citizenship for anyone. In fact, I advocate significantly easier access to recognised formal citizenship in many cases, and support aspects of the *jus nexi* of Ayelet Shachar, the constitutional patriotism of Katherine Tonkiss, the *jus domicile* of Dora Kostakopoulou, and the stakeholdership of Rainer Bauböck.<sup>14</sup> The noncitizen relationship presented in this book does not offer an alternative to citizenship, or a reason to see those who should be so-recognised as less than full citizens (as I show in more detail below, I reject the notion of denizenship and the idea of binarity between citizenship and

11 For example, Stephen Castles (2005) 'Hierarchical Citizenship in a World of Nation-States', pp. 689–692 in *Political Sciences and Politics*. See also the Global Passport Power Rank [www.passportindex.org/byRank.php](http://www.passportindex.org/byRank.php). Note the correlation of this, for example, with the HDI.

12 For example, see analysis in Chris Hayes (2017) *A Colony in a Nation*, Norton.

13 For example, see Shanthi Robertson (2015) 'Contractualization, depoliticization and the limits of solidarity: noncitizens in contemporary Australia', pp. 936–950 in *Citizenship Studies* 19(8) ADD.

14 Ayelet Shachar (2009) *The Birthright Lottery: Citizenship and Global Inequality*, Harvard University Press; Ayelet Shachar and Ran Hirshl (2007) 'Citizenship as an Inherited Property', pp. 253–287 in *Political Theory* 35(3); Katherine Tonkiss (2013) *Migration and Identity in a Post-National World*, Palgrave Macmillan; Dora Kostakopoulou (2008) *The Future Governance of Citizenship*, Cambridge University Press; Rainer Bauböck (2008) 'Stakeholder Citizenship: An Idea Whose Time Has Come?', Transatlantic Council on Migration Paper, Migration Policy Institute, Washington DC. See also Ruth Lister's examination of evolving understandings of the inclusivity of citizenship: Ruth Lister (2007) 'Inclusive Citizenship: realising the potential', pp. 49–61 in *Citizenship Studies* 11(1).

noncitizenship). What this book does offer is a way in which to understand how people are in fact relating to States, providing an alternative to the hyphenated ‘non-citizenship’, as nothing more than a negation, based on the assumption that citizenship is the only possible mode of relating to a State.

While more inclusive admission to full citizenship regimes is an important way to address many instances of activated noncitizenship, the problems associated with the non-recognition of (unhyphenated) noncitizenship cannot be adequately addressed in this way – neither theoretically nor practically. It is also not solved by adding yet more quasi-citizen statuses to an already long list. The human rights of everyone are, in theory at least, already legally protected, albeit not enforceably so, by existing treaties and conventions.<sup>15</sup> This book argues for an explicit philosophical, social and political recognition of the rights of noncitizens *qua* noncitizens. These rights are based on three factors: a person’s humanity, her/his noncitizen-vulnerability in relationship to a particular State or States, and the challenge that this raises for the relevant State(s) and the State system, including challenging its legitimacy. The noncitizenship presented here is a foundational relationship in its own right and the demand for its recognition is one of justice.

Consider the more than 11 million irregular immigrants in the United States, for example.<sup>16</sup> Irrespective of any citizen-approximating status, and separate from arguments for amnesties, I argue that irregular immigrants already have legitimate claims upon the US (in this case) for human recognition, and to enable them to meet their basic needs and develop their capabilities. The argument here is that these claims are not only humanitarian or ethical. They are also political and institutional, based on the individuals’ noncitizen relationships to the US.

One could argue that the US never consented to their physical presence, indeed tried to block it, but this does not detract from the noncitizenship-based claims those individuals have against the US.<sup>17</sup> These claims do not only derive from their presence, but also from the theoretical realities of State-creation and the policy realities of exclusion. This relationship may even be more deeply felt and so further ‘activated’ because of the decapacitation, exclusions and coercion of irregular immigrants, generating particular obligations towards them.<sup>18</sup> This

15 David Weissbrodt (2008) *The Human Rights of Non-Citizens*, Oxford University Press. See also OHCHR (2006) *The Rights of Non-citizens*, United Nations.

16 The most recent official figure comes from a 2012 report for the US Department of Homeland Security, estimating 11,510,000 persons; Michael Hofer, Nancy Rytina and Bryan Baker (2012) ‘Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011’, Department of Homeland Security, p. 4. Irregular migration is examined in more detail in Chapter 3.

17 Conversely, the argument might be made that the US has consented through the acceptance of these persons’ labour. *Prima facie* this was not acceptance by the State but by employers, though this can be contested, (e.g. see Christian Joppke (1998) ‘Why Liberal States Accept Unwanted Immigration’, pp. 266–293 in *World Politics* 50(2)). Whichever way, if there is consent, it only strengthens the argument here.

18 For example, see Jose Antonio Vargas (2011) ‘My Life as an Undocumented Immigrant’, *The New York Times Magazine*.

position may at first seem to be at odds with standard liberal frameworks that do not acknowledge noncitizenship. But once noncitizenship is recognised as fundamental to those frameworks and noncitizen-vulnerability addressed, the challenge irregular migrants pose becomes less threatening.

The latent citizen and/or noncitizen-vulnerability and challenge that individuals experience may well be little noticed. For the most part, this is a good thing. According to most liberal interpretations, it means that, with regard to that person, the State is making good use of the concentration of power and regulation of resources entrusted to it, while also mitigating appropriately for individuals' surrender of power. However, a system that serves some individuals well may be experienced very differently by others. This means that in order to develop a theoretical framework it is necessary to seek out noncitizen activation and its implications for individuals, including those who are far from the State in question. Noncitizenship, like citizenship, is for the most part a dormant status, ready to be felt when it conflicts with an individual's aims or impairs her/his capabilities. This book shows not so much how the noncitizen status is constructed, but how it is activated, and how two important aspects of this activation – vulnerability and challenge – can help us to understand the relationship of noncitizenship and its associated claims on States built upon liberal principles.

Individuals can be in both citizen and noncitizen relationships simultaneously with a particular State. But is it possible for a person to be in neither a citizen nor a noncitizen relationship with any State at all? This is *theoretically* possible. However, the world is in fact almost entirely composed of States which hold substantial control over their territories (excepting the High Seas, for example). It is conceivable that a person could be in no relationship with any *liberal* State – and liberal States are the focus here. However, as has been demonstrated by scholars like Charles Beitz, the world today is substantially interrelated so that for the most part this is unlikely. Either way, this does not make a big difference to the position presented here. It is enough to note that, in the world as it is, a person is, for the most part, forced to relate in some way to some collection of States, including liberal States. And s/he must in fact relate through some combination of citizenship and noncitizenship. Where one of these is made invisible or impossible, the other is likely to become predominant. Where neither can be recognised, this puts the individual in a difficult position.

### **Located liberalism and universalism**

In his 2000 book, *Philosophies of Exclusion*, Phillip Cole not only warns that noncitizens are absent from liberal theorising, he also suggests that perhaps they can never be included.<sup>19</sup> For Cole, liberal political philosophy seems to build an

<sup>19</sup> Phillip Cole (2000) *Philosophies of Exclusion*, University of Edinburgh Press.

edifice of universal principles of justice and human rights upon an underlying structure that arbitrarily narrows, and must so-narrow, the scope of who can be considered eligible to enjoy it. In more recent restatements of what he comes to call ‘insider theory’, Cole explains that liberal theory, by its very definition, is an insider theory, as it is constructed by its insiders who, perhaps unwittingly, define noncitizens out of consideration.<sup>20</sup> Women, disabled persons, ethnic, and other marginalised groups, Cole observes, can be incorporated as the scope of insidership is expanded. But being a noncitizen is not of the same sort as being a woman for example. Women can be defined into or out of citizenships as scope is either widened or narrowed. With noncitizens, the situation is different. Cole argues that noncitizens are excluded *by definition*. This book presents an alternative way to respond to this problem that Cole identifies. Liberal theory constructs the noncitizen – and necessarily so. But this book tries to show a way in which to recognise the noncitizen *qua* noncitizen within contemporary liberal political thought.

A common criticism of liberal thought is that it hides its epistemic location. By claiming universalism and a distanced rationality, it can give the appearance of being impartial.<sup>21</sup> As Cole identifies, liberal theory, like any theoretical position, is produced by located beings. And those beings speak from a particular position within the power structure of the State and the wider political systems. If those scholars writing the core texts of liberal theory experience the world primarily as citizens, and are unfamiliar with the experience of activated noncitizenship, then it stands to reason that the theory that arises as a result overlooks noncitizenship. This does not mean that citizen theorists *cannot* develop a noncitizenist approach to liberal theory, but it will need especial care, and can benefit from input from individuals relating to States in a variety of ways. One way in which to begin to avoid these pitfalls is to ensure as many and as diverse contributors as possible are involved in all stages of the formation of theory. This is borne out by experience with feminism, for example. A sudden flowering of feminist work in liberal political theory occurred in the 1970s, at the time when many women were suddenly part of the academy.<sup>22</sup> And, as I argue in Chapter 10, this also gave rise to an enriching of theory more widely.

20 Phillip Cole (2017) ‘Insider Theory and the Construction of Statelessness’, in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge; Phillip Cole (2015) ‘At the Borders of Political Theory: Carens and the Ethics of Immigration’, *European Journal of Political Theory*.

21 The problem in this can be seen symbolically if we consider the Mercator Map for example. Produced in the sixteenth century, it puts Europe in the centre and makes it proportionally larger than other continents. This projection is still commonly used today and in its apparent valueless descriptive quality, it can skew perceptions of the world. This is something which other projections, like the Peters Project, for example, is trying to redress.

22 Charles Mills (2015) ‘Race and Global Justice’, in Barbara Buckinx, Jonathan Trejo-Mathys and Timothy Waligore (ed.) (2015) *Domination and Global Political Justice: Conceptual, Historical and Institutional Perspectives*, Routledge.

The core canon in liberal political theory and even global justice theory still primarily derives from a narrow pool of thinkers,<sup>23</sup> located largely in wealthy English-speaking universities in rich countries. Charles Mills argues that the reason race, for example, has often been absent from liberal theoretical discourses is that:

... group experience and group privilege play a role in influencing concerns and interests. We would expect that those who have historically been the beneficiaries of racial injustice would tend to have less interest in exploring the topic than those who have been its victims.<sup>24</sup>

He argues that the construction of theory as raceless, for example, by those who have not experienced race as a problem, makes it difficult to critique or even to see race-based injustices within it. Similarly, and more broadly, assuming that all people can be neatly organised according to contemporary citizenships makes it difficult to examine the implications of noncitizenship as anything other than the lack of, or deviation from, the norm – the norm of citizenship.

The idea that knowledge is ‘located’ or ‘situated’ is not new, and there is a body of work examining how to address this in political and social spheres, as well as theory.<sup>25</sup> Feminist and intersectional philosophers, for example, argue that some social problems are just not visible from a ‘male’ or ‘White’ gaze.<sup>26</sup> And indeed, the insiders of the liberal democratic insider theory have traditionally been White and male – and primarily relating as citizens. When asked to describe the world, we describe it as we know it. Theorists can only ever theorise what they know to be there – and if the theoretical framework and the institutions upon which it is based are serving those theorists well, what reason is there to suppose that it is missing some people out? As more diverse voices are included in the theoretical canon, it becomes possible for all theorists to develop richer approaches.

On a theoretical level, Phillip Cole takes this further to say we have thereby constructed a theory that privileges the voices of insiders and makes it impossible for outsiders’ voices to feed into the theory’s reconstruction.<sup>27</sup> And yet, precisely because of the rational basis of liberalism (centred around the individual, the equality of dignity and freedom, aiming at universalism), a self-reflective

23 See Anke Graness (2015) ‘Is the Debate on “Global Justice” a Global One? Some Considerations in View of Modern Philosophy in Africa’, pp. 126–140 in *Journal of Global Ethics* 11(1).

24 Mills 2015 *ibid*.

25 For example, see David Walsch’s paper, ‘Reflections on the Nature of Modernity’, on breaking away from the ‘tyranny’ of the conventional perspective. See also, for example, Dale Turner’s presentation in Dale Turner (2006) *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy*, University of Toronto Press.

26 The term comes from George Yancy (2008) *Black Bodies, White Gazes: The Continuing Significance of Race*, Rowman & Littlefield.

27 Cole 2017 *ibid*.



*Figure 2.1* Home (Asti Maria, Lensational, 2013).

liberal position should be able to take on board criticisms from previously overlooked perspectives and use new voices to create more accurate and more just liberal presentations of the world. Indeed, in doing this, liberalism could also provide a means by which to address some contemporary injustices which put weighty burdens of the inadequately conceived State and State system on some individuals while benefiting others. One aspect of this will be the recognition of noncitizenship.

This locatedness of thinking is made jarringly apparent in Asti Maria's photograph, 'Home', part of the series 'Transit in Doubt'. It is a fuzzy photograph of a rough-sleeper in Hong Kong. At the time when she took the photograph, the photographer was herself an Indonesian domestic worker in the city. The intention behind the series was to enable the viewer to explore the world through the eyes of a domestic worker, a perspective that is often hidden. However, in

'Home', Maria does more than this. She helps us also to notice what she notices but cannot quite see, drawing us into her own efforts and understand a scene that may be outside the viewer's experience on several levels. Maria, from her own particular perspective, is raising a question, not about her position in society only, but about the society in which she, the viewer of her photograph, and the rough-sleeper all participate. Seen alongside Maria's more recent work, with the crisp lines of Hong Kong skyscrapers, this image appears as even more of a contrast. It shows what is blurred even in the spaces (including the theoretical spaces) that may appear to be known. It forces the viewer to look more closely at what is otherwise a mundane city scene to see other realities. The photographer shows herself as located, and forces the viewer to acknowledge her/his own locat- edness as well. Such recognition will be necessary if we are to develop a liberal theory that recognises noncitizenship.

### **Noncitizenship without the hyphen and its critics**

I introduce the analytic category of unhyphenated 'noncitizenship' to try to respond to this. Unlike hyphenated 'non-citizenship', it does not assume a deference to citizenship or an expulsion. Though imperfect and unequal, States' relationships with, and obligations to, citizens are well rehearsed. Insofar as individuals relate to States as noncitizens, this is not the case. Noncitizenship here is not some status to be added to the list that includes worker and student visas, residents and refugees, and the vast gamut of officially recognised relationships with States. These statuses are not citizenships, but they are also not noncitizenships. Insofar as they are officially recognised, they are approximations or proxies to citizenship, bestowed upon an individual by the grace of a State. That which is officially recognised in these statuses, is not noncitizenship. And so I refer to them as 'quasi-citizenship' statuses. The rights associated with them are not-quite-citizenship rights. A person with a work visa is not usually considered eligible for all of citizenship's benefits but, thanks to a State's beneficence, s/he has access to some. Noncitizenship is a different dimension of such a person's relationship with the same State, a dimension not represented in the quasi-citizen aspects of the individual-State relationship.

For example, someone living in a State with a work visa has a quasi-citizen relationship with that State, making claims, contributing, perhaps even voting. But at the same time s/he is always vulnerable to the cessation of the work contract and the expiry of the visa. S/he is vulnerable to the State, to the employer and to officials in a special sort of way and must negotiate eligibility for certain goods. Ultimately, s/he is always at risk of deportation. Such individuals are, then, *also* vulnerable to the State in question as noncitizens – a form of vulnerability that today can be more abject, unmitigated and potentially total, since it is currently largely unrecognised within liberal democratic systems. Such persons might in this respect also pose a challenge to that State. In Chapter 8, this is shown to be a three-faceted challenge: moral challenge, a legitimacy challenge, and perhaps an existential one as well.

Unhyphenated noncitizenship differs from ‘denizenship’. Denizenship is often used to refer to resident foreigners, to not-quite-citizen members (such as freed slaves) or to those born far from an empire’s metropole.<sup>28</sup> In contemporary analyses of denizenship, Rainer Bauböck presents it as a (poor) second to citizenship. Tomas Hammar observes that the high level of rights amongst denizens (*qua* foreign residents) is making naturalisation less attractive in some States.<sup>29</sup> They portray denizens as being within the State of their denizenship, with denizenship providing a citizen-like-but-not-citizen relationship with that State. Unhyphenated noncitizenship should not be seen as secondary to citizenship, and, like citizenship, noncitizenship can also be held with a State from afar.

Alongside his analysis of denizenship, Bauböck directly addresses the fact that there are people who do not have political rights in a faraway State that has power over their lives.<sup>30</sup> But in his discussion of denizenship, he puts these people to one side. His focus for denizenship is on those who are, to use his terms, ‘resident aliens’ in the State in question.<sup>31</sup> He argues that such individuals should not be forced to become citizens in order to access basic and not so basic rights. The discourse of noncitizenship helps to link Bauböck’s denizens with his others far away (who are the focus of the cosmopolitan global justice literature).

The removal of the hyphen also challenges the existing system’s binarity. It can seem as if there are two mutually exclusive options. On the one hand, there is citizenship, and on the other hand is its negation: hyphenated non-citizenship. There is also currently a middle ground populated by those who are not quite citizens, with priority given to citizens. Within this common approach, the dividing line between those persons who count as citizens and those persons who count as (hyphenated) non-citizens will depend on where along the continuum you place your cut-off. This provides too limited a framework within which to understand the complex relations people have with States. It shapes the theorisations that can be developed and the options that are imaginable. Indeed, the hyphenated term ‘non-citizenship’ even makes it difficult for someone disagreeing with the position in this book to argue *in favour* of seeing non-citizenship as merely a non-relationship, since this position seems terminologically trivial.

28 Rachel Ida Buff (2012) ‘Domestic Internationalisms, Imperial Nationalisms’, pp. 123–140 in Sukyana Banerjee, Aims McGuinness and Steven Charles McKay (eds) (2012) *New Routes for Diaspora Studies*, Indiana University Press; Peter Kivisto and Thomas Faist (2010) *Beyond a Border: The Causes and Consequences of Contemporary Immigration*, Pine Forge Press (Sage), pp. 225, 226.

29 Bauböck 2008 *ibid.* p. 11 states explicitly that denizenship cannot replace citizenship; see also particularly Rainer Bauböck (1991) ‘Migration and Citizenship’, pp. 27–48 in *New Community* 18(1) p. 31; Tomas Hammar (1990) *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration*, Avebury.

30 Rainer Bauböck (1994) ‘Changing the Boundaries of Citizenship: The Inclusion of Immigrants in Democratic Politics’, pp. 199–232 in Rainer Bauböck (ed.) (1994) *From Aliens to Citizens: Redefining the Status of Immigration in Europe*, Avery, Vienna.

31 Bauböck 1994 *ibid.* p. 203.



Consider the experience of urban Maoris as presented by Manuhua Barcham. Barcham observes how a pervasive enforcement of the assumption of binarity makes it difficult to characterise the realities of many urban Maoris.<sup>32</sup> He observes that for official recognition within the New Zealand State, individuals need to be classified as either Maori or not Maori, and to be either New Zealanders or not New Zealanders. The truth, Barcham explains, is more complex. I understand him as saying that for intersecting and complicated reasons, the same individuals are both Maori and at odds with being Maori, New Zealanders and at odds with being New Zealanders. The rigid terminology born of, and reinforcing, an uncompromising theoretical structure, forces such individuals artificially to choose boxes in which to insert themselves – or for others to choose those boxes on their behalves. The assumption of binarity in individual relationships with States is challenged by such individuals' experienced reality.

Given all this, why not just invent a totally new word without the baggage of 'noncitizenship'? I have considered doing so. However, this would depart unnecessarily from existing discourse. In practice, discussion around 'noncitizenship' often seems to engage in more than negation, even when not explicitly acknowledged or when conflated with the negation discourse. Although still etymologically constructed from 'citizenship', the unhyphenated 'noncitizenship' allows the relationship to be examined on its own terms and without deference.<sup>33</sup> Consider the etymological vs the ontological relationship between 'man' and 'woman'.

A further concern with this terminological discussion is that it speaks to anglophone discourse and seeks to address a theoretical oversight arising within this particular linguistic context. That is true. And indeed, any terminological question will be rooted in the linguistic framework within which that terminology is used and developed. This book is written in English and is located largely within the anglophone tradition. However, the assumed and forced deference of hyphenated non-citizenship to citizenship does not only occur in English. Chapter 4 revisits how the broader dehumanisation of noncitizens, using the language of 'lack', is found across several linguistic traditions. For now, though, it is enough to drop the hyphen, and to build a theorisation that departs from the usual deference to citizenship.

## A special relationship

Noncitizenship as presented here is a special relationship and the obligations it generates in States are special obligations. They derive from the way in which

32 Manuhua Barcham (2000) '(De)Constructing the Politics of Indigeneity', pp. 137–151 in Ivison, Patton and Sanders (eds) (2000) *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press; see also his 2013 talk, which gives a much more personal account of his perspective in this area, Manuhua Barcham (2013) 'What Do You Mean the Culture is Different Here?!?', talk at Ignite Seattle, November 20 2013. I discuss this further for example in Chapters 5 and 10.

33 For example, see Katherine Tonkiss and Tendayi Bloom (2015) 'Theorising Noncitizenship: Concepts, Debates and Challenges', pp. 837–852 in *Citizenship Studies* 19(8).

noncitizenship is constructed and how it is justified. This is an important departure from common discourses. Other approaches to the human rights of such individuals have difficulty allocating the associated duties. Acknowledging the noncitizen relationship does not give rise merely to humanitarian claims, but to directed claims of justice based on how the liberal State and the system of States are constructed.

One way to see this is through the development of debate on coercion – and particularly coercion at State borders.<sup>34</sup> Noncitizenship allows us to see how this form of border-zone coercion extends beyond the border. Broadly, we can understand that ‘whenever coercion takes place, one will is subordinated to the other. The coerced is no longer a completely independent agent’.<sup>35</sup> At the border, coercion of this sort can be identified: an individual who wants to cross a border and is prevented from doing so, or is forced to cross in a dangerous manner, is no longer acting freely. S/he is made vulnerable to the State(s) involved and to other individuals with regard to her/his capability to function and to act. In fact, noncitizen coercion by States does not only take place at the border, but this example helps to illustrate something larger.

Several writers (e.g. Arash Abizadeh, Phillip Cole, Joseph Carens, Bas Schotel)<sup>36</sup> have examined the problem of trying to justify control at a State border, arguing that it looks concerningly illiberal. Others query whether border control can really be understood as coercive in this way at all. David Miller argues that what takes place at the border is not coercion, but prevention.<sup>37</sup> Unlike coercion, prevention rules out one option from a set of options. Coercion, by contrast, forces a specific action. As such, for Miller, border control does not threaten autonomy and does not require justification of the sort called for by Arash Abizadeh, for example.<sup>38</sup> However, this focuses only on one side of what is taking place and ignores the large literature on prevention more generally as coercive. When converted into the language of vulnerability vis-à-vis capability, this is even clearer. Indeed, writers on coercion argue that forcing someone to perform some particular act can be effected by preventing her/him from performing other acts.

34 This debate is rehearsed for example in Tendayi Bloom and Verena Risse (2014) ‘Examining hidden coercion at state borders: why carrier sanctions cannot be justified’, pp. 65–82 in *Ethics and Global Politics* 7(2).

35 Gerald Dworkin (1970) ‘Acting Freely’, pp. 367–383 in *Nous* 4, at p. 367.

36 Arash Abizadeh (2008) ‘Democratic Theory and Border Coercion: No right to Unilaterally Control Your Own Borders’, pp. 37–65 in *Political Theory* 36; Joseph Carens (1987) ‘Aliens and Citizens: The Case for Open Borders’, pp. 251–273 in *The Review of Politics* 49; Phillip Cole (2000) *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Edinburgh University Press; Bas Schotel (2012) *On the Right of Exclusion: Law, Ethics and Immigration Policy*, Routledge.

37 David Miller (2010) ‘Why Immigration Controls are not coercive: A Reply to Arash Abizadeh’, pp. 111–120 in *Political Theory* 38.

38 Arash Abizadeh (2010) ‘Democratic Legitimacy and State Coercion: A Reply to David Miller’, pp. 121–130 in *Political Theory* 38.

In the border case, a person may well not only be being prevented from entry into one State alone. It is theoretically possible that a person could be excluded from every State. In such a case, the coercion needs to be understood as reaching more deeply than the prevention of one border crossing. It theoretically risks preventing that person from living out a located life.<sup>39</sup> Perhaps in a world that was differently composed, a person could go to some non-State space and live out some other life plan without submission to, or interaction with, States. Perhaps such a life would be better, or perhaps more brutish. In the world as it currently is, though, except in extraordinary circumstances, a person has to be in a relationship of some sort with some State or States, whether they like it or not.

This type of relationship does not only occur at the border. Abizadeh presents the problem of border control as unjustified to a constituency that includes all people. He argues that liberal theory does not have an adequate way to explain the way in which this coercion takes place. And it is not only at the border that liberal democratic theory comes into contact with individuals that it defines out of its scope of justification. It may be that in many such cases, coercion as usually defined cannot be traced directly. And yet it is clear that there are individuals who are vulnerable to a State vis-à-vis their vital interests and broader capabilities without being counted within the scope of democratic justification. Far from being a lack of a relationship, this in fact creates a *special* relationship.

One other way to see coercion, then, is through the way in which it makes a person vulnerable with regard to her/his capabilities. That is, the noncitizen relationship can be understood through the way in which an individual's basic and less basic capabilities become dependent upon that State – in a way that is left unexamined and unmitigated. Of course, citizens are also vulnerable to a State, and indeed much liberal theorising has aimed at understanding whether this subjection of citizens to States is legitimate, and, as such, what the proper limits and mitigations of State power should be. The coercion of citizens by their States is often framed as involving limiting citizens' capabilities in one dimension in exchange for the protection and promotion of their capabilities in some other. For example, a State may limit citizens in their use of violent power. Yet, in doing so, it commits to protect the vital interests that those individuals would have protected otherwise – and indeed to do so to a greater and more efficient extent – for example by organising a police force. Many liberal theories try to find ways in which this submission is consensual, even if hypothetically (i.e. this is what people *would* consent to). The coercion of noncitizens has not undergone the same level of examination. And yet, if we go along with writers like Michael Blake and Thomas Nagel who claim that relationships marked by State coercion ground duties of justice, then this seems to be a serious omission.<sup>40</sup>

<sup>39</sup> This is developed in Chapter 3.

<sup>40</sup> Michael Blake (2002) 'Distributive Justice, State Coercion, and Autonomy', pp. 257–296 in *Philosophy and Public Affairs* 30; Thomas Nagel (2005) 'The Problem of Global Justice', pp. 113–147 in *Philosophy and Public Affairs* 33. This point is also made in Bloom and Risse 2014 *ibid*.

This special relationship of noncitizenship does not preclude other relationships, including citizen-like ones. Joseph Carens, for example, argues that irregular immigrants embodied within a society have rights therein on this basis. That is, they enter into some aspects of the citizenry insofar as they are living in the State and perhaps becoming integrated therein.<sup>41</sup> Dora Kostakopoulou takes this further to argue that such individuals in fact have a claim to citizenship on the basis of their lives in a State.<sup>42</sup> In this book I do not take a position with regard to citizenship (though supporting inclusive formal citizenship along the lines presented in Chapter 1). *Insofar as* such individuals are experiencing the State *qua* noncitizens, they have claims *qua* noncitizens. They may well *also* have claims as citizens in other dimensions. This approach makes it possible to connect the discussions of the relationship of a State towards individuals at its borders and within its territory to discussions of the relationships between a State and individuals far away.

It has been argued that individuals in State A who are affected by the activities of State B thereby develop claims against State B. This book merely adds that these obligations are continuous with those obligations arising when the person arrives at State B's borders or within its territory. So long as there is a special relationship of noncitizenship, there are special obligations that result, though the nature of the claims and of the obligations may differ depending on context.

The noncitizenist approach, then, provides a means by which to examine how these locations of coercion, or vulnerability, relate to each other. A person may well have different claims at different times in this process. Yet something core to that individual's relationship to the State in question remains constant. This is what noncitizenship provides. It provides a way in which to understand what connects relationships which can otherwise appear to be substantially different. In addition, by developing an understanding of noncitizenship and citizenship as intersecting and overlapping relationships, it is possible also to consider how one individual may relate to multiple States in different ways at one time and how these relationships in turn interact with each other. It also makes it possible to draw attention to elements of these relationships that might otherwise be overlooked. There is, then, a special relationship of noncitizenship that can be understood through the special sort of vulnerability that a person thereby has in relation to a particular State, and the challenge that this poses.

### **A non-contractarian relationship**

Citizens submit their individual powers to a State. This may be with a view to ensuring their basic and less basic interests are secured (if they're Hobbesian), or perhaps they so-submit in order to achieve even greater heights of collective

41 Joseph Carens (1987) 'Aliens and Citizens: The Case for Open Borders', pp. 251–273 in *The Review of Politics* 49.

42 Kostakopoulou 2008 *ibid.*

achievement (if they're Lockean) or for some other reason (indeed, not all liberals are contractarians, though contractarians may struggle the most to incorporate noncitizens). In the noncitizen relationship, that submission cannot be of the same sort. Indeed, noncitizenship is generated by the creation and sustaining of the State *irrespective of the interests of noncitizens* – but also, noncitizenship is constructed by States irrespective of whether those States intended to construct it. Noncitizenship, then, is at core necessarily a very different sort of relationship. Irrespective of how citizenship is defined, noncitizenship cannot be contractarian. A liberal theory must, then, include an account of how a State built upon liberal democratic principles, even one organised along contractarian, or hypothetical contractarian, lines can explain its relationship to such individuals. Noncitizenism does not only advocate recognition of noncitizenship, but also drives the development of a theoretical framework that can better address reality more generally.

Noncitizenship as presented here is compatible with a variety of liberal democratic positions and the relationship of noncitizenship could be incorporated into most liberal perspectives. It advocates the inclusion of individuals who, by definition, in some dimension do not fit within the liberal State system as currently conceived. Throughout this book, there are examples of individuals who, because of a mismatch of laws and policies, find themselves falling between the cracks in the citizenist organisation of the world. There are also examples of individuals who disagree with their position in the current State structure, either because there is no State representing their interests and history, or because the State system is currently constructed and is unable inadequately is unable to take into account their way of life, for example because of their regular mobility. There are also individuals who traverse modes of noncitizen relationship, so that, unable to participate in the citizenist system in one position, they relocate in order to try to access it in some other way. A theoretical structure that assumes citizenism will find it difficult to analyse and recognise these and other perspectives. Acknowledging unhyphenated noncitizenship could enable a currently citizenist structure to take this individual relationship into account without much additional revision.

### 3 Theoretical error, real-world problems

There is, then, a theoretical error behind substantial real-world problems and those real-world problems are behind the theoretical error. The solution proposed here is theoretical, though it is driven by, and is directed at, reality. It requires a step back from standard theoretical liberal tropes, and the scope of vision they give to liberal State politics.

Despite its fundamental importance, noncitizenship has long gone unacknowledged in liberal political theory and liberal political institutions. As a result, noncitizens have often been kept from access to even the most basic goods needed for human development – food, shelter, water, sanitation, healthcare and primary education.<sup>1</sup> This book disassembles the dehumanisation of noncitizens inherent in traditional interpretations of liberal political thought in order to acknowledge the reality of noncitizenship as a foundational individual-State relationship.<sup>2</sup> Noncitizenship is more than an absence of citizenship. It can be a mode of engagement with a State in its own right. The argument here, then, is what I refer to as ‘noncitizenist’ (echoing ‘feminist’). It is that, in order to take seriously the equal moral worth of every human, a liberal theoretical framework and political reality must take account of this noncitizen relationship.

This work, is both practically and theoretically urgent. Failure to acknowledge noncitizen relationships with States seems to enable rights-deprivation, humanity-denial and wilful death. Addressing this practical problem is also important in order to develop a robust and relevant political and legal theory with applicable conclusions. This is not about producing a better alignment between ideal and real theory. It is about examining the world as it really is today and the obligations to which this gives rise. The concerns raised with existing systems are urgent. They threaten the legitimacy of politico-legal theory that does not adequately address the reality of the basic relationship of noncitizenship. And they threaten the associated rights and obligations. Failure to take the activated noncitizen relationship into account can leave people effectively rightsless in the real world.

1 See opening to Chapter 2.

2 This is done particularly in Chapter 5.

## **Noncitizens bear the burden of inadequate theory**

[29-year-old Esrafil] had no money and no home because his asylum application had been refused and his support cut off. He was ill and could not find a doctor who would treat him. Although terrified of return to Iran and convinced he had not had a fair hearing, he could not find a lawyer to take on his case. He set fire to himself in the office, and died six days later in hospital.

(Refugee Action UK 2006<sup>3</sup>)

From the details given above, it seems that Esrafil did not principally die of poverty and ill-health. And he did not die in a country that lacked the resources to help him to live. Though ostensibly built upon liberal democratic norms, the UK (the country where this took place) did not acknowledge his presence within them. He died because of a failure to recognise his living and human existence within moral and legal frameworks, and his relationship with the State on whose territory he stood. The relationship Esrafil had with the UK, where he died, was represented only as a non-relationship. He was unwanted and so unacknowledged. According to the State's policy framework, he should not have been there. But he was. That is the burden that noncitizens bear – at its most extreme, they must live in a system that only acknowledges them when it wants to. And when it doesn't want to, they are destined not to exist.

Not all those relating as noncitizens suffer as Esrafil did. Many live well, and rarely encounter their noncitizenship to this extent. Many are able to use citizenships or quasi-citizenships to overcome the most extreme noncitizen deprivations. A university lecturer from the UK, for example, may well live in the US, so long as the university continues to renew its contract with her/im and the State continues to let that count as reason enough for her/im to remain. S/he lives as a noncitizen in the US insofar as her/is right to remain is contingent and her/is quasi-citizenship is easily undone, giving rise to precarity. Once the university ceases to employ her/im, the State most likely ceases to recognise its relationship.

Noncitizens generally lack access to rights except through citizenship proxies. When noncitizenship is left unacknowledged it is possible for a person's living human existence to be denied by a State, even when s/he is physically present on its territory. On some occasions, this non-recognition might be considered worse than death. The truth of this was tragically demonstrated in the example above which speaks of the death, in 2006, of an Iranian young man who set himself on fire in order to be seen.

Noncitizens bear the burdens of their own non-recognition in four main ways.<sup>4</sup> First, the noncitizen burdens are felt upon the territory of a State – as in the case of Esrafil. For him, pervasive citizenism (the assumption that citizenship

3 Refugee Action (2006) *The Destitution Trap*, Refugee Action, London p. 10.

4 This is developed in detail in Chapter 8.

is the only form of relationship a person can have with a State) or statusism (discrimination even in basic humanity according to status) meant he had to prove some citizenship or quasi-citizenship in order to be acknowledged where he lived. Esrafil could provide no such proof. Consequently, while physically present, he was assumed to have no relationship with the State in question, and so was (to use the language of a 2007 UK Home Office document), ‘denied the privileges of life in the UK’.<sup>5</sup> Language is important. To construct access to the means to satisfy basic human needs as a ‘privilege’ is to play with words.<sup>6</sup>

This overwhelmingly affects those persons who already bear the most burden. Often, those who are assumed excludable must stay with particular employers or spouses in order officially to legitimise their presence through a quasi-citizenship, backed up with the threat of deportation or non-recognition. This makes such persons vulnerable to other individuals and to States in a way that is unknown to those who only ever feel a full liberal democratic citizen relationship with the State(s) that have most power over their lives. The recent trend towards ‘denationalisations’, both on a large scale such as in the Dominican Republic, and in numerous one-off cases, for example on terrorism grounds, in European countries, help to demonstrate the intersections of citizen and noncitizen forms of vulnerability.<sup>7</sup>

Second, noncitizens bear burdens at State borders. Each of us is asked to prove our own exception to the assumption of exclusion at a State border (outside of Schengen<sup>8</sup> or other localised agreements). For many, this can seem like a mere formality: the ritual showing of archaic documents. For others, this is a site at which the noncitizen relationship is symbolically activated. For entry, it is important to prove that a particular individual human being is associated with

5 UK Home Office (2007) *Enforcing the Rules*, Her Majesty’s Stationary Office.

6 See critiques of ‘earned citizenship’. Ayelet Shachar criticises this as a property-like way to understand citizenship, rather than her preferred connectedness: Ayelet Shachar (2013) ‘Earned Citizenship: Property Lessons from Immigration Reform’, Article 2, *Yale Journal of Law and the Humanities* 23(1). Theodora Kostakopoulou critiques earned citizenship as a special condition for migrants in Theodora Kostakopoulou (2014) ‘Mobility, Citizenship and Migration in a Post-Crisis Europe’, *Istituto Affari Internazionali*, No. 9, June 2014.

7 Jillian Blake (2017) ‘Race Based Statelessness in the Dominican Republic’, in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge. I develop this particularly in Chapter 3. Sandra Mantu (2015) *Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives*, Brill. Matthew Gibney relates this to banishment, while Kristy Belton refers to it as *in situ* displacement. Matthew Gibney (2013) ‘Should Citizenship Be Conditional? The Ethics of Denationalization’, pp. 646–658 in *Journal of Politics* 75(3); Kristy Belton (2015) ‘Rooted Displacement: The Paradox of Belonging Among Stateless People’, pp. 907–921 in *Citizenship Studies* 19(8). Katherine Tonkiss problematises the assumed integration of nationality and citizenship inherent in this term. See Katherine Tonkiss (2017) ‘Statelessness and the Performance of Citizenship-As-Nationality’ in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge. This is revisited in Chapter 4.

8 ‘Schengen’ here refers to the European zone of free movement, named after the city in Luxembourg where the treaty which created it was signed in 1985. Within the Schengen area travellers, in theory at least, do not need to produce documents in order to cross international borders.



some recognised citizenship or quasi-citizenship. Ethnicity, race, gender and other factors can also affect how both noncitizenship and citizenship are experienced at the border.<sup>9</sup>

David Miller draws attention to the assumed acceptability of this to foreground his work on compatriot partiality. He writes that at the border, ‘we dutifully join the appropriate queue, we take for granted that state officials can treat human beings quite differently simply because some are citizens and others are not’.<sup>10</sup> But the protests that arise when something challenges the acceptability of this indicate otherwise. Perhaps comfortable citizens join the queues Miller describes unthinkingly. It is not so much because they support what the queues represent, but because they have never really thought about it. As was argued in Chapter 2, for those who do not personally experience the challenges of unrecognised noncitizenship, and have not been shown its implications, there is little reason to invent it.

A State may also redefine the physical individual–State relationships that an individual can have with it by changing the nature of the border-zone and extending the spaces of exception.<sup>11</sup> Consider cases of extraterritorial immigrant detention centres, like those of Australia in Nauru and Papua New Guinea (PNG). The acute vulnerability of individuals in extraterritorial immigrant detention centres has recently been gaining publicity globally. This has been fuelled, in these Australian cases, by self-immolations of detainees who have no other way to be heard, by outcry from doctors, lawyers and civil society members who come into contact with the centres, and by films and newspaper articles – and by the July 2016 PNG Supreme Court decision that the Australian detention centre there is unconstitutional.<sup>12</sup> This was compounded by the August 2016 release by the UK newspaper the *Guardian* of ‘The Nauru

9 Naila Kabeer (2002) ‘Citizenship and the boundaries of the acknowledged community: identity, affiliation and exclusion’, *IDS Working Paper* 171, October 2002, Institute of Development Studies, University of Sussex; Willem Maas (2009) ‘Unrespected, Unequal, Hollow? Contingent Citizenship and Reversible Rights in the European Union’, pp. 265–280 in *Columbia Journal of European Law* 15(2); Evelyn Nakano Glenn (2004) *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor*, Harvard University Press; Shahram Khosravi (2010) *‘Illegal’ Traveller: An Auto-Ethnography of Borders*, Palgrave Macmillan.

10 David Miller (2016) *Strangers in Our Midst: The Political Philosophy of Immigration*, Harvard University Press, at p. 20.

11 Giorgio Agamben (1998) *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press; Nando Sigona (2014) ‘Campzanship: reimagining the camp as a social and political space’, pp. 1–15 in *Citizenship Studies* 19 (1).

12 Lucy Fiske (2016) ‘Self-immolation incidents on Nauru are acts of “hopeful despair”’, available at <http://theconversation.com/self-immolation-incidents-on-nauru-are-acts-of-hopeful-despair-58791>; Ben Doherty (2016) ‘Doctors refuse to discharge “Baby Asha” because of fears for safety on Nauru’, the *Guardian*, 12 February 2016; see the work of Australian Lawyers for Human Rights; for example, using the hashtags #CloseTheCamps and #LetThemStay; *The Manus Solution*, a film made as part of the ABC series, Four Corners; Tendayi Bloom (2016) ‘The Beginning of the End of Double-Offshoring? The Panama Papers, Asylum in Australia, and the PNG Supreme Court’, available at [www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog2016/beginning-end](http://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog2016/beginning-end) (accessed 2nd April 2017).

Files', a series of 2000 testimonies from detainees on the island, cataloguing extreme abuses of persons with no legal recourse.<sup>13</sup> These individuals bear substantial burdens as a result of their unrecognised noncitizenship and the state of exception that this allows. Their bodies are relocated geographically, cementing the ambiguity in their human relationships with the Australian State.<sup>14</sup>

This takes us to the third site of burden-bearing, when a noncitizen is physically far from a State that has overwhelming power over her/his life. The changing nature of the relationship between the inhabitants of the Bikini Atoll in the Marshall Islands and the United States can help to illustrate this. The US coordinated the administration of the Marshall Islands after the end of the Second World War. After conducting a series of nuclear tests in the Atoll, the US left Bikini, the largest of the islands, uninhabitable. The individuals were initially moved, at the behest of the United States, from one of the Marshall atolls to another. While the Marshall Islands is now an independent State, these tests have rendered some Marshallese particularly vulnerable in various dimensions.

This is yet another way in which noncitizenship can arise. In this case, the United States made life unsustainable for faraway others. Those individuals then became directly vulnerable to the US and developed claims, that the US has largely recognised, as a result.<sup>15</sup> Important in the Bikini Atoll example is also the way in which this relationship between individuals from Bikini and the State of the US evolved over time. It altered with changes both in the Marshall Islands and in the US, as well as in the relationship between the two. It also altered as the affected individuals migrated. The language of (unhyphenated) noncitizenship facilitates analysis of the interconnection between these various dimensions of the individual-State relationship.

Noncitizens bear the burdens of inadequate theory and its implications for the real world. At the same time, there are not yet mechanisms through which noncitizens *qua* noncitizens can impact upon this situation. It is a vicious cycle. For this reason, those most affected by this burden will need to adopt informal means in order to be acknowledged. And they do. At the extreme is Esrafil at the head of this section. Those who are insiders to the theory bear substantial obligation both to redress these burdens and to ensure that the perspectives of the excluded are fed into the development of a more just theoretical and real-world set of institutional structures that more adequately suit the world as it really is. This book focuses upon institutional obligations of States built upon liberal democratic principles. But derivative from this will be political obligations also upon citizens and even quasi-citizens.

13 See [www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive](http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive) (accessed 2 April 2017).

14 The situation for irregular immigrants is revisited in Chapter 4.

15 Chapter 7 presents this example in more detail and engages with the more complex historical relationship between the US and the Marshall Islands.

## Acknowledging a problematic past

The images of being political bequeathed to us came from the victors: those who were able to constitute themselves as a group, confer rights on and impose obligations on each other, institute rituals of belonging and rites of passage, and, above all, differentiate themselves from others, constructing an identity and an alterity simultaneously.

(Engin Isin, writing in *Being Political* in 2002<sup>16</sup>)

Tracing how the difficulties referred to here have arisen can help us to develop ways in which to address them. The sixteenth to nineteenth centuries in Europe were characterised by major political changes. There was a blossoming of human rights and a recognition of obligations of States towards ordinary people. This included the development of the notion of ‘citizenship’ rather than ‘subjecthood’. Countries like Britain, the Netherlands and France, within which several modern liberals were writing, were also benefiting from the new wealth and new opportunities in the so-called ‘New Worlds’. In burgeoning European colonies overseas, other new ways of categorising people, using racial stratifications, for example, were being used to justify land seizure, violence, indenture and enslavement of persons.<sup>17</sup> The role of race and of domination in this construction of modern citizenship and liberal theory more generally must be part of understanding its limitations today. It may be that liberalism cannot be reconfigured without these inconsistencies. If this is the case, Cole was right to suggest that it might be obsolete. But if liberalism is to stand a chance, it will need to address these problems head-on and examine the blind spots to which they have given rise.

This contextualisation is important to understanding the birth of modern liberal thought and the limitations this put upon the vision of its authors. It shows that in fact ‘egalitarian political theory has often ended up justifying explicitly inequalitarian institutions and practices’.<sup>18</sup> As settlers in English colonies, for example, railed against slavery to the Crown using the language of freedom and equality of Enlightenment liberalism, large populations were enslaved under them, constructed out of consideration within the same liberal calculus.<sup>19</sup> John Locke describes how ‘Native’ peoples, as they did not ‘improve’ the land

16 Engin Isin (2002) *Being Political*, University of Minnesota Press, p. 2.

17 For example, see Catherine Hall (2002) *Civilising Subjects: Metropole and Colony in the English Imagination 1830–1867*, Polity; several essays in Catherine Hall (ed.) (2000) *Cultures of Empire: Colonizers in Britain and the Empire in the Nineteenth and Twentieth Centuries: A Reader*, Manchester University Press.

18 Duncan Ivison, Paul Patton and Will Sanders (2000) ‘Introduction’, pp. 1–22 in Duncan Ivison, Paul Patton and Will Sanders (eds) (2000) *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press, at p. 2.

19 Samuel Johnson, creator of the first English dictionary, demanded: ‘How is it that we hear the loudest yelps for liberty from the drivers of negroes?’. This comes from his 1775 paper ‘Taxation No Tyranny: An Answer to the Resolutions and Address of the American Congress’, [www.samueljohnson.com/tnt.html](http://www.samueljohnson.com/tnt.html) (accessed 4 April 2017).

according to his definition of improvement, did not have relevant claims to it.<sup>20</sup> James Cook reportedly observed that Australia was so sparsely populated that there was no sense of ownership amongst the existing occupants at the time of colonisation. As a consequence of this, for example, colonised lands could apparently be appropriated justly within a liberal understanding of justice of the time. This is an important aspect of the development of both the theory and the practice of today's liberal democracies. And the blind spots developed then persist today.

Crucially, this was already identified by liberal theorists at the time. To an extent, the concern at the insider and located perspective presented in the previous chapter was already identified by Adam Smith who warned that a democracy of masters would be less likely to serve the interests of slaves than a despotism. He wrote:

... every law is made by their masters, who will never pass anything prejudicial to themselves...

and:

[t]he freedom of the free was the cause of the great oppression of the slaves [...] And as they are the most numerous part of mankind, no human person will wish for liberty in a country where this institution is established.<sup>21</sup>

And so slaves bear the burdens of this weird form of liberalism which is also constructed not to take them into account. Liberalism's founding fathers developed theories that explicitly justified racialised exclusions of certain people from consideration – and indeed supported extremes of treatment of people thereby excluded. Yet liberals also railed against this and contemporaries identified the inconsistencies in such theoretical approaches and the inhumanity of the activities that the theories apparently legitimised.

In some philosophy classrooms, when Locke is taught, his work is prefaced by the recognition that there are no longer the same apparently endless opportunities for settlement as there were in his time. But in Locke's time too, the vast lands ripe for appropriation were only available because some individuals were explicitly written out of consideration in the liberal metric. These persons were the noncitizens, the non-consenters to the liberal system, and those given no

20 See 'Of Property' in the *Two Treatises*. See also useful analyses in: Barbara Arneill (1996) *John Locke and America: The Defence of English Colonialism*, Clarendon Press, Oxford; James Tully and Quentin Skinner (1993) 'Rediscovering America: The Two Treatises and Aboriginal Rights', pp. 137–176 in James Tully (ed.) (1993) *An Approach to Political Philosophy: Locke in Contexts*, Cambridge University Press.

21 Adam Smith (1982) *Lectures on Jurisprudence*, Liberty Classics pp. 452–453 and p. 182. Suggested by Domenico Losurdo (2014) *Liberalism: A Counter-History*, Verso [translated by George Elliott].

opportunity, even theoretically, either to consent or to withhold consent. In particular, this included the indigenous people whose land was seized and those who were enslaved. They were ostensibly written out of consideration because their ways of seeing their relationships with the land and its resources were seen as different to the liberal thinking developing in Europe at the time. But they were also written out because it was convenient to do so. Today it can seem shocking that such acts were justified along liberal lines. And yet today noncitizens are also excluded from consideration, giving rise to new sets of oppressions that follow the lines of that same methodological citizenism and statusism that justified slavery and colonisation.

John Locke's philosophy also needs to be seen in the context of his own biography – his own located position. He helped to draft the notorious constitution of Carolina such that '[e]very freeman of Carolina shall have absolute power and authority over his Negro slaves, of what opinion or religion soever'.<sup>22</sup> He was also reportedly a shareholder in the Royal African Company.<sup>23</sup> This puts his commitment to extraordinarily illiberal practices into context. But that does not mean that liberalism itself must always be corrupt. It shows how interests and position can cloud the interpretation of liberalism and provides a starting point for rooting out the blind spots that liberalism's origins have helped to instate.

It is important, then, to observe that despite the apparently rational and universalist nature of the arguments, these blind spots were introduced from a racist and protectionist position based on self-interest. It relied upon the acceptability to the readership of the idea that some people could be seen as less than human (though, as we see, their contemporaries also contested this). This has given rise to two structural problems that are important to understanding liberalism today:

(1) On the one hand, the exclusions of the colonial period gave rise to, or aggravated, imbalances of wealth and power that are inherited today, skewing the way in which individuals can participate as citizens in the international system of States.

(2) On the other hand, the justification of these exclusions required the introduction of blind spots and exclusions to liberal theory itself. If we continue to use a theory that emerged from this context without correcting for these inconsistencies and injustices, then, it would be surprising if we did not develop a theoretical framework, and a system based on it, that reproduced them. Those exclusions introduced by the modern liberals were based for

22 'The Fundamental Constitutions of Carolina, March 1, 1669', in Francis Newton Thorpe (1909) *Colonial Charters and Other Organic Laws of the States, Territories and Colonies Now or Heretofore Forming the United States of America, Compiled and Edited under the Act of Congress of June 30 1906, Government Printing Office, Washington DC*, see particularly Article 110. See also James Tully (1982) *A Discourse on Property: John Locke and his Adversaries*, Cambridge University Press.

23 Losurdo 2014 *ibid.* p. 15.

example on race and on gender, so it stands to reason that these elements continue to motivate structurally entrenched injustices in contemporary liberalism and societies based around them. This need not mean that Locke's work and that of other liberals should be discarded, but that in using it and the work that builds upon it, we need to be aware of the blind spots of the authors. One such blind spot that still persists from these origins is found in the reality of unacknowledged noncitizenship.

## Contemporary developments

Contemporary liberalism arose in the late twentieth century out of this tradition. It developed particularly after the First and Second World Wars and with a new perspective on the possibilities of what people can do to each other. Its authors, several of whom are based in the United States, were responding to a perceived need to apply the liberal principles of the past to find a just way forward in a new and frightening world. As in the classic texts, justice internal to the State was initially still the primary concern though certainly not the only one. They inherited the assumption of citizenship, which has largely remained unchallenged.

Perhaps most paradigmatic amongst those contemporary liberals is John Rawls, who had himself experienced the changing realisation about the world, through military service in Asia (including seeing the aftermath of the Hiroshima bomb) and campus politics (including protests against the Viet Nam War), for example.<sup>24</sup> His work presented a new sort of liberal framework, arising from and for mid-twentieth-century America. For Rawls and others there is a focus on relations *within* the citizenry, excluding noncitizens from the ranks of the vulnerable and excluded. He recognises that State borders are morally arbitrary, but holds that this does not render them meaningless, and seems to use this to legitimise their assumed prevalence.<sup>25</sup> From behind an international veil of ignorance, Rawls believes that representatives of peoples would reach a consensus for duties only of *mutual aid* between 'liberal and decent peoples', and a duty of assistance between them and illiberal, not 'decent', peoples.<sup>26</sup> This makes it difficult to consider justice for those individuals already marginalised by, or not obviously attached to, a particular State or the system of States.

This is not completely resolved when the theory is globalised. In his globalised version of a Rawlsian framework for example, Charles Beitz emphasises the

24 Daniele Botti, forthcoming; Iain King (2014) 'Thinkers at War – John Rawls', *Military History Monthly*.

25 John Rawls (1999) *The Law of Peoples*, Harvard University Press p. 252.

26 John Rawls proposes the 'veil of ignorance' as a thought experiment. He suggests that one way to test the principles of justice is to imagine what sort of principles would be devised by individuals who know nothing of their position in society but who understand the basics of how a society functions. Rawls himself saw this as functioning on a State level, but neo-Rawlsians like Thomas Pogge and Charles Beitz have used the same device on a global level.

importance of justifying (i.e. not just assuming) restriction of rights to citizens.<sup>27</sup> For him, (human) rights just are ‘conditions that the institutions of all domestic societies should strive to satisfy, whatever a society’s more comprehensive aims’.<sup>28</sup> On the one hand, this seems to admit a noncitizenism like that presented in this book. On the other hand, in his 2009 book *The Idea of Human Rights*, Beitz explains that institutional protection for rights is to be provided in the first instance by States, through their laws and policies, where ‘the beneficiaries of these protections are citizens’.<sup>29</sup> It is possible that he did not intend this to restrict scope only to formal citizens. Yet, this reintroduction of the assumption of citizenship, even if only through a quirk of language, is not uncommon amongst cosmopolitan approaches. Beitz and other cosmopolitans who do this do not explain how the composition of that citizenry is to be decided, how someone may enter it, nor how noncitizens are to feature. Rights theorists, including those who concern themselves directly with the problems of dehumanisation and exclusion, can also be found to use language in this way.<sup>30</sup>

### Methodological citizenism

Amongst theorists of global justice, then, there is another common problem. While concerned with noncitizens overseas, some appear to take it for granted when they discuss justice *within* a State that they are talking only of citizens.<sup>31</sup> Jon Mandle, for example, explicitly discusses noncitizens abroad, including with regard to political participation.<sup>32</sup> He describes a hypothetical mechanism for allowing neighbouring or allied countries or other foreign groups to have input when a proposed law would significantly affect them, but concludes that ‘it is not unjust for a constitution to exclude them’.<sup>33</sup> He sums this up: ‘[i]n one case, the individual is a member of the collective body in whose name the injustice is being perpetrated, while in the other case he is not complicit in the injustice.’<sup>34</sup>

In a different way, Gillian Brock’s 2009 book on global justice explicitly addresses immigration, and some of the needs and rights arising as a result.<sup>35</sup> But

27 Charles Beitz (1975) ‘Justice and International Relations’, pp. 360–389 in *Philosophy and Public Affairs* 4; Charles Beitz (1979) *Political Theory and International Relations*, Princeton University Press (1999 edition).

28 Charles Beitz (2003) ‘What Human Rights Mean’ pp. 36–46 in *Daedalus* 132(1), p. 44.

29 Charles Beitz (2009) *The Idea of Human Rights*, Oxford University Press, p. 85.

30 For example, Ronald Dworkin discusses the particular rights and obligations of *citizens* at length, but does not address the question of who can be a citizen and what to think about noncitizens. Ronald Dworkin (1991) *Taking Rights Seriously*, Duckworth, London, pp. 185, 266.

31 Seyla Benhabib provides a particularly interesting presentation of this kind of approach in terms of what she calls ‘sovereignism’, see Chapter 7 in Seyla Benhabib (2011) *Dignity in Adversity: Human Rights in Troubled Times*, Polity.

32 Jon Mandle (2006) *Global Justice*, Polity Press, p. 86.

33 Mandle 2006 *ibid.* p. 87.

34 Mandle 2006 *ibid.* p. 87.

35 Gillian Brock (2009) *Global Justice: A Cosmopolitan Account*, Oxford University Press.

in this discussion the focus is not on the rights of noncitizens themselves, but on the implications for other groups: for citizens and others left behind. This is quite common. In her early work, even Martha Nussbaum, upon whose capabilities approach this book draws heavily in Chapter 9, assumes citizen-composition, and that a State's obligations are principally to its own citizens. She uses the word 'citizen' without explanation and does not discuss the implications of non-citizenship. For example, in 2003, to indicate universality, she wrote that entitlement is for all *citizens*, continuing: 'to secure a right to citizens in these areas is to put them in a position of capability to function in that area.'<sup>36</sup> Amartya Sen reflects on needing to ensure all 'citizens' have access to development and a voice in society, but it is sometimes also unclear who he would include in that constituency.<sup>37</sup> In 2011, Nussbaum explicitly rejected justice theorising whose scope is limited to citizens.<sup>38</sup>

And yet citizenship is often seen as arbitrary, as a status of inherited privilege, or an essentially 'caste-like' 'rank of citizenship'.<sup>39</sup> Despite this, the experience of formal citizenship is itself unequal and less secure than it could be. Here emerges another important role for noncitizenship. On one hand, class, race, ethnicity and gender, for example, can alter persons' experiences of citizenship, so that there is an intertwining of citizenship with noncitizenship.<sup>40</sup> On the other hand, some may want to reject aspects of citizenship, claiming an empowered noncitizenship.<sup>41</sup> Noncitizenship and citizenship are not mutually exclusive. Recognising this makes it possible to identify and to address discrimination within the system in a new way.

For David Miller, a State's right to exclude comes with the obligation to protect the equal status of all those living within its borders.<sup>42</sup> For liberal communitarians like Miller, there must be universal membership within a State,

36 Martha Nussbaum (2003) 'Capabilities as Fundamental Entitlements: Sen and Social Justice', pp. 33–59 in *Feminist Economics* 9, p. 35, p. 7.

37 Amartya Sen (2009) *The Idea of Justice*, Allen Lane, London, pp. 352–355.

38 Martha Nussbaum (2011) *Creating Capabilities: The Human Development Approach*, Harvard University Press, p. 128.

39 For example, Joseph Carens (1987) 'Aliens and Citizenships: The Case for Open Borders', pp. 251–273 in *The Review of Politics* 49(2), p. 252; Gregory Vlastos (1984) 'Justice and Equality', pp. 41–76 in Jeremy Waldron (ed.) *Theories of Rights*, Oxford University Press, p. 54.

40 For example, Elizabeth Anderson (2011) *The Imperative of Integration*, Princeton University Press; Evelyn Nakano Glenn (2004) *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor*, Harvard University Press; 'Essays' in Tariq Modood, Anna Triandafyllidou and Ricard Zapata-Barrera (2006) *Multiculturalism, Muslims and Citizenship: A European Approach*. In Chapter 9, I also discuss this with regard particularly to the semi-fictional figure presented in Buchi Emecheta's *Second Class Citizen*. See also Leti Volpp (2007) 'Citizenship Undone', pp. 25–79 in *Fordham Law Review* 75; Niraja Gopal Jayal (2013) *Citizenship and Its Discontents: An Indian History*, Harvard University Press.

41 Developed in Chapter 6.

42 David Miller (2005) 'Immigration: The Case for Limits', pp. 193–206 in Andrew Cohen and Christopher Heath Wellman (eds) (2005) *Contemporary Debates in Applied Ethics*, Blackwell, p. 205.



which requires that the State's culture and social character are protected by strong external borders, trumping claims of outsiders. This is why, famously, for Michael Walzer, allowing there to be non-member permanent residents within a State is like being in a house with 'live-in servants', leaving some people, while fully present and contributing to society, effectively denied full human status within the polity. To avoid this, Walzer advocates easy access to membership for all long-term residents alongside significantly closed borders. On one level, this is positive, giving the individuals concerned the option of accessing citizenship. But this is based on an implicit citizenism. Stretching the household metaphor (which is already over-stretched by Walzer), it also seems a little like householders saying that if someone wants to work for them, s/he has to become a family member, whether s/he wants to or not.

To see the problem with this it is useful to look beyond the metaphor, at real-world discourse relating to the treatment of migrant domestic workers. Mary Romero critiques the quasi-family relationship which she argues has often been cultivated between employers and domestic workers in the United States. She observes that this stands in the way of those workers accessing the full dignity and respect of workers.<sup>43</sup> In the UK, it has been observed that households employing such workers often characterise themselves as 'benefactors' or 'hosts' who are enabling those individuals to start a new life in the country, rather than seeing themselves as employers of employees who are providing a service.<sup>44</sup> This skews the logic of the relationship. The worker is expected to be grateful and may struggle to claim rights.

These writers demonstrate the need for live-in workers *not* to be seen as family members. The alternative to a house with live-in servants need not, therefore, be a house with family members treated as servants, as Walzer suggests. Instead, it could be a house with paid members of staff who are respected and treated appropriately, in the role of employees. Walzer's example is emotive and provides a useful stimulus for thought. However, his solution does not take a sufficiently critical approach to existing relationships.

While most thinkers would not go as far as Walzer, in the power of his example and his response to it, we see implications of assuming citizenship to be the only proper relationship with a State. This most commonly arises as a result of a State-based status quo (with States largely understood as nation-States); what has variously been called 'methodological nationalism' and 'explanatory nationalism'.<sup>45</sup> That is, a system that assumes nations. It gives rise to 'methodological citizenism', an assumption of citizenship as the principal or only form of relationship between an individual and a State.

43 Mary Romero (2016) *Maid in the USA*, Routledge [first published 1995]; ILO 2013 p. 44.

44 Bridget Anderson (2007) 'A Very Private Business. Exploring the Demand for Migrant Domestic Workers', pp. 247–264 in *European Journal of Women's Studies* 14(3).

45 Thomas Pogge (1997) 'The Boundaries of Nationalism', *Canadian Journal of Philosophy* 26; Ulrich Beck (2004) 'Cosmopolitan Realism: on the distinction between cosmopolitanism in philosophy and in the social sciences', in *Global Networks* 4(2).

This citizenism relates to noncitizenism in some sense as sexism relates to feminism or racism to the pursuit of racial equality. It has been referred to by Jason Tucker and Matthew Gibney as ‘tyranny’ of citizenship and of citizens.<sup>46</sup> It is difficult retroactively to take noncitizens into account in structures theoretically defined without them.<sup>47</sup> Work will be needed in order to make sure those structures can address noncitizenism. It will be difficult. But it is not impossible.

### **The search for an alternative**

There is disagreement regarding how to address these weaknesses. Much emphasis has been placed upon widening access to existing systems through citizenship, while others have proposed ways to enable rights outside citizenship.<sup>48</sup> Another approach is to advocate easier access to border crossings, including internal border crossings.<sup>49</sup> There is also a growing body of work arguing for more radical change. Some advocate recognition of a form of global citizenship or another kind of universal membership, while others worry that liberal theory may simply be at an impasse that liberalism itself simply cannot address.<sup>50</sup> One other approach is to critique the very notion of citizenship as currently constructed and to pursue a different political project.<sup>51</sup>

Some have tried to address this by fixing the way in which citizenship is defined and how it is allocated. They problematise arbitrary and excluding citizenship regimes based on birth, advocating something like what Ayelet Shachar calls *jus nexi* in citizenship acquisition, which would be based upon a person’s connections within the citizenry. Dora Kristopoulou, who looks at

46 Jason Tucker and Matthew Gibney take slightly different approaches. While Tucker refers to the ‘tyranny of citizenship’, warning about the tyranny of the institution of citizenship, Gibney refers to the ‘tyranny of the citizens’, to characterise the fact that those with membership are able to have power over those kept from membership. Jason Tucker (2013) ‘Challenging the tyranny of citizenship: statelessness in Lebanon’, Doctoral Thesis, University of Bath, September 2013, p. 181; Matthew Gibney (2008) ‘Who Should be Included? Noncitizens, Conflict and the Constitution of the Citizenry’, in F. Stewart (ed.) (2008) *Horizontal Inequalities and Conflict: Understanding Group Violence in Multiethnic Societies*, Palgrave Macmillan.

47 John Rawls (2005) *Political Liberalism* Expanded Edition, Columbia University Press, p. 13.

48 Ayelet Shachar (2009) *The Birthright Lottery: Citizenship and Global Inequality*, Harvard University Press; Katherine Tonkiss (2013) *Migration and Identity in a Post-National World*, Palgrave Macmillan; Bauböck *ibid.*; Hammar *ibid.*

49 Joseph Carens (2013) *The Ethics of Immigration*, Oxford University Press; Linda Bosniak (2008) ‘Being Here: Ethical Territoriality and the Rights of Immigrants’, pp. 123–138 in Engin Isin, Peter Nyers and Bryan Turner (eds) (2008) *Citizenship Between Past and Future*, Routledge.

50 Seyla Benhabib (2004) *The Rights of Others: Aliens, Residents, and Citizens*, Cambridge University Press; Luis Cabrera (2010) *The Practice of Global Citizenship*, Cambridge University Press; Cole 2000 *ibid.*

51 Engin Isin (2002) *Being Political: Genealogies of Citizenship*, University of Minnesota Press; Engin Isin (2012) *Citizens Without Frontiers*, Bloomsbury. See also Linda Bosniak (2010) ‘Peasants and Citizens in Constitutional Thought’, pp. 9–29 in *I-CONN* 8.

citizenship based on residence and Katherine Tonkiss, who focuses on embracing State institutions themselves as key, also seek to expand citizenship and in important ways.<sup>52</sup> Their work does not conflict with that presented here, but seeks to answer different questions. These approaches contribute to an urgent re-examination of the justice of citizenship. This book adds that insofar as such individuals are in fact experiencing the State *qua* noncitizens, they have claims *qua* noncitizens. It is likely that many people currently primarily relating as noncitizens need access to much stronger citizenships for the reasons Shachar, Kristopoulou, Nyers, Tonkiss and others set out. However, such individuals also currently relate with State institutions in another way, and this also needs to be acknowledged. As was argued in the context of communitarianism above, even if the relationship between external and internal borders is established, it is still necessary to take noncitizens, including territorially present noncitizens, into account when thinking about justice and how to operationalise it.

State obligations towards territorially present noncitizens have been analysed in the context of migration discourse. Recently, some have emphasised the need to move away from focusing on the most vulnerable of migrants as an exception to an assumption of exclusion to include also persons to whom Bas Schotel and Joseph Carens respectively refer as ‘normal’ or ‘ordinary’.<sup>53</sup> A key text in this move is Bas Schotel’s 2012 book, *On the Right of Exclusion*, which demands justification for the exclusion even of ordinary migrants. Against common assumptions, he argues that it is *exclusion* that needs to be justified, not inclusion. However, while Schotel deals primarily with border-crossing, this book draws upon similar justifiability problems in the State-noncitizen relationship more broadly.

In his 2013 book, *The Ethics of Immigration*,<sup>54</sup> Joseph Carens brings several decades of work together to present an approach to entry to a State’s territory that has evolved since his famous 1987 article.<sup>55</sup> The current book takes into account both Schotel and Carens’s ways of addressing how ‘ordinary’ or ‘normal’ individuals enter into relationships with States and what this means for noncitizen claims on States. Sarah Fine and Lea Ypi’s 2016 book, *Migration in Political Theory* provides a useful overview of contemporary philosophical and theoretical debates about migration.<sup>56</sup> Many of the essays in this collection were directed towards addressing the problems associated with non-citizenship. And yet it did not seem to engage explicitly with noncitizenship *qua* noncitizenship.

52 Shachar 2009, *ibid.*

53 Bas Schotel (2012) *On the Right of Exclusion*, Routledge; Carens 2013 *ibid.*

54 Carens 2013 *ibid.*

55 Carens 1987 *ibid.*

56 Sarah Fine and Lea Ypi (eds) (2016) *Migration in Political Theory: The Ethics of Movement and Membership*, Oxford University Press.

Noncitizenship draws attention to the substantial obligation-generating relationship between noncitizens and States, showing that noncitizen rights are not purely humanitarian in nature, and are not supererogatory, but are part of a just institutional arrangement. When persons have to prove either citizenship or some quasi-citizenship in order to make claims against a State, this means that anyone unable to do so will be seen as (hyphenated) non-citizens, assumed to have no recognised relationship with, or claim upon, the State concerned. The recognition of (unhyphenated) noncitizenship is, then, both theoretically appropriate and in fact urgent. There is also a readiness for change amongst some international policy actors. There has been a growing and developing constellation of entities and processes directed at securing the rights of various groups of noncitizens, whether through the Millennium Development Goals and their successors, the Sustainable Development Goals or increasing discussions of migration and the claims of migrants, for example.<sup>57</sup>

It is increasingly acknowledged that rights need to be secured for migrants, workers and refugees, as well as for those stateless persons who have not moved. Globally, there is realisation that individuals are vulnerable to States far away and theorists and policy-makers alike have been seeking ways to secure rights in this context. There has also been increasing recognition of the interconnection between these various instances of noncitizenship. The noncitizenship I present brings this work together. It offers an analytical tool that allows the specific vulnerability – and the challenge – of all of these individuals’ relationships with States to be understood together. This addresses a core problem in contemporary understandings of liberalism, and some of the inherited difficulties from liberalism’s problematic past.

Another way to see this challenge is through an image. Gohar Dashti’s photograph of a couple embracing in the desert, alongside their pile of belongings, is desolate. But it is also challenging. There is something in it that does not make sense. We do not know how the couple came to be in the desert. And it is not clear how they will live if they continue to be here. Their bodies and their belongings seem small and futile in comparison to the dry of the desert around them and the rocks behind them. And yet, Dashti writes of the series of images, entitled ‘Stateless’, of which this is a part:

Maybe it is only at this point, when nature can be a safe haven for these refugees. Sky becomes the ceiling and mountains the walls of their new home; because Nature is the only promising place that shelters these people, an eternal and everlasting refuge.

The photographs are taken in the desert, reportedly staged on the island of Qeshm in the Persian Gulf.<sup>58</sup> The environment seems inhospitable but, as Dashti

57 This is picked up again in Chapter 11.

58 Cate McQuaid (2016) ‘“Stateless” photographs timely and timeless’, *The Boston Globe* 12 January 2016, [www.bostonglobe.com/arts/2016/01/12/images-from-iran-filled-with-mystery-drama/FUsk3FGuXukdGLEZt1AOgI/story.html](http://www.bostonglobe.com/arts/2016/01/12/images-from-iran-filled-with-mystery-drama/FUsk3FGuXukdGLEZt1AOgI/story.html) (accessed 4th April 2017)]. That they are taken in Iran and not a State identifying as liberal democratic does not detract from the power of the images in the context under discussion in this book.



*Figure 3.1 Stateless (Gohar Dashti).*

explains, it is also a haven. Like the individuals forced to put themselves at the mercy of nature, on flimsy boats in the photographs in Chapter 11, these individuals are forced to seek their shelter in the sparse landscape of rocks. Unable to find recognition within a State or the State system, individuals are forced to find shelter in nature, but to do so not in a state of nature, but in a world of States. This turns liberal justifications of the State on their head, challenging their legitimacy and forcing us to rethink the role of noncitizenship in a liberal State.

## 4 Introducing ‘unwanted’ noncitizens

‘Unwanted’ noncitizens here refers to those noncitizens with whom a State or States would rather have no relationship at all. This chapter considers in particular the situation for irregular migrants and stateless persons within a State built on liberal democratic principles. While the contexts for those defined in these two ways are different, both can be characterised by State non-recognition of its relationship with individuals, putting them at risk of extreme vulnerability with regard to core capabilities. There are other commonalities. For example, many stateless persons in fact lack travel documents. If such individuals want to travel internationally, they must do so irregularly. Conversely, irregular migrants or their children may end up effectively or formally stateless, or at risk of statelessness, because of lost documents or difficulties with birth registration, for example.<sup>1</sup> This chapter focuses largely on ‘unwanted’ noncitizens *in situ*. This is because in these cases, the nature of the individual-State relationship is particularly easy to uncover. There is much discussion here of their vulnerability, but irregular immigrants and stateless persons should not only or even primarily be seen as vulnerable. They are active agents (albeit constrained) who are potentially challenging a State and the State system.

The rights and interests of ‘unwanted’ noncitizens are usually the last to be considered, if at all. Yet their relationships with the States where they live can tell us much about the construction of noncitizen-vulnerability and how dehumanisation, stigma and shame create and recreate this vulnerability in new ways. Existing arguments for the rights of these ‘unwanted’ noncitizens often rely upon humanitarian concerns and rights which, as they are seen as outside the institutional framework, can sometimes appear to be supererogatory. Yet, irrespective of a particular State’s intentions or interests, a State based on liberal democratic principles has a fundamental and substantive relationship with its noncitizens, including those with whom it would rather have no relationship at all. Noncitizens in general, and ‘unwanted’ noncitizens in particular, are made vulnerable to that State, a vulnerability that is reinforced rather than neutralised by its denial.

<sup>1</sup> Jacqueline Bhabha (2011) *Children Without a State: A Global Human Rights Challenge*, MIT Press; Laura van Waas (2009) *Nationality Matters: Statelessness Under International Law*, Intersentia Publishers p. 12.

With this in mind, this chapter also observes that, while access to citizenship is important, trying to address noncitizen-vulnerability *only* through the acquisition of citizenship and proxy-citizenship risks further entrenching some of the problems it aims to solve.

Before launching into the chapter, it is important to make some notes. First, statelessness is not a migratory status. It may sometimes arise as a result of migration, but this is not the only mechanism.<sup>2</sup> Statelessness can arise for example from administrative, gender and ethnicity barriers, from changes in State borders and changes in relationships between States.<sup>3</sup> Crucially, a person is stateless because s/he is not recognised as a citizen by any State. Second, a person can enter the category of 'irregular immigrant' when s/he crosses an international border without (perhaps arbitrarily withheld) permission. But a person can also find that s/he has become an irregular immigrant without moving. This happens, for example, with the expiry of a visa, a change in relations between States, or perhaps as a result of a change or cessation of employment or an employment contract. In such cases, it is not the migration itself that is irregular, but how a person and her/his activities are or are not categorized within the State in question. Studying the situations for these two groups of 'unwanted' noncitizens is instructive, then, in terms of both their commonalities and their dissimilarities.

### Irregular immigrants

'Illegals' is not a noun. It is not a noun. [...] what you can say is that it is an immigrant living illegally or that it is an immigrant living without papers or without documents in this country. But what you cannot do is to label a person 'illegal'.

(Maria Hinojosa, speaking to Steve Cortes, an advisor to then US Presidential Candidate Donald Trump on the television show MSNBC 'AM Joy' on 31 October 2016)

Irregular immigrants are the quintessential 'unwanted' noncitizens. They are people with whom a State or States has explicitly tried to refuse a territorial (or any) relationship and yet who are manifestly in just such a relationship. The adjective 'irregular' is used in this chapter. A phenomenon is 'irregular' if it does not follow an expected pattern or some set of regulations, or goes against attempts at regulation. This provides a good description of the form of migration discussed here, and 'irregular' (as an adjective) lacks the value-ascription made by other terms often employed (such as 'illegal' or 'clandestine'). Irregular migration might

2 See Caia Vliets's discussion of statelessness *in situ* and statelessness in a migratory context: Caia Vliets (2017) 'Contexts of Statelessness: The Concepts "Statelessness *in Situ*" and "Statelessness in the Migratory Context"', in Bloom, Tonkiss and Cole, (eds) 2017, *ibid*.

3 For example, Laura van Waas (2008) *Nationality Matters: Statelessness Under International Law*, Intersentia.

accompany criminal activities, and the deprivations associated with an irregular status might push people into illegal activity, but irregular migration itself seems more like an administrative infraction than a dangerous crime. The reference here is to 'immigrants' rather than 'migrants' as the discussion for now relates to the relationship between such persons and the State(s) where they are currently *in situ*.

Not everyone agrees. Peter Schuck, for example, argues that one should 'call the activity what it manifestly is, "illegal", rather than "irregular", an arguably amoral euphemism'.<sup>4</sup> From a very different perspective, Nicholas De Genova argues that 'irregular' is a 'less obnoxious but not less problematic' proxy for 'illegal'.<sup>5</sup> For De Genova, migration that circumvents administrative systems is not illegal in the usual sense of the word and so it is not irregular. He advocates 'undocumented' as the most honest term since the anomaly being highlighted is one of documentation.<sup>6</sup> However, this risks excluding: someone whose presence is irregularly documented; someone whose presence is regularly documented, but whose employment is not; or someone whose documentation has elapsed. The focus here is upon the deviation from the status quo, the irregularity.

The term 'extra-legal', suggested by Catherine Dauvergne *prima facie* provides a useful alternative.<sup>7</sup> It locates the activity outside the law rather than against it. This is initially attractive, but in reality, irregular immigrants may well follow the law, pay tax, and support a State's legal systems. They may be forced in some instances to contravene regulations because of the way their relationships with a State have been constructed. It seems likely that such individuals do not feel like they have a supra-legal relationship, but rather have an agonistic one with the law, fearing detection because they are unavoidably contravening administrative prescriptions.<sup>8</sup> The relationship they have with the State(s) concerned is not extra-legal, but *irregular*.

A person is considered to be an 'irregular' immigrant if her/his presence or work within the State where s/he is present or working is in contravention of that State's administrative regulations governing entry, residence or work. This includes those who have committed serious crimes in their home countries and now live abroad to avoid punishment, alongside child soldiers who have fled torture and being forced to kill, but are now unable to prove their age, identity, and the validity of their need

4 Schuck, with Rogers Smith, has gained notoriety by lobbying to block *jus soli* American citizenship for the children of irregular immigrants; see for example Peter Schuck and Rogers Smith (1996) 'Two Yale Professors argue against the concept of ... Citizenship Without Consent', *The Social Contract* Fall 1996; Peter Schuck and Rogers Smith (1985) *Citizenship Without Consent: Illegal Aliens in the American Polity*, Yale University Press; Peter Schuck, Response to 'Forum: The Case for Amnesty', initiated by Joseph Carens, *Boston Review* May 1 2009, <http://bostonreview.net/forum/case-amnesty/moral-argument-details-matter-peter-schuck> (accessed 4 April 2017).

5 Nicholas De Genova (2002) 'Migration 'Illegality' and Deportability in Every Day Life', *Annual Review of Anthropology* 31 p. 420.

6 De Genova 2002, *ibid*.

7 Catherine Dauvergne (2008) *Making People Illegal: What Globalisation Means for Migration and Law*, Cambridge University Press.

8 For example, see discussion by Jose Antonio Vargas in his 2013 film, *Documented*, as he discusses the difficulties he experiences in regularising his status.



for protection. It includes someone who has travelled with cash from illicit trade to continue such trade in a new country, alongside a mother or father who has spent months travelling dangerously to a more affluent State to earn money from menial labour to send home. It also includes the American gap-year backpackers who, allowing their visas to expire in Australia, float into what, in 2013/14, continued to be one of Australia's largest irregular immigrant groups.<sup>9</sup> It has been found that people migrate irregularly for similar reasons to those for which people migrate more generally. The activity is rendered irregular by the administrative institutions rather than the people who move.<sup>10</sup>

In examining irregularity, it is useful to consider who it is that migration regulations are intended to exclude, and so whose movement and whose presence it is intended to delegitimise. Consider the American backpackers in Australia mentioned above. Australian government data show that US citizens have persistently made up the third-largest group of 'unlawful non-citizens' in Australia, comprising 8 per cent of Australia's irregular immigrants in 2012, 2013 and 2014, just below the numbers of Malaysian and Chinese citizens respectively. Indeed, migrants from OECD countries comprise well over a third of all Australia's 'unlawful non-citizens' for all three years (38.1 per cent in 2012, 37.8 per cent in 2013, 37.5 per cent in 2014).<sup>11</sup> And yet no OECD citizens were recorded to have been in Australian immigration detention facilities in the period 31 January 2013 to 31 December 2014 (the period overlapping the above statistics for which data was available at the time of writing).<sup>12</sup>

During this period, the detained immigrant population in Australia was recorded to have been made up, to different extents over time, of citizens of: Afghanistan, Bangladesh, China, Indonesia, India, Iraq, Iran, Myanmar, Pakistan, Somalia, Sri Lanka, Viet Nam, as well as stateless persons. For the period after this until July 2016, two additional nationalities started to appear in Australian immigration detention. From March 2015, New Zealanders were recorded to be held in detention, rising quickly to be the second-largest group, and from October 2015, UK citizens also began to be recorded.<sup>13</sup> US citizens

9 Data taken from Australian Government (2014) *Australia's Migration Trends 2013–14*, Commonwealth of Australia, p. 137. This also provides the data for Chart 2.1. At the time of writing, this is the most recent data available. I first came across this phenomenon in Catherine Dauvergne (2008) *Making People Illegal: What Globalisation Means for Migration and Law*, Cambridge University Press, p. 16, n. 43.

10 For example, see discussions in: Bimal Ghosh (ed.) (1998) *Huddled Masses and Uncertain Shores: Insights Into Irregular Migration*, Kluwer Law International; Khalid Koser (2007) *International Migration: A Very Short Introduction*, Oxford University Press, p. 54; see also discussion in Vicki Squire (2016) 'Unauthorised migration beyond structure/agency? Acts, interventions, effects', *Politics*, online view 1 December 2016.

11 Australian Government 2014 *ibid*.

12 Australian Border Agency Immigration Detention Statistics monthly reports, available from: [www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention](http://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention) (accessed 31 August 2016).

13 Malaysian detainees were recorded in April 2016, but not before or since.

were not recorded in immigration detention. This can help us to explore whose presence the prescription of irregularity is intended to delegitimise and suggests that the way in which noncitizenship is experienced is not homogenous, not even amongst 'unwanted' noncitizens.

Discourse about irregular migration can often be polarised, describing people either as victims or as villains, with those who support the rights of the individuals involved tending to place more individuals into the victim category.<sup>14</sup> Bridget Anderson has warned that drawing such firm lines makes some persons seem villainous when they are more appropriately described, if anything, as victims, while characterising people as victims suggests they can only suffer or be helped, but cannot be angry or participate.<sup>15</sup> This contributes to the dehumanisation which will be taken up in Chapter 5. Acknowledging the relationship of noncitizenship can help to provide a way in which to represent irregular immigrants as active agents in their own right. Noncitizens in general, and 'unwanted' noncitizens in particular, *are* vulnerable, but they are not *only* vulnerable and while this chapter focuses on vulnerability, later in this book the emphasis is on agency and the challenge of activated noncitizenship for States built upon liberal democratic principles.

Irregular migration exists because it is defined into existence.<sup>16</sup> While individuals choose to migrate, often knowing this is going to leave them in irregular situations, a person cannot be an irregular immigrant except by definition by a State – or by non-attribution of status by a State. In a liberal theory of justice there is no underlying moral reason to render the activity in which such persons engage (border-crossing, work, setting up a home) illegal or wrongful in itself. And it is not trivial to argue that an individual should be impeded in these basic activities. This is not to suggest that there are no good reasons to exclude, and no good reasons to define some forms of migration as irregular. It may be necessary, for example, to stop someone escaping justice, or causing disorder.

This can be seen in one of two ways. Either it is a matter of social coordination (such as that which allocates on which side of the road we can drive), or it is a matter of administration, or a mix of the two. In any case, the construction of irregular immigration is bureaucratic. Yet, where (even mostly beneficial) bureaucratic rules end up harming the vulnerable, this provides a reason to override them – or at least a reason why their enforcement needs to be justified.<sup>17</sup> The argument in this book so far has suggested that the vulnerability of many noncitizens within the current State system is a symptom of a deeper theoretical problem. The construction of irregularity not only makes such individuals more vulnerable. It also creates a new sort of vulnerability. Seen in this way, irregular migration is for the most part symptomatic of a failure of theoretical and policy

14 Bridget Anderson (2008) '“Illegal immigrant”: Victim or Villain?', ESRC Centre on Migration, Policy and Society Working Paper No. 64, University of Oxford.

15 Anderson 2008 *ibid.*

16 For example, argued in Dauvergne 2008 *ibid.*, p. 15.

17 Robert Goodin (1986) *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities*, University of Chicago Press.

frameworks to take full account of reality.<sup>18</sup> In becoming irregular immigrants, some individuals become vulnerable to the State and to individuals with regard to their access to the most basic goods. For some of those, as with the Americans in Australia, discussed above, the vulnerability is mitigated by other factors, such as citizenship elsewhere. For others, the vulnerability might be extreme – and indeed recent self-immolations in Australian immigration detention facilities are testament to the impact that it has had on individuals.<sup>19</sup>

There is another aspect to this. When irregular migration is constructed as criminal in itself, this also needs to be seen as a criminalisation of asylum-seeking.<sup>20</sup> Efforts to prevent irregular migration, including mobilisations against smuggling, make it difficult for people fleeing humanitarian calamities to find somewhere safe to be.<sup>21</sup> This is because such persons are most often moving irregularly. This means that even if you take a very narrow view on entitlement to move, including only the principle of asylum, then efforts to criminalise and to prevent irregular movement also impede asylum. In addition, by constructing irregular migration as criminal and irregular migrants as villainous means that people in these situations are more easily dehumanised. This also leads to a secondary form of criminalisation and another aspect of dehumanisation. Often without access to legal work or welfare, living undercover, sometimes in debt to people smugglers, 'unwanted' noncitizens may have to participate in criminal activity such as theft, for example, in order to survive. This further excludes such individuals from the State system. It removes from affected individuals the moral choice to be law-abiding and constrains their freedom to avoid activities that they consider to be wrong.

Some irregular migrants are seeking asylum, others may be fleeing conditions such as famine or State collapse. There are many other reasons, and combinations of reasons, why people move. They may move in order to be better located within the international system to which they are vulnerable. This movement in turn may put people into a situation of further vulnerability. However, it should also be seen as active and as challenging to that system. The movement is challenging because it demonstrates illiberal realities of States built upon liberal

18 Lea Ypi (2008) 'Justice in Migration: A Closed Borders Utopia?' pp. 391–418 in *Journal of Political Philosophy* 16(4), p. 395.

19 For example, 23-year-old Iranian detainee Omid Masoumali died in May 2016 after setting himself on fire on camera at the Nauru detention facility, declaring that he was 'exhausted', adding 'I cannot take it any more', referring to his life in the camp; see Ben Doherty and Helen Davidson (2016) 'Self-immolation: desperate protests against Australia's detention regime', in the *Guardian*, 3 May 2016. The August 2016 release of the Nauru Papers shows the devastating extent of suicide attempts and self-harm in the detention facility on the island. This is also discussed in Chapter 3.

20 For example, see Matthew Gibney (2004) *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*, Cambridge University Press; Vicki Squire (2009) *The Exclusionary Politics of Asylum*, Palgrave Macmillan.

21 Thomas Gammeltoft-Hansen (2011) *Access to Asylum: International Refugee Law and the Globalisation of Migration Control*, Cambridge University Press; Valsamis Mitsilegas (2015) *The Criminalisation of Migration in Europe: Challenges for Human Rights and the Rule of Law*, Springer.

democratic principles and forces such States to encounter people with whom they would rather not relate.<sup>22</sup> Irregular migration is closely tied both to border controls and to the reasons people have to move. As such, an individual who is already vulnerable to the citizenist system of States may well move in order to reposition her/himself within it and so to alter the impact of that vulnerability. The vulnerabilities of irregular migrants are continuous with the vulnerabilities of those who do not move, including those unable to move. This can be understood in terms of a shared relationship of noncitizenship.

### **Stateless persons**

I was born in 1990 on December 10th in Newcastle here in South Africa. In 1994, I moved to Kenya with my mum. When my mum was murdered, we left for Uganda. In 2007, I tried to allocate my citizenship. My potential target was to locate some of my relatives here in South Africa. On my approach to Newcastle, that was the first time I was arrested, because I didn't have any legal document. From there I was detained for almost a month, then I was taken to the Repatriation Centre in Lindela.

[...]

I have been arrested several times. I cannot even count how many times. Every time I'm arrested, I am assaulted. They can kick you, they can hit you. They can do anything they want, because you don't have any rights. The only thing they can say: "Eish, we are tired of foreigners here in South Africa!" These arrests, I don't think it is going to stop. Every time I's being asked to identify myself, I cannot. But there is no solution to my problems. There is no country where I am known.

[...]

People do not believe that on this planet there are stateless people, but I do exist: I am a stateless person.

(Khumbulani Frederik Ngubane, stateless man in South Africa, speaking in 2014<sup>23</sup>)

Officially, a stateless person is someone who is not recognised as a 'national' by any State under the operation of its laws.<sup>24</sup> The implications of statelessness

22 Movement as itself a noncitizen act is examined further in Chapter 11.

23 Taken from the documentary film, *Belonging*, 2014, produced by Lawyers for Human Rights, South Africa, UNHCR and OneTwoDee [www.youtube.com/watch?v=s07egavs3FM](http://www.youtube.com/watch?v=s07egavs3FM) (accessed 14 June 2016).

24 Convention Relating to the Status of Stateless Persons 1954 Article 1(1). The number of stateless persons in the world is unknown. Using UNHCR and NGO data, the Institute for Statelessness and Inclusion estimates that there are more than 15 million stateless persons. It is also possible to take a wider definition, including also all who cannot call upon their citizenship, which makes the number of persons affected much greater. For a problematisation of the use of 'national' here, see for example Katherine Tonkiss (2017) 'Statelessness and the Performance of Citizenship-As-Nationality', pp. 241–254 in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.

demonstrate, perhaps more than anything, the inconsistencies written into existing citizenist frameworks and the resulting vulnerability that can be invisible to insiders. Stateless persons may be subject to every sort of privation.<sup>25</sup> Such individuals are extremely vulnerable to States and to the State system as they largely have no recognised place within it. This vulnerability may well not be accompanied by any mitigating protections, neither in theory nor in fact. As can be seen in Khumbulani Frederik Ngubane's story above, which is not unique to South Africa, stateless persons can be caught within a State system that is not structured to acknowledge them. They may be arrested as irregular immigrants but cannot be deported *to* anywhere. They may be punished for not having documents while being given no means to obtain any. The inconsistency of this is also illustrated by Gohar Dashti's photograph at the end of the last chapter, where individuals seek shelter in the desert, though they have no shelter and it is unclear how they will be able to live.

While someone like Ngubane, quoted above, urgently needs access to a recognised formal citizenship, it is also necessary to recognise the claims of justice he has against the States concerned even without it. That is, stateless persons have liberal theoretical (as well as legal) claims of justice upon States, even *as* stateless persons. A stateless person also has a noncitizen relationship with the State(s) in question. Addressing stateless persons' claims within liberal democratic discourse is theoretically important and urgent from a practical perspective. The language of noncitizenship can help.

On the face of it, one could suppose that statelessness should not occur within a well-functioning liberal democratic system. But even in such a system there could be persons who were stateless (this is taken up particularly in Chapter 6). Irrespective of this, let us look at the reality of statelessness today. It can arise in a number of ways.<sup>26</sup> For example, some ethnic groups experience inherited statelessness, such as the Rohingya in Bangladesh, Malaysia and Myanmar or the Roma communities in some parts of Europe. Some other populations, because of poverty, prejudice, or inefficient administration, may find it difficult to register life events, so that children end up unable to prove a citizen relationship with any State.<sup>27</sup> This can also occur for other reasons. For example, laws in some countries which prevent mothers passing their citizenship to their children will leave children of a woman without a male citizen spouse unable to claim any citizenship. Children may also fall between systems of citizenship laws. For example, some States allocate formal citizenship mostly based on birth to citizen

25 This is detailed, for example, in Laura van Waas (2009) *Nationality Matters: Statelessness Under International Law*, School of Human Rights Research. For a theoretical analysis, see Kelly Staples (2012) *Rethorising Statelessness: A Background Theory of Membership in World Politics*, Edinburgh University Press.

26 For a comprehensive analysis see van Waas 2009 *ibid.*; van Waas and de Chickera 2017 *ibid.*

27 Zahra Al Barazi and Jason Tucker (2017) 'Challenging the Disunity of Statelessness in the Middle East and North Africa', pp. 87–101 in Tendayi Bloom, Katherine Tonkiss and Philip Cole (eds) (2017) *Understanding Statelessness*, Routledge.

parents (*jus sanguinis*), while others allocate formal citizenship based on birth on the territory (*jus soli*). A child born on the territory of a *jus sanguinis* State to citizens of a *jus soli* State will struggle to claim any citizenship.<sup>28</sup> Other factors, like disruptions to normal birth registration, can also make it difficult for children to be allocated a citizenship. This might happen in the context of war, migration or epidemic, for example.

People can also become stateless as adults. For example, when a person's State of citizenship ceases to exist or changes in form, s/he may find her/himself outside citizenship frameworks. Widespread instances of this have occurred during periods of decolonisation (e.g. the ending of the British Empire and the USSR), with effects that are still being felt.<sup>29</sup> The recent splitting of the State of Sudan is now also making it difficult for some people to assert a citizenship.<sup>30</sup> In some countries people may have their citizenship removed, or renounce their citizenship voluntarily. Consider the case of the Dominican Republic, where persons identified as having Haitian heritage had their formal citizenships removed. This shows how administrative status interplays with existing systems of prejudice and constructions of entitlement.

The Dominican Republic shares the Caribbean island of Hispaniola with Haiti. The two States have a complex and intertwined history of colonisation, slavery and war, and of repressive dictatorships in both countries. In 2013, the Constitutional Court of the Dominican Republic ruled to uphold a Constitutional amendment to, as one commentator has described it, 'revoke the citizenship rights of children born to undocumented immigrants in the Dominican Republic (who are predominantly of Haitian origin).'<sup>31</sup>

Haitian migration to the Dominican Republic has a long history, from those moving to work in the sugar industry in the twentieth century to those who fled the dictatorship in the 1970s and 1980s. In 2010, Haitians again fled to the Dominican Republic and elsewhere to escape the after-effects of a major earthquake.<sup>32</sup> There has long been discrimination in the Dominican Republic against people who, because of their darker complexion, are seen as being of Haitian

28 For example, consider the case of Daniella, born to Cuban parents in South Africa, and after over eight years at the time of writing still unable to make use of a citizenship. Liesl Muller (2016) 'South African courts confirm the right to nationality of a stateless child – 20-year-old legal principle protecting stateless children is finally implemented', European Network on Statelessness 13 September 2016 [www.statelessness.eu/blog/south-african-courts-confirm-right-nationality-stateless-child-20-year-old-legal-principle](http://www.statelessness.eu/blog/south-african-courts-confirm-right-nationality-stateless-child-20-year-old-legal-principle) (accessed 4 April 2017). Despite the positive decision described in this post, at the time of writing, Daniella has still not acquired a passport.

29 See for example, Bronwen Manby (2009) *Struggles for Citizenship in Africa*, Zed Books.

30 See for example, Mike Sanderson (2014) 'Key Threats of Statelessness in the Post-Secession Sudanese and South Sudanese Nationality Regimes', Open Research Exeter, University of Exeter.

31 Jillian Blake (2014) 'Haiti, the Dominican Republic, and Race-based Statelessness in the Americas', *Georgetown Journal of Law and Modern Critical Race Perspective* 6, p. 141.

32 Blake 2014 *ibid.* p. 147.

origin.<sup>33</sup> Not least, in 1937, Dominican Republic dictator Rafael Trujillo gave orders leading to the deaths of thousands of people identified as 'ethnic Haitians'.<sup>34</sup> The complex use of ethnicity, indigeneity and race in the constructions of power and entitlement – and of irregularity and status – on Hispaniola illustrates how contingent these matters can be.<sup>35</sup>

Like many in the Americas, the 1929 Dominican Constitution gives automatic *jus soli* citizenship to anyone born within the State's territory, with the exception of those born to persons 'in transit' or to diplomats. This 'in transit' exception has dogged those identified as Haitians in the country. They were reportedly often classified as being in transit, on the basis that 'all Haitians were "in transit"'.<sup>36</sup> In 2013, what changed was that also persons with formal Dominican Republic citizenship, considered to be 'of Haitian descent', would lose their citizenship, and those without any other citizenship, would thereby become stateless.<sup>37</sup> The rationale given was that these individuals had been irregular immigrants and, as such, had only ever been 'in transit'. The notion of 'irregularity' was wielded in order to render people stateless and the statelessness in turn made them irregular immigrants and apparently deportable.

The individuals affected were already suffering racial discrimination, impeding their ability to exercise their formal citizenship fully. The removal of formal citizenship formalised and deepened their noncitizen-vulnerability in the context of the State system.<sup>38</sup> This case demonstrates the need for protection of, and access to, appropriate citizenship. And yet, it also shows that the problems associated with statelessness result not so much from the loss of citizenship alone as from the much wider situation of discrimination that was behind the loss of citizenship in the first place.<sup>39</sup> Kristy Belton describes excluded persons of Haitian descent in the Dominican Republic and elsewhere in the Caribbean as 'noncitizen insiders'.<sup>40</sup> She describes statelessness in this case, then, as 'a form of forced displacement that immobilizes them *in situ*'.<sup>41</sup>

33 For example, see Junot Diaz's now classic novel on the Dominican Republic: Junot Diaz (2008) *The Brief and Wondrous Life of Oscar Wao*, Faber & Faber.

34 Bridget Wooding (2003) 'Contesting discrimination and statelessness in the Dominican Republic', pp. 23–25 in *Forced Migration Review* 32, p. 23; Blake 2014 *ibid.* p. 144.

35 Bridget Wooding (2008) 'Contesting Dominican Discrimination and Statelessness' pp. 366–375 in *Peace Review: A Journal of Social Justice* 20.

36 Blake 2014 *ibid.* p. 149.

37 Blake 2014 *ibid.* p. 163.

38 Consider Lindsey Kingston's discussion in: Lindsey Kingston (2014) 'Statelessness As a Lack of Functioning Citizenship', pp. 127–135 in *Tilburg Law Review* 19. Introduced in Chapter 1.

39 For example, see Lindsey Kingston (2017) 'Worthy of Rights: Statelessness As a Cause and Symptom of Marginalisation', pp. 17–34 in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.

40 Kristy Belton (2011) 'The Neglected Non-Citizen: Statelessness and Liberal Political Theory', *Journal of Global Ethics* 7(1).

41 Kristy Belton (2015) 'Rooted Displacement: The Paradox of Belonging Among Stateless People', *Citizenship Studies* 19(8) p. 908.

More generally, constructing someone as an 'unwanted' noncitizen forces displacement ('expulsion' to use Saskia Sassen's terminology<sup>42</sup>) from the current understanding of the State system, one in which it is *States* that get to choose who can fall within their scope of concern. Using the apparently legalistic mechanisms of formal citizenship and of immigration control can obscure race, class and other arbitrary discrimination in this expulsion. With Kelly Staples, this book rejects the idea that people cannot be recognised as people if they are not recognised as citizens somewhere. However, it acknowledges that, in practice, in a world of States, the recognised relationship a person has with a State will impact upon this.<sup>43</sup>

### **Problematising humanitarian exceptionalism by considering when it is denied**

No failed asylum seeker need face destitution if they comply with the law and the decisions of our courts and go home when required and able to do so.

(Statement in BBC broadcast, attributed to UK Home Office<sup>44</sup>)

A key way in which the assumption of exclusion is often considered to be overridable is where a humanitarian exception is identified. This is presented even by liberal nationalists who presume particularly closed borders alongside the 'principle of asylum', whereby if someone arrives at a State's borders having fled for their life, they should be admitted.<sup>45</sup> In practice, this usually means that if a person arrives at a State and can prove that s/he is a victim of some atrocity that can be defined as persecution, then s/he can be included, on terms dictated by the receiving State. The most important version of this is refugee status, but there are also other humanitarian statuses found in different States in different ways. These statuses are vital in the context of the citizenist interpretation of liberalism in most existing States built upon liberal democratic principles. They enable some of those most ill-affected by exclusion from the existing State system to find some way of accessing it.

Yet, it is also problematic. This will be shown here by considering an example of refused asylum seekers in the UK.<sup>46</sup> Unable to prove the

42 Saskia Sassen (2014) *Expulsions: Brutality and Complexity in Global Economy*, Harvard University Press. Though this is only one element of Sassen's expulsion. She uses the word more broadly.

43 Kelly Staples (2012) *Rethorising Statelessness*, Edinburgh University Press.

44 Quoted in Catrin Nye, 'Glasgow's destitute asylum-seekers' (2013) BBC News Scotland website [www.bbc.com/news/uk-scotland-21835432](http://www.bbc.com/news/uk-scotland-21835432) (accessed 16 June 2014).

45 David Miller (2005) 'Immigration: The Case for Limits', pp. 193–206 in Andrew Cohen and Christopher Heath Wellman (eds) (2005) *Contemporary Debates in Applied Ethics*, Blackwell.

46 I want to thank Anne Kershen who kindly allowed me to draw heavily upon this chapter: Tendayi Bloom (2015) 'London's Role in the Policy of Destitution of Asylum Seekers: The 'Ghosts' in the British Migration Infrastructure', in Anne Kershen (ed.) (2015) *London the Promised Land*, Ashgate.



humanitarian exception, some people are seen to be legitimately excluded from any relationship with the State with most power over them. This is despite a strongly activated individual-State relationship. Irrespective of the validity of such individuals' humanitarian claims, the argument here is that they in fact have relationships with the State in question. A citizenist discourse makes it possible to ignore, and indeed quite difficult to characterise, these relationships. In addition, the assumed citizenism risks legitimising or obscuring other, for example ethnically based, reasons for exclusion. A recognition of (unhyphenated) noncitizenship helps the interrogation of these exclusions.

There is no internationally recognised definition of asylum seeker.<sup>47</sup> In the UK:

'claim for asylum' means a claim made by a person [...] that it would be contrary to the United Kingdom's obligations under the [1951 Refugee] Convention for him to be removed from, or required to leave, the United Kingdom.<sup>48</sup>

An asylum seeker according to this definition is someone who has made such a claim. After examination, if the claim is considered unfounded, or insufficient for that person to be recognised as a refugee or to be eligible for some other quasi-citizen humanitarian status, then it is rejected. In many cases, this leaves people with no individual-State relationship on which to call and so no State in place to protect their rights. Such individuals are, then, irregular immigrants. Some commentators have suggested that this puts people into a situation that looks like statelessness.<sup>49</sup> There are no reliable data on how many refused asylum seekers are in the UK, but one 2009 LSE study put the number at between 417,000 and 863,000, and given people continue to arrive and continue to be refused asylum, while few are deported, the number may well be much higher.<sup>50</sup>

Once someone has been refused asylum in the UK s/he has a window in which to appeal or to leave. After that period, the person, still forbidden from working, for the most part becomes ineligible for cash benefits, housing and

47 For example, see David Weissbrodt (2008) *The Human Rights of Non-Citizens*, Oxford University Press, p. 111; Guy Goodwin-Gill and Jane McAdam (2007) *The Refugee in International Law* 3rd Edition, Oxford University Press, section entitled 'The Concept of Asylum'.

48 (1993 Act (1)).

49 Brad Blitz and Miguel Otero-Iglesias (2011) 'Stateless by Any Other Name: Refused Asylum-Seekers in the United Kingdom', pp. 1–17 in *Journal of Ethnic and Migration Studies* 37(4).

50 Jennifer Allsopp *et al* (2014) *Poverty among refugees and asylum seekers in the UK*, IRiS Working Paper Series, No. 1/2014, University of Birmingham, p. 10; Nando Sigona and Vanessa Hughes (2012) *No Way Out, No Way In*, Research Report, May 2012, ESRC Centre on Migration, Policy and Security, Hollywell Press, Oxford, p. 7; Ian Gordon, Kathleen Scanlon, Tony Travers and Christine Whitehead (2009) *Economic impact on the London and UK economy of an earned regularisation of irregular migrants to the UK*, LSE report for the Greater London Authority, London.

other welfare support, falling into the broad category of 'irregular migrant'.<sup>51</sup> Some people can apply for some limited help, but few do so.<sup>52</sup> Such a person is forbidden from working and so has no legal means of subsistence other than charity. The apparent contradiction that leads to destitution (no legal work and no benefits) is not a legal oversight. In 2007, a Home Office document explained the thinking behind the policy:

[refused asylum seekers] should be denied the benefits and privileges of life in the UK and experience an increasingly uncomfortable environment so that they elect to leave.<sup>53</sup>

As well as being unable either to work or to claim benefits, since 2004, refused asylum seekers have also been ineligible for public National Health Service (NHS) hospital care beyond emergency treatment and screening for infectious diseases.<sup>54</sup> Despite these conditions, many remain in the country. Three primary reasons for this have been suggested:<sup>55</sup> (1) Removal is not possible; (2) Fearing compulsory return, they abscond; and/or (3) Desire to ensure that the claim is given proper consideration.

Destitution impacts upon individuals' capabilities, and is reported to make people feel 'useless'.<sup>56</sup> This is mentioned across the studies and reports that highlight wasted human resources, deskilling, negative psychological effects and dehumanisation. The absurdity of this is demonstrated through individual cases, such as those of persons who were respected professionals prior to seeking asylum, but following a rejected claim are left destitute.<sup>57</sup> It is striking to consider the difference in such a person's status before and after the decision on her/his asylum claim, even though nothing about her/him, as a person, had changed, and no new information about her/him had come to light.

Studies show the policy has driven people neither to leave nor to stop claiming asylum, though it has driven them to become more invisible once refused.<sup>58</sup> Destitution is not short-term. In a 2009 UK-wide study of visits by destitute

51 Alice Bloch (2013) 'Living in Fear', *Journal of Ethnic and Migration Studies* 40(10).

52 Additional support is available, for example for children or those who applied at port of entry. Heaven Crawley, Joanne Hemmings and Neil Price (2011) *Coping with Destitution*, Oxfam Research Report, February 2011 p. 26, 5; Bloch 2013 *ibid.* p. 1512.

53 UK Home Office (2007) *Enforcing the Rules*, Her Majesty's Stationary Office, p. 17.

54 See Amnesty International (2006) *Down and Out in London*, Amnesty International UK.

55 For example, Crawley *et al* 2011 *ibid.* p. 17. These are explored in more detail in Bloom 2015 *ibid.*

56 For example, in response to the interview question, 'How did you feel about being refused asylum?', including reference to the destitution that has resulted, a respondent explained: 'I feel useless. My confidence shattered.', in Kamena Dorling, Marchu Girma and Natasha Walter (2012) *Refused*, Women for Refugee Women, p. 14.

57 Bloom 2015 *ibid.*

58 For example, Blitz and Otero-Iglesias 2011 *ibid.*; SHSH (2007) *Briefing paper on destitute refused asylum seekers*, Still Human Still Here; OECD 2011.

persons to Red Cross support centres, 62 per cent of refused asylum seekers had been destitute for over six months.<sup>59</sup> The length of destitution is often longer, with 31 per cent of refused asylum-seeker visits from persons who had been destitute for over two years.<sup>60</sup> Other studies have suggested that less than half of rough-sleepers in London are formal UK citizens.<sup>61</sup>

This makes such individuals vulnerable. Forced to be destitute, to rely upon NGOs, religious groups and community members for survival, individuals falling into this category are not only vulnerable to the State, but thereby also to everyone within the State. Their personal security is compromised, as is their security of stay, such that they are constantly at real risk of personal attack or deportation. Such individuals are vulnerable with regard to their basic and less basic capabilities. While the example of destitute refused asylum seekers in the UK is quite extreme, this level of exclusion (expulsion) is symbolic of a more general form of vulnerability experienced by noncitizens. While many noncitizens are able to access labour and/or welfare systems, they are still dependent upon employers to support their visas, landlords to accept their documentation, and the State to continue, in its beneficence, to allow them to stay.<sup>62</sup> If not, they become 'unwanted' and so vulnerable to new forms of exploitation which further challenge liberal norms.

Refugees are often seen as the quintessentially 'good' migrants, and put-upon victims. However, before a person becomes a 'refugee', s/he is in a weird limbo, denoted by the makeshift title of 'asylum seeker'. Given that people are assumed excludable, even excluded until they can prove otherwise, many asylum seekers are irregular immigrants (though by no means all). Except in the limited cases of refugee resettlement, in order to claim asylum a person must find her/his own way to enter the territory of the State where s/he plans to claim asylum. This may involve travel on a visa, but especially in cases of urgent flight, it may well mean travelling irregularly. Those who need to move urgently are likely to be unable to perform the administrative tasks needed for regular migration even in the case that such options would be open to them. Not all countries offer asylum seekers any protection or access to national systems – and where it is available, this access is often restricted.

59 Calculated from Kate Smart (2009) *The Second Destitution Tally*, Asylum Support Partnership Policy Report p. 6.

60 Calculated from Smart 2009 *ibid.* p. 16.

61 S. Fitzpatrick, H. Pawson, G. Bramby, S. Wilcox and B. Watts (2015) *The Homelessness Monitor, England 2015*, Crisis. Note that those formal citizens who are homeless may well *also* be experiencing activated noncitizenship.

62 This 'enduring asymmetry' is developed in a very different way in Chapter 6. The phrase 'enduring asymmetry' in this context comes from Jeremy Harding (2012) *Border Vigils: Keeping Migrants Out of the Rich World*, Verso.

Two systemic responses suggested by theorists to address this situation for irregular immigrants are Joseph Carens's 'firewall',<sup>63</sup> creating an administrative barrier between migration enforcement and public services, and Christina Boswell's 'benign neglect',<sup>64</sup> whereby the State turns a blind eye to its irregular immigrant population. Measures like this could be vital to helping some people in the interim, but more is needed to respond to the more fundamental problem presented here.

Carens's firewall means that a State can at the same time consider some persons to be 'unwanted' and their claims illegitimate, while providing for those persons' needs. Boswell's 'benign neglect' is based on what she describes as the State's source of effective legitimacy:

...the state mobilizes loyalty and compliance through guaranteeing its citizens privileged access to certain political rights and socioeconomic goods. Even though states are not always able to guarantee this privileged access in practice, their legitimacy remains contingent on (at least symbolic) attempts to do so.

The firewall and the policy of benign neglect are important for ensuring access to capabilities now, but they do not contest the methodological citizenship directly (and perhaps this is also what makes them such important interim tools). They offer interim ways to make the implications of citizenship less brutal.

This book does not contest that there may be special claims for citizens, but it argues that there are *also* different special claims for noncitizens. While it is crucial to advocate ever more access to humanitarian protections and to citizenships, to more exceptions to the overarching assumption of exclusion more generally, it is also necessary to continue to challenge it.<sup>65</sup> Even if every individual alive today were allocated some citizenship or quasi-citizenship status that was satisfactory to her/im; even if all individuals could satisfy their basic and even less basic physical needs using a combination of citizenships, quasi-citizenships and firewalls; the *possibility* of completely excluded noncitizens renders the liberal democratic framework as currently interpreted, theoretically unjust, and likely to be unjust in practice as well. The reality, in which people are in fact experiencing utter exclusion/expulsion, makes this theoretical problem urgent to address.

Irregular immigrants and stateless persons provide a paradigmatic example of how rights, usually presumed to be held by all, are also believed to be *legitimately*

63 Joseph Carens (2008) 'The Rights of Irregular Migrants', pp. 163–186 in *Ethics and International Affairs* 22(2).

64 Christina Boswell (2008) 'The Elusive Rights of an Invisible Population', pp. 187–192 in *Ethics and International Affairs* 22(2).

65 I am not suggesting advocates of the firewall or banal reject are not troubling the status quo, but am arguing that I do not think that these approaches solve the specific problems raised in this book.

withheld from some. Indeed, even discussing *whether* irregular immigrants are eligible for access to goods considered to be human rights allows the possibility that such persons implicitly (or perhaps even explicitly) can be considered not fully human. This goes deeper than the question of access to specific rights. While noncitizens *in situ* do not always fare badly, 'unwanted' noncitizens often do. Without access to a humanity-confirming status, 'unwanted' noncitizens are often forbidden from working and unable to access welfare systems. Consequently, such persons may find life, or core aspects of life, effectively legally forbidden.<sup>66</sup> And yet it is the liberal State and the State system that have created the categories of irregularity and created the conditions that push people to enter into them. One commentator has described the situation for stateless persons as a continuing 'blind spot on the international community's agenda'.<sup>67</sup> The same can be said for noncitizens more broadly, since while specific noncitizen groups are given specific sets of protections by virtue of some form of quasi-citizenship, there is not a general appreciation of the vulnerability of noncitizenship and the obligations that this places on States.

### **'Unwanted' by whom? Unrecognised noncitizenship and its effect on citizenship**

I went to Rodbyhavn and was met with scenes that I'd never seen before in Denmark. There were refugees everywhere. Complete chaos. Adults, children, single mothers, teenagers – wary people with tired faces, most of them with just small plastic bags containing their belongings and some with nothing but the clothes they wore. Those faces. Not desperate but stern. Weary. Committed. I phoned Mikael, my husband, and said: "Listen, I'm going to offer some of them a lift." He said: "But of course you are. Bring them home, I'll make coffee."

[It turned out that the family she picked up were from Damascus, travelling to meet their father and husband in Helsingborg in Sweden. She drove them to her home in Solrod Strand where her husband served coffee, soda and cinnamon buns. Then he drove the family to the train station still within Denmark.]

A few hours later, we got a call from their father. He was overjoyed, and grateful. That was good. But we felt bad. We had done so little, and yet it had meant so much to these six people. [...]

That was in September. The following month, my husband and I were contacted by the police. They were investigating us on the charge of people-smuggling, and wanted us to come in for questioning. [...] In judicial terms,

66 This is picked up again in Chapter 5.

67 Kirsty Belton (2013) 'Statelessness and Economic and Social Rights', in Lanse Minkler (ed.) (2013) *The State of Economics and Social Human Rights: A Global Overview*, Cambridge University Press p. 223.

our crime consisted of aiding, transporting and harbouring persons without valid travel documents. That's the lift and the coffee. [...] I was not aware of the law, and the idea of asking the family for valid travel documents never entered my mind. I have never asked anybody for valid travel documents when offering them a lift.

[She and her husband received a 45 Danish Kroner fine, which was paid by public donations.]

I never knew that decency, generosity, charity – whatever you choose to call it – was reserved for people with valid travel documents.

(Lisbeth Zornig Andersen, describing her experience in *Granta*, 7 December 2016<sup>68</sup>)

An additional dimension of the construction of some noncitizens as 'unwanted', expelled by a State built upon liberal democratic principles is the implication that this has for the free-association of citizens, and their decisions about how to live their lives. In the Danish example above, the construction of individuals out of a recognised relationship with the Danish State was challenged by the relationship (albeit brief) that was developed between Lisbeth Zornig Andersen, who related with Denmark as a citizen, and the six individuals to whom she gave a lift. Andersen and her husband were punished for an activity that was made criminal by the way in which the individual-State relationships were constructed and the non-recognition of noncitizenship. This impacted upon both the autonomy of all the individuals involved and their capabilities to act in a way that they consider to be moral.

As such, limits placed upon, and vulnerabilities of, 'unwanted' noncitizens also constrain citizenship. Beyond the extreme example given here, controls on who is able to enter through regular channels, who can enter labour markets and access social and other communities, limits citizens in who they can marry, befriend, work for, buy from, employ, or, indeed, give a lift to. In turn, this risks activating noncitizen relationships in the formal citizens who are affected. Citizens then also participate in the disobedience and politicisation associated with noncitizenship. Perhaps the most famous example of State checks on private citizen support of irregular immigrants is the tellingly named French '*delit de solidarité*' (crime of solidarity), whereby helping an irregular immigrant (including providing shelter) has been prohibited in France, with a potential prison sentence and fine.<sup>69</sup> Yet though the French example is particularly well known, as the testimony of Zornig Andersen demonstrates, cases can increasingly be found across States ostensibly built

68 Lisbeth Zornig Andersen (2016) 'When Denmark Criminalised Kindness', *Granta*, 7 December 2016.

69 See [www.gisti.org/spip.php?article1791](http://www.gisti.org/spip.php?article1791) (accessed 27 January 2011).



Figure 4.1 Elena and Ramadan outside their caravan (Denis Bosnic, 2015).

upon liberal democratic principles.<sup>70</sup> This further demonstrates the interrelationship of citizenship and noncitizenship and the need to recognise the reality of noncitizenship.

In Denis Bosnic's photograph, taken near Rome, Elena and Ramadan embrace outside the caravan where they live with their sons. They are some of a number of individuals who have worked with Bosnic in order to raise awareness in Italy about the situation for stateless persons. Elena has Romanian citizenship, but because Ramadan is stateless, they have not been able to register their marriage. Their children are not registered as Ramadan's, but instead as fatherless. In this way, they have been able to claim the citizenship of their mother. The entire family is affected by a noncitizen, indeed a stateless vulnerability to the State and the State system. That is, statelessness not only affects Ramadan's ability to act in the world, but also makes those close to him vulnerable to the State system

70 A discussion of the impact of Swedish border checks of travellers from Denmark and how it fits within wider developments is found, for example, in Tim Marshall (2016) *Prisoners of Geography: Ten Maps that Tell You Everything You Need to Know About Global Politics*, Elliott & Thompson Ltd, p. 107. For more on the involvement of non-State actors in border management, see for example Gallya Lahav (2003) 'The Rise of Non State Actors in Migration Regulation in the United States and Europe: Changing the Gatekeepers or Bringing Back the State?', pp. 215–241 in Nancy Foner, Rubén Rumbaut and Steven Gold (eds) (2003) *Immigration Research for a New Century*, Russell Sage Foundation.

in new ways. It activates new forms of noncitizenship in individuals who would otherwise not be excluded in this way.

The vulnerabilities associated with noncitizenship also change the meaning of citizenship at a more fundamental level. If formal citizenship or quasi-citizenship is needed for recognition or protection, then all must pursue citizenship of some kind for satisfaction of basic needs. If it is seen in this way, then citizenship cannot be seen as a consensual relationship, or even hypothetically consensual. If citizenship is needed for access to basic human needs, it is hard to imagine many people withholding their consent from it (though, as we will see in Chapter 6, some try to do so). As a result, it becomes distasteful to speak in even quasi-contractarian terms. The non-recognition of 'unwanted' noncitizens, then, also constrains the meanings of citizenship on several levels.

When the relationships of 'unwanted' noncitizens with the States where they live is denied, such individuals suffer from an artificial constriction of capability that is often rendered invisible, or even conceptually non-existent. As has been shown in this chapter, irregular immigrants and stateless persons may be healthy, strong, highly qualified. Yet they can be artificially impaired in their capabilities by the institutional situation in which they find themselves. In this way, individuals may also be forced to be in opposition to the States where they live in order to perform unavoidable activities. Both irregular immigrants and stateless persons are explicitly rejected by the States where they live. Both are often impeded in travelling regularly and both are often subject to significant vulnerability and substantial privations. They are also both at risk of being subject to a vicious cycle of dehumanisation.



## 5 Banal dehumanisation

Drawing upon sociologist Michael Billig's notion of 'banal nationalism', 'banal dehumanisation' refers to a mundane denial of a person's humanity so that, through the activities and speech acts of daily life and underlying institutional arrangements, someone can be constructed out of the scope of consideration for justice.<sup>1</sup> This comes in three forms. First, there is the dehumanisation that locates individuals as below other people in a hierarchy of concern. Second, there is the dehumanisation that denies individuals' existence altogether. Finally, there are the alterations of the frame within which s/he can live out her/his own humanity.

All three of these take place in two ways. On the one hand, the dehumanisation can be inadvertent, constructed through the theoretical framework itself. On the other hand, it may be part of an intentional project. These need not occur exclusively of each other. For example, dehumanisation may initially be inadvertent, but then generate a future desire to dehumanise, or dehumanisation may be intentional to an extent, but some of its consequences may be unintended. This chapter particularly addresses the role of the liberal democratic theoretical framework as currently understood in banal dehumanisation of noncitizens, and implications for the institutional and social frameworks based upon it.

### Making people less than human

[L]abels do not exist in a vacuum. They are the tangible representation of policies and programmes ... labels develop their own rationale and legitimacy and become a convenient and accepted shorthand.

(Roger Zetter, writing in *Journal of Refugee Studies* in 2007<sup>2</sup>)

Much has been written about how terminology has enabled the dehumanisation of persons and groups, leading to some of the worst actions of humans against

1 This draws on Michael Billig's notion of 'banal nationalism': Michael Billig (2002) *Banal Nationalism*, Sage [first published in 1995].

2 Roger Zetter (2007) 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization', pp. 172–192 in *Journal of Refugee Studies* 20(2). This builds upon his classic paper, Roger Zetter (1991) 'Labelling Refugees: Forming and Transforming a Bureaucratic Identity', pp. 39–62 in *Journal of Refugee Studies* 4(1).

other humans.<sup>3</sup> In recent history, ‘Tutsi’ has been made synonymous with ‘cockroach’ and ‘Jew’ with ‘rat’ before genocidal projects could be possible.<sup>4</sup> In these cases, perpetrators have avoided seeing their victims as less than human.<sup>5</sup> Banal dehumanisation is not so obvious. It involves small, implicit, and incremental instances that combine to construct and reinforce a framework that defines some people as being of lesser worth than others.

The banal dehumanisation of ‘unwanted’ noncitizens can be seen in several languages’ colloquial references to irregular immigrants and stateless persons. The Arabic term ‘bidoon’, for example, is an adjective meaning ‘without’. Short for ‘bidoon jinseeya’, or ‘without nationality’, the word is commonly used as a noun to refer to a person. Broadly, it can refer to anyone without relevant documents, but narrowly it is used to refer to those persons who did not obtain citizenship when the modern States of the Arabian Gulf were formed, and the descendants of those persons.<sup>6</sup> Something similar can be seen in the French and Spanish adjectival phrases ‘sans papiers’ and ‘sin papeles’, respectively, meaning ‘without papers’, used as nouns to describe fully persons and their relationships with the States in question.<sup>7</sup>

3 For example, Jonathan Glover (2012) *Humanity: A Moral History of the 20th Century* 2nd Edition, Yale University Press.

4 See analysis by Gregory Stanton, which also provides wider insight in this context: Gregory Stanton (2004) ‘Could the Rwandan Genocide Have Been Prevented?’, pp. 211–228 in *Journal of Genocide Research* 6(2). Stig Hornshoj-Moller, for example, examines the rat metaphor and the role of the media more generally. See also Stig Hornshoj-Moller (1998) ‘“The Eternal Jew” – A Blueprint for Genocide in the Nazi Film Archives’, paper presented at the Genocide Studies Program Seminar, Yale University, 15 October 1998; Ben Kiernan (2008) *Blood and soil: A World History of Genocide and Extermination from Sparta to Darfur*, Yale University Press; David Livingstone Smith (2012) *Less Than Human: Why We Demean, Enslave, and Exterminate Others*, St Martin’s Press; see also Jess Melvin (2018 forthcoming) *Mechanics of Mass Murder*, Routledge. Kristy Belton refers to more recent references to those denationalised in the Caribbean as ‘pigs, hogs, and dogs’: Kristy Belton (2015) ‘Rooted Displacement: The Paradox of Belonging Among Stateless People’, *Citizenship Studies* 19(8), p. 912.

5 For example, see Richard Rorty (1993) ‘Human Rights, Rationality and Sentimentality’, reprinted at pp. 107–131 in Aakash Singh Rathore and Alex Cistelean (eds) (2011) *Wronging Rights? Philosophical Challenges for Human Rights*, Routledge; Michael Ignatieff (2001) ‘Human Rights as Politics’, *Human Rights* p. 3; Steven Lukes (2005) ‘Liberal Democratic Torture’, *British Journal of Political Science* 36 p. 15. See also Glover 2012 *ibid*.

6 Zahra Al Barazi and Jason Tucker (2017) ‘Challenging the Disunity of Statelessness in the Middle East and North Africa’, pp. 87–101 in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge. Also, Maureen Lynch (2010) ‘Without Face or Future: Stateless Infants, Children and Youth’, pp. 117–140 in Marisa Ensor and Elzbieta Gozdzia (eds) (2010) *Children and Migration: At the Crossroads of Resiliency and Vulnerability*, Palgrave Macmillan.

7 For example, see Andreu Casero Ripollés (2007) ‘Discurso mediático, inmigración e ilegalidad: legitimizar la exclusión a través de la noticia’, pp. 69–90 in Ricard Zapata-Barrero and Teun A. Van Dijk (eds) (2007) *Discursos Sobre La Inmigración en España: Los medios de comunicación, los parlamentos y las administraciones*, Fundació CIDOB; Anne McNevin (2006) ‘Political Belonging in a Neoliberal Era: The Struggle of the Sans-Papiers’, pp. 135–151 in *Citizenship Studies* 10(2).

It has been suggested that the American English ethnic slur ‘WOP’, used against Italian Americans, comes from the letters that were put onto the documents accompanying Italian deportees, standing for ‘With Out Papers’.<sup>8</sup>

Sometimes, ‘illegal’ is used in English as a noun, implying that a person’s very existence is illegal. Catherine Dauvergne describes it as ‘one of the most derogatory terms’ applied to those engaged in irregular border crossings.<sup>9</sup> This view is shared, for example, by the ‘No One Is Illegal’ campaign, a global movement calling for an end to borders and immigration controls. In its very name, this movement draws attention to a nonsensical linguistic construction. It applies the adjective ‘illegal’ to a person, rather than to her/is actions.<sup>10</sup> A comment attributed to Nobel-prize-winning author Elie Wiesel perhaps best shows the incoherence:

You who are so-called illegal aliens must know that no human being is illegal. That is a contradiction in terms. Human beings can be beautiful or more beautiful, they can be fat or skinny, they can be right or wrong, but illegal? How can a human being be illegal?<sup>11</sup>

Moreover, using language in this way enables the development of an underlying sense that such persons have no relationship with the State(s) under discussion, making often extreme privations seem acceptable. The emphasis of lack in the hyphenated terminology of ‘non-citizenship’ is similar. Allowing an assumption of exclusion, ‘non-citizenship’ hides the substantive relationship of (unhyphenated) noncitizenship that an individual may have with a liberal State.

Banal dehumanisation also takes place in the construction of an atmosphere that assumes some persons to be appropriately omitted from consideration. This occurs with respect to noncitizens far away from, at the borders of, and within, the States in question. The media plays an important role in this. In one international study, for example, researchers conducted a series of experiments using negative news stories with research subjects, concluding:

These studies suggest that the uncertainty surrounding immigration, paired with the media’s proclivity to focus on negative rather than positive news

8 For example, see Alan Dundes (1971) ‘A Study of Ethnic Slurs: The Jew and the Polack in the United States’, *The Journal of American Folklore* 84(332). Thank you to Danny van Gelder for drawing my attention to this example.

9 Catherine Dauvergne (2008) *Making People Illegal: What Globalisation Means for Migration and Law*, Cambridge University Press, p. 4.

10 Dauvergne 2008 *ibid.*, p. 10. Indeed, the illegalising of people themselves is associated with some of the most problematic regimes in history. See, for example, Trevor Noah (2016) *Born a Crime*, Random House, about his experience of being born to a Black mother and a White father in apartheid South Africa.

11 I have not been able to find the first source of this widely cited quotation, but it is likely to have been said by Elie Wiesel in the late 1980s or early 1990s and to have been directed at irregular immigrants in the US.

stories, can lead to extreme negative reactions to immigrants and refugees – their removal from the human race through dehumanization.<sup>12</sup>

This banal dehumanisation in the media and elsewhere also makes way for less banal expressions. For example, in Spring 2015, in response to migrant boats sinking in the Mediterranean Sea, UK journalist Katie Hopkins of *The Sun* newspaper published an article entitled ‘Rescue boats? I’d use gunships to stop migrants’. In the article, she refers to those migrants crossing the Mediterranean as ‘cockroaches’ and describes them as unworthy of rescue.<sup>13</sup> This echoes words used in genocidal projects mentioned above, something observed also by Zeid Ra’ad Al Hussein, United Nations High Commissioner on Human Rights.<sup>14</sup>

The extreme sentiments expressed by Hopkins were, I argue, made possible by the banal dehumanisation of irregular migrants as illegal, by hyphenated non-citizenship and its assumption of exclusion, as well as by other localised anti-migrant tropes.<sup>15</sup> Hopkins was writing within a framework in which some noncitizens are fairly uncontroversially assumed excludable from institutional schemes. This is also a period in which the power of banal dehumanisation is amplified through the use of social media, which has changed the ways in which ideas are spread. This includes what have become known as ‘echo chambers’, such that social media users, as well as those who use online search engines, can find their own views amplified unchallenged, rather than being confronted with alternative perspectives, helping to reinforce their own way of understanding the world.<sup>16</sup>

The dehumanisation also involves securitisation and militarisation of discourse (and the connection between this and a narrow understanding of sovereignty). Consider the language used in a UK government document from 2007, *Managing Global Migration*. The 20-page document has 40 references to illegality of migration, describing government responses in the form of ‘tackling’, ‘fight’, ‘combat’ and ‘target’, for example.<sup>17</sup> Something similar happens globally

12 Victoria Esses, Stelian Medianu, and Andrea Lawson (2013) ‘Uncertainty, Threat, and the Role of the Media in Promoting the Dehumanization of Immigrants and Refugees’, pp. 518–536 in *Journal of Social Issues* 69(3).

13 Katie Hopkins (2015) ‘Rescue boats? I’d use gunships to stop migrants’, in the *Sun* 17 April 2015.

14 ‘UN Human Rights Chief urges U.K. to tackle tabloid hate speech, after migrants called “cockroaches”’, 24 April 2015, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885&LangID=E) (accessed 4th April 2017).

15 For example, see Didier Fassin (2005) ‘Compassion and Repression: The Moral Economy of Immigration Policies in France’, pp. 362–387 in *Cultural Anthropology* 20(3) p. 363. For UK context (the location for the above case study), see also Scott Blinder (2015) ‘Briefing: UK Public Opinion Toward Immigration: Overall Attitudes and Level of Concern’, Migration Observatory briefing paper 20 August 2015.

16 Alex Krasodomski-Jones (2016) ‘Talking to Ourselves? Political Debate Online and the Echo Chamber Effect’, *DEMOS*.

17 Home Office and Foreign and Commonwealth Office (2007) ‘Managing Global Migration: A strategy to build stronger international alliances to manage migration’, HO and FCO June 2007. Note that this document was released the year after the 2006 UN High-level Dialogue on International Migration and Development and the year after the release of UK-made dystopian film, *Children of Men*, in which ‘illegal immigrants’ are kept in cages around London and at the coasts: Alfonso Cuarón (2006) *Children of Men*, Universal Pictures.

in the splicing of discussions of irregular migration with those of national security and the ubiquitous threat of terrorism. This, what one commentator has called '[u]nfocused war rhetoric',<sup>18</sup> risks muddying discussion with prejudices and emotions. Some have argued that this construction of combat and fear of an enemy, once normalised, has been used in the 2010s to support increasingly far-right politics in several liberal democracies.<sup>19</sup> Also crucial to this dehumanisation are the binary constructions of some ways of being as 'normal' (settled, citizen, majority-member) and then, derivative from this, some ways of being as non-normal or sub-normal (nomadic, non-citizen, minority-member), where normal is implicitly seen as human and non-normal as not quite human.<sup>20</sup>

Billig describes his 'banal nationalism' (upon which the 'banal dehumanisation' used here is based) as, for example, a flag hanging unnoticed in the corner of a room.<sup>21</sup> It includes the use of 'we' in newspapers and 'the country' in weather forecasts as subtle reminders that there is a 'we' and there is an assumed country from which that 'we' looks out.<sup>22</sup> For Billig, the use of national symbols, unnoticed, throughout daily encounters is also crucial to the creation of a sense of a national identity sufficiently strong to muster an army when needed. Similarly, methodological citizenism, coupled with the banal construction of some people out of that 'we', generates a dehumanisation that helps to lessen the sense of outrage when those relating to a State primarily as noncitizens are treated in ways usually considered to be unacceptable. As Nussbaum puts it, dehumanising people puts them beyond the 'scope of our empathy'.<sup>23</sup>

This banal dehumanisation is not only relevant in the eyes of those located within the normative position with regard to some dehumanised other. It is a general and insidious banal dehumanisation, that may involve everyone. It could include the shaming or stigmatising of individuals in their own behaviours and their sense of their own entitlements, to see themselves as non-normative. This can be seen in the work of Stefan Zweig. In his autobiographical book, *The World of Yesterday*, Zweig recalls that he used to have a romantic view of statelessness as not being beholden to any State.<sup>24</sup> Then one day, like many others caught up in the xenophobia of the twentieth century, he found himself not

18 Margaret Beare (1999) 'Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats?', pp. 11–41 in Phil Williams (ed.) (1999) *Illegal Immigration and Commercial Sex: The New Slave Trade*, Frank Cass, p. 14.

19 For example, Valeria Bello (2017) *International Migration and International Security: Why Prejudice is a Global Security Threat*, Routledge.

20 For example, see María Lugones (2010) 'Toward a Decolonial Feminism', pp. 742–759 in *Hypatia* 25(4); Walter D. Mignolo (2000) *Local Histories/Global Designs*, Princeton University Press, where he discusses what he refers to as 'the colonial difference'.

21 Billig 2002 *ibid.* p. 38, p. 155.

22 Billig 2002 *ibid.* p. 154.

23 Martha Nussbaum (2013) *Political Emotions: Why Love Matters for Justice*, Harvard University Press.

24 Stephan Zweig (1964) *The World of Yesterday*, University of Nebraska Press. This is seen more broadly, for example, in Clark Hanjian (2003) *The Sovrien: An Exploration of the Right to Be Stateless*, Polyspire.

recognised as a citizen anywhere. He describes struggling to demonstrate that he was still a ‘gentleman’, even to himself, and the recognition that with his citizenship he had lost something that he had unknowingly assumed necessary for being ‘in good standing’.<sup>25</sup>

Zweig describes how he had become an object of suspicion even to himself. This is because States and citizenships currently hold sway over how we construct our world. In his case we can see how the perception one has of noncitizenship and its role in the political construction of reality can change depending on one’s own experience of it, but it can also affect how we see our own position in the world. Zweig discovered himself to believe citizenship and good standing to be intertwined at the same time as he found himself stateless. As a result, he describes his personal struggle to maintain his own sense of himself as a ‘gentleman’. The dehumanisation of (hyphenated) non-citizens, then, also affected Zweig’s own sense of his place in the world and his entitlement to be there.

This did not only happen in Zweig’s extreme experience of statelessness. Consider Wei Ming Kam’s reflection on being a child of Chinese immigrants in the UK.<sup>26</sup> She recalls her mother’s excitement whenever she saw someone with a Chinese face on the television. Ming Kam explains that while she used to ridicule this behaviour, she later realised that her mother was exhibiting a sense of belonging. She describes it as ‘a rare acknowledgement of our existence in the UK. *Look, my mum was saying. We’re here*’<sup>27</sup> (emphasis in the original). While this was not something that Ming Kam felt she needed herself, she realised that it was necessary for her mother. Ming Kam reflects that her mother sought affirmation of her rightful place in the State where she lived, through the banal means of seeing people that looked like her featured in popular media. So, seeing Chinese faces on television might be part of a banal recognition of such individuals as insiders amongst majority culture, Ming Kam suggests that it was also important for those who saw themselves reflected in those faces. This leads to a further conclusion. The same tools that could support banal dehumanisation could also be used banally to humanise.

The banal dehumanisation, then, is a pervasive force that affects how all sorts of relationships can be developed and envisaged across society. While for the most part the focus here is on the obligations that develop for the State, it is important also to recognise the obligations of individuals, including insiders to that State system. By virtue of the structure of exclusion, individuals who bear the brunt of banal dehumanisation cannot be the only ones to change the structure that dehumanises them. Audre Lorde writes as a formal citizen of the US who also experiences overlapping minority memberships, which can be seen as activating her noncitizenship in some dimensions: ‘[t]here is a constant drain of energy which might be better used in redefining ourselves and devising realistic

25 Zweig 1964 *ibid.*

26 Wei Ming Kam (2016) ‘Beyond “Good” Immigrants’, pp. 84–95 in Nikesh Shukla (ed.) (2016) *The Good Immigrant*, Unbound.

27 Ming Kam 2016 *ibid.* at p. 84.

scenarios for altering the present and constructing the future.<sup>28</sup> And, for those written out of formal citizenship entirely, the burden becomes even greater. Insiders, then, though excused from any default burden, have an obligation to react against dehumanisation when they come to recognise it, however banal it seems, and to seek it out when it is obscured.

### Invisibility and nonsensical deprivation

While admitting that ‘Yes, as human beings [they exist] because they are present,’ the officer emphasizes that they ‘do not exist in the civil sense of the word’.

(Kristy Belton, 2015, reflecting on comments of the UNDP officer in the Dominican Republic.<sup>29</sup>)

Dehumanisation can also be existential. That is, rather than being constructed as less than human, persons are constructed out of recognised existence altogether. This results in the sort of situation described by the UNDP officer to Kristy Belton in the quotation above, such that some people seem not to exist legally at all. And yet there are some actions that a person must perform, even if the State in which s/he lives would rather that s/he did not perform them – even if s/he would like to comply.

Consider Jeremy Waldron’s argument relating to homelessness. Homes and States are not analogous, but Waldron’s style of argumentation is useful here.<sup>30</sup> In his examination of homelessness, Waldron himself explicitly mentions that he is referring to homeless American citizens in American cities.<sup>31</sup> In one paper he does mention statelessness as a potential parallel,<sup>32</sup> though he does not develop it and indeed seems explicitly to remove ‘undocumented aliens’ from the sphere of those who can count amongst the homeless persons under discussion.<sup>33</sup>

Taken from his various papers on the topic, and with some rearrangement, his core argument can be presented as follows:<sup>34</sup>

28 Audre Lorde (1984) ‘Age, Race, Class, and Sex: Women Redefining Difference’, pp. 114–123 in Audre Lorde (1984) *Sister Outsider: Essays and Speeches*, Crossing Press, at p. 115.

29 Belton 2015 *ibid.* p. 911.

30 This argument is developed much further in Tendayi Bloom (2016) ‘Migration in a World of Citizens, Nonsensical Morality and Academia’s Role in Addressing Hidden Poverty’, in Helmut Gaisbauer, Gottfried Schweiger and Clemens Sedmak (eds) (2016) *Ethical Issues in Poverty Alleviation*, Springer.

31 Jeremy Waldron (1991–1992) ‘Homelessness and the Issue of Freedom’, *UCLA Law Review* 39; Jeremy Waldron (2000) ‘Homelessness and Community’, *University of Toronto Law Journal* 50; Jeremy Waldron (2009) ‘Community and Property – For Those Who Have Neither’, *Theoretical Inquiries into Law* 10.

32 Waldron 2009 *ibid.* p. 189.

33 Waldron 2009 *ibid.* p. 185.

34 This distillation of Waldron’s argument is taken directly from Tendayi Bloom (2016) ‘Migration in a World of Citizens, Nonsensical Morality, and Academia’s Role in Addressing Hidden Poverty’, pp. 247–258 in Helmut Gaisbauer, Gottfried Schweiger and Clemens Sedmak (eds) (2016) *Ethical Issues in Poverty Alleviation*, Springer.

- 1 Persons with homes can perform activities either in their homes or in public.
- 2 Persons without homes can only perform activities in public.
- 3 There are some activities that city authorities would like to ban in public (urinating, defecating, cooking, having sex) as this would make public space more pleasant.
- 4 If persons without homes can only perform activities in public and these activities are made illegal in public, this effectively makes urinating, defecating, cooking and having sex illegal for persons without homes.

For Waldron, rules that ban such activities in public without providing alternative provision work on the incorrect assumption that everyone has a home, while in the real world there are people without homes and, for those people, this represents an unacceptable constriction of freedom.<sup>35</sup> Waldron goes on to note that as such, homeless persons end up bearing the burden for property-ownership, through their loss of human rights protection.<sup>36</sup>

However, the problem that Waldron sets up represents something deeper than a constriction of freedom. He describes people who are forbidden from public urination in a context without public toilets. This constrains something more basic than human rights and freedom. It is simply nonsensical. Even if a person wants to comply, it is practically impossible to do so. As such, a set of regulations that could effectively outlaw urination for some people in some place at some time fails adequately to acknowledge human life as it really is. The problem is not that people have a basic interest in urination or even a *need* to urinate so much as that people just do urinate. Similarly, forbidding a person from standing in any place represents a non-acknowledgement of life. This is dehumanisation at its most brutal. It goes deeper than Jean-François Lyotard's concern that some humans are not seen as interlocutors. In this case some people are not even *seen* (recall Esrafil from Chapter 3 who felt that he had to set himself on fire in order to be seen).

Photographs 5.1 and 5.2 are part of the series, 'Still Human Still Here', produced by photographer Abbie Trayer-Smith, working with refused asylum seekers in the UK. Anne, who Trayer-Smith describes as trying not to spend too long looking out of the window that is shown in Figure 5.1, arrived in the UK after both experiencing and witnessing extreme violence in the Democratic Republic of Congo:

She had been detained and beaten for condemning the forced recruitment of child soldiers after her son was taken by rebel forces and her husband killed. On the second occasion, she was raped by the rebels. After forming a women's group to protest against rebel activity she was forced to watch, paralysed with horror, as three of the women in her group were buried alive

35 Waldron 1991 *ibid*.

36 Waldron 2009 *ibid*.





*Figure 5.1* Curtain, Still Human Still Here (Abbie Trayler-Smith, 2013).



*Figure 5.2* Cooker, Still Human Still Here (Abbie Trayler-Smith, 2013).

by the rebels. Following the rejection of her asylum claim Anne spent the next three years living in total destitution, much of the time sleeping outside.

In the UK, Anne is reported to have experienced further violence. At the time of the Still Human Still Here project, she had shelter but not security. She was living without any legal means of subsistence.

Abbie Traylor-Smith describes Figure 5.2 as taken in a squat in Leeds, UK, home to a number of people who had been refused asylum. Some of those involved in the Still Human Still Here project had been professionals, activists and journalists before leaving their homes. Now in the UK and forbidden from working and from studying, they were stuck in a limbo. Where there was no legal means of subsistence, some turned to sex work or theft, for example, to cover daily needs. Some described living on the street without access to food, some were indentified as living on £2–£3 per week. Many had significant physical and psychological scars from violence they had experienced both before and after arriving in the UK. At the time of the project, all of them were reported to be destitute.

In Figure 5.2 the stove is being used for cooking, but it also recalls the stove described in Heather Johnson's 2015 paper, which was used to efface the finger prints of someone in such a limbo. Johnson opens the piece with a quotation:

Take a strong painkiller. Then turn the front two oven rings of your oven on and wait until they are red hot. Then lay four fingers of your right hand on the right oven ring and the four fingers of the left on the left ring.

Johnson describes the 'fine lines' of the finger prints as the borders between those assumed eligible for rights and protection and those assumed excluded. Both of these photographs are of mundane items. As has been shown, the experiences of those living with the items pictured can be driven by the extent to which their individual relationships with a particular State are recognised. In this way, they also recall the pile of belongings in Gohar Dashti's photograph in Figure 3.2, the use to which they can be put is affected by dehumanisation and lack of recognition.<sup>37</sup>

When a person resides upon a territory effectively controlled by a particular State, s/he becomes vulnerable to that State in a very basic way. It is the State's institutions that regulate social life and ensure that people can survive together. It regulates, and enforces the regulation of, persons' behaviour. This includes the unavoidable activities of being human. And yet, the citizenship inherent in the way we understand our institutions of justice and politics allows that some basic

37 Heather Johnson (2015) 'These Fine Lines: Locating Noncitizenship in Political Protest in Europe', pp. 951–965 in *Citizenship Studies* 19(8). This example is taken up again in subsequent chapters.

activities be outlawed for people whose relationships with the States that have the most power over them is unwanted and so ignored by those States.

The problems with this go deeper than that which is uncovered by Waldron in his discussion of homelessness. In 2010, Joseph Carens warned that ‘... we should be wary of efforts to criminalise actions that irregular migrants take simply to live ordinary lives’. Carens explains that if a person needs documents in order to work, and needs to work in order to eat, it becomes nonsensical to impose even what seem to be ‘sensible laws intended to prevent fraud’ against someone using false documents if this in effect means preventing her/im from eating.<sup>38</sup> In this case, the ‘unwanted’ noncitizen bears the brunt of the failure of existing political systems, based on existing political-theoretic systems, to recognise reality as it actually is. And, by being written out of recognition, such an individual is also denied official means to contest it.

Speaking of detainees in Nazi concentration camps, Jean-François Lyotard observes that they were not spoken to, they were ‘treated’. They were not seen as interlocutors. They were not enemies because they were ‘not human’.<sup>39</sup> An important part of the dehumanisation of ‘unwanted’ noncitizens is their constructed voicelessness, their exclusion also from institutions of expression. As will be developed in the next chapter, often even the realities of noncitizen politics are suppressed. This hides the ability of the individuals concerned to be interlocutors, or forces them to try to act as citizens or as victims in order to *be* interlocutors, and silences them if this becomes impossible. Despite this, as will be developed through the second half of this book, noncitizens, even ostensibly silenced noncitizens, are *not* voiceless, are substantively political, and in fact successfully challenge their constructed voicelessness in many ways.

The comparison between homelessness as conceived by Waldron and the ‘unwanted’ noncitizens introduced in Chapter 4 also becomes useful because of the disanalogy. For example, while homeless persons do have access to public space in the city (even if activities are restricted), in the world as a whole, there *is* no globally public space. That is, there is no inhabitable land that has no State of some sort attached to it. In addition, the limit of the politics of recognition is largely drawn along State lines. The region with most claim to be stateless in this sense is probably the High Seas, though no one can stand there without a boat. Other spaces are similarly inhospitable.

This means that leaving it to territorial States to decide whether or not to relate to a noncitizen (in the way that a home-owner can decide whether or not to allow a homeless person into her/is home) makes it theoretically possible and in fact the case that a person can be denied the right to stand lawfully anywhere on earth within a system that does not offer her/im the opportunity to consent to it or to reject it. The person’s political reality, then, is denied, as well as her/is physical humanity. S/he is rendered vulnerable in a particularly abject way to the State system.

38 Joseph Carens (2010) *Immigrants and the Right to Stay*, MIT Press p. 46.

39 Lyotard 1993 *ibid.* p. 144.

**Shame, stigma and the scope of justification**

Banal dehumanisation cannot, however, only be understood with regard to how resultant policies affect physical realities. It is also part of a process that gives rise to conditions which in turn contribute to further banal dehumanisation. When the relationship of noncitizenship goes unacknowledged, the individuals in question are not only excluded from recognised relationships with a particular State. They are also potentially excluded from the scope of consideration within the theoretical framework itself. As such, a stateless person for example could not either accept or reject the reason for her/his exclusion from theory within a theory that has no space for her/im. This is because s/he is simply not recognisably present within it unless a State chooses to allocate her/im some status therein. It is not conceptually possible for someone reasonably to share reasons for excluding her/himself even from the conceptual possibility of consideration, because it is not clear how one would give meaning to her/his reasons for so doing within that framework. This represents a vulnerability that is difficult to understand within dominant understandings of the existing theoretical framework.

First, some persons, as ‘unwanted’ noncitizens, are forced to continue to break laws and administrative regulations in order to survive, feeding into the construction of irregular immigrants as criminals, and stateless persons as untrustworthy. At the same time, in order to obtain rights-protection, including protection of the very basic goods needed for life, it is for the most part necessary for individuals to engage with the States that exclude them by assumption and prove eligibility for recognition. The citizenist State system requires individuals to submit to its logic in order to claim this recognition, rather than allowing contestation and debate of the system itself. Insofar as they do not have the usual protections of citizens and those with citizen-like relationships, ‘unwanted’ noncitizens are rendered even more vulnerable through their unacknowledged existence. As implied by the quotation from the official at the head of the previous subsection, things that happen to such persons may even not seem real. But this does not mean such persons are apolitical or only vulnerable.

As was reflected above in the examples of Stefan Zweig and the mother of Wei Ming Kam, this banal dehumanisation is not only dehumanisation in the minds of others. It also risks undermining an individual’s self-respect, while denigrating and humiliating attitudes play a role in the destruction of self-worth as well as enabling others to justify their actions.<sup>40</sup> This also highlights the resilience of those who maintain self-respect *despite* such dehumanisation. Some contemporary understandings of self-respect have been framed as the capability to stand up in public without shame (Sen, Nussbaum), and even a condition for the pursuit of a good life (Rawls).<sup>41</sup> In fact, in *A Theory of Justice*, John Rawls

40 See, for example, the results of studies presented in Chapter 4.

41 Amartya Sen develops this from the statement by Adam Smith as a capability-deprivation taking the form of social exclusion. Amartya Sen (1993) ‘Capability and Well-Being’ in Amartya Sen and Martha Nussbaum (eds) (1993) *The Quality of Life*; Amartya Sen (1983) ‘Development: Which Way Now?’, pp. 745–762 in *The Economic Journal* 93.

describes self-respect as ‘perhaps the most important primary good’.<sup>42</sup> Joel Feinberg adds one further dimension to this, describing self-respect as the recognisable capacity to assert claims.<sup>43</sup> It seems likely that all of these elements are important. As such, if we are to examine claims-making from a theoretical perspective, it is crucial also to acknowledge social and psychological factors that affect the sorts of claims that can be imagined.

The reasons given for the ‘expulsion’ of ‘unwanted’ noncitizens described here include the protection of national coherence, integrity and safety. These are similar to the justifications sometimes given for torture and it is helpful to consider parallels.<sup>44</sup> Different perspectives on torture can be traced particularly through the evolution of the work of Henry Shue. In his 1978 discussion paper, Shue initially allowed that there are some situations in which torture could be justified where it would prevent extreme catastrophe. However, in his 2005 follow-up, explicitly responding to the release of the so-called ‘Guantanamo Papers’, he had changed his mind. His reasons for this are useful to consider in the current context.<sup>45</sup>

Shue argues that there is no guarantee that the dehumanising practices of torture will remain rare if they are ever allowed.<sup>46</sup> That is, if torture is considered to be acceptable in some urgent and exceptional cases, then the scope of these cases can easily become less and less exceptional. While in 1978 he thought that there might be situations in which torture would be defensible, Shue explains that, in the light of what occurred at the Guantanamo Bay detention centre, where American army guards subjected inmates to widespread inhumane and degrading treatment, this point of view cannot be sustained. That is, he argues that even if, morally, there were (he says that there are, I am not sure that there are) some situations where, all other things being equal, torture might be justified, unavoidable real-world ramifications counteract this. For Shue, the worry is that even allowing torture theoretically risks it becoming more widely acceptable. I add that it also changes the theoretical basis for society built on

42 John Rawls (1971) *A Theory of Justice*, Harvard University Press.

43 Feinberg 1970 *ibid.* p. 257.

44 Legally, torture is defined by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article 1: ‘Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.’

45 Karen Greenberg and Joshua Dratel (eds) *The Torture Papers: The Road to Abu Ghraib*, Cambridge University Press.

46 Henry Shue (2005) ‘Torture in Dreamland: Disposing of the Ticking Bomb’, *Case Western Reservation Journal of International Law* 37 p. 238; see also Henry Shue (1978) ‘Torture’, *Philosophy and Public Affairs* 7(2).

liberal norms if there are some occasions when some humans could legitimately be subjected to such treatment as part of the self-reproduction of that society.

Shue argues that, once such practices become acceptable in exceptional circumstances, it is naïve to suppose that lawyers and governments will not use loopholes and specious reasoning to allow torture in this or that other instance. Something related is seen in the case of ‘unwanted’ noncitizenship and the conditions to which it gives rise. Those without a recognised relationship with a State may be without a clearly protected legal personhood. According to reports, this denial of the self is damaging, as are the physical conditions to which it allows people to be subject. The banal dehumanisation of noncitizens seems to facilitate the supposition that there is some category of ‘featherless bipeds’ towards whom such treatment is acceptable (whether because they are lesser humans or their existence is unacknowledged).

This is deeply problematic for any theory that claims to be just according to liberal democratic principles. It also, as we can see, has not been narrowly applied, but instead, the banal dehumanisation has allowed the denial of any individual-State relationship to affect large numbers of people thereby rendered extremely vulnerable – and the extent of this expulsion has been allowed to spread. Where the assumption is exclusion, and the voices of the excluded are muffled, it becomes possible to exclude more individuals and to subject them to more abject vulnerability.

Finally, it is important to interrogate who is constructed as unwanted. Contemporary immigration regimes imply that there are ‘proper and improper reasons to migrate’.<sup>47</sup> This also includes implicit assumptions about the sort of people that could properly have those reasons. For example, consider the experiences of the protagonist, James, in Ra’anan Alexandrowic’s 2003 film, *James’s Journey to Jerusalem*, seen in Figure 5.3. James leaves his home in South Africa on the advice of his pastor to pray in the holy city of Jerusalem. The film follows James’s route from South Africa to Israel, and his journey in Israel. He finds that no one is willing to see him as a pilgrim, or his purpose as spiritual. Because of the way he looks and where he comes from, it is assumed that he must be hoping to work irregularly, to defraud, or to commit crime, and he is mocked when he tries to explain otherwise. Eventually, because of the way his relationship with the State system is constructed, he is in fact forced to work irregularly and to live according to those expectations. The language of noncitizenship can help in the examination of the multi-dimensional prejudices behind the constructions of irregularity.

### **Dehumanisation and a special sort of vulnerability**

It can be tempting to focus on migration, but this is a red herring. As was shown in Chapter 4, even in examples that involved movement, it was not generally the physical movement itself that made people particularly noncitizen-vulnerable

47 Dauvergne 2008 *ibid.* p. 18.



Figure 5.3 James (Siyabonga Melongisi Shibe), still from the film *James Journey to Jerusalem* (Ra'anan Aleixandrowicz, Lama Productions, Zeitgeist Films, 2003).

(though it may lead to other sorts of vulnerability). In fact, their lack of any recognised relationship with a State was created administratively and it was the implications of this lack of relationship that made people vulnerable, including making their physical movement particularly dangerous, for example. In turn, that lack of relationship was found to be constructed, and may well be illiberal and arbitrary. Chapter 4 observed that US citizens made up one of the largest groups of irregular migrants in Australia, yet Americans were not found in immigration detention facilities. They were not subjected to the same vulnerability as others in an ostensibly similar situation. Conversely, James, the pilgrim from *James's Journey to Jerusalem*, was assumed to be nefarious and in need of control.

There are four aspects to the vulnerability and to the dehumanisation discussed here: (1) Protection of basic interests is out of one's control; (2) Personal security is not protected; (3) Agency is undermined, including the freedom to make moral choices; and (4) A person is shamed; his or her dignity is not protected.

All four of these stem from the need for an individual to demonstrate that s/he has a relationship with the State in question in order to receive recognition and respect.

In the context of a liberalism obscured by methodological citizenism and assumed exclusion, for recognition as human, an individual must demonstrate why a particular State needs to take note of her/his interests – and this must be done through obtaining a citizen or quasi-citizen status. Noncitizen-vulnerability, then, is not mitigated or even recognised as problematic. The vulnerability of

‘unwanted’ noncitizens is not only vulnerability to a State. It also creates vulnerability in relation to other individuals (employers, landlords, spouses, etc.), as well as a more general vulnerability in terms of self-respect and rights-claiming. ‘Unwanted’ noncitizens may struggle to obtain basic nourishment and shelter, medical care and education, but also police protection and access to legal justice. As this book will go on to show, this also relates to noncitizenship more generally – including that experienced by formal citizens.

Feminist literature has highlighted the relevance of vulnerability, including vulnerability to, and dependency upon, other individuals, to thinking about political systems. Scholars within this tradition have examined the social structures that create vulnerability and have argued that a State built upon liberal democratic principles must acknowledge changing needs and address the changing nature of vulnerability that results.<sup>48</sup> This has, for example, in turn driven new understandings of support for disabled persons and financial and other benefits for parents. These are persons who have traditionally been assumed necessarily reliant to different extents upon family structures, even dysfunctional family structures, for basic life needs. It is now widely recognised in liberal democratic discourses that structures that place a person’s basic interests in the hands of another individual enable coercion based on the threat or the reality of withheld basic needs. It is worth noting the power that the State can give in this context to some individuals over others.<sup>49</sup>

State institutions can artificially make otherwise independent individuals dependent on individual and collective others through the State’s citizenist institutional structure. Such individuals become dependent upon employers, for example, not only for employment (such that they could take their labour elsewhere if they wanted), but also for immigration documents, for example, when they are tied to a particular employer. Power over people by virtue of their quasi-citizen, or lack of citizen, status is also given to landlords, who may be required or allowed to check a person’s documents and threaten reporting.

When people are prevented from working and from claiming access to welfare systems, this risks making those who are already sick or physically weak, or those who are already vulnerable in other ways, more vulnerable. It also renders particularly vulnerable those who otherwise would not be. Such persons become unnecessarily dependent upon employers or charitable institutions, for example, for the satisfaction of their basic needs. As was presented in Chapter 2, this is contrary to a liberal political theoretical framework that

48 For example, consider the discussion among interviewees of the case study of ‘Francis’ in a Joseph Rowntree Foundation Report whose situation was described by one respondent in this way: ‘He has no control over his own destiny’; Suzanne Fitzpatrick, Glen Bramley, Janice Blenkinsopp, Sarah Johnsen, Mandy Littlewood, Gina Netto, Filip Sosenko and Beth Watts (2015) ‘Destitution in the UK: An Interim Report’, Joseph Rowntree Foundation Programme Paper, March 2015.

49 This is addressed in Chapter 10, where the lessons that can be learnt from the development of feminism are explored in more detail.



upholds the importance of the individual, of individual liberty, dignity, equality, as well as the capacity for solidarity. It actively inhibits individuals' capabilities.

Putting someone into this situation of vulnerability is made possible by banal dehumanisation, while making someone vulnerable to others in these ways contributes to her/his dehumanisation. Being vulnerable to someone or some thing means that one's capacity to act with agency in particular instances is impaired. This also may include a lack of confidence that a course of action will be possible, a lack of self-esteem, or fear of a loss of basic functionings. That is, for example, Chapter 4's 'unwanted' noncitizens may refrain from reporting to law enforcement authorities when they are the victims of crime or avoid seeking help in other ways, for fear of deportation or loss of other rights. It also impedes an individual's freedom to be moral and the freedom to follow the rules. That is, an individual may be forced to steal in order to eat and be prevented from helping others. At its most basic and most symbolic, those who find themselves in activated noncitizen relationships and unable to realise their most basic of capabilities may feel themselves obliged to cross State borders (internal, like those to labour markets and external, like those to the territory) irregularly in order to access those capabilities otherwise denied to them.

Vulnerability is inevitable when humans come into contact with each other. State institutions can institutionalise it, protect against it, or mitigate its effects. In and of itself, this vulnerability may not be a bad thing. In fact, some have written of the importance of our human dependency upon each other.<sup>50</sup> However, it is important to examine how this dependency is managed and distributed within the existing structure, and so how it is experienced by individuals. In the activated noncitizen relationship, a person is exposed to a vulnerability that is not matched by structural mitigation and is not distributed fairly. As such, persons with activated noncitizenship bear burdens of the creation and sustaining of the State that are not associated with its benefits.

Joel Anderson and Axel Honneth open their 2005 paper on the relationship between autonomy, vulnerability, recognition and justice by stating that '[o]ne of liberalism's core commitments is to safeguarding individuals' autonomy. And a central aspect of liberal social justice is the commitment to protecting the vulnerable'.<sup>51</sup>

They see autonomy as a 'set of capacities to lead one's own life' and focus on the implications of a liberal obligation to reduce autonomy-related vulnerability. This book moves slightly away from Anderson and Honneth's position by referring specifically to *vulnerability to the State in question* as a motivator of obligations in that State. Indeed, the challenge posed to this core liberal commitment by the raw vulnerability with which activated noncitizenship may currently be

50 For example, see Judith Butler (2005) *Undoing Gender*, Routledge.

51 Joel Anderson and Axel Honneth (2005) 'Autonomy, Vulnerability, Recognition, and Justice', in John Christman and Joel Anderson (eds) *Autonomy and the Challenge to Liberalism: New Essays*, Cambridge University Press.

associated – and that of ‘unwanted’ noncitizens in particular – generates forms of obligation that differ from those associated with citizenship because the vulnerability is of a different sort. It may be an abject vulnerability even to the theoretical system itself and forces people to engage with the State and with other individuals from a position of weakness. The vulnerability of noncitizens needs to be understood as a whole and as a fundamental part of the existing liberal theoretical and political system of States infrastructure.

### **Dehumanisation and the politicisation of ‘unwanted’ noncitizens**

... a mother, unable to find employment and desperate to feed her children [...] will be turned away if she tries to cross into another country (such as ours, for example) – and this not by crooks and thugs but by ‘the law’, by judges, immigration inspectors, the police, who, backed by our recognition or acquiescence, do their ‘duty’ in the name of human justice.

(Thomas Pogge, writing in *Realizing Rawls*, 1989<sup>52</sup>)

For the most part, irregular migration is peaceful. It may include those disobeying laws *because* they believe them to be unjust, but most likely mainly involves those who primarily disobey laws because they must, or they believe they must, irrespective of what they think of them. Disobedience has traditionally been used by people who are constructed out of the scope of justice to draw attention to, and to challenge, the structures that exclude them.<sup>53</sup> When instances of irregular migration are seen in this way, then, increasingly repressive attempts to control immigration can resemble the efforts of those who benefit from a repressive regime to maintain the status quo. And the reactions to irregular immigrants then seem reminiscent of attacks on those disobeying unjust laws in other contexts (though this does not assume all migration control is unjust). Civil disobedience is usually reserved for those who are citizens, who follow all the other rules except the unjust ones against which they are protesting.<sup>54</sup> The actions of those kept even from any recognised relationship with a State or the State system may not be actions of ‘civil disobedience’ of this form. But they can be seen as actions of informed and intentional ‘disobedience’ against specific injustices.

52 Thomas Pogge (1989) *Realizing Rawls*, Cornell University Press, Ithaca p. 276.

53 Martin Borstelmann has referred to the global anticolonial movement as ‘the international civil rights movement’.

54 For example, John Rawls and Brian Smart seem to disagree on everything about civil disobedience except that it is for citizens. John Rawls describes it as a last resort, when ‘standard democratic processes have failed’. See John Rawls (1999) ‘Civil Disobedience’, pp. 244–253 in Aileen Kavanagh and John Oberdiek (eds) (2009) *Arguing About Law*, Routledge, first published in *Collected Papers*, Harvard University Press; Brian Smart (1978) ‘Defining Civil Disobedience’, pp. 249–269 in *Inquiry* 21.

When individuals are denied recognition in the world of States, or denied a favourable position within it, they might disobey the system that constructs them into this situation. Moving home, working, playing sports, need not be seen as political acts, but where these are impeded or criminalised, they also become politicised. Such individuals who undertake these activities irregularly when they have been inappropriately denied could, then, be seen as claiming that which is unjustifiedly and unjustifiably being kept from them.

Forbidden from joining the labour market, when ‘unwanted’ noncitizens work, this act can be seen as a form of political disobedience. If ‘unwanted’ noncitizens are forbidden from entering the cultural community of the State, are prevented from accessing the means to survive, then in participating in the community and in finding the means to survive, those persons can find themselves engaging in political acts. This is not disobedience *simpliciter*, though, it looks like a political disobedience.<sup>55</sup> If these are seen as political acts (alongside other forms of protest), then even ‘unwanted’ noncitizens have political voice, and they have that voice even if attempts to mute traditional forms of political expression are successful.<sup>56</sup>

Far from rendering persons apolitical, then, restrictions placed upon ‘unwanted’ noncitizens, in deepening their vulnerability, also force even very basic actions to be politicised. Failing to recognise the reality of the noncitizen relationship with a State does not mean that the relationship disappears but that, in order to live out that relationship, individuals must perform acts of disobedience. ‘Unwanted’ noncitizens are forced, then, to become political actors, even if they would have preferred not to engage in politics at all. The failure to mitigate their special form of vulnerability, and allowing it to give rise to extremes of deprivation, contributes to a noncitizen politics that is challenging and can seem threatening. The banal dehumanisation in the denial of a recognised individual-State noncitizen relationship, then, overwhelmingly burdens those individuals most directly affected. But it also impairs the possibility of developing a system that is just according to liberal democratic principles more generally.

55 Consider, for example, Bonnie Honig (1993) *Political Theory and the Displacement of Politics*, Cornell University Press; Peter Nyers (2012) ‘Moving Borders: The Politics of Dirt’, pp. 2–6 in *Radical Philosophy* 174; as well as the papers in Peter Nyers and Kim Rygiel (eds) *Citizenship, Migrant Activism and the Politics of Movement*.

56 This is developed in Chapter 11.

## 6 Unwanted and ambivalent citizenship

In liberal political thought, citizenship is often taken uncritically to be emancipatory and so also to be desirable.<sup>1</sup> Even critical approaches to citizenship often seem to assume its desirability in their reconceptualisations. There is a good reason for this. Full formal citizenship in some State is in fact mostly needed today for rights and recognition and in order to have a say (however symbolic) in how the local, regional and global systems are organised. Citizenship is made desirable within a system based upon liberal democratic principles because there is no other officially acknowledged option available within that system. The struggle for citizenship has, then, been the struggle for representation, for rights, and for recognition in the absence of an alternative. Yet, a resilient understanding of citizenship requires an appreciation of what happens when it is experienced in ways that challenge standard interpretations – when that citizenship is unwanted or ambivalent.

By acknowledging that citizenship may be unwanted and that noncitizenships may be rationally claimed, it is possible to provide a more complex characterisation of the reality (including the theoretical reality) of those States built upon liberal democratic principles. It may be that, in the end, a more radical approach will be needed, but if we are to make a proper go of using liberal democratic frameworks, it will be crucial not only to acknowledge the function of the noncitizen relationship within them, but also to use this in analysing the reality of unwanted or ambivalent citizenship. In earlier chapters, I already argued that the historic framing of citizenship needs to be examined from a range of perspectives, which is not restricted to that of the European beneficiaries of the Enlightenment. Even as contemporary citizenship was being defined for some, others were being written out of the very structure of that citizenship, both theoretically

1 For example, see these classic texts: Thomas H Marshall (2009) 'Citizenship and Social Class', in Jeff Manza and Michael Sander (eds) (2009) *Inequality and Society*, W.W. Norton and Co, New York. [first published 1950]; Will Kymlicka (2002) *Contemporary Political Philosophy*, Oxford University Press; Stuart White (2003) *The Civic Minimum*, Oxford University Press. See also essays in Engin Isin and Bryan Turner (2003) *Handbook of Citizenship Studies*, Sage. For a useful survey, see Will Kymlicka and Wayne Norman (1994) 'The Return of the Citizen: A Survey of Recent Work on Citizenship Theory', pp. 352–381 in *Ethics* 104(2).

and in practice. This chapter and the one that follows observe how, as a result of its historical and political context, citizenship is not unambiguously positive for those who must then define their relationships with liberal States in this way.

### **The Iroquois National Lacrosse team and the 2010 World Lacrosse Championships<sup>2</sup>**

The ‘Haudenosaunee’ are also referred to as ‘Iroquois’, a word with apparently uncertain roots.<sup>3</sup> Haudenosaunee individuals traditionally live in parts of the east coast of North America, on both sides of the US-Canadian border. The Iroquois National Lacrosse Team is considered to be one of the best lacrosse teams in the world.<sup>4</sup> It competes as a national team, alongside those of internationally recognised States. The team members can claim formal citizenship of the US or Canada. And yet in championships they play lacrosse against US and Canadian teams. This has given rise to conflict which played out particularly publicly in relation to the 2010 Men’s World Lacrosse Championship. Examining this case through the language of unhyphenated noncitizenship helps to uncover additional ways in which noncitizenship can interact with formal citizenship.

In 2010, the Men’s World Lacrosse Championship was held in Manchester in the UK. The Iroquois team was predicted to do well,<sup>5</sup> but the players never made it to the tournament. Prevented from travelling on Haudenosaunee travel documents and unwilling to travel to the tournament on Canadian or US passports, in the end they returned home without having boarded the plane.<sup>6</sup> An article in a

2 This case is examined in more detail in Tendayi Bloom (2017) ‘Colonised Groups and the Right to Have Rights’, in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (2017) *Understanding Statelessness*, Routledge. The Iroquois Lacrosse Team example, and the situation for the Haudenosaunee more generally is given more air time than the struggles of other peoples in the same continent, which may then be left unheard. Here I draw upon this example both because of the interesting symbolism it presents and because of the wealth of literature available on it, but recognise that these discussions also affect other groups.

3 The name ‘Haudenosaunee’, meaning ‘People of the Longhouse’, encompasses six nations located in what is now southeastern Canada and northeastern United States, the Cayuga, Mohawk, Oneida, Onondaga, Seneca and Tuscarora peoples. See, for example, Audra Simpson (2000) ‘Paths Toward a Mohawk Nation: Narratives of Citizenship and Nationhood in Kahawake’, pp. 113–136 in Duncan Ivison, Paul Patton and Will Sanders (eds) (2000) *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press, at p. 127; and Capton Marques 2011 *ibid.* at p. 385. On the word ‘Iroquois’, Daniel K. Richter (1992) *The Ordeal of the Longhouse: The Peoples of the Iroquois League in the Era of European Colonization*, University of North Carolina press, p. 1; for a survey of thinking about the origins of the word in the 1960s, see Gordon M. Day (1968) ‘Iroquois: An Etymology’, pp. 389–402 in *Ethnohistory* 15(4).

4 In 2002 and 2006, the Iroquois team came fourth in the world. In 2010, they were unable to compete. In 2014, they came third in the world.

5 For example, it was identified as the side’s ‘most dynamic team yet’, John Jiloty (2010) ‘Iroquois Grounded but Future Looks Bright’, *Inside Lacrosse* 16 August 2010.

6 Wil Haygood (2010) ‘Iroquois National Lacrosse Team asks White House to honor sovereign passports’, *Washington Post* 14 July 2010; Marques 2011 *ibid.* ‘Divided We Stand: The Haudenosaunee, Their Passport and Legal Implications of Their Recognition in Canada and the United States’, pp. 363–426 in *San Diego International Law Journal* 13.

local newspaper, the *Post-Standard*, published at the time, included a particularly interesting photograph of team member Marty Ward, taken while the team was waiting for a decision in New York. In this image (see Figure 6.1), which was taken by Mike Greenlar, Ward is seen from behind. He looks out over the Hudson River towards the symbolic icon of American freedom, the Statue of Liberty. The Statue of Liberty is emblematic for having greeted those denied freedom elsewhere as they arrived in America. In Greenlar's picture, this liberty is seen from a different perspective, through the eyes of Ward, as he waits to learn whether he and his team will be able to leave New York or whether they will be grounded for contesting the State system and citizenship that is usually assumed to be emancipatory.

For the team to board the plane with only Haudenosaunee documents, the UK required that the US would vouch officially that the players would be allowed to return after the tournament.<sup>7</sup> As negotiations continued, the team reportedly missed matches, with effects on their potential performance in the championship as well as financial implications.<sup>8</sup> When no satisfactory solution was offered the team eventually returned home.<sup>9</sup> Joe Heath, General Counsel to the Onondaga, one of the six nations that make up the Haudenosaunee confederacy, is quoted in the press as describing the bureaucracy that would not let them travel as part of a 'racist colonial, assimilationist machine'.<sup>10</sup> I interpret this to mean that he saw the travel restrictions as part of a framework that reinforces the status quo which was created by, and continues to support, colonial occupation of lands previously occupied by the Haudenosaunee, and forcing those that would contest this to conform. It is hard to disagree.

In 2010, the lacrosse players were told that they must either submit to a framework that they contested or be prevented from fulfilling capabilities within it, symbolised by their inability to travel to the tournament. Since that framework is the overarching global political framework within which rights are crafted and protected, the coercive threat in this is strong. This incident shows how the prevalence of the citizenist assumption renders contestation of it, and of one's place within it, difficult. It also makes it easier for that contestation to be unacknowledged. The imposition of citizenship, including through the coercive refusal of travel to those unwilling or unable to make use of a recognised citizenship, seems also to challenge the freely chosen and consensual (even if only hypothetically) nature of the citizen relationship itself. It forces those who are

7 Brian Kolva (2012) 'Lacrosse Players, Not Terrorists: The Effects of the Western Travel Initiative on Native American International Travel and Sovereignty', pp. 307 in *Washington University Journal of Law and Policy* 40, p. 309; Thomas Kaplan (2010) 'Iroquois Defeated by Passport Dispute', *New York Times* 16 July 2010.

8 Kolva 2012 *ibid.*

9 *The Economist* (2010) 'The Iroquois and their passports: unfair play', 22 July 2010; Kaplan 2010 *ibid.*; Lindsey Kingston (2011) 'Opting Out of Legal Nationality: Identity, Passports and the Iroquois National Lacrosse Team', Western Political Science Association 2011 Annual Meeting [unpublished].

10 *The Economist* 2010 *ibid.*



*Figure 6.1* Iroquois national lacrosse player Marty Ward, of Syracuse, looks across the harbour to the Statue of Liberty National Monument from the dock of Battery Park in New York (Mike Greenlar, Advance Media, New York, 2010).

contesting either to submit to citizenship or to bear the burden of the existing citizenist State system without acknowledgement within it.

One common way to defend the documentary requirements like those that grounded Ward and his teammates is security. In 2004 and 2008, the United States imposed new security requirements on documents used at its borders.<sup>11</sup> This impacted upon the ability of indigenous governments to make documents that would meet these requirements, with two sorts of implications. On the one hand, this measure demonstrated the power of the United States to decide for the whole territorial space the sort of documents could be used. On the other hand, it in fact forced individuals who wanted to travel to use US documents. Tracing the recent history of lacrosse teams alone uncovers inconsistency in whether the Haudenosaunee travel documents are recognised.

Their recognition seems to depend upon decisions from those recognised States that control existing borders and territories. In 2012, members of the male under-19 team travelled to Finland on Haudenosaunee passports, while in 2015 members of the female under-19 team were again unable to travel to the UK (other recent tournaments have been held in North America, so these issues did

<sup>11</sup> Haygood 2010 *ibid.*; Kingston 2011 *ibid.*

not arise). Already in 1923, a representative used an official Haudenosaunee travel document to go to a meeting of the League of Nations.<sup>12</sup> The State system, then, and the insiders to that system, decide whether individuals are able to act within it. The attempt to depoliticise and not acknowledge noncitizen challenges seems to have deepened their political nature, so that activities that could have been relatively apolitical (like playing in a sporting tournament) end up taking substantial political significance.<sup>13</sup>

Another way to look at what is going on here might be to suggest that the Haudenosaunee players are not contesting citizenship, but are fighting to be part of the citizenist structure on their own terms, as citizens of another recognised State, the Haudenosaunee State.<sup>14</sup> However, even if this *were* behind even some members of the lacrosse team's refusal to use US and Canadian travel documents, the argument here would still stand. This is because, in doing what they are doing, what emerges is precisely a problematisation of the existing State structure that is able to ignore those who do not conform with its existing citizenist assumptions. Even if a new State were to be created, including a new Haudenosaunee citizenship that was internationally recognised in the same way as Canadian and US citizenships are today, this would itself pose the same problems to those who do not want that new citizenship and do not identify either with the newly formed State or any of the other existing States in the required way. As such, while it might address the concerns of some Haudenosaunee today, it would not solve the underlying theoretical problem that space is needed within liberal democratic thinking for examining what happens when people contest it.

And yet, formally, these individuals are citizens. In some cases, this may just be a formality, but in other cases it is not. Many individual Haudenosaunee have struggled historically for *access* to citizenship and continue to struggle for equality of that citizenship. Many serve and have served in the US army.<sup>15</sup> Meanwhile, prominent Haudenosaunee leaders and thinkers have spoken out against the imposition of US citizenship, and individuals contest citizenship in a myriad of

12 For example, see Nicole Terese Capton Marques (2011–2012) 'Divided We Stand: The Haudenosaunee, Their Passport and Legal Implications of Their Recognition in Canada and the United States', pp. 383–426 in *San Diego International Law Journal* 13. The contemporary form of this document has existed since 1977. One analysis of the importance of this is found in Grace Li Xiu Woo (2003) 'Canada's Forgotten Founders: The Modern Significance of the Haudenosaunee (Iroquois) Application for Membership of the League of Nations', in *Law, Social Justice and Global Development* 2003(1).

13 This echoes Chapter 4's analysis. Though, given the heritage of lacrosse, it is already political in this case. Not only was lacrosse created by the Haudenosaunee, but it also has particular spiritual significance, known by some as 'the Creator's Game'. Indeed, the Iroquois national lacrosse team has been described as 'the Iroquois's most public expression of sovereignty', cited in Kolva 2012 *ibid.* pp. 317, 318.

14 This is contested, for example, in Simpson 2014 *ibid.* and Dale Turner (2006) *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy*, University of Toronto Press.

15 In 2013, 0.7 per cent of the US veteran population were recognised as American Indian or Alaskan Natives; United States Department of Veterans Affairs (2015) *American Indian and Alaska Native Veterans: 2013 American Community Survey*, May 2015, p. 5.



other ways.<sup>16</sup> This practical reality again reinforces the theoretical claim that the struggles for recognition of both noncitizenship and citizenship are not mutually exclusive and may in fact be mutually reinforcing. On the one hand, individuals may seek a formal citizenship, tied up with a contestation of the way in which full and equal memberships are allocated. On the other hand, the relationship between the individuals involved and the relevant States cannot be understood simply as citizenship or simply as a negation of citizenship. This relationship also involves what is described here as an activated noncitizenship, and a particular vulnerability to the existing State system, as a result.

### Noncitizen citizens and being counted

I was born at a time when the Australian government knew how many sheep there were but not how many Aboriginal people [...] I was 10 years old before the '67 referendum fixed that. The first decade of my life was spent as a non-citizen.

(Linda Burney, MP, in her maiden speech to the Australian Parliament, August 2016<sup>17</sup>)

The progress of other indigenous movements in States ostensibly built upon liberal democratic principles can bring out further aspects of the complex interplay of citizenship and noncitizenship in these cases and beyond. Individuals have, as in the case of the Haudenosaunee, both fought to obtain citizenships and fended them off, sometimes as part of the same process. There is no singular experience. In 1967, Australia was preparing for a referendum on whether to include Aboriginal people in the national census.<sup>18</sup> Some saw this as a referendum on something more: on whether finally to ensure full citizenship rights for Aboriginal people (they officially became citizens in 1948).<sup>19</sup> Exclusion from the census was seen as symbolic of non-recognition, as well as making it difficult to demonstrate the interests of those left uncounted (something similar can be said of the stateless persons and irregular immigrants of Chapter 4).<sup>20</sup> In 2016, Linda

16 Douglas M. George-Kanentiio (2006) *Iroquois on Fire: A Voice from the Mohawk Nation*, Praeger, p. 27; Audra Simpson (2014) *Mohawk Interruptus: Political Life Across the Borders of Settler States*, Duke University Press, p. 119; Marques 2011 *ibid.* p. 392; Peter Nyers (2011) 'Alien Equality', pp. 471–486 in *Issues in Legal Scholarship* 9(1) p. 474.

17 For example, see BBC (2016) 'Australian Aboriginal MP Linda Burney vows to fight for change', 31 August 2016.

18 For example, see Bain Attwood and Andrew Markus (2007) *The 1967 Referendum: Race, Power and the Australian Constitution*, Aboriginal Studies Press; an official research brief on the history of the referendum is given here: John Gardiner-Garden (2007) 'The 1967 Referendum – history and myths', Research Brief no. 11, 2006–07, Parliament of Australia, Parliamentary Library, 2 May 2007.

19 Attwood and Markus 2007 *ibid.* at p. 44. But see also David Mercer (2010) "'Citizen minus'?: Indigenous Australians and the Citizenship Question', pp. 421–445 in *Citizenship Studies* 7(4).

20 For an interesting discussion of the politics of censuses and the relationship to citizenship, see Melissa Nobles (2000) *Shades of Citizenship: Race and the Census in Modern Politics*, Stanford University Press.

Burney became the first indigenous Australian woman elected to the Australian Lower House. The extract from her maiden speech given at the head of this section demonstrates the symbolic as well as legal importance of the referendum and the way in which it related to individuals' relationships with the Australian State and their experiences of citizenship and noncitizenship.

This context helps to locate the words of activist Chicka Dixon in a public speech in 1967, in the lead-up to the vote:

There's a simple reason why I want a huge 'Yes' vote on the Aboriginal question at next Saturday's referendum: *I want to be accepted by white Australians as a person.* There are scores of other reasons why the vote should be yes. But for most Aborigines it is basically and most importantly a matter of seeing white Australia finally, after 179 years, affirming at last that they believe we are human beings.<sup>21</sup>

Dixon explains that he is fighting a form of dehumanisation that has played an important role in the ways in which today's States have developed. It is not essential to theoretical liberalism, but it is certainly part of how it was created and how it has played out in practice.

From the Latin, meaning 'nobody's land', '*terra nullius*' refers to the affirmation that the land of Australia was empty of people before European settlers arrived.<sup>22</sup>

There is dispute about whether or not *terra nullius* was official policy in the early years of the colony in Australia.<sup>23</sup> However it happened, though, in Australia the notion of *terra nullius* took hold. Seen in this context, Chicka Dixon's statement and that of Linda Burney, for example, take on a yet thicker meaning. Indeed, in the context of this level of dehumanisation, it is clear that an important part of what such activists were seeking in citizenship was impossible without inclusion in the Australian census. They wanted to have a recognised existence

21 Chicka Dixon, in the *Sydney Sun-Herald* 21 May 1967. This is cited, with the same emphasis, in several places. For example, see Russell McGregor (2011) *Indifferent Inclusion: Aboriginal People and the Australian Nation*, Aboriginal Studies Press; Attwood and Markus 2007 *ibid.*

22 For example, see Christabel Chamarette (2000) 'Terra Nullius Then and Now: Mabo, Native Title, and Reconciliation in 2000', pp. 167–172 in *Australian Psychologist* 35(2). The year 1992 marks the end of a ten-year battle by Eddie Mabo and four other members of the Meriam people to prove their traditional claims to land on Murray Island in Northern Queensland. Importantly, the court also found that Australia was not a *terra nullius* at the point of European settlement, though it explicitly stated that this could not be used to challenge the sovereignty of Australia. *Mabo v. Queensland* 175 CLR 1 (1992). For a useful discussion of the case and its implications, see for example Gerry Simpson (1993–1994) 'Mabo, International Law, Terra Nullius and the Stories of Settlement: An Unresolved Jurisprudence', pp. 195–210 in *Melbourne University Law Review* 19.

23 For example, see Stuart Banner (2005) 'Why *Terra Nullius*? Anthropology and Property Law in Early Australia', pp. 95–131 in *Law and History Review* 23 (1); Merete Borch (2001) 'Rethinking the Origins of Terra Nullius', pp. 222–239 in *Australian Historical Studies* 32.

in the polity. They wanted to be 'counted'. Within the existing system of States, the only mechanism that there is for such recognition is citizenship or quasi citizenship.

### Citizen noncitizens and imposition

Members of indigenous groups in North America were initially defined out of citizenship. The policy of the United States began to change in the late nineteenth century. It increasingly became one of *enforcing* citizenship without consent. In 1887, the 'Allotment Policy' was introduced, giving people land that had previously been held in common by their national groups, in exchange for US citizenship.<sup>24</sup> Official literature from the time presents this as part of an intentional effort to 'civilise' the people concerned, through a move towards individualistic ownership of land. It could also be seen as an effort to emancipate and so give power to the individuals concerned. Others have argued that the Allotment Policy also had the aim of breaking up national groups to increase the likelihood of peaceful submission to colonial rule and to enable US entities to take control of more 'Indian land'.<sup>25</sup>

The Indian Citizenship Act 1924 then imposed US citizenship on all those indigenous individuals who had been born within the territory of the United States but were not yet citizens. This was seen by some (mainly White activists including, reportedly, Eleanor Roosevelt) as emancipatory.<sup>26</sup> Others saw it as a decisive next step in the project of colonisation.<sup>27</sup> In his memoirs, Chief Clinton Rickard, who lived from 1882 until 1971 and founded the Indian Defence League in 1926, reflects upon the move towards imposing citizenship upon native peoples in the US: 'We did not request this citizenship, did not want it, and opposed it.'<sup>28</sup> This presents decisively the nature of the citizenship from his perspective, and it helps to demonstrate that the individual-State relationship for those thereby rendered citizens cannot be analysed in terms of citizenship alone. It requires recognition of a foundational relationship of a different sort. I propose to fill this gap with the analytical category of unhyphenated noncitizenship.

In the mythology of early settler Americans, citizenship represented a rejection of monarchy, of imposed foreign rule, and a rejection of inherited privilege. For them, it was a move towards self-rule and equal ownership of society

24 Through what was known as the Dawes Act.

25 For example, see Mark A. Michaels (1998) 'Indigenous Ethics and Alien Laws: Native Traditions and the United States Legal System', pp. 1565–1584 in *Fordham Law Review* 66(4), at p. 1576.

26 Laurence M. Hauptman (1999) 'Eleanor Roosevelt and the American Indian: The Iroquois as a Case Study', *The Hudson Valley Regional Review* 16(1).

27 For example, Douglas M. George-Kanentiio (2006) *Iroquois on Fire: A Voice from the Mohawk Nation*, Praeger, at p. 27; Laurence M. Hauptman (1999) 'Eleanor Roosevelt and the American Indian: The Iroquois as a Case Study', in *The Hudson Valley Regional Review* 16(1).

28 Clinton Rickard (1973) *Fighting Tuscarora: The Autobiography of Chief Clinton Rickard*, Syracuse University Press, at p. 126.

through the *demos*. The indigenous peoples of North America did not share this history. This has been presented particularly succinctly by one scholar: ‘Native peoples saw no need to be emancipated from a feudal, medieval social order they had never experienced.’<sup>29</sup> This makes no claims about the political structures of the colonised peoples themselves. It only observes that their experience of subjection to the British crown functioned differently to that of the White settlers, and their experience of the coming of republican citizenship was also different (indeed some reportedly saw the British as at least protecting against settler expansion westward).<sup>30</sup>

Consequently, the imposition of this liberal democratic citizenship cannot be seen only as emancipatory. It also represented subjection to a colonising regime. Some indigenous individuals also worried that changing the nature of the relationship between themselves and the United States might undermine the system of rights-protections that had been negotiated through treaties. That is, whereas individuals had previously been treated as citizens of foreign nations, if their predominant relationship with the US would be one of formal citizenship, many worried about the status of the original treaties.<sup>31</sup> One writer poses the rhetorical question: ‘How can a citizen have a treaty with his own government?’<sup>32</sup>

Citizenship and noncitizenship are not mutually exclusive relationships with a State. Yet, so long as the theoretical framework within which the State system functions assumes that they are, a person who wants to claim a noncitizen relationship might in fact have to claim hyphenated non-citizenship and wholly reject citizenship and everything that goes along with it. When that citizenship is the only way in which a person can have a recognised relationship with a State, including what this means for the protection of rights and interests, this drives a choice between protected rights within an acknowledged individual-State relationship on the one hand; and rightslessness, dehumanisation and claiming a reality that will still probably not be recognised on the other hand.

In this, the noncitizen challenge is made clear. It is a challenge both to the noncitizen and to the State. In cases where citizenship is unwanted, it is difficult, within traditional interpretations, for such persons to express their rejection of the theoretical framework of the State built upon liberal democratic principles. Their position is assumed out of the framework. Not recognising noncitizenship as a real relationship between an individual and a State makes the choice even more constrained. And it can make the struggles seem more threatening.

29 Alexandra Witkin (1995) ‘To Silence a Drum: The Imposition of United States Citizenship on Native Peoples’, pp. 353–383 in *Historical Reflections/Reflexions Historiques* 21(2), at p. 355.

30 For example, the Royal Proclamation of 1703 which had attempted to forbid European settlement west of the Appalachians. Colin Calloway (1995) *The American Revolution in Indian Country: Crisis and Diversity in Native American Communities*, Cambridge University Press.

31 George-Kanentio 2006 *ibid.* p. 27. See detailed study in Vine Deloria Jr and David E. Wilkins (1999) *Tribes, Treaties, and Constitutional Tribulations*, University of Texas Press.

32 Rickard 1973 *ibid.* p. 56.

This also challenges the reality of citizenship, for if it can be experienced as imposition by some, then even if most individuals would not contest their citizenship, it is hard to understand it as consensual or free more generally. The lacrosse case discussed above shows one example of what happens when individuals contest liberal democratic citizenship and indicates that the consensual nature of US citizenship (in this example) is more tenuous than it can sometimes seem. This extends beyond colonial contexts.

The European Union Democracy Observatory (EUDO) on Citizenship keeps up-to-date information on the rules surrounding the renunciation of citizenship in 77 States in Europe and the Americas.<sup>33</sup> Only 16 per cent of the 77 States included in the survey allow someone to become stateless if that person chooses to renounce her/his citizenship. Conversely, 16 per cent require that a person *already has* citizenship of another State *before* citizenship can be renounced, and 27 per cent require that the individual be resident overseas in order to renounce citizenship. This makes sense, seeing as most of the States in the survey are signatories of the 1961 Convention on the Reduction of Statelessness. These measures stop a person from becoming stateless (with its associated deprivations), but they also inhibit the possibility of contestation. Looking in more detail at the results, also indicates a distinction in this between citizens who became citizens at birth and those who became citizens through choice later in life.

An anomaly that occurs in five of the States studied in the EUDO project with regard to naturalised citizens raises wider questions for the interweaving of citizenship and noncitizenship. Citizens-by-birth of Ecuador, Haiti, Mexico and Nicaragua cannot renounce their citizenship. Citizens-by-birth of Venezuela can only do so if they already have citizenship of somewhere else. Yet, for *naturalised* citizens (those who have chosen to become formal citizens) of these States the situation is quite different. They *can* renounce their citizenship (though naturalised Haitians must be residing abroad, and naturalised Mexicans, like naturalised Venezuelans, must receive another citizenship). The legal reasons for this aside, this seems to suggest that there are those who can make decisions about their citizenship and there are those who cannot. That is, someone who has chosen to take up Mexican citizenship can also choose to renounce it, while someone born into Mexican citizenship cannot make such a choice. This seems strange. But it also relates to something found in a much broader range of States.

EUDO scholar Henio Hoyo has analysed the reasons for this discrepancy in some of the States involved in the project. He suggests that it arises in the Mexican context as a result of ethno-national identity-formation.<sup>34</sup> Hoyo observes that, while

33 EUDO CITIZENSHIP (2016) 'Mode L01: Renunciation' in *Global Database on Modes of Loss of Citizenship*, san Domenico di Fiesole, European University Institute. Data correct as of 1 January 2016.

34 Henio Hoyo (2015) 'Apertura externa, exclusión interna: El nacionalismo Revolucionario y los derechos de migrantes, mexicanos por naturalización, y dobles nacionales en México', Working Paper No. 87, desigualdades.net Research Network on Interdependent Inequalities in Latin America.

for the most part in South American countries, a person can obtain a new citizenship without having to renounce the previous one, and voting rights are extended quite widely, this is associated in some cases with a restriction on the rights of those persons thereby made formal citizens by naturalisation. For Hoyo, this suggests that naturalised Mexican citizens are not seen as full and equal citizens.<sup>35</sup> He finds that the discrimination against citizens by naturalisation extends far into the State, so that Mexicans by naturalisation are limited in the jobs and appointments they can take. They are excluded from the diplomatic service for example, some government positions, and cannot serve on the board of governors of some cultural, higher educational, or research institutions. In one sense, they have greater ability to consent to or withhold consent from Mexican citizenship. In another sense, they are unable fully to enjoy Mexican citizenship.

Hoyo observes that such discrimination is not unique to Mexico. He recalls that the US President or Vice President must be citizen by birth.<sup>36</sup> And other authors have identified much wider distinctions, that go beyond being able to sit in key positions of power (see, for example, discussions in the work of Linda Bosniak, Kelly Staples and Katherine Tonkiss).<sup>37</sup> Ayelet Shachar critiques what she describes as ‘birthright citizenship’, the assumption that citizenship should be assigned at birth and that citizenship that has been allocated at birth, takes precedence over other relationships.<sup>38</sup> Peter Nyers, like Shachar, draws attention to instances that are referred to as ‘accidental citizenship’, for example, where the implicit assumptions of citizenship can become more explicit.<sup>39</sup> There is, then, also a strange hierarchy in the membership of the global community of citizens, and from the EUDO index and the work of Hoyo, we can see that the fully recognised citizenship in practice seems to be the one you cannot choose and cannot reject. This further challenges the freedom of citizenship. The language of noncitizenship, and the sense that unhyphenated noncitizenship intertwines with both formal and informal citizenship, can help us to examine what is happening here.

35 Recall also the passage from the New Testament Acts Chapter 22 Verses 27–29: ‘The commander went to Paul and asked, “Tell me, are you a Roman citizen?” “Yes, I am,” he answered. Then the commander said, “I had to pay a lot of money for my citizenship.” “But I was born a citizen,” Paul replied. Those who were about to interrogate him withdrew immediately. The commander himself was alarmed when he realized that he had put Paul, a Roman citizen, in chains.’ Reference suggested by Daniel Gorman (2006) *Imperial Citizenship: Empire and the Question of Belonging*, Manchester University Press.

36 Hoyo *ibid.* p. 5 n. 7.

37 Linda Bosniak (2010) ‘Peasants and Citizens in Constitutional Thought’, pp. 9–29 in *I.CONN* 8; Kelly Staples (2012) *Rethorising Statelessness*, Edinburgh University Press; Katherine Tonkiss (2013) ‘Constitutional Patriotism, Migration and the post-National Dilemma’, pp. 491–504 in *Citizenship Studies* 17(4–3).

38 Ayelet Shachar (2009) *Birthright Citizenship: Citizenship and Global Inequality*, Harvard University Press.

39 Peter Nyers (2006) ‘The Accidental Citizen: Acts of Sovereignty and (un)Making Citizenship’, pp. 22–41 in *Economy and Society* 35(1).

## Plural and transnational citizenships

[one should] as soon tolerate a man with two wives as a man with two countries.

(George Bancroft, writing in a letter to Lord Palmerston in 1849<sup>40</sup>)

Historically, plural formal citizenship has often been presented as the counterpart to statelessness.<sup>41</sup> It has been seen as a related upshot of malfunctions in the State system. This logic can be found, for example, in the League of Nations Convention on Certain Questions Relating to the Conflict of Nationality Laws 1930 which stated that ‘it is in the general interest of the international community to secure that all its members should recognise that every person should have a nationality and should have one nationality only’.<sup>42</sup> Plural citizenship, then, like statelessness, has been seen as a *problem* in and of itself. It challenges the logic of the State system. To use Christian Joppke’s words, ‘dual citizenship breaks with the segmentary logic of the classic nation-state, according to which one could only belong to one state at a time’.<sup>43</sup> As a result, plural citizens, like stateless persons, have been seen as suspicious and subject to social moral opprobrium.<sup>44</sup> At one extreme, and as suggested in the above quotation from George Bancroft, such individuals have been likened to those engaging in bigamy, assumed to be odious. At another extreme, they have been seen as enemy aliens and interned.

The anti-binary approach presented in this book, including the acknowledgement of noncitizenship, allows a more nuanced understanding of plural citizenship (both formal and informal), and the individual-State relationships that it involves. The complexities of plural citizenship and the relevance of this to the problematic of citizenship have been thrown into relief during recent debates in several States built on liberal democratic norms. Those debates relate to denationalisations of persons suspected of terrorism.<sup>45</sup> If the assumption is that a person is either a full citizen

40 George Bancroft (historian, politician, US ambassador), writing in a letter to Lord Palmerston (UK politician) in 1849. George Bancroft (1849) ‘Letter to Lord Palmerson’, 26 January 1849, cited in Rey Koslowski (2003) ‘Challenges of International Cooperation in a World of Increasing Dual Nationality’, in Kay Hailbronner and David Martin (Eds) (2003) *Rights and Duties of Dual Nationals: Evolution and Prospects*, Kluwer Law Publishers.

41 Or the ‘antithesis’ to statelessness, see for example Tanja Brondsted Sejersen (2008) ‘“I Vow to Thee my Countries” – The Expansion of Dual Citizenship in the 21st Century’, pp. 523–549 in *International Migration Review* 42(3) at p. 528. I presented the situation of statelessness in Chapter 4.

42 League of Nations (1930) Convention on Certain Questions Relating to the Conflict of Nationality Laws, *League of Nations Treaty Series* 179 (4137), 18 April 1930.

43 Christian Joppke (2003) ‘Citizenship between De- and Re-Ethnicization’, pp. 429–458 in *European Journal of Sociology* 44, p. 441.

44 Peter Spiro explores this use of the development of social norms, for example in Peter Spiro (2010) ‘Dual Citizenship as Human Right’, pp. 111–130 in *ICONN* 8(1) at p. 114.

45 Sandra Mantu (2015) *Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives*, Brill; Christian Joppke (2016) ‘Terror and the Loss of Citizenship’, pp. 728–748 in *Citizenship Studies* 20(6–7). For example, consider Audrey Macklin and Rainer Bauböck (2015) ‘The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?’, *Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS 2015/14*; Matthew Gibney (2013) ‘Should Citizenship Be Conditional? The Ethics of Denationalization’, *The Journal of Politics* 75(3); Peter H. Schuck (2011) ‘Citizen Terrorist’, pp. 61–73 in *Policy Review* 164.

with sole allegiance or is not a citizen at all then these developments make sense. And yet individuals' lives are more complex than this. This will become particularly clear below, in the discussion of nomadism. However, first let us examine some core areas of contention that have been raised in the context of plural citizenship. Major arguments against plural citizenship include the question of how and whether a person could satisfy or fulfil her/his duties with regard to each of the States with which s/he holds citizenship.<sup>46</sup> This is particularly clear in the cases of military service and voting, and so I will pick up on these here.

It is important to note that historically, the belief that a person has another allegiance beyond a particular formal citizenship is not dependent only upon that person being a *formal citizen* of another State. This is particularly tragically clear in the case of those US citizens of Japanese descent who did not need to be formal Japanese citizens in order to be assumed to have some allegiance with Japan and so to be interned. Their ethnic heritage was considered sufficient to generate a fear that they would side with Japan against the US in the Second World War. The apparently crisp legalistic notion of plural citizenship, then, was (as in the cases of other citizen noncitizens above) conflated with ethnic identifications of membership. As a result, Ben Herzog notes that '5,589 American citizens of Japanese descent were forced to renounce their citizenship.'<sup>47</sup> This is related to Henio Hoyo's naturalised citizens in the South American countries discussed above, where full citizenship was not only about legal and formal citizenship, but also about birth and blood.

Distrust of plural citizenship, then, is not only about concerns relating to the shared allegiance of formal citizens. It is also tied up with assumptions about birth, blood, ethnicity and race. As such, as Shachar has also pointed out, birth-right citizenship, however it is construed (whether by birth to citizen parents or by birth upon a particular territory) can also be a proxy for other distinctions that are difficult to align with liberal democratic principles. The analytic tool of 'non-citizenship' can help us to interrogate this.

Let us consider what this means for voting. The loyalties of plural citizens came under the spotlight in Australia in 2000 when there was concern about Italian citizens living in Australia voting in Italian elections. Italy had introduced new rules allowing postal votes and creating expatriate constituencies in the Italian parliament (these persons may or may not have also held Australian citizenship).<sup>48</sup> The public debate in Australia at the time uncovered a wider issue

46 For example, see Tanja Brondsted Sejersen (2008) "'I Vow to Thee My Countries'" – The Expansion of Dual Citizenship in the 21st Century', pp. 523–549 in *International Migration Review* 42(3) at p. 526.

47 Ben Herzog (2015) *Revoking Citizenship: Expatriation in America from the Colonial Era to the War on Terror*, New York University Press, p. 95.

48 In 2001, the Italian Parliament created four overseas constituencies: Europe; South America, North and Central America; Africa, Asia and Oceania; and Antarctica. Arguably, the overseas electorate was key in electing Berlusconi in the 2006 election, in which 1 million expatriate Italians voted (Dauvergne 2008, p. 133). Catherine Dauvergne (2007) 'Citizenship with a Vengeance', pp. 489–508 in *Theoretical Inquiries in Law* 2(6).



of whether citizenship as a membership status should be prioritised or whether presence within the territory of a State was key when it came to voting – and what happens when two States with two different approaches to this interact through the movement of persons.

Core to this was the debate about whether or not individuals should be able to relate in a citizen-like way with more than one State at a time. A former Australian ambassador to Rome has explained the fear:

... an Australian resident, possibly with dual citizenship, could come to hold the balance of power in the Italian parliament and be tempted to use that power to induce the Italian government to intervene in issues of an Australian domestic character.<sup>49</sup>

The right to vote is often seen as a core symbol of citizenship, and stakeholder-ship in State governance. The Australian fear was that Italians might use their vote in Italy to effect change in Australia, the State where they had a primary stake. This would, it was feared, devalue Australia's independence and autonomy. In this case, we can see an important element of the concerns around plural citizenship. That is, the concern is centred around how the relationship between States could play out through individuals and *vice versa*. The relationship between citizenships and noncitizenships and what this means for the relationships between States has arisen several times in this book (consider for example the differential experiences of irregular immigrants discussed in Chapters 3 and 4). In this Australian/Italian case of plural citizenship and voting, we can see particularly clearly the perceived threat in an individual's symbolic relationships with more than one State, in terms of the challenge this poses to the States involved. It involves the intertwining of citizenships, but also the activation of noncitizenships as a result. Unhyphenated noncitizenship, then, also provides a way in which to talk about what happens when the relationships between States play out through individuals. When the individual-State relationships in this context can only be described in one dimension – in terms of gradations or versions of one citizenship – something important in the nature of the relationship is not only lost but becomes challenging to the theoretical and political framework as a whole.

Some sociologists suggest that transnational migrants should be seen as able to be participants in both societies at the same time.<sup>50</sup> Seen in this way, we can understand individuals as functioning as citizens in more than one place, but we

49 Bruno Mascitelli and Simone Battison (2009) 'Challenging the Australian Government Approach Towards Expatriate Voting: The Case of Italy', pp. 513–519 in *Australian Journal of Political Science* 44(3) at p. 515.

50 For example, Nina Glick Schiller, Linda Basch and Cristina Szanton Blanc (1995) 'From Immigrant to Transmigrant: Theorizing Transnational Migration', pp. 48–63 in *Anthropological Quarterly* 68(1); Aihwa Ong (1999) *Flexible Citizenship: The Cultural Logics of Transnationality*, Duke University Press.

can also understand them as functioning as noncitizens too – a noncitizenship which, if recognised, need not be so challenging to the States involved. Characterising the situation in this way can also help us to see the complexity of the ways in which people live out their lives. Crucially, as Takeyaki Tsuda has argued, it shows how ‘we need to explore the dynamic *relationship* between immigrants’ incorporation in the receiving country and their transborder engagement with the sending country as *one coherent transnational social process*.’<sup>51</sup> In this book, the suggestion is that the complex and changing interrelationships of an individual with more than one State need to be considered and that this could be facilitated by the analytical tool of noncitizenship.

Military service provides a differently symbolic case in which the relationships between States play out through individuals, and one which further problematises the notion of allegiance and the idea that it can be shared. As in the case of overseas voting, it is particularly useful to look at a context in which this has come to a head. Patrick Weil describes how, in 1982, the first contingent of young men with citizenship of both France and Algeria reached the age of military service.<sup>52</sup> Both countries are described as having an obligatory draft at the time. Weil reports that this gave rise to a campaign for those individuals’ release from French citizenship by the Algerian consulate, describing them as ‘Frenchmen in spite of themselves’.<sup>53</sup> This case differs in structure from that of the US citizens assumed to have allegiance to Japan discussed above for a number of reasons relevant here. First, as a result of colonisation and then decolonisation, the individuals involved were defined as citizens-by-birth on the territory of both the French and the Algerian States simultaneously.<sup>54</sup> Second, it was also politically expedient for both France and Algeria to *claim* them as citizens – and to do so uniquely.

According to Weil, many individuals applied to be ‘released’ from French citizenship (758 in 1983; 2,949 in 1984; 1,034 in 1985; 872 in 1986), and for the most part the requests were rejected (72 per cent, 85 per cent, 71 per cent and 44 per cent respectively).<sup>55</sup> He reports that at some point during this debate, Algerian discourse changed, recognising the Algerian population in France as likely to stay there after all, but seeing them as strategically useful in a new way,

51 Takeyaki Tsuda (2012) ‘Whatever Happened to Simultaneity? Transnational Migration Theory and Dual Engagement in Sending and Receiving Countries’, pp. 631–649 in the *Journal of Ethnic and Migration Studies* 38(4) p. 634.

52 By double application of *jus soli* they were both in France, and born to a parent born in pre-independence Algeria – considered to be French soil – Article 23 of Nationality Code. Patrick Weil (2008) *How to Be French: Nationality in the Making Since 1789*, Duke University Press, translated by Catherine Porter, p. 155.

53 Weil 2008 *ibid.* p. 155.

54 Olivier Vonk (2012) *Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States*, Martinus Nijhoff Publishers, p. 198.

55 Weil 2008 *ibid.* p. 155 n. 7.

providing a political lobby within France.<sup>56</sup> And French discourse also changed, so that this period was followed directly by successful efforts by the French right to restrict access to French citizenship and to French voting rights for individuals from North Africa. Plural citizenship was, then, shown not to be a problem in itself or a good in itself, but to be dependent upon the political reality of the time, including the relationships between the States involved. The ways in which individuals were understood as formal or informal citizens, as noncitizens or non-citizens, affected and were affected by the ways in which the States involved related to each other.

The situation of military service was somewhat resolved in France with the agreement, signed on 11 October 1983, that a dual citizen could choose in which country to perform his (for at the time it related to men, not women) military service.<sup>57</sup> These individuals were being asked to sacrifice their lives and to kill on behalf of the State. This, of any situation, *prima facie* seems least to admit nuanced relationships. But also perhaps, for this reason, nuance of explanation is most needed. People take sides militarily not only for reasons of sole formal citizenship, but also because of conviction. Consider those like George Orwell who fought in the Spanish Civil War on the basis of principle, despite having little connection with Spain previously, and conversely, the US citizens who refused to fight in the Viet Nam War also for reasons of principle;<sup>58</sup> and the young Israelis today who stand against military service and so are imprisoned as a result.<sup>59</sup> These examples help to show the complexity in the ways in which we relate to States, even in moments of symbolic participation (as in voting) and ultimate sacrifice (as in military service).

In these cases, fighting (or refusing to fight) was often ideological rather than based only on singular citizenship. In this context, it is particularly interesting to consider the position played by US army veterans of a range of backgrounds who have been supporting indigenous protesters against the Dakota Access Pipeline (DAPL).<sup>60</sup> The DAPL is a project to lay a pipe carrying crude oil diagonally across a large part of the US from northwest to southeast. The most publicised protest has arisen in the area where the pipe would both run through land about which the Standing Rock Sioux must legally be consulted because of the place's cultural and religious importance, and under water which feeds the sole supply of the Sioux drinking water. What is interesting in the case of the veterans engaging in the

56 Weil 2008 *ibid.* p. 156.

57 Weil 2008 *ibid.* p. 156; Vonk 2012 *ibid.* p. 199; Christophe Bertossi (2007) 'Ethnicity, Islam, and Allegiances in the French Military', in Christophe Bertossi (ed.) (2007) *European Anti-Discrimination and the Politics of Citizenship: Britain and France*, Springer p. 207.

58 See George Orwell (1989) *Homage to Catalonia*, Penguin Books; Michael S. Foley (2003) *Confronting the War Machine: Draft Resistance During the Vietnam War*, University of North Carolina Press.

59 For example, see essays in Perez Kidron (ed.) (2004) *Refusenik! Israel's Soldiers of Conscience*, Zed Books.

60 For example, A Sammon (2016) 'A History of Native Americans Protesting the Dakota Access Pipeline', *Mother Jones* 9 September 2016.

DAPL protests is that the individuals involved have both demonstrated loyalty to the country and demonstrated their rejection of certain of its actions. This shows that individuals can defend the integrity of a State militarily and see no inconsistency (for there is no inconsistency) in also using force to oppose some of its actions. Indeed, their rejection arguably takes on symbolic significance because of their military service. In cases of voting and of military service, the potential tensions in plural citizenships become apparent. And in these cases it also becomes clear that it is not only citizenship that is at play within these tensions. It is the interaction of citizenship and noncitizenship in the individuals' relationships with the States in question in a context where noncitizenship is left unacknowledged.

## **Nomadism**

New dimensions of this emerge when we consider nomadism, another way in which an individual may relate with multiple States. Settledness is, for the most part, implicit in traditional liberal democratic theoretical frameworks based around territorial States with mostly fixed populations. For this reason, the nomadic critique of liberal democratic theory is important to consider. There have long been difficulties in understanding the relationships of nomadic individuals with such States. On the one hand, there is the wider suspicion of people who move, whether between States or within States – and the relationship of this with the considerations of plural allegiances discussed above. On the other hand, there are the policies and structures that impose settledness, whether intentionally or unintentionally, and the implications of challenging them.

The word 'nomad' refers here either to a member of a community which by tradition has more than one fixed place of residence, or to an individual who in fact has more than one or no fixed location of residence. The latter includes the temporary agricultural workers and the highly paid professionals who make use of globalised labour markets. For the purposes of this chapter, the two forms are similar. Both challenge standard citizenist understandings of how people organise their lives. In both cases this may include those who engage in patterns of circular movement, returning to certain fixed locations according to season, for example. It may also include those who move linearly, from place to place, without regular return.<sup>61</sup> This movement can be within recognised States, or between them. And the individuals concerned may well be formal citizens in at least one of the States involved, but this might also not be the case. When movement is between States, the challenges to the settled citizenist construction become particularly clear, but nomadic movement within a State also problematises State structures that assume settled citizenship.

61 Judgement is withheld here on how long term the period of movement needs to be, or the periods of stays, to be considered nomadism. Instead, cases are considered where one of these types of nomadism is considered to pertain by some or all of those involved (e.g. the State, the individual movers, the local community) and examine ways in which this challenges settled liberal democratic citizenist assumptions.

Consider, for example, Tseng Yen-Fen's analysis of Taiwanese business migrants (or, as he puts it, 'migrants in postmodern terms').<sup>62</sup> These are nomads of the second form. Yen-Fen describes the individuals he studies as working in contracting manufacturing, facilitating businesses that wish to source manufacturing sites abroad. The migration pattern found amongst individuals in this group are, then, heavily driven by changing contexts in international markets and economic climates. Yen-Fen finds that the migrants he studies fall into two categories in terms of how they understand their relationships with States. First, there are those who regard themselves as having 'flexible citizenship'.<sup>63</sup> These individuals are at the top of the business hierarchy, able to pick and choose amongst States for the place where they are best able to do business.<sup>64</sup> Yen-Fen describes citizenships and individual-State relationships for them as comfortably pragmatic. Second, there are the small-scale business-owners, who are tied to narrow profit margins. These individuals' decisions about movement are based upon capitalist forces.<sup>65</sup> Yen-Fen presents them as migrating repeatedly in order to find cheaper and more controllable labour, for example. They are relating with multiple States, each in different ways. And there is likely a mixture of citizenship and noncitizenship, affected also by their location in the professional hierarchy, as well as the implications of this in terms of class.

Yen-Fen observes that these nomadic business migrants are highly skilled and highly mobile. They also experience discrimination as a result of their mobility. The research finds that they experience racism and distrust (based on their nomadism) in places where they live, alongside an increasing estrangement in Taiwan, the State they started from and of which they have formal citizenship. This complex experience of nomadism and the different experiences depending upon location in the hierarchy is also found in other studies. For example, Megha Amrith describes Filipino 'semiprofessionals' who move, and may move repeatedly, to work in the medical professions and distinguishes them from both domestic workers on the one hand and elites who deploy strategies of 'flexible citizenship' on the other hand.<sup>66</sup> She finds that different categories of workers (medical, care, household) have different experiences of movement.

The discussion of nomads can often focus on low-skilled agricultural and factory workers or on the members of traditionally nomadic communities. And these are important to consider. However, as the Taiwanese business people and

62 Tseng Yen-Fen (2005) 'Permanently Temporary: Taiwanese Business "Nomads" as Reluctant Migrants', pp 179–193 In Beatriz Lorente, Nicola Piper, Shen Hsiu-Hua and Brenda Yeoh (eds) (2005) *Asian Migrations: Sojourning, Displacement, Homecoming and Other Travels*, National University of Singapore Press. Reference for parentheses: Yen-Fen *ibid.* p. 189.

63 This derives from Aihwa Ong's classic book of this title – Aihwa Ong (1999) *Flexible Citizenship: The Cultural Logics of Transnationality*, Duke University Press.

64 Yen-Fen 2005 *ibid.* pp. 183–184.

65 Yen-Fen 2005 *ibid.* p. 184.

66 Megha Amrith '“They Think We Are Just Caregivers”: The Ambivalence of Care in the Lives of Filipino Medical Workers in Singapore', pp. 410–427 in *The Asia Pacific Journal of Anthropology* 11(3–4) p. 411. See also Megha Amrith (2017) *Caring for Strangers*, NIA Press.

the Filipino ‘semiprofessionals’ cases show, even if the broader experiences of the individuals involved are very different, the vulnerabilities associated with the lack of recognised individual-State noncitizen relationships are more generally pervasive. Moreover, the simplistic either/or approach to citizenship and the often assumed binary relationship between citizenship and (hyphenated) non-citizenship makes it difficult to explain the ways in which such individuals may have both citizen and noncitizen relationships with several States simultaneously – and the ways in which this interplays with ethnicity, migratory status, and class. Indeed, Yen-Fen reports that the individuals in his study describe estrangement from Taiwan, though not a renunciation of citizenship. This demonstrates the need for a more complex understanding of how individuals relate to States that moves beyond binary understandings, citizenism and an assumption of settledness.

### **Rejecting binarity and acknowledging noncitizen politics**

Recognising the many and diverse experiences of citizenship – including when it may be unwanted, ambivalent and plural – helps to demonstrate the need for a more complex way to theorise the ways in which individuals relate to States. This includes those who embrace and those who reject the citizenship(s) made available to them. It also includes those who relate as citizens in unusual ways or with more than one State. Steven Vertovec has observed that: ‘the modern nation-state container model has normally functioned with an implicit zero-sum understanding of social/cultural/political belonging: either one is in, or out.’<sup>67</sup> Criticism of the assumed citizen/non-citizen binarity is not new.<sup>68</sup> This book proposes that one way to address the complexity of the ways in which individuals relate to States is through the analytical category and mode of individual-State relationship of noncitizenship and an examination of the ways in which noncitizenship and citizenship interact.

The rejection of binarity presented in this chapter and throughout this book proposes the rejection of a much broader ‘either/or’ form of political understanding, where someone must be either a citizen and wholly a citizen or not a citizen at all, where someone must be located in this or that or the other national community and that community alone. It embraces instead a complex and messy picture of lived reality. Noncitizenship provides a way in which to understand

67 Steven Vertovec (2001) ‘Transnational Challenges to the “New” Multiculturalism’, paper presented at ASA Conference held at the University of Sussex 30 March till 2 April 2001, available from University of Oxford website. Container model terminology introduced p. 5, this quotation appears on p. 17.

68 For example, see Rainer Bauböck (2010) ‘Migration and Citizenship’, pp. 27–48 in *Journal of Ethnic and Migration Studies* 18(1); Rainer Bauböck (1994) ‘Changing the Boundaries of Citizenship: The Inclusion of Immigrants in Democratic Politics’, pp. 199–232 in Rainer Bauböck (ed.) (1994) *From Aliens to Citizens: Redefining the Status of Immigration in Europe*, Avery, p. 203 – resident alien status as a chosen status.

another type of relationship, and to explain what happens when it intertwines with citizenships. When a person is denied access to the full rights of citizenship, or when a person contests citizenship, this does not mean that s/he thereby has no relationship with a State, and no claims upon the State. While s/he may well still seek citizenship and full recognition of that citizenship, in the meantime, s/he still has a thick relationship with the State in question, and one that generates claims in its own right. Individuals can relate with States both as noncitizens and as citizens, and can do so simultaneously even with the same States.

## 7 Noncitizens overseas and migration

Unhyphenated noncitizenship provides an analytical tool for understanding the mechanisms connecting apparently different sorts of individual-State relationships. This chapter looks in particular at how an activated noncitizenship far from a State could feed into an individual's relationship to that State at its border, and how it may be continuous with her/his noncitizen relationship with that same State *in situ*. For example, when the United States engaged in nuclear testing in Bikini Atoll, previously inhabited islands became uninhabitable. This changed the relationship between those individuals and the United States. In the case of the Bikinians, a connection was recognised between noncitizenship activated far away and obligations relating to migration and Bikinian migrants on the territory of the United States. Other examples are less clear-cut, and this chapter sets out several cases in order to trace how the individual-State relationships evolve over time and according to context, and to examine the obligations that result.

These presentations also show a connection between different locations and forms of noncitizenship activation. In the cases of both Bikinians and people affected by anthropogenic climate change, for example, individuals have been forced, and have sought, to move. They have often moved into a physical relationship with those States that have been wholly or partially responsible for the reasons that have driven this movement (either directly or indirectly). The language of noncitizenship provides a way in which to see the connections between these scenarios. I propose that some of the continuities between discussions of global justice, and of migration justice in particular, can be seen more clearly through the language of (unhyphenated) noncitizenship. This chapter takes historical injustices into account insofar as they are part of today's system of structural injustice. Those individuals directly affected by a State far away are in a special sort of political relationship with that State – one of activated noncitizenship. When that relationship is made oppressive, through structural injustices, exclusions and lack of acknowledgement, it becomes further activated, and infused with a special sort of noncitizen-vulnerability and challenge.



## Making someone's life unsustainable: Bikinians and the United States

For our people, for the Marshall Islands, March 1, 1954 is the defining moment in world history. That is the Fourth of July, the Assassination of President Lincoln and Kennedy, Pearl Harbour and 9/11 all wrapped into one.

That is the day the world stood still and also changed forever. That is the day we went from being an occupied nation to becoming a dependent nation.

(Rongelap Mayor James Matayoshi, Bravo Day, 1 March 2004, Marshall Islands<sup>1</sup>)

Bikini Atoll is located within the South Pacific State of the Marshall Islands. The Marshall Islands has long represented a strategic military position. The islands are named after the eighteenth-century English explorer John Marshall and have had periods under Spanish, German, British, Japanese and American colonial rule. The US took control in 1944, and in 1947 entered into an agreement with the UN Security Council to administer the country.<sup>2</sup> In 1977, the Marshall Islands developed a constitution and in 1986 became an independent State. Today, the country remains militarily strategic and deeply and unambiguously affected by the effects of both colonisation and the Cold War.

A State's actions in another State may make individuals noncitizen-vulnerable, or 'dependent', to use Mayor Matayoshi's word in the quotation at the head of this section. This is clearest when those persons' lives are thereby made unsustainable in the place where they had been living. Bikini Atoll provides a clear example. Between 1946 and 1958 the United States carried out 66 nuclear tests in the Marshall Islands, including 23 at Bikini Atoll.<sup>3</sup> Tests in Enewetak Atoll completely obliterated two of its islands, while in Bikini Atoll, life became unsustainable on its principal island of Bikini.<sup>4</sup> Since the tests, people across the Marshall Islands have reportedly been affected by disease and abnormal births, which have been associated with the nuclear activity.<sup>5</sup>

The biggest part of the 'Castle' series of tests, codenamed 'Bravo', was in 1954.<sup>6</sup> It was a bomb 1,000 times more powerful than that dropped on Hiroshima and affected several atolls. The centre of the test was at Bikini Atoll and it rendered its main island, Bikini, uninhabitable, cementing a special relationship

1 This statement also opens Anita Smith's paper: Anita Smith (2007) 'Colonialism and the bomb in the Pacific', pp. 51–72 in John Schofield and Wayne Cocroft (eds) (2007) *A Fearsome Heritage: Diverse Legacies of the Cold War*, Routledge.

2 For example, see Smith 2007 *ibid.* p. 56.

3 IAEA (1998) *Radiological Conditions at Bikini Atoll: Prospects for Resettlement*, International Atomic Energy Agency, Vienna at p. 6.

4 Smith 2007 *ibid.* p. 56.

5 April L Brown (2014) 'No Promised Land: The Shared Legacy of the Castle Bravo Nuclear Test', in *Arms Control Today*, March 2014.

6 See the Marshall Islands Dose Assessment and Radioecology Program website: <https://marshallislands.llnl.gov/bikini.php> (accessed 9 December 2015).

between the US and its former inhabitants. In some ways, it merely reinforced a citizen-like relationship already in place as a result of US administration of the Marshall Islands. This was not all it did, though. It also activated in a new way a noncitizen relationship between the individuals living in the Marshall Islands and the US, and continues to do so today. Despite its complexities, this case demonstrates one (extreme and unambiguous) way in which noncitizenship can be activated overseas: when a person's vital interests become dependent upon the actions of another State because of the actions of that State. The site of the Bikini Atoll Nuclear Test Site is now recognised as a World Heritage Site by UNESCO, as can be seen in Figure 7.1. As the image shows, this space now appears verdant and lush, but as we will see, it remains unsuitable for human habitation.

In 1946, when US nuclear researchers labelled Bikini Atoll as 'the most suitable and convenient location for the testing of atomic weapons', the 166 or 167 Bikinians were asked to relocate to one of a list of locations within the Marshall Islands.<sup>7</sup> They were moved to the much smaller uninhabited atoll of Rongerick, believing that they would soon be returning home. The Bikinians struggled to produce enough food in Rongerick and struggled with their displacement from their ancestral land in Bikini. The US Administration was exploring other options. They moved the Bikinians to Enewetak Atoll but then, wanting Enewetak as an additional test site, moved them again.<sup>8</sup> Finally, they offered the Bikinians relocation either to Wotho or Kili. Leonard Mason, who was involved with the community at the time of the relocation, observes that this was not really a choice. He observes that the leader of Wotho Atoll had tried unsuccessfully to claim jurisdiction over Bikini in the past. Relocation there would have required the Bikinians to submit to his rule.<sup>9</sup> In 1948, the Bikinians were transferred again, this time to the tiny island of Kili.<sup>10</sup> After only a couple of years, the nuclear tests were already making them vulnerable to other individuals and to States in a new way.

In Kili, it was again a struggle to secure sufficient food. While Bikini is an atoll of 23 islands around a sheltered lagoon, Kili is a single island.<sup>11</sup> The winds reportedly made growing crops and fishing difficult. By the late 1950s, agricultural land and wild foods were made available on nearby islands. But an

7 It is worth noting that a commission in the US 'felt that tests should be held overseas until it could be established more definitively that continental detonation would not endanger the public health and safety', quoted in Jonathan Weisgall (1980) p. 76. One core text says there were 166 individuals (Tobin 1974), another core text says there were 167 (IAEA 1998 *ibid.*), and the other sources say one or the other. The first of these texts is: Tobin, Jack (1974) *Background Information Paper – The Bikini Situation*, Majuro, Marshall Islands, April 5, 1974, pp. 2–4. Accessible at: <https://evols.library.manoa.hawaii.edu/bitstream/10524/23043/1/DU%20720.9%20B5%20T62.pdf> (accessed 9 December 2015). It is interesting that the Broadway musical, *South Pacific*, opened in 1949 and ran until 1954.

8 Vesper 2015 *ibid.* p. 55.

9 Leonard Mason (2001) 'Foreword', pp. xxxi–xxxix in Jack Niedenthal (2001) *For the Good of Mankind: A History of the People of Bikini and Their Islands*, Bravo Books.

10 Tobin 1974 *ibid.* p. 5.

11 Smith 2007 *ibid.* p. 57.



Figure 7.1 Bikini Atoll Nuclear Test Site (Marshall Islands) (Copyright UNESCO/Ron Van Oers).

increasing amount of the Bikinians' food needed to be brought in from outside the Marshalls. This now included flour, sugar and processed meats.<sup>12</sup> New livelihoods needed to be found to pay for the products, for example through handicrafts.<sup>13</sup> In 1958, Kili was hit by a typhoon. The Bikinians living there struggled on. The actions of the US had made them vulnerable for their vital needs to the US and to their own government of the Marshall Islands. They were also vulnerable in a new way to other individuals and to other atolls and to weather events. Whereas before the tests Bikinians were able to pursue the development of their capabilities independently, after the tests this became impossible, and remains so. In 1956, the first compensation payment was reported to have been made by the US to the islanders, of US\$325,000, which was put into a trust fund.<sup>14</sup>

Nuclear testing in the Marshall Islands ended in July 1958. In the late 1960s it was announced that the largest islands of the Bikini Atoll were safe for habitation.<sup>15</sup> Extensive clear-up work was carried out.<sup>16</sup> However, after a series

12 Mason 2001 *ibid.* at p. xxxiv.

13 For example, see Mary Lanwi (2004) 'Mission School to National Mission', pp. 101–116 in Anono Lieom Loeak, Veronica C Kiluwe and Linda Crowl (eds) (2004) *Life in the Republic of the Marshall Islands, Mour lo Republic eo an Majol*, (written by Marshall Islanders), University of the South Pacific Centre, at p. 109.

14 Tobin 1974 *ibid.* at p. 9, 10.

15 IAEA (n.d.) 'Radiological Conditions at Bikini Atoll and the Prospects of Resettlement, the International Atomic Energy Agency website, [www-ns.iaea.org/appraisals/bikini-atoll.asp](http://www-ns.iaea.org/appraisals/bikini-atoll.asp) (accessed 9 December 2015); IAEA 1998 *ibid.* at pp. 6, 7.

On 31 October 1958 the USSR, UK and USA agreed to stop atmospheric nuclear weapon testing.

16 Tobin 1974 *ibid.* at p. 10.

of additional tests a decade later, it was found in 1978 that inhabitants had worryingly high levels of radionuclide  $^{137}\text{Cs}$  in their bodies, and it was decided that they should be relocated back to Kili and other islands.<sup>17</sup> In the 1980s, further experiments were conducted to try to make Bikini habitable, but there has been little progress and further tests in 1995 reconfirmed that radiation was dangerously high, with the majority of human exposure coming through the food chain.<sup>18</sup>

Finally, in 1997, an International Atomic Energy Association (IAEA) Advisory Group concluded, after a further set of measurements, that:

Permanent resettlement of Bikini Island under the present radiological conditions without remedial measures is not recommended in view of the radiation doses that could potentially be received by inhabitants with a diet of entirely locally produced foodstuffs.<sup>19</sup>

As a result, Bikini continues to be uninhabited. The Bikinians receive compensation, which they are now able to spend either in the Marshall Islands or overseas, including in the US. In this case, then, the activated noncitizenship produced by making someone's home uninhabitable has been recognised to generate obligations of compensation and to allow individuals to have certain freedoms within the obligated State's territory and at its borders. Bikinians already had the right to settle in the US, but not to spend compensation money there – though the level of this compensation, its delivery and its form are still being contested.

Let us examine when the noncitizen relationship became activated in the example as presented, putting aside for now the quasi-citizenship arising from US occupation. Suppose the first Bikini–US interaction had begun when the US government asked Bikinians to move aside for the nuclear testing (this was not the case). If this had been so, then this alone would have been the impetus to activate their noncitizenship.<sup>20</sup> Indeed, from this moment, the people involved did experience a new and activated form of vulnerability particularly to the United States with regard to their basic capabilities. At the same time, this

17 IAEA 1998 *ibid.* at p. 7; Weisgall 1980 *ibid.* p. 89; IAEA n.d. *ibid.*

18 IAEA n.d. *ibid.*

19 IAEA 1998 *ibid.* at p. 43. To put this into context, UNSCEAR estimates that the worldwide average effective annual exposure to natural background radiation is 2.4mSv. In the northern Marshall Islands, natural radiation is significantly lower, giving an annual average of 0.22mSv, though that from food is around 2.2mSv/a (IAEA 1998 *ibid.* at p. 26). Two studies from the late 1990s offer different radiation levels in Bikini. One estimate is that there is an annual effective dose of 10.4mSv. The other estimates about 17.4mSv (IAEA 1998 *ibid.* at p. 27). Either way, it's high.

20 This relationship began after a church service in Bikini on 10 February 1946, when the American military governor of the islands asked the islanders if they would be 'willing to sacrifice your island for the welfare of all men'. After collective deliberation, it is reported that Chief Juda Kessibuki replied: 'If the United States government and the scientists of the world want to use our island and atoll for furthering development, which with God's blessing will result in kindness and benefit to all mankind, my people will be pleased to go elsewhere.' Cited in Weisgall 1980 *ibid.* p. 77.

presented a challenge to the United States in terms of the free pursuit of its interests, since some of its activities were creating a sort of vulnerability in noncitizens that conflicted with its liberal democratic principles.

At first glance, the initial relationship seems to have been contractual, but the Bikinians did not retain capability to make decisions about their vital interests after the initial contract had been brokered. In the real-world historical case, this was further reinforced by the fact that the United States already had a colonial relationship with the Marshall Islands so that the contract was not made between equals. With the testing, the relationship changed. As one commentator puts it, '[a]lthough they are geographically and culturally Marshallese, the Bikinians effectively have become wards of the United States'.<sup>21</sup> Their noncitizenship was activated in an extraordinary way. Even if it *had* been agreed upon by a contract between equal parties, the outcome was such that the individuals as a group lost the possibility of independence. From the point at which the tests took place, the US and the former inhabitants of the atoll became engaged in a pressing relationship giving rise to substantial obligations in the US towards the Bikinians – not only of compensation (and indeed the focus in this book generally is not upon compensation for historic wrongs), but also of ensuring individuals can develop their capabilities in ways that they can value. Indeed, the obligation is to support this capability development particularly in dimensions in which the State is otherwise impairing it. Importantly, based upon the tests alone, it is also a special and directed relationship between each specific individual and the State of the US. But importantly, it is not a relationship of citizenship.

A noncitizen relationship was again activated with the tests themselves, this time in another way. The US rendered the Bikinians vulnerable in their most basic need to *be* somewhere. This aspect of their relationship with the US, then, challenges the US in particular and the system of States in general. It challenges a system in which States control all the spaces within which someone can live. It also challenges the systems of power, and the legitimacy of the activity of the US in this case, within that structure. Today, Bikinians directly challenge the State's legitimacy in their performance of everyday vital activities. This is because the US State is directly responsible, and continues to be responsible, for the constraints on their capabilities. It is important also to recognise that, even if we suppose that only the region of Bikini was made uninhabitable (in fact this is contested), while other areas within the State of the Marshall Islands were not (so that they could move within the Marshalls), this does not remove the claims of Bikinians against the United States.

Now let us consider the changing quasi-citizen/noncitizen relationship between individual Bikinians and the US over the period of the case. During the Second World War, the United States fought, and beat, Japan for control of the

21 Jonathan M Weisgall (1980) 'The Nuclear Nomads of Bikini', pp. 74–98 in *Foreign Policy* 39 p. 75.

Marshall Islands. One commentator who grew up on an American base in the aftermath of this period recalls how the rhetoric of the time meant that he:

... learned to picture Marshallese as happy bystanders, singing and cheering elatedly as these victors [the Americans] arrived, hands outstretched to receive chocolate bars and cans of SPAM – on the sidelines, watching the real world pass them by.<sup>22</sup>

They were, then, not seen as actors in the system of States. This implies that they were not really seen as citizens within it, but they were not really seen as anything else either. This does not mean that they were not in fact any in relationship with the State and the system of States, but it means that the nature of their relationship was not recognised. From the end of the Second World War until the Republic of the Marshall Islands' independence in 1986, the Marshall Islands was under the administrative control of the United States. Under the terms of the 'Compact of Free Association', initially signed in 1983, and replaced by a revised Compact in 2004, Marshall Islanders are granted visa-free work and study in the US and the US is responsible for the security infrastructure of the country.<sup>23</sup> This makes it possible to consider the rights of Bikinians *in situ* in the US without it being clouded by the issue of contingent irregularity of presence.<sup>24</sup>

Marshall Islands citizens today are also vulnerable to the US, even while they are in the Marshall Islands, in other ways. The Republic of the Marshall Islands continues to be dependent upon US aid and uses the American dollar as its currency. Indeed, the US has reportedly provided 'millions of dollars, along with a series of medical programs and cleanup operations'. Though the Marshallese believe this to be insufficient, observing for example that those living outside the narrowly defined affected area have not yet been compensated despite continuing to suffer the health and other effects of the tests.<sup>25</sup> This again alters the nature of the relationship. In one sense, Marshall Islands citizens are not vulnerable in terms of their presence in the key State of their noncitizenship. They are allowed to live in the United States without visas or permits. Their noncitizen vulnerabilities are of another sort – and their case has enabled us to examine that aspect more generally.<sup>26</sup>

22 Greg Dvorak (2008) '“The Marshall Islands”: Making Marshallese Masculinities between American and Japanese Militarism', pp. 55–86 in *The Contemporary Pacific* 20, at pp. 58–59.

23 Compact of Free Association, Agreement between the United States of America and the Marshall Islands, Amending the Agreement of 25 June 1983, concerning the Compact of Free Association, As Amended Signed at Majuro April 30 2003 (entered into force 1 May 2004), Treaties and Other International Acts Series 04–501. Available at [www.state.gov/documents/organization/173999.pdf](http://www.state.gov/documents/organization/173999.pdf) (accessed 4 March 2017). It is worth noting that the Compact prevents individual lawsuits against the US.

24 Chapter 4 presented this contingency.

25 Smith 2007 *ibid.*; Brown 2014 *ibid.*; Lucy Westcott (2014) 'Marshall Islands nuclear lawsuit reopens old wounds', *Newsweek* 1 August 2014; Brown 2015 *ibid.*

26 See *People of Bikini Atoll v. United States* 2007–5175 06-CV-288 (2009).

Some Bikinians become full US citizens and this may become their overriding way of relating to the US State. Noncitizenship may even become unimportant to such individuals. Others do not become full US citizens and it would be inappropriate to require them to do so. Bikinians, then, in their relationship with the US, demonstrate that noncitizenship is about more than a shaky right to abode. Whether living in the Marshall Islands or in the United States, or elsewhere, their legal right to be where they currently are, is not what is in question. In their situation, we can see a vulnerability to the US in the protection of their basic interests and their capabilities to function in the ways they want to function. As a result, they challenge the US State even with their performance of usually apolitical acts, through their need to eat and to sustain life somewhere that is uncontaminated.

### **Potentially making someone's life unsustainable: sharing the Mekong river**

In the Bikini example above, one State has overwhelming responsibility for the capabilities of individuals far away. It is a relatively simple case, with few actors and clear lines of responsibility. Things are rarely so clear-cut. This can be seen particularly in cases where multiple States interact with regard to a shared vital resource. River cooperation involves inequalities of power and special vulnerabilities irrespective of any historical or ongoing actions of the States involved. When States cooperate with regard to a river, there is a strong possibility of making the lives of persons far away unsustainable. This has been developed in the literature on water-sharing.<sup>27</sup>

This section examines this through a brief sketch of one of the most famous river-sharing initiatives – that which is now known as the Mekong River Commission. While the negotiations within the Commission and the discussions surrounding it are principally about the relations between States, the claims against upriver States fall into two categories. On one hand, there is an obligation of one sovereign State to another to be mutually respectful of sovereignty. On the other hand, there is an obligation of one State not to damage wantonly the interests of individuals elsewhere who are directly affected by its actions. That is, while the discourse about river-sharing is primarily diplomatic, at its core it is also about activated noncitizenship.

The Mekong is the eighth-largest river in the world and its river basin is characterised by wet and dry seasons, with widespread flooding and resultant

27 The Notorious Harmon Doctrine from the US held that it was acceptable for those within one state of the United States to use water as much as they wanted, even if it might injure those in a neighbouring state (e.g. see Gleick 1993 p. 106). This has been rejected by most other water-sharing agreements. For example, Malin Falkenmark's 'the water barrier' estimates the level of water below which significant development constraints occur (e.g. see Falkenmark 1986). More recently, some theorists have also discussed mechanisms for cross-border involvement in decision-making when it will affect those not usually able to vote, for example.

loss of life and livelihood during the wet season. It provides a vital resource for water and aquaculture, but also transport and other goods for those living in the region. The river is shared by six countries. From upriver to downriver, these are: China, Myanmar (Burma), Viet Nam, Laos, Thailand and Cambodia. There have been various efforts at formalising the sharing of the Mekong and in 1966, UN Secretary General U Thant described these attempts 'as one of the most important actions ever undertaken by the United Nations'.<sup>28</sup> Mekong river-sharing has also been important in the complex geopolitics arising out of the Cold War. As such, analysis of the Commission (and its other instantiations, starting from 1957<sup>29</sup>) has focused on these issues. And yet, the importance of rivers as examples of potentially ahistorical unequal State power is also useful to study.

The fact that individuals living downriver are vulnerable to the States that are upriver pertains by virtue of their position along the river though this interplays with other historical and contemporary power struggles. The thought experiment provided by considering a rarified picture of the Mekong river basin reflects real-world realities that play out well beyond the context of rivers. The historic and contemporary power struggles that feed into the Mekong context are similar to tensions that play out much more widely. This moves on from the Bikini Atoll case in some key ways.

Consider three.

First, there is an inequality of both obligation and vulnerability between States and between individuals. People living downriver are vulnerable to damming projects, pollutants, and all aspects of water management that take place upriver. At the same time, those downriver can pollute, dam and use the water to which they have access without the challenges caused by having others downstream (though we might argue that they have other reasons not to do so). Everyone involved must use the same water, then, but some have different constraints of justice than others with regard to its use. In the rarified river case, this derives from the situation that pertains today, irrespective of how it arose. The argument here is not that the States of the Mekong should see it in this way, but to use the Mekong as an example through which to consider a set of relationships of this sort from a liberal perspective.

Second, unlike in the above case of nuclear testing, in the river-sharing example, the activities that activate the noncitizen-State relationship need not be all that extraordinary. Instead, the individuals living downstream from State X are vulnerable to the general well-running of State X. They are vulnerable to the way in which it organises the satisfaction of the basic needs of those living within its territory insofar as these will impact upon water. That

28 Greg Browder and Leonard Ortolano (2000) 'The Evolution of an International Water Resources Management Regime in the Mekong River Basin', pp. 499–531 in *Natural Resources Journal* 40, p. 507.

29 Browder and Ortolano 2000 *ibid.* at p. 500.



is, the claims of downriver individuals may even challenge the way in which State X manages its ordinary internal affairs.

Third, obligations pertain simply because of those States' geographic location. Some States may have better locations than others because historical struggles secured them these positions, but the obligation itself arises simply because individuals downriver need water for the satisfaction of their vital needs and States upriver govern what happens to that water as it passes through their territories. A State may have powers, privileges and obligations irrespective of its previous activities and irrespective of whether the relationship is chosen. While this is not a reason to ignore past injustices, it shows how the noncitizen relationship is not dependent upon agreement about why a certain state of affairs has come into being. What is important is access to capabilities today.

This can help as a tool for understanding State obligations more broadly within global systems that put some States metaphorically upstream and some individuals metaphorically downstream. The Mekong case shows that even if we do not take historical injustices into account, metaphorically upriver States may well have special obligations towards the inhabitants of States that are metaphorically downriver. And if there is no metaphorical clean water downriver as a result, urgent obligations are generated. Financial flows, trade restrictions, and so forth, mean that some individuals become vulnerable to faraway States in a way that can be helpfully understood as an instance of activated noncitizenship. The States that have power over those individuals have special obligations as a result.

### **Shared responsibilities for making life unsustainable: anthropogenic climate change**

Mr. Secretary-General, Mr. President, Excellencies, Ladies and Gentlemen,

I address you today not only as a President, but as a father, as a grandfather, as a custodian of my culture, and as a representative of a nation that lies just two meters above sea level and risks being submerged by rising waves.

Everything I know, and everyone I love, is in the hands of all of us gathered here today

(His Excellency Christopher J. Loeak, President of the Marshall Islands, speaking in France in 2015<sup>30</sup>)

In the case of river-sharing, it was already necessary to take into account multiple State duty-bearers, though the group of States was still small and the line of causation was clear. The case of anthropogenic climate change is more complicated and

30 His Excellency Christopher J. Loeak, President of the Marshall Islands, speaking at the Opening of the UN Framework Convention on Climate Change's 21st Conference of Parties, Paris, France, 30 November 2015.

writers on global justice have long been examining it.<sup>31</sup> The noncitizen relationship can also be found in this context and is useful in analysing the nature of the relationships involved. This is the case even though there is a key difference between anthropogenic climate change and cases like that of river-sharing. That is, there is no single State or unambiguously defined body of States responsible. The line of responsibility is contested and of varying weight and intent. In addition, the individuals affected are spread throughout the world, such that many individuals are vulnerable to many States – and indeed these two groups are intersecting.

Despite this, rising sea levels, loss of natural resources, and more extreme weather events will most affect those living in countries that are more exposed and less resilient to climate hazards.<sup>32</sup> Those living in the countries that industrialised earliest and to the highest level (and so have contributed significantly, and continue to contribute, to anthropogenic climate change) are most likely to be resilient to the changes. This also, then, activates the noncitizen-State relationship from afar. It shares the cataclysmic reality of the nuclear test example, but with the shared responsibility of river-sharing. And it takes both of these aspects well beyond their formations above. It is born of the reality of a complex and mutually dependent world, and yet its impact upon individuals is clear from the statement from President Loeak given at the head of this section.

Anthropogenic climate change can be seen to give rise to two types of burden upon States with regard to securing the capabilities of individuals: mitigation of current and past activities' contribution to ongoing atmospheric pollution, and adaptation of activities in response to the change that has already occurred or is occurring.<sup>33</sup> Individuals in those States which are most badly affected by climate change are particularly vulnerable to the policies of those States which are most polluting and most able to change their pollution patterns. This is alongside being more broadly vulnerable in terms of the structures that make it particularly difficult for the poorest countries to mitigate for changes in climate. There arises, then, a *structural obligation* based upon the special relationship between affected

31 For example, Simon Caney (2010) 'Climate Change and the duties of the advantaged', pp. 203–228 in *Critical Review of International Social and Political Philosophy* 13(1); Henry Shue (1999) 'Global Environment and International Inequality', pp. 531–545 in *International Affairs* 75(3); Dale Jamieson (2001) 'Climate Change and Global Environmental Justice', pp. 287–307 in Clark Miller and Paul Edwards (eds) (2001) *Changing Atmosphere: Expert Knowledge and Environmental Governance*, MIT Press; Steve Vanderheiden (2008) *Atmospheric Justice: A Political Theory of Climate Change*, Oxford University Press. See also Jeremy Moss (ed.) (2015) *Climate Change and Justice*, Cambridge University Press; Nicholas Herbert Stern (2007) *The Economics of Climate Change: The Stern Review*, Cambridge University Press; and World Bank (2010) *World Development Report 2010: Development and Climate Change*, The World Bank, Washington DC.

32 World Bank 2010 *ibid.* at p. 7.

33 For example, see Simon Caney (2005) 'Cosmopolitan Justice, Responsibility, and Global Climate Change', pp. 747–775 in *Leiden Journal of International Law* 18, at p. 751; Simon Caney (2009) 'Climate Change and the Future: Discounting for Time, Wealth and Risk', pp. 163–186 in *Journal of Social Philosophy* 40(2), at p. 204.

individuals and States. This is of a form similar to that in the other cases given above and can be seen as activated noncitizenship experienced from afar.

These different sorts of vulnerability also interact, layering States and obligations. Consider the Bikinians, now living on the Marshall Island of Kili, but also spread around the Marshall Islands and increasingly in the US. Rising sea levels and dramatic storm events associated with anthropogenic climate change are now reportedly making life increasingly difficult on Kili, salinating drinking water, harming crops and damaging infrastructure.<sup>34</sup> Their lives are again being made hard to sustain because of other States' activities – and they are also less resilient to this because of their more general vulnerability. As such, the vulnerability they experience toward those who can stop the pollution and those who can help with the adaptation to the changing conditions amplifies vulnerabilities resulting from the Bravo test discussed above. Again, the very fact of the Bikinians, living in the way they do today, enacting their capabilities despite, rather than thanks to, liberal States and the system of States, poses a challenge for those States and the system of States that have made Bikinians so existentially vulnerable.

Bikinians are in activated noncitizen relationships at least with those States that are increasingly making their homes uninhabitable, which have obligations as a result. Where States are mutually responsible for the vulnerability, we must conclude that they are mutually responsible for the response, experienced in different ways in different locations, in turn leading people to enter into new phases of noncitizenship, with different sets of mechanisms needed in order to fulfil obligations. The obligations, based upon the constraint of capabilities, must be met by enabling rather than further restricting individuals' autonomy.

### **Activated noncitizenship and the drive to migrate**

MIGRAR DEBE SER UNA ALTERNATIVA. PERO NO LA ÚNICA OPCIÓN.

Translation: Migration must be an alternative but not the only option.

(Statement on the shirts of migrant worker rights marchers in NYC, USA in October 2013)

While exclusion plays an important role both inside and outside the territories of States,<sup>35</sup> at the border it is particularly clear how the exclusion works. In 2012, the Mediterranean Sea was recorded to have been the most surveilled sea in the

34 For example, Sarah Kaplan (2015) 'Exiled by nuclear tests, now threatened by climate change, Bikini islanders seek refuge in the U.S.' in the *Washington Post* 28 October 2015; Oliver Milman and Mae Ryan (2016) 'Lives in the balance: climate change and the Marshall Islands', in the *Guardian* online, 15 September 2016.

35 Linda Bosniak (2007) 'Being Here: Ethical Territoriality and the Rights of Immigrants', pp. 389–410 in *Theoretical Inquiries in Law* 8(2).

world, and yet it was also by far the one with the highest loss of life, accounting for 75 per cent of migrant deaths globally.<sup>36</sup> This paradox shows how the physical barriers, and the experience of noncitizenship at them, are not only theoretical. In the Mediterranean, and at the behest of liberal States, the barriers are fences and walls, reinforced by battleships and high-tech surveillance equipment; and controlled by guards with guns. The physical border is also a site where the difference between the dehumanised noncitizen and the citizen is made particularly clear. Lea Ypi has put it as follows: ‘[borders] constitute a visible expression of profoundly unequal distribution of spatially-differentiated opportunities’<sup>37</sup> – as are the ways in which different people experience them.

In enclosing some portion of the world’s people, territory and resources, and excluding some individuals from using them, a State built on liberal principles cannot be justified in ignoring the needs of those thereby excluded. Obligations arise because the enclosure of people, territory and resources by each State has left some people unable to satisfy their basic needs or develop their capabilities to function. This draws upon the other cases above. Consider particularly that of river-sharing. Such persons can be seen as being in activated noncitizen relationships with States, even States far away. Individual-State relationships from afar affect the ways in which people think about moving, the migration opportunities that are possible, and the way in which they experience the border and the space within the border.

For example, as Saskia Sassen and others have observed, major receiving countries tend to receive immigrants from their ‘spheres of influence’.<sup>38</sup> That is, individuals are in States with which they have ‘postcolonial and current neo- or quasi-colonial bonds’,<sup>39</sup> economic links, and organised recruitment of workers, through kinship, family and other networks.<sup>40</sup> States often receive immigrants from amongst those with whom they already have a particularly strongly activated noncitizen relationship as well as forms of quasi-citizenship – with individuals who are metaphorically downstream, or have citizen-like memberships in some dimensions.

State coercion at borders cannot be understood in isolation from what plays out within them, and, importantly, what takes place outside them. It is, then, a mistake to see questions of global justice, and questions of migration justice, in isolation. Rather, it is necessary take into account the wider contexts. As a

36 Tara Brian and Frank Laczko (2014) ‘Migrant Deaths: An International Overview’, pp. 15–44 in Tara Brian and Frank Laczko (eds) (2014) *Fatal Journeys: Tracking Lives Lost During Migration*, International Organization for Migration, p. 20.

37 Lea Ypi (2008) ‘Justice in Migration: A Closed Borders Utopia?’ pp. 391–418 in *Journal of Political Philosophy* 16(4), p. 395.

38 Saskia Sassen (1996) *Losing Control? Sovereignty in an Age of Globalization*, Columbia University Press, New York, at p. 71.

39 For example, almost all immigrants to Europe from the Indian subcontinent and from the English Caribbean in 1996 lived in the UK, and similarly with regard to North Africans and France, and other groups in other former colonial countries (Sassen 1996 *ibid.* at p. 86).

40 Sassen 1996 *ibid.* at p. 82.

starting point, this could include examining individuals' decisions whether to migrate and the ways in which those individuals were already in a substantive noncitizen relationship with a particular State or States from afar, at borders, and within. It will be necessary to examine their changing relationships with the States(s) in question in these different contexts.

At the head of this section is the statement that was printed in yellow on white airtex shirts worn by marchers for migrant workers' rights in New York City in October 2013 – as shown in Figure 7.2. As international diplomats and politicians were discussing migration and development in the High-level Dialogue on International Migration and Development at the UN headquarters in Turtle Bay, these marchers were debating the same topics in the Church Building across the road and then as they marched through the city and over the Brooklyn Bridge. As indicated in the message on their shirts, an important part of understanding *migrant* rights for example is to understand also the right *not to migrate*. These protesters were also arguing that migration does not happen in a vacuum but is part of a global system. I would add that we can see it as a global system of activated noncitizenship. It is common to talk about those that flee war or violence



Figure 7.2 Marchers in NYC, USA, October 2013 (Tendayi Bloom, 2013).

and to recognise the lack of freedom in their decision to move. However, activated noncitizenship may play a role in preventing people from staying put or preventing people from moving in a much broader range of situations, and with a gradation of levels of coercion and choice. For some, it may be a difference between starvation and sustaining life. But for many, this is not the decision. For them, the decision to migrate is the decision to claim their part of the aspirational advantages of the global system.

Consider the concern about 'brain drain'. This is the idea that some countries experience a haemorrhaging of highly skilled professionals who move to countries where they can be better remunerated for their skills, or can enjoy better working conditions, for example. Some argue that there are good capability-based reasons for restricting movement, to stop highly trained professionals leaving the countries that need them the most. Yet, if such individuals struggle to function in the way they want to without moving, this suggests that more work is needed in order to enable those who *can* move to flourish *without* moving, and those who *cannot* move, to flourish *tout court* (which is also made more possible if their society's doctors, nurses, dentists and other professionals are choosing to stay). In a citizenist world, it can be difficult to connect these noncitizen relationships overseas with relationships much more broadly, but the movement of highly trained professionals can help to show the connections between experiences of noncitizenship.

This can be seen through the classic case of healthcare. Some countries now have extremely few medical professionals per capita and struggle to maintain a viable health system.<sup>41</sup> And yet, it seems reasonable for those who have dedicated their lives to develop the skills necessary to work in such professions to move to a place where they can have better conditions, better salary, and be better able to develop as professionals. As it currently stands, this often leads medical personnel to take jobs in wealthy (often liberally based) countries. And those countries are happy to have them. But it is not only the workers themselves who have invested. It costs money to train healthcare professionals.<sup>42</sup> When workers move, then, one State has paid for the training that another State can make use of. This then impacts upon individuals in those States thereby left with less adequate healthcare provision as well as those States which thereby have many more healthcare professionals. This is clearly a matter of global justice.

41 An interesting survey with a troubling, but common, omission of discussion of the individuals migrating: Simon Commander, Mari Kangasniemi and L. Alan Winters (2004) 'The Brain Drain: Curse or Boon? A Survey of the Literature', pp. 235–272 in Robert E. Baldwin and L. Alan Winters (eds) (2004) *Challenges to Globalisation: Analysing the Economics*, University of Chicago Press. See also Ronald Skeldon (2008) 'Of Skilled Migration, Brain Drains and Policy Responses', pp. 3–29 in *International Migration* 47(4).

42 Ashnie Padarath, Charlotte Chamberlain, David McCoy, Antoinette Ntuli, Mike Rowson and Rene Loewenson (2003) *Health Personnel in Southern Africa: Confronting Maldistribution and Brain Drain*, EQUINET Discussion Paper No. 3.

Before thinking this through further, note that the situation is even more complex than this initial summary can make it seem. When workers move, this doesn't only allow the workers themselves to tap into global frameworks from which they would otherwise be excluded. There are two key ways in which home countries – and individuals in those countries – also benefit. First, in the early 2000s, the world was becoming aware of the development importance of remittances.<sup>43</sup> Studies have found, for example, that families with access to remittances from overseas may well be able to access capabilities more easily than other families. Remittances may come from countries nearby or from countries far away. In Nigeria and Senegal in 2013, a World Bank study found that on average almost twice as many family members had a secondary education in households with remittances from outside Africa in comparison to families with no remittances.<sup>44</sup> Second, when skilled professionals are able to gain skills, knowledge and networks overseas, they are also able to help their home countries to tap into these systems.

In the way in which systems are currently designed, however, this movement is not best serving the interests of migrants, their families, and systems of global justice. This puts an obligation upon those who design the systems to develop structures that enable capabilities more generally rather than focusing on capital (Chapter 11 takes up this discussion of human capabilities vs human capital). This includes finding mechanisms to invest in health systems and training institutions that supply highly skilled professionals, for example, and recognising the obligations associated with the noncitizenship of individuals overseas, which is activated when their health workers are attracted to a State far away. Migration justice and justice far away are deeply related. Careful rethinking is needed if migration is really to be an alternative, but not the only option.

### **Presence and the right to be present**

Now turn to the presence itself. Earlier chapters have identified obligations generated in a State when an individual's noncitizenship is activated when the person is present on its territory. If presence itself confers a claim against a State, could it coherently confer a claim to presence itself? To put it another way, once you are in a State, are you *entitled* to be there?<sup>45</sup> Christina Boswell observes that there is a contradiction when, by virtue of being physically present, a person may have claims against a State, and at the same time may not be entitled to that very presence, and so to the entitlement to those rights in the first place.<sup>46</sup> There

43 Critiqued for example in Hein de Haas (2005) 'International Migration, Remittances and Development: Myths and Facts', pp. 1269–1284 in *Third World Quarterly* 26(8). Developed in Chapter 11.

44 Dilip Ratha (2013) 'The Impact of Remittances on Economic Growth and Poverty Reduction', *Migration Policy Institute Policy Brief* No. 8 September 2013, at p. 5 (though the direction of the causation is not clear).

45 I touched upon this already in Chapter 4's discussion of the justified claims of 'unwanted' noncitizens.

46 Christina Boswell (2008) 'The Elusive Rights of an Invisible Population', pp. 187–192 in *Ethics and International Affairs* 22(2).

may well be citizenship-related arguments to be made here, for example referring to an individual's engagement-through-presence with the State and the State community as a citizen, or developing citizenship claims as a result of presence. I leave them to one side.

The noncitizenship approach turns the question around. It is not the inclusion but the exclusion that needs to be justified. The nature of the justification needed may well change once the person is *within* the State. It is the vulnerability and challenge with regard to an individual's capabilities that is important – and it may be heightened when a person is present in the State in question. It is not the *presence* that is relevant, then, but the vulnerability and challenge associated with that presence that gives rise to the obligations. As we have seen, this relationship did not come into existence when that person entered into the territory, but it did change in form. The problem of the confluences between residence and presence, and the difficulty in pinning down the nuances of the specific definitions, can be avoided by instead looking at whether, in each case, the noncitizen relationship is being activated, and in what respects this activation is being experienced. That is, is the person noncitizen-vulnerable? And in what ways does this challenge the State?

Whether it wants to or not, the State where a person *is* provides the roads upon which s/he walks and polices the towns in which s/he interacts. It supplies the park benches upon which s/he might sleep and controls the institutions that s/he must interact with for her/is immediate needs. As will now be presented, not only does that State in fact do these things, it also *has an obligation* to do so, as the entity with effective control over the territory concerned, excluding others from exercising power therein. This means that by virtue of a person's living presence in a State and that State's overall justification for its jurisdiction over a territorial space, the State cannot help but provide certain benefits to, and exert certain coercions upon, someone who is within its territory. And, if it is not to impede that person in her/is capabilities, thus activating her/is noncitizenship, that State also *should* do so.

It is always important to be cautious when drawing parallels between States and entities that are very much not States, but consider for a moment the swimming pool of a private members club. Suppose someone sneaks in who is not a member. We may suppose that it is appropriate to deprive her/im of complementary towels, or even throw her/im out of the swimming pool. However, if s/he runs into difficulties in the water and needs the help of a life-guard, I think few would suggest that s/he should be allowed to drown – and moreover, few would suggest that the obligation to save that person's life is in conflict with the notion that there can be a private members club. Whatever we think about private members clubs and their swimming pools, now that you are in it, the club must take responsibility for saving you. You are dependent upon it, vulnerable to it, with respect to your basic capabilities. Similarly, even supposing the State's right to exclude in some particular case is justified, this does not remove obligations to individuals that bypass the exclusion.



Noncitizenship can be activated far from the State, at its borders, and within its territory. While there may be different obligations associated with the activation at these different locations, the noncitizenship itself is continuous between them. By looking both at situations of noncitizenship activated overseas and at migration it is possible to see this continuity. It is necessary next to understand more about the mechanisms by which noncitizenship can be activated and the implications of this for State obligations towards the individuals concerned.

## 8 Activating noncitizenship

For the most part, the noncitizenship presented in this book is latent, but actions both of States and of individuals can activate it, making an individual both vulnerable and challenging to a State and the State system. There is something faintly idiosyncratic in presenting activated noncitizenship as a relationship of both vulnerability and challenge. While one makes the noncitizen seem weak, the other emphasises the noncitizen's power. This tension is important to understanding the relationship. Non-acknowledgement of a noncitizen's relationship with a State including heightening the deprivations associated with noncitizenship, increasing both the individual's vulnerability and the challenge that her/his situation poses to that State including to its legitimacy. The activation of noncitizenship, then, has two related components: a special sort of vulnerability and a special sort of challenge. Both of these operate bidirectionally: the individual is vulnerable/challenging to a State built upon liberal democratic principles and the State system; and such a State and State system are vulnerable/challenging to the individual. Vulnerability and challenge are not unique to noncitizenship, but in this relationship they take a special form and are deepened in special ways.

By their very nature, the construction and maintenance of States built upon liberal democratic principles and the State system make people vulnerable to that structure in an organised way, something which has long troubled liberal political philosophers. The focus of those addressing this has been upon the mitigation and justification of citizen vulnerability, and it is this that is written into most liberal democratic State constructions. Yet, this book argues that noncitizen-vulnerability is as central to the construction of a State built upon liberal democratic principles as that of citizens. This chapter turns more concertedly to the theoretical implications of this.

### **The subjection of noncitizens**

Much work in liberal political philosophy has focused on establishing whether it is possible, and if so how, to justify the deferral or delegation of power to a State by citizens who, it is assumed, are the ones who defer or delegate that power. One concern amongst those who focus on contracts and consent is whether

citizens could ever really consent to be governed. A particularly well-known presentation of this is David Hume's disparagement of what he refers to as 'tacit consent'<sup>1</sup> and its role as some sort of theoretical fiction. Others have used this consent for example as a device in a thought experiment to establish the conditions to which people would consent if they were asked.

Not all liberal theories focus on consent in this way, but a theory based on consent alone will perhaps find it particularly difficult initially to incorporate noncitizenship because the noncitizen-State relationship cannot, in an important sense, be based upon consent. I focus on such approaches in order to show how even they can incorporate the notion of noncitizenship presented here. There has been little work done to establish the justification of the subjection of those who *by definition* cannot so consent. In addition, there has been little work to examine the contexts within which those persons who *could* consent (i.e. citizens) are non-consenting. This is the crux of the problem of noncitizen-vulnerability and by extension the noncitizen challenge addressed in this book.

As was discussed in Chapter 1, there are two broad exceptions. First, there has been a body of work since the 1980s, growing in the 2000s, examining involuntary subjection of noncitizens in the context of migration. For example, and most famously, Joseph Carens presents an analysis of the hierarchy of citizenship as a feudal system, in which it is absurd to suggest that there is any sort of consent on the part of the 'alien' who falls at the bottom of it.<sup>2</sup> He examines justice in border-crossing, but also, and particularly, the just treatment of arrived migrants. A broad literature has now developed in this area.<sup>3</sup>

Second, scholars working on 'global justice' have examined the involuntary subjection of those experiencing the relationship described here as noncitizenship

1 Hume states: 'Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives, from day to day, by the small wages which he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish the moment he leaves her.' David Hume (1971) 'Of the Original Contract' pp. 147–166 in Ernest Barker (1971) *Essays by Locke, Hume and Rousseau* Oxford University Press, p. 156 [essay first published in 1748]. See also, for example, P.F. Brownsey (1978) 'Hume and the Social Contract', pp. 132–148 in *The Philosophical Quarterly* 28(111).

2 Joseph Carens (1987) 'Aliens and Citizens: The Case for Open Borders', pp. 251–273 in *The Review of Politics* 49(2); Peter Brown and Henry Shue (eds) (1983) *The Border that Joins: Mexican Migrants and U.S. Responsibility*, Rowman & Littlefield.

3 For example, Seyla Benhabib (2004) *The Rights of Others: Aliens, Residents and Citizens*, Cambridge University Press; Linda Bosniak (2007) 'Being Here: Ethical Territoriality and the Rights of Immigrants', pp. 389–410 in *Theoretical Inquiries in Law* 8(2); Christina Boswell (2008) 'The Elusive Rights of an Invisible Population', pp. 187–192 in *Ethics and International Affairs* 8(2); Matthew Gibney (2009) 'Precarious Residents: Migration Control, Membership and the Rights of Non-Citizens', *Human Development Research Paper* 2009(10); Bonnie Honig (2001) *Democracy and the Foreigner*, Princeton University Press; Lea Ypi (2008) 'Justice in Migration: A Closed Borders Utopia?', pp. 391–418 in *Journal of Political Philosophy* 16(4).

far away from their State(s).<sup>4</sup> Practical work on this has developed for example (but by no means exclusively) in the context of discourse responding to anthropogenic climate change.<sup>5</sup> Within this, some have debated whether persons would (and whether they could) consent to the actions of States far away when those actions affect them deeply, including impacting upon their ability to satisfy basic needs.<sup>6</sup> In the (overlapping) literatures both of migration and of global justice, then, theorists have found challenges to the legitimacy of certain State actions or even to States themselves. Some writers observe how these discourses relate to each other, for example, developing the idea of some sort of global citizenship.<sup>7</sup> In this book, the suggestion is that this can be understood usefully through the analytical category of noncitizenship – and in particular that of *activated* noncitizenship.

### **A right to exclude and assuming a non-relationship**

A key way in which noncitizenship has been activated in the cases discussed so far in this book has been when a State does not acknowledge that there is any relationship. This was central to the difficulties experienced by the ‘unwanted noncitizens’ – the irregular migrants and stateless persons – introduced in Chapter 4. That chapter found the non-acknowledgement of the noncitizen-State relationship to be problematic more broadly than in the cases discussed. It critiqued the citizenist assumption of exclusion which means that all individuals are assumed excludable from a State unless they can prove otherwise.

In denying that it has any relationship with an individual noncitizen, a State may in fact give that relationship more substance and further entrench associated obligations. The creation of a State may produce noncitizenship. But it does not follow that the noncitizenship need be *active*. The way in which State institutions are constructed can make noncitizenship more or less strongly experienced. When the State constructs exclusions around its territory, its institutions, or its citizenry, the noncitizenship takes a new form. And there is

4 In different ways: Charles Beitz (1975) ‘Justice and International Relations’, pp. 360–389 in *Philosophy and Public Affairs* 4; Charles Beitz (1979) *Political Theory and International Relations*, Princeton University Press; Gillian Brock (2009) *Global Justice: A Cosmopolitan Account*, Oxford University Press; Simon Caney (2001) ‘Cosmopolitan Justice and Equalising Opportunities’, pp. 113–134 in *Metaphilosophy* 32(1); Nigel Dower (2007) *World Ethics: The New Agenda*, Edinburgh University Press; Jon Mandle (2006) *Global Justice*, Polity Press; Thomas Pogge (ed.) (2003) *Global Justice*, Blackwell Publishing; Thomas Pogge *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, Polity Press; Henry Shue (1980) *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, Princeton University Press; Peter Singer (1993) *Practical Ethics*, 2nd Edition, Cambridge University Press.

5 This is presented in Chapter 7.

6 This is also presented in Chapter 7.

7 Seyla Benhabib (2004) *The Rights of Others: Aliens, Residents, and Citizens*, Cambridge University Press, consider particularly the last chapter; Luis Cabrera (2010) *The Practice of Global Citizenship*, Cambridge University Press.

the potential for it to be activated when the individual's projects are frustrated, or their capabilities impaired. This does not mean that individuals should never be excluded. It means that they should not be *assumed* excludable or even excluded.

The most basic assumption usually made about those who are defined by their lack of citizenship of a particular State is the legitimacy of exclusion (from a territory, from a labour force, from systems of contribution and benefit; including where inclusion is obtained on the basis of meeting some set of conditions that others do not need to meet). This is so even for 'normal noncitizens' (to draw upon Bas Schotel and Joseph Carens's terminology) or 'normal' or 'ordinary' migrants. In many cases, such individuals may have quasi-citizen statuses, deriving from their having a particular salary or employer, or because of the country from which they come (i.e. based on another citizen relationship). Yet, the assumption is still that they *remain vulnerable* to exclusion and must prove their eligibility for inclusion into the systems mentioned above based upon that quasi-citizenship.

To explore this, it is useful to understand critical discourses surrounding the right of States to exclude in the first place. In his 2000 book, *Philosophies of Exclusion*, Phillip Cole argued that political theory as it currently stands is unable to account for the assumed right of States to exclude migrants:

I asked whether liberal political philosophy could answer the membership question in terms that were consistent with its central moral principles and commitments, and I have suggested that the answer to this question is that it cannot. Any solution that has been offered to justify exclusive membership – and therefore immigration and naturalisation regulations – has given rise to an incoherence between the liberal polity's internal and external principles and practices, while those at the border are subjected to illiberal principles and practices.<sup>8</sup>

He laments that if theorists are unable to defend such exclusion from the liberal polity, liberal political theory has reached its limit. Cole's work has proceeded from this point. Subsequent writings by others have responded by reinforcing the requirement to protect emergency migrants, using principles of rescue, and defending protection in extreme cases. This merely addresses some of the unfortunate implications of assumed citizenist exclusion for those who are not defined as citizens without touching upon the underlying problematic that Cole was drawing attention to – that of an unjustified assumption of a State's right to exclude.

In his 2012 book, *On the Right of Exclusion*, Bas Schotel brought the discussion back to this problematic, with a focus in particular on what is required and what is really possible within existing legal frameworks. He presented the

8 Phillip Cole (2000) *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Edinburgh University Press, p. 202.

situation of the ‘normal migrant’, not in an emergency context, not highly skilled, but the ordinary person who is excluded from a liberal polity.<sup>9</sup> Schotel focuses on the assumption of exclusion itself, arguing that the discussion of special leniencies for emergency migrants reinforces that there is an assumption of exclusion, a ‘default’ which he argues is inappropriate and undefended.<sup>10</sup> His way forward is:

First, authorities do not have the legal backing for today’s admission policies; it goes against the structure of law to exclude without justification. Second, not only must authorities justify exclusion, political theory suggests that they should carry the first burden of justification. Third, it is also institutionally possible for the authorities to carry this first burden of justification.<sup>11</sup>

The problems Cole raises with assumed exclusion and Schotel’s movement of the justification burden from individuals to States are compelling. The underlying problem with which both are contending is the theoretical (as well as political, legal, etc.) dominance of citizenship, and in particular of citizenship and quasi-citizenship as the core way in which to assign rights and the core designator of legal personhood.

Yet, as was argued in Chapter 4, while work on migration and immigration is important to consider, it is not the movement that is important. Key is a person’s status in a State, or the way in which a relationship is recognised or not. I argue that the critique, then, is not of the assumed dominance of the needs of people in some place, or of those with established roots in one place rather than another, but the assumed dominance of a particular form of relationship with a State (and so with States in general) – and the largely arbitrary recognition of that relationship. Many have railed against the arbitrariness of birth-based access to citizenship, of the outdatedness of national notions of political belonging and the general inadequacy of existing citizenship regimes.<sup>12</sup> All those things are true, but it does not avoid the fact that it just isn’t all about citizenship.

Linda Bosniak troubles citizenship as the panacea it can sometimes seem, drawing attention to its apparent link in literature and in use to ‘nation’ and ‘nationalism’.<sup>13</sup> She is also disturbed by the fact that ‘despite the term’s apparent inclusiveness and universality, it actually betrays those ideals and conveys a

9 Bas Schotel (2012) *On the Right of Exclusion: Law, Ethics and Immigration Policy*, Routledge.

10 Schotel 2012 *ibid.* p. 201.

11 Schotel 2012 *ibid.* p. 201.

12 For example, see Ayelet Shachar and Ran Hirshl (2007) ‘Citizenship as Inherited Property’, *Political Theory* 35(3); Ayelet Shachar (2009) *The Birthright Lottery: Citizenship and Global Inequality*, Harvard University Press.

13 Linda Bosniak (2010) ‘Persons and citizens in constitutional thought’, pp. 9–29 in *I.CONN* 8(1); Linda Bosniak (2008) *The Citizen and the Alien: Dilemmas in Contemporary Membership*, Princeton University Press.

deeply exclusionary and parochial message'. Bosniak proposes 'giving up on citizenship as an aspirational project altogether'.<sup>14</sup>

This book presents an individual-State relationship which is not about membership. The noncitizenship described here is not like denizenship, which is often more of a not-quite-citizenship. Noncitizenship is a broader type of relationship, and an analytical category in its own right. Yet, the argument here is not for the creation of a legal relationship of noncitizenship, or not yet. It also does not suggest that those that need to be recognised in their noncitizen relationship actually *should* principally be relating as noncitizens. Instead, it argues for a theoretical, cultural and political recognition of the fact of noncitizenship and the obligations to which it gives rise.

Most of the obligations presented here do not deviate from existing legal obligations under human rights frameworks. But they are obligations that are often unfulfilled. The reasons for this are, as I have argued, theoretical, cultural and political. It is because of an underlying assumption of a lack of relationship, or a relationship of lack. It is, then, this theoretical, cultural and political assumption that needs to change if the obligations are to be recognised and fulfilled. That is, a major shift is needed, not only to recognise noncitizenship, but to recognise that there could be a political relationship with a State which is not about membership.

### **Introducing noncitizen-vulnerability**

The non-recognition of noncitizenship makes individuals particularly vulnerable to States and the State system, raising difficult questions for contemporary lived liberal democracy. The failure to acknowledge this reality contributes further to the 'activation' of the noncitizenship. That is, noncitizenship thereby becomes an increasing burden, as individuals' capabilities become dependent upon the decisions and actions of a State or States. Taking noncitizenship seriously means that, irrespective of whether you accept that there may be some sort of implicit citizen consent to State power, there *must* be non-consensual subjection in a world of States, including States built upon liberal democratic principles. This is troubling for many (if not all) forms of liberalism. However, once we acknowledge it, we can examine whether a liberal theory could respond to it justly, and if so, how.

The focus here is upon that aspect of human vulnerability that is engendered or exacerbated by the activated noncitizen-State relationship. That is, such that persons come to be dependent on a State's decisions and actions for the realisation of their capabilities to function without structural means for participation in the sovereign body, for making demands, and indeed without recognition within the structure that such demands can be made. This is 'noncitizen-vulnerability'. Its implications for States will be explored further in Chapter 9, through the

14 Linda Bosniak (1998) 'The Citizenship of Aliens', pp. 29–35 in *Social Text* 56, p. 33.

language of capabilities. It builds upon a large and growing literature on the nature of vulnerability.<sup>15</sup>

Chapter 3 introduced the debate between David Miller, Arash Abizadeh and others on whether or not there is coercion at State borders – and so also on the nature of the coercion that there may or may not be with respect to noncitizens. It was argued that not only does coercion indeed take place at borders between States, but that, seen another way, this is part of a much broader vulnerability of individuals to States. That is, individuals are made vulnerable to States with regard to their basic, as well as less basic, capabilities. Consequently, they also become dependent upon others in new ways. The examples given throughout this book are of individuals whose capabilities are impaired by a State and its actions and by the State system, but also by the collateral vulnerability and dependency upon other individuals that arise as a result.

Robert Goodin's relational approach to vulnerability observes that a child is particularly vulnerable towards its parents because of the special relationship involved, and builds the particular responsibilities to vulnerable persons more generally in this way.<sup>16</sup> He explains that for him the special vulnerability amongst citizens gives rise to special claims and special obligations in a similar way. For Goodin, 'A is vulnerable to B if and only if B's actions have a great impact on A's interests'.<sup>17</sup> The special relationships amongst citizens may well be arbitrary for him. That is, there may be nothing special about the members of a particular State community other than the fact that they are contingently vulnerable to each other. He argues that there are special obligations towards compatriots based upon this vulnerability. However, given the pragmatic reason behind the special obligations, they are not really all that 'special'. In fact, they resemble something more like relationships of convenience. As a result, they can

15 See a particularly useful survey in the introduction to Catriona MacKenzie, Wendy Rogers and Susan Dodds (eds) (2014) *Vulnerability: New Essays in Ethics and Feminist Philosophy*, Oxford University Press. Another way of thinking about vulnerability has been in opposition to resilience. This is found in economics, child development and mental health literatures for example, as well as in recent discourses surrounding sustainable development. However, vulnerability here is also tied up with coercion and loss of independence. See Patrice Engle, Sarah Castle and Purnima Menon (1996) 'Child Development: Vulnerability and Resilience', pp. 621–635 in *Social Science of Medicine* 43(5). See also essays in Steven Southwick, Brett Litz, Dennis Charney and Matthew Friedman (eds) (2011) *Resilience and Mental Health: Challenges Across the Lifespan*, Cambridge University Press.

16 For example, Robert Goodin (1985) *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities*, University of Chicago Press; Robert Goodin (1985) 'Vulnerabilities and Responsibilities: An Ethical Defence of the Welfare State', pp. 775–787 in *American Political Science Review* 79(3). Samuel Scheffler approaches this slightly differently, but it is useful to consider his explicit explanation of how this basis in vulnerability makes it possible for some special responsibilities to be trumped or created in unexpected ways; see Samuel Scheffler (1997) 'Relationships and Responsibilities', pp. 189–209 in *Philosophy and Public Affairs* 26(3).

17 Robert Goodin (1985) 'Vulnerabilities and Responsibilities: An Ethical Defence of the Welfare State', pp. 775–787 in *American Political Science Review* 79(3), p. 779. Goodin explains that he is equating interests with welfare, following the work of Brian Barry 1965 p. 176.



be overridden on the basis of a trumping vulnerability.<sup>18</sup> For Goodin, the vulnerability itself gives rise to moral obligations. This book looks at the obligations arising with respect to vulnerability that has been constructed by the State system. That is, while Goodin's vulnerability could be seen as interactional, this book presents interactions that it sees as institutional.

It could be argued that, given the natural vulnerability of humans, the individuals referred to here would have been vulnerable to other persons or other collectivities in the absence of any particular liberal democratic State structure. Understood like this the particular vulnerability of a noncitizen to a State is not constructed by this institutional structure in the same way. Instead, there is merely a relocation of vulnerability. But I think that the individuals are rendered vulnerable to a State even if they would have been vulnerable if there were no such State. This is for two reasons. First, it is not possible to know whether a person might have been more or less vulnerable in any of a vast universe of possible worlds, and second, hypothetical alternatives are not relevant for today's real world. The fact is that on the basis of the construction of the State and the State system, some people are in fact vulnerable to that institutional structure. And indeed, many people are in fact likely made vulnerable in ways that they would not otherwise have been.

#### Four dimensions of vulnerability

In the fields, *la migra*. My aunt saying, “*No corran*, don't run. They'll think you're *del orto lao*”. In the confusion, Pedro ran, terrified of being caught. He couldn't speak English, couldn't tell them he was fifth generation American. *Sin papeles* – he did not carry his birth certificate to work in the fields. *La migra* took him away while we watched. *Se lo llevaron*. He tried to smile when he looked back at us, to raise his fist. But I saw the shame pushing his head down, I saw the terrible weight of shame hunch his shoulders. They deported him to Guadalajara by plane. The furthest he'd ever been to Mexico was Raynosa, a small border town opposite Hidalgo, Texas, not far from McAllen. Pedro walked all the way to the Valley. *Se lo llevaron sin un centavo al pobre*. *Se vino andando desde Guadalajara*.

(Gloria Anzaldúa, 1987, writing in the opening to *Borderlands/La Frontera*<sup>19</sup>)

The depth and implications of noncitizen vulnerability are nuanced, affected by context and by recognition. These relate to different ways in which noncitizenship is activated. These can be seen in different locations of burden-bearing:

18 Robert Goodin (1988) ‘What Is So Special About Our Fellow Countrymen?’ pp. 663–686 in *Ethics* 98.

19 Gloria Anzaldúa (1987) *Borderlands/La Frontera: The New Mestiza*, Aunt Lute Books, p. 4, emphasis in the original.

- 1 On the territory of a State (*territorially present noncitizen-vulnerability*)
- 2 At State borders (*frontier noncitizen-vulnerability*)
- 3 Physically far from a State (*territorially distant noncitizen-vulnerability*), and
- 4 Potentiality (*noncitizen-vulnerability in potentiality*).

The quotation from Gloria Anzaldúa's semi-autobiographical book above presents a situation in which noncitizenship is functioning in forms 1, 2, and 3, and it shows these forms of noncitizenship being activated in someone who is a formal citizen. Pedro lives in the US as a formal citizen (we are told that he is 'fifth generation American'). His activated noncitizenship is activated while he is in the US and as he is relocated to Mexico. He then experiences activated noncitizenship from afar, though still at the same time a formal citizen. He then walks back to the US and experiences activated noncitizenship at the border. Pedro was assumed excludable and, unable to prove otherwise, was expelled. The tragedy of his case shows how noncitizenship in various locations interact, how noncitizenship and citizenship intertwine, and how the assumption of exclusion plays out in practice.

The first form of noncitizen burden-bearing – *territorially present noncitizen-vulnerability* – pertains when an individual is vulnerable to a State whilst on that State's territory. This form has been the most discussed in this book. Subject to that State's laws, walking on its streets, perhaps sleeping on its park benches, the individual cannot help but encounter the State. And that State has jurisdiction over territory, resources and power in that space.

For the most part, a State does not want other States to act within its territory, or have power over its resources. As such, that State may seek to prevent individuals from looking to other States for the satisfaction of their rights while they are within its territory. As was seen in Chapter 6, there is a concern that when an individual within the territory of State X looks also to State Y, this may involve State Y acting within State X's space of effective control. There is concern about an individual's split loyalties and about the implications of this for the relationship between States. This makes those individuals, who are thereby unable to look elsewhere, vulnerable to the State in which they live in additional ways. This gives rise to obligations in that State, even towards individuals present without its consent. This means that the State has these obligations both by virtue of activated noncitizenship generally and by virtue of the special condition of activated territorially present noncitizen-vulnerability.

There is something else to consider in this case. The State is not only composed of territory, material resources and infrastructure. When an individual is on the territory of a State, s/he is also engaged bodily with the community of people in that State's territory. As has been widely discussed, this may also lead to claims for formal and informal citizenship, defended in a variety of ways.<sup>20</sup>

20 In very different ways, consider Katherine Tonkiss (2013) *Migration and Identity in a Post-National World*, Palgrave Macmillan; Jonathan Seglow (2009) 'Arguments for Naturalisation', pp. 788–804 in *Political Studies* 57(4); Michael Walzer (1983) *Spheres of Justice*, Basic Books; Dora Kostakopoulou (2001) *The Future Governance of Citizenship*, Cambridge University Press.

While I do not directly discuss access to citizenship in this book, it is important to recall the dynamic interactions of citizenship and noncitizenship and to note that nothing in this book should be taken to imply that individuals should not be incorporated as formal citizens. It is also important to consider the citizenry, because the way in which the State institutions are constructed may also make noncitizens vulnerable in noncitizen ways to individuals and in turn to make otherwise citizen individuals vulnerable in special ways. This is through relationships as employers, collaborators and lovers, for example. Recall Elena and Ramadan, pictured in Figure 4.1. When someone relating primarily as a citizen within the community of States and someone relating primarily as a noncitizen fall in love, their capabilities become intertwined.

Second, noncitizen-vulnerability develops at the borders of a State. Let us call this *frontier noncitizen-vulnerability*. This is a complex and hard-to-understand space of coercive power,<sup>21</sup> where the jurisdiction is ambiguous and the rules fuzzy, both theoretically and in fact. In the border-zone, an individual can seem to have no relationship with either/any of the States concerned. As such, individuals could find their positions in the world unacknowledgeable. However, the lens of noncitizenship suggests that they are in fact in strong relationships with *all* such States, all of which thereby develop obligations towards the individuals concerned. In this way their position can be more easily theorised and the implications more easily assessed.

In her opening to the semi-autobiographical book, *Borderlands/La Frontera*, Gloria Anzaldúa describes in a mixture of Spanish and English the space in which she grew up. As was seen in the passage at the head of this section, this mixing of languages helps to demonstrate the ambiguity and flux of the border-zone. She explains that:

[a] borderland is a vague and undetermined place created by the theoretical residue of a vulnerable boundary. It is in a constant state of transition. The prohibited and forbidden are its inhabitants.

She goes on:

Tension grips the inhabitants of the borderlands like a virus. Ambivalence and unrest reside there and death is no stranger.<sup>22</sup>

While she is describing the US–Mexico border, this is reflected also in the descriptions of other border areas. It is a space within which the nature of the State’s coercion is both overt and hidden, both explicit and implicit. It is ambiguous. This is even within the much smaller border-zone of the airport.<sup>23</sup>

21 For example, Tendayi Bloom and Verena Risse (2014) ‘Hidden Coercion at State Borders: Why Carrier Sanctions Cannot be Justified’, pp. 65–82 in *Ethics and Global Politics* 7(2).

22 Anzaldúa 1987 *ibid.* p. 4.

23 Bloom and Risse 2014 *ibid.*

As Anzaldúa describes, the border-zone is also an area in which extremes of State coercion can take place, and where its implications can be difficult to identify and difficult to mourn.<sup>24</sup>

The border-zone exists and is maintained as part of the hegemonic State system. If there are to be borders, there must be border-zones, which are to a greater or lesser extent crisp. As was seen in the example of unwanted and ambivalent citizenship in Chapter 6, even those who do not agree with the delineation of physical frontiers are made vulnerable in their ability to function by the constructed realities of these borders. This becomes particularly clear when considering members of groups whose lives function across recognised international borders. At the borderline and in the border-zone, the activation of noncitizenship – and of citizenship – can also perhaps be seen most clearly. At a border, an individual must prove a special status for recognition. Even a formal citizen at a border must prove that s/he, *qua* human, should be associated with the citizen identity that is acceptable to the State and so prove that s/he has a claim to entry. In the moments before this proof has been made, there is a welling of both noncitizenship and citizenship.

In the third instance – *territorially distant noncitizen-vulnerability* – there is the relationship that develops physically far from a State. This is the sort of relationship discussed particularly in the global justice literature. It includes a broad variety of types of relationship, concerning situations in which the individual is noncitizen-vulnerable to the State in question at a geographical remove. This may take place explicitly, in the direct activities of colonisation, war, and the seizure of resources, for example. This is seen particularly clearly in Chapter 7's discussion of the relationships of the Bikini Atoll islanders with the United States as a result of American nuclear testing on their islands. It may also take place less directly, for example through the failure to regulate activities of others. This may occur when a State does not control the activities of registered companies, particularly when that State will be the only one able to carry out such controls.<sup>25</sup>

Noncitizenship may also be activated when an unfavourable environment is created, for example by trade protectionism and unfair taxation systems.<sup>26</sup> This is likely to be hard to pin down, such as in the case of anthropogenic climate change, in which the noncitizen relationship may be activated for an individual in a region severely affected by climate change with respect to many States

24 For example, see Alexandra Délano Alonso and Benjamin Nienass (2016) *Borders and the Politics of Mourning*, special issue of *Social Research* 83(2).

25 This may happen in the area of industry more generally, but I have raised particular concerns with regard to some sectors directly related to the construction of noncitizenship: Tendayi Bloom (2015) 'The Business of Noncitizenship', pp. 892–906 in *Citizenship Studies* 19(8).

26 Fernando Tesón and Jonathan Klick (2012) 'Global Justice and Trade', in Chi Carmody, Frank Garcia and John Linarelli (eds) (2012) *Global Justice and International Economic Law: Opportunities and Prospects*, Cambridge University Press; Loren Lomasky and Fernando Tesón (2015) *Justice at a Distance: Extending Freedom Globally*, Cambridge University Press; Thomas Pogge and Krishan Mehta (eds) (2016) *Global Tax Fairness*, Oxford University Press.

contribute to excessive CO<sub>2</sub> emissions.<sup>27</sup> The language of noncitizenship helps to trace how the obligations developed in this territorially distant noncitizen-vulnerability form part of a much larger collection of obligations based on liberal democratic State construction – and a system of States along these lines. As such, these distant obligations are continuous with the obligations that arise close at hand – though their implications for practice may differ.

A fourth dimension to the noncitizen vulnerability needs to be added here. This is the vulnerability that is found in a *potential* relationship. This is perhaps the most difficult dimension of the vulnerability to establish and arises where an individual wants to enter into a relationship of one of the forms mentioned above but is deterred from taking any steps in this direction because of potential problems associated with doing so. This inhibits capabilities in ways that are particularly difficult to trace. Perhaps it relates to something like the notion of ‘adaptive preferences’ or Isaiah Berlin’s ‘sour grapes’.<sup>28</sup> An individual may, then, even unknowingly, inhibit her/his preferences, in turn, *based on* her/his limited access to capabilities.

Rabindranath Tagore’s story, ‘A Wife’s Letter’ is interesting to consider here.<sup>29</sup> The story exposes how the structure of sexism makes women extremely vulnerable, and shows how they may develop unique ways to struggle for capabilities *despite* rather than *because of* conditions that currently exist and in the context of institutional vulnerability. This story helps to illustrate that vulnerability, even extreme vulnerability, does not mean passivity or servility. In the story, one woman, having lost the love of her husband, develops her mental capabilities. She writes poetry in secret and then falls in love with another woman in the family home. The second woman is unable to find satisfaction in life and eventually sets herself on fire as the only way to escape the suffering of her status. As such, this story, more than being one of abjection, is a story of the complex ways in which different individuals seek ways to express themselves and to flourish despite circumstances.<sup>30</sup>

This also comes across particularly clearly through Iddrisu Wari’s analysis of his own decision-making and that of those he met during his migration from Ghana to Spain.<sup>31</sup> He draws upon his own experience, both as a migrant who

27 Alexandre Gajevic Sayegh (2016) ‘Climate Justice and Carbon Pricing’, published online ([www.nottingham.ac.uk/climateethicseconomics/documents/papers-workshop-2/gajevic-sayegh.pdf](http://www.nottingham.ac.uk/climateethicseconomics/documents/papers-workshop-2/gajevic-sayegh.pdf)); Henry Shue (2014) *Climate Justice: Vulnerability and Protection*, Oxford University Press (accessed 4 April 2017).

28 Isaiah Berlin (1958) ‘Two Concepts of Liberty’, in Isaiah Berlin (1969) *Four Essays on Liberty*, Oxford University Press.

29 Martha Nussbaum also considers this story in this context, though I propose a different interpretation. Martha Nussbaum (2000) *Women and Human Development: The Human Capabilities Approach*, Cambridge University Press, p. 111.

30 Rabindranath Tagore ‘A Wife’s Letter’, pp. 604–619 in Fakrul Alam and Radha Chakravarty (eds) (2011) *The Essential Tagore*, Harvard University Press.

31 Iddrisu Wari (2016) ‘You Make a Decision and You Start Your Journey: Reflections of a Ghanaian Economic Migrant and Founder of the NGO, CEHDA’, in Belachew Gebrewold and Tendayi Bloom (eds) (2016) *Understanding Migrant Decisions: From sub-Saharan Africa to the Mediterranean Region*, Routledge.

travelled irregularly, and as someone working with sub-Saharan migrants in Spain and North Africa, and would-be migrants in Ghana. His analysis also shows the part played by the potential activation of his noncitizen relationship with several States. Wari describes a number of factors that influenced his decision to migrate across the Mediterranean. A key one amongst these is the discovery that countries of the north would not allow him to enter. That is, when he learnt of the potential activation of his noncitizenship, this in fact activated his territorially distant noncitizen vulnerability in a new way.

From his analysis, it can be seen that he experienced his exclusion in two main types of ways. First, he was dissatisfied in his current situation, and was made more dissatisfied by the fact that certain options were being closed to him. Second, he believed that the desirability or value of that which was being kept from him in denying him entry could be measured by the lengths taken to exclude him. He experienced the awareness that he was excluded as a privation in itself, as a power that a State or States had over him, about which he, *prima facie*, could do nothing. This fourth dimension to noncitizenship is, then, important to understanding noncitizenship as a whole and the nature of the relationship between individuals and States.

Wari experienced another sort of exclusion when he decided to move. At this point, the experience of the denial was more visceral. His aims were frustrated directly. This took place far from the States with which he was experiencing this dimension of the noncitizen relationship. It does not make sense to say that at the time when his movement was impaired he had no relationship with these States, since it is precisely the activities of these States that led him to act in a certain way and their actions that (amongst other things) impaired him in his travels. And yet, the relationship he had initially, while it may be related to territorially distant noncitizen-vulnerability, cannot be completely explained in this way. Part of what made the relationship was Wari's sense of what it could be, its potentiality.

Wari travelled irregularly to Libya and then across the sea to Spain. At times, he implies that he had considered travelling to the UK or to Italy, but Spain is where he ended up. This route, as he notes, was much more expensive and much more dangerous than it would have been if he had been allowed simply to board a plane. There is a relationship of power imposed with no check from the perspective of the noncitizen. The third stage of Wari's activated noncitizenship took place as he experienced the danger of the journey he undertook, including shipwreck and internment, for example, but risking much worse.

In each of these forms of noncitizen-vulnerability the noncitizen relationship is activated differently. That is, the person is rendered noncitizen-vulnerable in different ways. Often, these aspects are addressed as distinct, whether within migration justice, global justice or some other field of investigation. This book argues that they need to be understood as different forms of the same phenomenon: different instantiations of the noncitizen-State relationship. Recall Lea Ypi's argument that borders are problematic, not in themselves, but because

‘they constitute a visible expression of a profoundly unequal distribution of spatially-differentiated opportunities’.<sup>32</sup> The example above helps to demonstrate that the problem is broader. That is, both the difficulties associated with borders and the spatially differentiated opportunities are part of a much broader problem of a failure to acknowledge the necessary and foundational noncitizen relationship and its implications.

This is helpful in a range of ways. First, it is helpful to recognise the underlying similarities between these forms of relationship. They are all aspects of the same noncitizenship that is part of the liberal democratic State. Second, recognising their relationship also helps to foster an overarching theory which makes it more possible to analyse what happens to the obligations when a person moves from one form of noncitizen-State relationship to another. Finally, it demonstrates that the obligations arising from the noncitizen-State relationship do not only arise because of something in the individual, or something in the State. In fact, they are a function of a range of interacting factors, including also relationships between States and between an individual and other States, as well as between that individual and other individuals. The individual’s own needs, interests, desires and priorities also affect the nature of the relationships and the associated obligations.

The extreme situations of abject vulnerability presented for example in Chapter 4 arise when two conditions hold. First, the noncitizen-State relationship goes unrecognised, even aggressively unrecognised. This is often seen in the enforcement of the hyphenated ‘non-citizen’ relationship which has also been used to legitimise atrocities carried out against some individual or group. Second, that person does not currently benefit from a strong State-citizen relationship in relevant ways with any State within the relevant systems of States. Core, then, there must be an obligation to recognise the noncitizen-State relationship as real and substantive, and to examine the complicated ways in which this interacts with other relationships.

Since noncitizenship is not generally recognised either in theory or in practice, someone whose noncitizenship is activated may well live what s/he considers to be a flourishing and fully human life *despite* a State and the State system, not *because of* it or thanks to it. Persons who are formal citizens of a State may also experience noncitizenship in some dimensions, pursuing capability-functionings *despite*, or even at odds with, not *thanks to* the State system. Judith Butler argues that the vulnerability of vulnerable persons can itself be used as part of their struggle for change.<sup>33</sup> And indeed the vulnerability present here is intertwined with a form of challenge born of that vulnerability.

32 Lea Ypi (2008) ‘Justice in Migration: A Closed Borders Utopia?’, pp. 391–418 in *Journal of Political Philosophy* 16(4), p. 395.

33 Judith Butler, Zeynep Gambetti and Leticia Sabsay (2016) *Vulnerability in Resistance*, Duke University Press.

### **Noncitizen challenge**

The obligations of a State towards a noncitizen arise not only as a result of this vulnerability, but as part of the challenge arising from, and tied up with, it. This, in particular, is what sets noncitizen-vulnerability apart from other forms. There is a challenge in general arising from the vulnerability of unrecognised noncitizenship. That is, the citizenist status quo is challenged and this challenge comes in three dimensions:

- 1 The theoretical normative challenge
- 2 The legitimacy challenge, and
- 3 The existential challenge.

These dimensions of noncitizen challenge are deeply intertwined with the noncitizen-vulnerability and its activation described above. As such, an understanding of the obligations that arise will require an understanding of the dynamics of noncitizen-vulnerability, the forms of challenge, and the complex interrelationship of States and individuals and their changing understandings of their own needs and interests.

First, there is the theoretical normative dimension to the challenge which noncitizen vulnerability poses to the way in which the State, based upon liberal democratic norms and the liberal State system, is understood. There is a friction between the liberal democratic theoretical nature of a State (with core values of equality, liberty and individuality, as well as universality of scope) and the definition of some people and their interests as less equal than others. This is compounded by the structural relationship between (unhyphenated) noncitizenship and liberal States.

That is, the problem is not merely that some individuals are seen as less than equal, but that the reality experienced by those individuals is necessarily tied up with that of the liberal State. While the core of this first dimension of the noncitizen challenge is theoretical, it is also associated with the real-world difficulties that this theoretical challenge implies for individuals. This dimension of the noncitizen challenge, I argue, is the most serious, as it challenges the theoretical, psychological and sociological basis of liberal democracy. It is the error in the theory – and in the mindset behind it – that supports the real-world problems that make the noncitizenist project so urgent. This also gives rise to the two other dimensions of challenge.

The second dimension to the noncitizen challenge is one of legitimacy. This problematises how the liberal State and the liberal State system is justified, including how it justifies itself. It includes both the theoretical dimension of the challenge mentioned above and the dimension of the challenge posed by the activities that must be carried out in order to maintain such a system that does not acknowledge the claims of noncitizens. Whereas in the first dimension, the question was whether it is theoretically possible to maintain a State defined on liberal democratic lines, in this second dimension the question is whether it can,



in practical terms, be possible to maintain a State or a State system that is justifiable or legitimate according to liberal democratic norms and does not acknowledge noncitizenship. This sits between the first and the third dimensions of the noncitizen challenge.

The third dimension, building upon the previous two, is the existential dimension to the noncitizen challenge. It has two aspects:

- 1 On the one hand, based on the second dimension to the challenge, the concern is whether any existing system can be understood to be a liberal democratic one when it must act in ways that seem counter to liberal democratic norms. That is, the concern is whether a State thereby undermines its own liberal democratic existence (though not its existence *per se*). This builds upon the second challenge, to ask whether a State that must act illiberally in order to maintain its non-relationship with noncitizens can still be referred to as ‘liberal democratic’.
- 2 On the other hand is the direct existential threat posed by individuals who challenge their noncitizen-vulnerability. This can be seen in real-world attacks to liberal State institutions and in the contraventions of those instruments of protectionism that are shown to be unjust or illegitimate (consider the flouting of borders, riots at detention centres and rejection of property disparities).<sup>34</sup> Cecile Fabre has warned that the poor of the world would be justified in waging violent war against the rich world that keeps them poor.<sup>35</sup> Related, one might want to ask what actions of these experiencing activated noncitizenship might be justifiable.

The work in this book, then, has been to present this three-dimensional noncitizen challenge to the State built upon liberal democratic principles that arises from its ignoring of noncitizenship: theoretical normative, legitimacy-based, and existential.

Related to this is the idea of struggle. Judith Butler’s presentation of vulnerability as potentially itself part of struggle was introduced above.<sup>36</sup> One way this could play out is presented by Celestine Nyamu-Musembi. Nyamu-Musembi proposes that the rights that are really important are those which people identify through their own struggle. She argues that rights are ‘shaped through actual struggles informed by people’s own understandings of what

34 An interesting paper on this is Luis Cabrera (2012) ‘Unauthorised Immigration as Principled Resistance’, Keynote Lecture at *Displacement, Resistance, Representation: Culture and Power in Contexts of Migrancy*, Conference at Queen Mary University of London 28–29 June 2012.

35 Cecile Fabre (2012) *Cosmopolitan War*, Oxford University Press. Can this be related to Martin Borstelmann’s notion of ‘the international civil rights movement’?

36 For example, see Judith Butler (2016) ‘Rethinking Vulnerability and Resistance’, pp. 12–27 in Judith Butler, Zeynep Gambetti, and Leticia Sabsay (eds) (2016) *Vulnerability in Resistance*, Duke University Press.

they are justly entitled to'.<sup>37</sup> If seen this way, then, in the activities in the second part of the third dimension of challenge above, we can identify some serious struggles and so some particularly important rights, and consequent State obligations. As Jeremy Waldron has declared, arguments for basic rights-satisfaction should be put in terms of 'How dare you' rather than 'Please may I'.<sup>38</sup>

The interest here is not in rights *per se*, but in the way in which rights and obligations arise from a special sort of individual-State relationship – and the impact that this relationship has upon individuals' capabilities. The actor-orientated approach of Nyamu-Musembi offers a way in which to incorporate the claims of individuals themselves (whether directly or explicitly, or as evidenced through their struggles) into the theory. Through the challenge that noncitizen-vulnerability poses to a State and the State system, it becomes possible to start to identify the obligations of liberal justice that States have towards such persons in virtue of their noncitizenship.

The challenge can be understood to develop in one of the first two dimensions whether or not people are actually able to struggle. And yet, if we look through a noncitizenist lens, we can see political struggles that are obscured by a citizenist approach. Chapter 11 shows how struggles, from the explicit organised collective action of domestic workers to seek protection of their rights, to the physical movement of migrants globally, can be understood as noncitizenist challenges – and part of a global politics of noncitizenship in a context in which there is often an attempt to stifle noncitizen politics.

Noncitizenship should not only be associated with vulnerability – and the political struggle and challenge of noncitizens should not only be seen as born of vulnerability. In fact, persons experiencing an activated noncitizenship may still realise their capabilities in ways that they value, and ways that are empowered. Through ingenuity and persistence, individuals flourish *despite*, rather than *because of* the State and the State system. This is illustrated, for example, in Khadija Farah's photographs from Dadaab camp in Kenya. Dadaab is the largest refugee camp in the world. Largely outside the jurisdiction of the Kenyan State and so also of the State system, its inhabitants are largely kept from engaging with the particular State or the system of States.

Figure 8.1 shows a woman butcher laughing and slicing meat to be sold and eaten. Farah describes the image:

Muslimo Hassan Ali is one of the busiest butchers in IFO2. Her speciality is camel meat and she is the only one who sells it in the camp. She began as a butcher three years ago as a way to provide for her family. Pictured here is

37 Celestine Nyamu-Musembi (2005) 'Towards an actor-oriented perspective on human rights', pp. 31–49 in Naila Kabeer (ed.) (2005) *Inclusive Citizenship: Meanings and Expressions*, Zed Books p. 31.

38 Jeremy Waldron (1993) *Liberal Rights; Collected Papers 1981–1991*, Cambridge University Press p. 21.



Figure 8.1 Butcher in Dadaab Camp (Khadija Farah).

one of her nine children. Because there is no slaughterhouse in IFO2, Muslimo travels by motorcycle (her own) at 7 am to pick up the meat from IFO camp, roughly 6 km away. “If we had our own slaughterhouse, it would make things much easier on me and the other butchers here,” she says. But she is proud of her business and the fact that she employs three people. “It all started with 3000 shillings and now I have this as well as other small stalls around the camp,” she says with a huge smile on her face. Muslimo also sees her job as providing a necessary service to the community and hopes to continue in this way while supporting her family by expanding the business.

Hassan Ali’s relationship with the Kenyan State is one of activated noncitizenship. She is noncitizen-vulnerable and this is challenging to the State and to its legitimacy. And yet she acts and finds capability-functionings *despite* this.<sup>39</sup> She is forbidden from working and has no access to support on account of her status, and yet she has developed a thriving business that contributes to her community and supports her family. She is vulnerable, but she is far from abject or powerless.

39 For an analysis of the impact of non-acknowledgement of Somalis in Kenya, see Oscar Gakuo Mwangi (2017) ‘Statelessness, Ungoverned Spaces and Security in Kenya’, in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.

Her noncitizen-vulnerability is a challenge, but her flourishing is also challenging in a context in which she is flourishing despite the State. Recognition of her noncitizenship and her capabilities, removing barriers to her flourishing, could help to reduce her noncitizenship activation, reducing her noncitizen-vulnerability and in turn decreasing the challenge it poses to the State and to the State system.

While Heather Johnson's understanding of noncitizenship differs in some core ways from that which is developed here, her work also helps to deepen our understanding of how this functions. She also sees 'the noncitizen as central, a transgressive and disruptive figure in world politics who challenges the ways in which we understand political subjectivity'.<sup>40</sup> I propose that noncitizenship *in itself* is not challenging – indeed, it is a central and normal part of liberal theory if it can only be recognised as such. But *activated* noncitizenship, in a context where noncitizenship is denied recognition and noncitizens are thereby rendered unacceptably vulnerable, *is* challenging. It is this which has the potential to challenge the theory, the legitimacy, and even the existence of the liberal democratic State and the system of States.

Johnson describes how individuals must both identify and hide their identity in order to transgress the structures set up to exclude them. Perhaps the most shocking instantiation of this is found in a 2015 paper mentioned already in Chapter 5. It is entitled 'These Fine Lines', referring to the lines of a fingerprint. In the paper, she uses the words of a poem which describes the process of effacing a person's fingerprints in the fire of a kitchen stove.<sup>41</sup> A picture of just such a kitchen stove sitting in the home of a refused asylum seekers in the UK is found in Chapter 5 (see Figure 5.2).

As can be seen in the different presentations of Waldron, Nyamu-Musembi, Butler, Farah, and Johnson, this is not passive or abstract. Individual noncitizens, in claiming rights, or in living 'as if' they had rights (which, in the absence of a recognised noncitizenship, is usually taken to mean living 'as if' citizens), can seem challenging to the day-to-day reality of States built upon liberal democratic principles, but this is only the case insofar as their rights-claiming is denied and *thereby* politicised.<sup>42</sup> In the case where a person's rights, political agency, and even being, are denied, even mundane activities can be politicised and challenging. I argue that recognising noncitizenship and the place noncitizens hold within the liberal democratic theoretical framework,

40 Heather Johnson (2014) *Borders, Asylum and Global Non-Citizenship: The Other Side of the Fence*, Cambridge University Press. Quoted text appears on p. 1.

41 Heather Johnson (2015) 'These Fine Lines: Locating Noncitizenship in Political Protest in Europe', pp. 951–965 in *Citizenship Studies* 19(8).

42 This has been discussed in very different ways. For example, see Engin Isin (2012) *Citizenship Without Frontiers*, Bloomsbury; Heather Johnson (2014) *Borders, Asylum and Global Non-Citizenship: The Other Side of the Fence*, Cambridge University Press; Yasemin Soysal (1994) *Limits of Citizenship: Migrants and Postnational Membership in Europe*, University of Chicago Press.

and addressing the inhibition of their capabilities, will be crucial to arresting the continued activation of noncitizenship and so the challenge this poses. This may well include recognition of formal citizenships that have been denied, though this is not the focus here.

All these dimensions of the noncitizen challenge derive directly from noncitizen vulnerability and its activation. The project of reclaiming liberal democratic theory, then, will need to find a means of lessening or mitigating this vulnerability and of recognising both noncitizenship and the challenge it poses within a reconceptualisation of liberal democratic theory. Central to this is the commitment to an inalienable right to self-preservation, that '[f]or all human beings to function with a significant degree of rationality and self-awareness, they need a certain minimum amount of physical security, health care, and subsistence ...'<sup>43</sup> This is the aim of the next chapter.

43 Odera Oruka 1989 *ibid.* p. 53.

## 9 Dynamic capabilities

The capabilities approach as it is used here provides a way in which to examine how activated noncitizenship interferes with what a person can do and be and the obligations to which this gives rise. While the content of the obligations arising may differ depending on the context and location of the particular instantiation of the relationship, these obligations are continuous. Far away, a State based on liberal democratic principles has a negative obligation not to infringe a person's access to capabilities, and to facilitate an international system that also does not inhibit capability-functioning. At a State's border, and at the various locations where the border is experienced, the obligations become more direct. Within a State, the obligation is directly to facilitate basic capability-functioning, to facilitate dynamic capabilities, and not to inhibit functioning.

### Background considerations

This approach includes three core concepts: capability, functioning and agency. A person's capability 'represents the various combinations of functioning (beings and doings) which that person can achieve'.<sup>1</sup> There is no need for her/im to make use of them. The agency aspect of the capabilities approach means that individuals simply need to be put into a position in which they could make use of such capabilities to function if they wanted to. This includes dynamic capabilities – the capabilities that an individual has to respond to changing social and institutional conditions but also to contribute to changing them.

This draws heavily on the capabilities approaches of Amartya Sen and Martha Nussbaum, but the intention of the work here differs. Their approaches were primarily directed at providing a tool with which to evaluate how well individuals are faring. In particular, they sought to provide a means of comparison between people and between States (as in the Human Development Index). Ingrid Robeyns identifies three ways in which the capabilities approach is used: (1) to evaluate individual advantage and social arrangements; (2) to critique other approaches; and (3) as a formula for

1 Amartya Sen (1995) *Inequality Reexamined*, Harvard University Press [first published 1992].

making interpersonal comparisons of well-being. She identifies the capabilities approach as a paradigm.<sup>2</sup>

In this chapter, the capabilities approach is used in order to examine what is problematic in the activation of noncitizenship – in order to identify that it is problematic for a State to restrict noncitizens from doing and being and what obligations arise. Here, the intention is not to provide a complete account, but instead to set out a mechanism by which such obligations can be identified and some of the considerations that will need to be factored into its application. Though different, this does not deviate irreconcilably from the capabilities approach of Nussbaum and Sen and, most importantly, maintains the spirit of their approach.

The most common way in which to respond to the liberal democratic assumption of the equal moral worth of humans who thereby have equal claim to the conditions they need for the freedom to flourish is by listing ‘human rights’. This has provided a powerful tool in protecting and promoting the needs of vulnerable persons, but it is not a useful starting point for theoretical work trying to establish why and which States have obligations towards individuals. In reality, it is difficult for some people to claim their human rights. First, in complex cases it is often difficult to establish the location of the obligation to ensure a human right,<sup>3</sup> particularly for persons who do not fall neatly into citizen and quasi-citizen categories.

Underlying citizenship is found in literature on rights which uses the words ‘citizen’ and ‘person’ interchangeably. In addition, the rationale behind obligations associated with rights are often tied into the construction of the State system and what this means for citizens. This risks overlooking special considerations of noncitizenship. Second, the approach of a fixed list of rights, while serving an important pragmatic purpose in implementation, can make it difficult to respond to the changing and complex nature of human life without producing a proliferation of lists to accommodate each nuance that arises. It can be difficult to reflect the way in which existing systems of norms themselves affect the development of future frameworks. The dynamic capabilities approach enables analysis of complex systems and changing social conditions, and how they are shaped.

One group that is often left out from discussions of citizenship, let alone those of non-citizenship and noncitizenship, is that composed of children. However, the special case of children is discussed with regard to capabilities and considering capabilities here can help us to explore the particular importance of children in discussing noncitizenship. Children are important to consider both because they are particularly vulnerable and because it is through children that we can

2 Ingrid Robeyns (2005) ‘The Capability Approach: A Theoretical Survey’, pp. 93–117 in *Journal of Human Development* 6(1).

3 As a particularly stark presentation of this, see Onora O’Neill (2005) ‘The Dark Side of Human Rights’, pp. 427–439 in *International Affairs* 81(2).

most clearly see the temporal and ongoing importance of capabilities and so also the capabilities of noncitizens. This is because children's capabilities today are partially for today and partially for the future. We know that educating children today will enable them to develop as individuals, as workers and as part of the ongoing social and political structures of which they are part, including helping to shape them. But children are not the only ones whose capabilities today affect their capabilities tomorrow.

The consideration of children raises an additional question. As mentioned above, children are particularly vulnerable to adults and each other. They are also particularly vulnerable to the State. Indeed, most States built on liberal democratic principles in fact enforce an additionally restrictive and non-emancipated condition on children within society. They are required to receive an education (which usually means attending school) for example, but are forbidden from working on an equal basis to others in society. There are things that they are not allowed to do and places that they are not allowed to go. Children are also prevented from access to some of the ways in which citizens are able to participate in deciding how the State's power is allocated. They cannot vote or stand for office, for example.

Could these additional aspects of a child's position in society make her/im noncitizen-vulnerable? Jacqueline Bhabha, for example, has interrogated this, questioning whether children are really able to be citizens in current circumstances.<sup>4</sup> Children are vulnerable, and they are vulnerable to States. The vulnerability of children, when it is activated, is also challenging to the States where they live. Indeed, mistreated children are often used as symbolic of errors in policy. This has been particularly the case in the discourse around migration.

### **Why capabilities?**

While the capabilities approach is primarily intended to provide a means of comparison within and across societies, both Sen and Nussbaum move on from this original approach, in different ways and to different extents. For Sen, an understanding of capabilities can help to provide a base-standard for measuring human development. This is seen for example in the Human Development Index which he helped to develop.<sup>5</sup> For Nussbaum, capabilities are not only intended to measure inequality, but:

4 Jacqueline Bhabha (2003) 'The Citizenship Deficit: On Being A Citizen Child', pp. 53–59 in *Development* 46.

5 The Human Development Index is used as a comparative tool to measure the level of development between States. In recent years, additional dimensions have been added and indeed distinct new indices have been added. To see the most recent iteration of this, see the website of the United Nations Development Program: <http://hdr.undp.org/en/content/human-development-index-hdi> (accessed 4 April 2017). For Sen's candid statement of his contribution to, and view of, the measure, see Amartya Sen (1998) 'Mahbub ul Haq: The Courage and Creativity of His Ideas', speech at the memorial meeting for Mahbub ul Haq at the United Nations, quoted in Selim Jehan (2002) 'Evolution of the Human Development Index', *Handbook of Human Development*, Oxford University Press, p. 154.



... to articulate an account of how capabilities, together with the idea of a threshold level of capabilities, can provide a basis for central constitutional principles that citizens have the right to demand from their governments.<sup>6</sup>

Crucially, it also allows the consideration of social interactions. It allows us ‘to explore the social institutions that are favourable for human flourishing, as against those that impede it’.<sup>7</sup> The approach in this chapter is to apply capabilities specifically to the claims of noncitizens.

This chapter takes the evolution of the approach further, using capabilities to frame the analysis of what noncitizens have the right (by justice) to demand from States built upon liberal democratic principles and from the State system. Given the broad understanding of the activated noncitizen-State relationship, based on vulnerability with respect to capabilities and challenge as a result, many of the disadvantaged individuals highlighted by Nussbaum and by Sen can in fact be seen to be experiencing forms of activated noncitizenship (even in the case of persons who are formal citizens). In addition, the practical work to identify capabilities made by both Sen and Nussbaum can provide a useful starting point for establishing what is being impeded in the activation of noncitizenship.

Capabilities are not being used here within a *moral* theory. Instead, the capabilities approach is used to assess institutional arrangements and considerations of *justice*. As such, the dynamic noncitizen capabilities approach developed here avoids some of the main potential criticisms of other forms of the capability approach. In particular, capabilities theorists have been criticised in terms of their theories’ ability to motivate the obligations that they identify.<sup>8</sup> As it is understood here, the obligations arise from the construction of the institutional framework itself. The capability approach provides a valuable tool in the context of noncitizenship because it can be developed in a non-contractarian way, allowing individual autonomy without the need for consent.<sup>9</sup> That is, for example, it does not need to rely on some historic or hypothetical contract amongst individuals or between the individual and the State in order to motivate the obligations of justice. It is not the only approach that will allow this, but this is an important benefit of the capabilities approach.

It is important because, as argued above, noncitizenship cannot be seen as a contractarian or consensual relationship with the relevant State(s) (however tacit or abstract). This book does not make any claims about the nature of the

6 Martha Nussbaum (2000) *Women and Human Development: The Capabilities Approach*, Cambridge University Press, p. 12.

7 Frances Stewart (2013) ‘Capabilities and Human Development: Beyond the Individual – The Critical Role of Social Institutions and Social Competencies’, Human Development Report Office Occasional Paper 2013/03.

8 For example, see Thomas Pogge (2002) ‘Can the Capability Approach be Justified?’, pp. 167–228 in *Philosophical Topics* 30(2); Thomas Pogge (2010) ‘A Critique of the Capability Approach’, pp. 17–60 in Harry Brighouse and Ingrid Robeyns (eds) (2010) *Measuring Justice: Primary Goods and Capabilities*, Cambridge University Press.

9 For a useful explanation of this, see for example Martha Nussbaum (2006) *Frontiers of Justice: Disability, Nationality, Species Membership*, Harvard University Press, from p. 81.

citizen-State relationship and the capability approach developed here is therefore narrow. Yet the noncitizen claims put forward here could potentially be incorporated even within a theoretical framework that is otherwise contractarian (i.e. one in which the citizen-State relationship is constructed on contractarian lines), which arguably will be the family of liberal theory for which incorporation of noncitizens will be particularly difficult.

The flexibility of the capabilities approach also makes it particularly well suited to accommodating evolution and change in social contexts, interests and political constructions. And it allows individuals to be understood as individual decision-makers. More than this, it allows the recognition that policy and institutional structures feed into the context in which interests and capabilities are defined in the first place, contributing to the activation of noncitizenship. It also, then, allows an examination of how the theory itself can influence the situation at both of these levels and can facilitate individuals to contribute positively to that change. Finally, the dynamic capabilities approach in the context of noncitizenship also provides an institutional explanation as to why States should consider the obligations that the approach attributes to them. It is the construction of the State that both motivates the content of the theory and generates the obligations.

The capabilities approach emerged out of two key developments in the second half of the twentieth century. First, feminist discourses were being developed across politics, economics and society in States built upon liberal democratic principles and others.<sup>10</sup> They demanded and produced political theorisations that could both take account of female agency and address aspects of women's lives that were often omitted from theory, such as traditional caring roles.<sup>11</sup>

Second, and related, was the move away from flat economic measures that focused on an accumulation of financial wealth, towards a human-centred understanding of utility,<sup>12</sup> including a more nuanced appreciation of human interest.<sup>13</sup> This was crucial to the creation, in the late 1960s, of the United Nations Development Program (UNDP) under the mantra that people are both the means and the end of economic development.<sup>14</sup> Yet, importantly, the capability approach does not, like welfare economics, for example, put emphasis on valuations

10 Feminist discourses were arising in other States too, though these are not the focus of this book. Chapter 11 revisits feminist literature in more detail.

11 For an overview volume that provides a selection of key texts going back quite far in history, but is necessarily selective about more recent work, there is Estelle Freedman (2007) *Essential Feminist Reader*, Random House. Another survey that does not go so far back in time, but provides a broader disciplinary study is provided by Alison Jagger (2014) *Just Methods: An Interdisciplinary Feminist Reader*, Paradigm. For work specifically on care, see for example Carol Gilligan.

12 Consider, for example, Mahbub ul Haq (1976) *The Poverty Curtain: Choices for the Third World*, Columbia University Press; Amartya Sen (1983) *Choice, Welfare, and Measurement*, Harvard University Press.

13 Amartya Sen (1977) 'Rational Fools: A Critique of the Behavioural Foundations of Economic Theory', pp. 317–344 in *Philosophy and Public Affairs* 6(4).

14 This is put lyrically in the opening to Chapter 3 of Mahbub ul Haq (1995) *Reflections on Human Development*, Oxford University Press. For a critical discussion, see T.N. Srinivasan (1994) 'Human Development: A New Paradigm or Reinvention of the Wheel?', pp. 238–243 in *American Economic Review* 84(2) at p. 239.

between States of what has been produced or achieved. Instead, it focuses on the features of the world and how they put people into a position of capability.<sup>15</sup>

Arising within and between these movements, and within the context, for example, of the work of John Rawls and Thomas Scanlon, Amartya Sen's capability theory calls for multidimensional measures that would be able both to speak to women's experiences of development, and to characterise more accurately the complex nature of how humans want to live out their lives.<sup>16</sup> It was felt that explicitly and intentionally addressing hidden gender discrimination, for example, was needed in order to avoid developing theory that is unthinkingly male-oriented.<sup>17</sup> As he observes:

...one of the many contributions of feminist economics has been precisely to bring out the importance of certain freedoms that were not recognised very clearly – or at all – earlier on, for example freedom from the imposition of fixed and time-honoured family roles, or immunity from implicit derogation in social communication ...<sup>18</sup>

We can add to this the many roles that women often play simultaneously (unpaid housework and caring, paid labour market work, community organising)<sup>19</sup> and the effects of their traditional exclusion from consideration (both political and economic). Crucially, Sen saw the problems raised by an acknowledgement of the needs of women as evidence also of the need for an economic theory that can accommodate a changing social structure with consequent changes in how people view their own interests. His capability approach was intended to offer a nuanced way in which to measure equality or inequality across people within a society or societies in terms of their capabilities to function in the ways that are important to them.

Alongside this, and building in important ways upon her work on Ancient Greek ethical traditions,<sup>20</sup> Martha Nussbaum also developed a capabilities

15 For a neat presentation of the differences between capabilities and welfarist approaches, see for example Robert Sugden (1993) 'Welfare, Resources, and Capabilities: A Review of *Inequality Reexamined* by Amartya Sen', pp. 1947–1962 in *Journal of Economic Literature* XXXI.

16 Amartya Sen (1980) 'Equality of What?' in S. McMurrin (ed.) *The Tanner Lectures on Human Values* University of Utah Press; Amartya Sen (1992) *Inequality Re-examined*, Clarendon Press; Amartya Sen (1999) *Development as Freedom*, Knopf Press.

17 For example, set out in Ingrid Robeyns (2008) 'Sen's Capability Approach and Feminist Concerns', pp. 82–104 in Flavio Comim, Mozaffar Qizilbash and Sabina Alkire (eds) (2008) *The Capability Approach: Concepts, Measures and Applications*, Cambridge University Press; Eva Feder Kittay (1999) *Love's Labour: Essays on Women, Equality and Dependency*, Routledge.

18 Amartya Sen (2004) 'Dialogue: Capabilities, Lists, and Public Reason: Continuing the Conversation', pp. 77–80 in *Feminist Economics* 10(3) (an interview) p. 79.

19 Susan Moller Okin (2003) 'Poverty, Well-Being, and Gender: What Counts, Who's Heard?', pp. 280–316 in *Philosophy and Public Affairs* 31(3), p. 285.

20 To see how Nussbaum herself has presented this, see for example Martha Nussbaum (1992) 'Human Functioning and Social Justice: In Defense of Aristotelian Essentialism', pp. 202–246 in *Political Theory* 20(2); Martha Nussbaum (1987) *Nature, Function and Capability: Aristotle on Political Distribution*, UNU WIDER Working Paper WP31.

approach prioritising those things needed for good human life which was able to respond to the questions raised by feminism and welfare economics. Her approach draws lessons from both Stoic and Aristotelian traditions, characterising the Stoic as holding that every human has dignity and is worthy of reverence merely by virtue of being human,<sup>21</sup> though adding (with feminist ethicists) that humans are also dependent upon each other.<sup>22</sup> And she seeks, with the stoic, a life with ‘truly human functioning’.<sup>23</sup> She also draws upon Aristotle’s analysis of the purpose of human dignity and the goods of human life and flourishing (*eudaimonia*). Nussbaum’s capability approach, then, incorporates both individual human dignity and extreme dependency.<sup>24</sup> It is also intended as a comparative measure, in order to assess justice within a society and across societies.

Together, Sen and Nussbaum have developed a normative discourse of capabilities. This provides the basis for the efforts in this chapter to understand better the implications of the vulnerability of activated noncitizenship. However, while their approaches are intended as mechanisms for assessing societies, comparing individuals’ capabilities, the use of capabilities thinking in this chapter is different. In line with Sen and Nussbaum, irrespective of whether people decide to make use of capabilities, they are valuable. Capabilities are used as a way in which to elaborate the nature of the noncitizen-vulnerability – and what is challenging about it. As such, the capabilities approach is used here to uncover the obligations of States towards noncitizens.

The conceptualisation of capabilities is useful for this project because it provides a way in which to measure the implications of individual-State relationships in terms of what is good for human life. In this way, using capabilities as a tool does not prejudice the outcome of the project based on what any one of us thinks makes life worthwhile. What is important is what each individual believes is important. It also allows for a changing social and institutional construction of society. For example, there will be different implications for what justice requires from a State in an institutional framework that strongly activates noncitizenship than one in which noncitizenship is not strongly activated. And indeed, part of the characterisation of justice that is developed must also take into account the importance of moving from the former to the latter.

21 Martha Nussbaum (2011) *Creating Capabilities: The Human Development Approach*, Cambridge University Press p. 129.

22 In this she draws upon Locke’s comment that the stoic-inspired theorising upon ‘free, equal and independent parties’ ignores the fact that humans are dependent on each other. John Locke [1690] 2008 s.95–99; quoted in Martha Nussbaum (2003) ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, pp. 33–59 in *Feminist Economics* 9.

23 Nussbaum 2003 *ibid.* p. 40.

24 Set out particularly in Martha Nussbaum (2003) ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, pp. 33–59 in *Feminist Economics* 9 p. 53.

## Introducing noncitizen capabilities

Based upon the analyses in foregoing chapters, there are three main levels of capabilities to consider here. To identify them, we need to ask what sort of non-citizen capabilities must not be impaired at all (Level 1) and which should be mitigated (Level 2). Chapter 5 found that another level of capability is being infringed in some extreme cases of noncitizenship activation: the capability to be, and to be seen to be (Level 0). Table 9.1 gives an example of what the content of these levels of capabilities might be. This is a loose list and is intentionally vague. It is certainly not intended to be exhaustive. It builds upon Sen's approach. He intentionally mostly keeps capabilities unspecified. It is also likely that there is bleeding between levels in the table, depending upon context, and depending upon the individual. This is to be expected. The table also accords with other taxonomies. For example, Henry Odera Oruka and Abraham H. Maslow, in different contexts, both focus on what a person is able to think about or desire. As Odera Oruka puts it, a person who is suffering hunger or thirst will be unable to think about other things. And in this way we know that hunger and thirst are basic.<sup>25</sup> Teodros Kiros takes this further, observing that '[t]hose human beings who do not have the money with which to buy food are condemned to die'. He identifies those things which are more or less necessary for bare life first.<sup>26</sup> It is problematic to build a hierarchy beyond this extreme.

The suggestion is that Type One capabilities cannot be acceptably made unavailable, while Type Two capabilities could potentially be mitigated. These will be discussed in turn, but first let us turn to Type Zero capabilities. Type Zero refers to having one's living existence recognised or recognisable. Chapters 4 and 5

Table 9.1 The three types of noncitizen capabilities

Type Zero	Recognition of living human existence.	Making life logically possible.
Type One	Bare life, including bodily and mental integrity.	Healthy: food, water, air, shelter and human-to-human relationships.
Type Two	Day-to-day functioning and flourishing.	Creativity, decision-making, thinking and rationality, play, relationships with nature, aspiration.

25 Henry Odera Oruka (1989) 'The Philosophy of Foreign Aid: A Question of the Right to a Human Minimum', pp. 465–475 in *PRAXIS International* 1988(8), p. 53; A.H. Maslow (1989) 'A Theory of Human Motivation', pp. 20–35 in Harold J. Leavitt, Louis R. Pondy and David M. Bojz (1989) *Readings in Managerial Psychology* 4th Edition, University of Chicago Press [first published in 1964]. Personal safety is included in Type One, love and esteem are included in Type Two. This also resembles the list given by Martha Nussbaum.

26 Teodros Kiros (1992) *Moral Philosophy and Development: The Human Condition in Africa*, Ohio University Press p. 168.

presented how some activities of States and State institutional arrangements with respect to some noncitizens go further than merely denying bare life or even killing. It was found that some institutional arrangements force a person into a situation of presumed non-existence with respect to that State. I proposed that this occurred because of the illogicality in a liberal democratic State construction that does not allow for (unhyphenated) noncitizenship. This is troubling for a political system built upon liberal democratic thinking, or indeed almost any ideological framework. At its most basic, all humans must in fact be recognised to exist as humans. We might debate about whether a particular State has obligations towards that person, but the fact of a person's human existence must be recognised for liberal thinking even to get off the ground.

The core premise of the capabilities approach is that how well rights are secured cannot be measured only by the specific achievements or functionings that people end up with, nor by the tangible resources that they have, though these may be important. It is about putting people in a position of *capability to function* in crucial areas, which may be constrained when noncitizenship is activated. What this means varies from person to person. To take Nussbaum's example (which she takes from Aristotle), Milo the wrestler needs more food than other people,<sup>27</sup> while a person without the use of her/is legs will need equipment unnecessary for someone else.

This is precisely not to say that everyone will need the same starting point or will arrive at the same end point – indeed, the end points are not what is important. The photograph in Figure 9.1 portrays a contemporary Milo of Croton. Paralympian Iliesa Delana won high jump gold at the 2012 Paralympic Games by clearing 1.74 metres. As this picture shows, he also did this with only one leg. The *amount* of functioning a person can derive from any particular resource, then, also differs from person to person. Someone who is unable to digest dairy products is unlikely to derive as much benefit from a glass of milk as another person. The capabilities approach does not require that this person has access to milk, so much as that s/he has access to adequate nutrition, whatever that means for her/im. The capability approach as it is understood here also requires that people have the means to make use of certain material goods.

Finally, different people will want to use their capabilities differently. Consider Level 2 capabilities. One person might derive great satisfaction, and even aspects of self-identity, from developing a skill like writing poetry. Another person might find poetry boring. A third may even want to inhibit her/is indulgence in poetry for ideological reasons that are meaningful to her/im and to her/is self-understanding. This is even the case with capabilities of the first type, since a person might choose to go on hunger strike, or to enjoy camping under

27 This refers to Milo of Croton, an outstanding wrestler of the sixth century who won many awards at the Olympic Games. Aristotle makes the reference in the *Nicomachean Ethics* at 1106b; see Roger Crisp (ed.) (2000) *Aristotle: Nicomachean Ethics*, Cambridge University Press, p. 30. Nussbaum also discusses this example, for example, in Martha Nussbaum (1992) *Love's Knowledge: Essays on Philosophy and Literature*, Oxford University Press.



Figure 9.1 Fijian high-jumper Iliesa Delana wins gold in the 2012 Paralympic Games (Matt Dunham, Associated Press, 2012).

the stars in freezing temperatures. The key in the context of noncitizenship is that it is not the State institutions that write such individuals out of the possibility of enjoying the use of these capabilities. The capabilities approach allows for ‘competing conceptions’ of what is important, while still providing an overall idea of what these could include.<sup>28</sup>

In examining how to use his approach to measure capability, Sen considers this comparison:

[a] person’s advantage in terms of opportunities is judged to be lower than that of another if she has less capability – less real opportunity – to achieve those things that she has reason to value.<sup>29</sup>

The aim then of the capabilities approach from this perspective is not to create a ‘canonical list of rights’, but to provide means for comparisons between people in terms of their access to rights.<sup>30</sup> As one way to think this through, Nussbaum

28 I take the phrase ‘competing conceptions’ from Rosalind Hursthouse in her defines of virtue ethics’ ability to allow for ‘competing conceptions of *eudaimonia*’, or happiness/flourishing. See Rosalind Hursthouse (1991) ‘Virtue Theory and Abortion’, pp. 223–246 in *Philosophy and Public Affairs* 20(3), p. 228 n. 4.

29 Amartya Sen (2009) *The Idea of Justice*, Allen Lane p. 231.

30 Amartya Sen (2005) ‘Human Rights and Capabilities’ pp. 151–166 in *Journal of Human Development* 6(2) p. 157.

lists capabilities that are intended to be both separate and connected.<sup>31</sup> To ensure that the flexibility allowed by this essentially comparative function of the capabilities is retained in the different application of it here, two elements are involved. First, there is the comparative element to a certain, though lesser, extent. Second, there is the explicit use (developed in the following section) of dynamism.

Sen also argues against the notion that there may be a fixed hierarchy of capabilities. That is, for him, it does not make sense to say that a little more food is always more important than a little more shelter, since this would assume that the needs of someone who starves in a warm house and those of someone who eats well but suffers the elements can be appraised in the same way.<sup>32</sup> What is key to the approach presented in this chapter is that a collection of capabilities are needed, in interconnecting ways, to enable a person to flourish. And where noncitizenship is activated, it is the State and the system of States that puts that noncitizen in the relevant situation of vulnerability, and this is challenging to a State built on liberal democratic norms.

In situations of activated noncitizenship, capabilities become inaccessible or at risk of being inaccessible. This then challenges the liberalness of the State and the justifiability of both the State and the system of States along liberal lines. This approach does not require that the capabilities way of understanding is ‘universal’ but only that this impediment to capabilities causes problems for liberalism broadly understood and can frame what is needed to address the challenge. As such, the capabilities approach to noncitizenship could easily be incorporated into a wide variety of existing theoretical approaches.

Broadly, when a noncitizen’s ability to develop in one or more of these dimensions is being impaired by a State, her/is noncitizenship is activated. The most obvious way in which this occurs is when the basic conditions for life are made difficult to access and this is clearest again when it takes place within a State. In such cases, the obligations are also quite clear: there is an obligation to ensure that such basic conditions are not made difficult to access, and also that the individual’s capabilities are not impaired by the existence of the State and the State system (or the way in which it is operating).

When we consider the other capabilities, a difficulty emerges, and it is a difficulty that is not special to the noncitizen approach. This is the problem of how extensive the capability obligations should be and how they should operate (including the imperative to avoid infringing on autonomy). In order to understand this, it will be necessary to triangulate between the current

31 Versions of this list are found for example, at Martha Nussbaum (2000) *Women and Human Development: The Capabilities Approach*, Cambridge University Press pp. 78–80; Martha Nussbaum (2003) ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, pp. 40–42; Martha Nussbaum (2011) *Creating Capabilities: The Human Development Approach*, Harvard University Press pp. 33–35.

32 Sen 2004 *ibid.* p. 78.



reality of States, the State system, the relationship of citizenship, and the relationship of noncitizenship, as well as the various sets of interests involved – and to do this on a case-by-case basis. This will be no small task.

### Introducing dynamism

The capabilities approach was also developed to allow for an evolving understanding of human interests and needs based on public reasoning and discussion. Sen writes that he ‘must stand up against a grand mausoleum to one fixed and final list of capabilities’.<sup>33</sup> And the dynamic capabilities approach presented here also aims to avoid this, as well as taking the dynamism a step further. This section presents my ‘dynamic capabilities’ approach, showing how it builds upon the presentation of capabilities given above, and how it draws upon insights from another body of work addressing something known with the same name, found within the Strategic Management Studies literature<sup>34</sup> – and how it relates both to the dynamism in the theory and to the empowerment of both States and noncitizens to affect it.

The first step of a capabilities approach is the emergency provision of access to capability-functioning right now. This is directed at alleviating the immediate problems associated with activated noncitizenship, but it will not provide a long-term resolution. Into the longer term there is the need for a society in which this sort of emergency direct response is not necessary. Part of how to understand the State’s obligations towards noncitizens, then, is that it must also facilitate a society in which the dignity and individuality of persons in a noncitizen relationship with the State are respected, and noncitizenship is not activated. Or at least, it is not activated in the ways it is activated today. This will need to counter the common contemporary approach in States ostensibly built upon liberal democratic principles, of developing a society in which noncitizens are constructed increasingly as hyphenated non-citizens, as other, as outside the sphere of liberal concern.

As we have seen, justice in the context of capabilities and noncitizenship cannot be satisfied by a one-off creation of any set of rules, even assuming their perfect enforcement. It is a constantly evolving conception of how society(ies) can function, including what capabilities they can realistically provide, with the changing notion of noncitizenship as a crucial aspect of this – and it will need to include recognising noncitizens as the active agents of societal change that they

33 Amartya Sen (2004) ‘Dialogue: Capabilities, Lists, and Public Reason: Continuing the Conversation’, pp. 77–80 in *Feminist Economics* 10(3) (an interview) p. 80.

34 For example, see David Teece and Gary Pisano (1994) ‘The Dynamic Capabilities of Firms: an Introduction’, pp. 537–556 in *Industrial and Corporate Change* 3(3); Birger Wernerfelt (1984) ‘A Resource-Based View of the Firm’, pp. 171–180 in *Strategic Management Journal* 5(2); Véronique Ambrosini, Cliff Bowman and Nardine Collier (2009) ‘Dynamic Capabilities: An Exploration of How Firms Renew Their Resource Base’, *British Journal of Management* 20; David Teece (2009) *Dynamic Capabilities and Strategic Management: Organizing for Innovation and Growth*, Oxford University Press.

are and could be. Moreover, it involves an ongoing feedback from reality into theory. For example, to express this in terms of Judith Lichtenberg's notion of 'situationalism', people are affected in their actions by small changes in their environment.<sup>35</sup> Lichtenberg notes that the way people act is affected by how other people act, and that the way people feel about what they need for well-being is affected by how the others around them are faring.<sup>36</sup> For example, the conditions that people feel that they need in order to flourish may change, including how this does or does not involve others. Part of this will require recognition of the relevance of 'banal' acts (as presented in Chapter 5) and facilitating a responsive social structure.

This is particularly important if we are to take solidarity seriously. In a fragmented society, some individuals may consider their flourishing to be impaired by the need to share space or community with members of some group (whether defined by gender, sexuality, ethnicity, race, nationality or other characteristic). Given the importance that this exclusion may play in the capabilities of those individuals to flourish, it should not be ignored or simply demonised within liberal thinking. However, such a position does cause problems for a liberal society, as it will put barriers in the way of ensuring that people are able to flourish simultaneously. That is, if my ability to flourish requires that you do not flourish then we are stuck with a zero-sum game. We need to acknowledge that I currently feel this way, but not that this is the way things have to be. We also need to examine the institutional structures (of internal injustice and banal dehumanisation, for example) that can seem to pit some individuals against others – and look for ways to address them.

This means that the role played by the institutional structure in facilitating the construction of a society in which individuals can live together must be recognised, and part of the obligation of the State must be to facilitate solidarity. This is because of its importance in making a liberal democratic State society feasible. This is particularly relevant to the situation for those in a noncitizen relationship with States today, since the constructed dehumanisation of some persons as hyphenated non-citizens and their exclusion from societies and from justice-thinking can make it difficult to conceive of ways in which to acknowledge the claims of both noncitizens and citizens. Recognising this problem and the role of institutions in addressing it is part of the second framing of capabilities justice. While justice-thinking as presented here must start from where we find ourselves now, it must be dynamic – recognising the possibility of changing the basic conditions, how they are understood, and how they are shaped. This

35 Judith Lichtenberg (2014) *Distant Strangers: Ethics, Psychology, and Global Poverty*, Cambridge University Press, p. 122. Note also, in a different way, these economists' study of how identity affects how we feel about our interests: George A. Akerlof and Rachel E. Kranton (2010) *Identity Economics: How our Identities Shape Our Work, Wages and Well Being*, Princeton University Press.

36 'The relativity of well-being', see Lichtenberg 2014 *ibid.*, p. 124. A different dimension of this is discussed, for example, in Kate Pickett and Richard Wilkinson (2010) *The Spirit Level: Why Equality is Better for Everyone*, Penguin Books.

might involve, for example, promoting internal justice within societies and avoiding demonising certain individuals. It will also require acknowledging the role of noncitizens in affecting society and institutional structures – and examining how to facilitate this to happen.

The extent to which people feel well disposed to helping others, including specific others, may well alter over time and according to policy. What people consider to be just is also diverse and changes over time; a process which can be actively influenced. This potential to influence how society functions must be a core part of how we understand State obligations in this area. This is because, apart from other things, it is important for enabling noncitizen capabilities to be part of the State's justification for its power. More crucially, it is important for enabling a State built upon liberal democratic principles and a system of States influenced by those principles, to fulfil currently apparently conflicting obligations simultaneously. Persons value different modes of (societal and individual) functioning at different times. To characterise how individuals understand their own capabilities, then, it is necessary to be able to take into account this evolving nature of human functioning, as well as the complex ways in which people view their own interests and affect the perceptions of others. It must also acknowledge that institutions can, and do, manipulate these changing preferences whether they intend to do so or not. Indeed, some decisions must be made which will affect how people view their capabilities and those of others.

There are three ways to see this (and all three can be useful):

- 1 Dynamism in the capabilities
- 2 Dynamism in the theory of those capabilities, and
- 3 Relationship between the two.<sup>37</sup>

That is, it is necessary to allow, first, for flexibility and change in how individuals understand their capabilities and, second, for how this flexibility and change fit within a theory of capabilities, including a social understanding of value. There also needs to be flexibility in a third dimension: in terms of how the *justice of capabilities* operates this will be addressed shortly. The Strategic Management Studies literature in this area shows particularly well that there is a difference between a passively changing system to which a dynamic capabilities approach must respond and a theory in which the dynamic capabilities themselves are understood actively to alter the environment within which they operate.

In this chapter, the emphasis is upon a dynamism that is active rather than responsive. This acknowledges the crucial role of current actions and characterisations of capability, as well as enactment of capability, in shaping the reality to

<sup>37</sup> This idea arose from reading the work on dynamic capabilities within strategic management studies, in particular that of David Teece and Gary Pisano: David Teece (2009) *Dynamic Capabilities & Strategic Management: Organizing for Innovation and Growth* (2011 edition), Oxford University Press, p. 4; David Teece and Gary Pisano (1994) 'Dynamic Capabilities of Firms: an Introduction', pp. 537–556 in *Industrial and Corporate Change* 3(3).

which future instantiations of the theory must respond. This includes both the institutional shaping of society and a recognition of the claims made by citizens and noncitizens alike – and recognition of their own roles in shaping that society. In *Development as Freedom*, Sen argues that '[i]ndividual freedom is quintessentially a social product'.<sup>38</sup> He argues that social arrangements enhance individual freedoms and that, in turn, individual freedoms can help improve social conditions.

In this way, *today's* understanding of justice, and of noncitizen capabilities within that, will help to create the context within which justice, and noncitizen capabilities within that, is understood *tomorrow*. It also presents as part of the dynamic capability framework a requirement to shape the environment within which capabilities are experienced, and to which theories must go on to respond, and to facilitate others to shape it. This is particularly important when it comes to noncitizenship since noncitizens cannot be understood within contractarian or consensual interpretations of individual-State relationships, and *insofar* as they are noncitizens, they may be unable to use traditionally understood democratic means to affect societal and institutional change.

Cultural and political norms can be altered – including through policy decisions. Chapter 5's presentation of banal dehumanisation presented Michael Billig's description of how a State uses its powers to alter action and preferences, through 'banal nationalism'. While many in stable societies may seem to take their nationality for granted, Billig argues that this only works because of an unnoticed constant recreation of the nation. He argues that the nationalism that erupts in times of crisis does not come from nowhere, but draws upon something that is quietly nurtured daily in a mundane, 'banal' way,<sup>39</sup> fixing appropriate behaviours and social categories. Processes like this are central to this second dynamic stage of justice in the context addressed here, and so to the activation – or not – of noncitizenship. Crucially, a State shapes how noncitizenship is understood no matter what. Even if this is by totally ignoring noncitizenship, that State thereby constructs how it will be understood and experienced. And there is a further dimension to this. For liberal theory to work, a noncitizen also needs to be empowered with regard to that construction.

In the construction and reconstruction of State society, some form of norm-shaping is inevitable as decisions are taken for how that State society is to be governed, for example, and how democracy and redistribution is to be organised. So, since these social norm-shaping processes are in fact taking place *in some form*, irrespective of explicit intention, it could be argued that there is an obligation for a State that wants to identify as liberal democratic to *direct* them towards ensuring informal capability-rights-promotion including for those relating to a State as noncitizens. While this may seem like brainwashing, if this construction is going to happen one way or another anyway, then for a State to be liberal democratic, it needs to make sure that the form in which the society is

38 Amartya Sen (1999) *Development As Freedom*, p. 31.

39 Michael Billig (1995) *Banal Nationalism*, Sage Publications [2002 printing] p. 5.

constructed will allow liberal institutions to function. As a result, it becomes necessary for a State based upon liberal democratic norms not only to *avoid* banal dehumanisation but also to *engage in* some sort of banal *humanisation* process to help to address the challenges posed by today's activation of noncitizenship – and to help to develop a society conducive to capability-functioning generally that will allow all participants to be part of shaping it.

This is important. Several of the reasons given for not securing basic capabilities for various categories of persons experiencing activated noncitizenship both within the territory of a State and beyond are sociological. They relate to the maintenance of a coherent society or national culture, or to the idea that similarity is needed in order to motivate collective giving and welfare.<sup>40</sup> It seems from the literature (of which that referred to here is but an extremely small sample) that these factors are not fixed, but cultivated, maintained or disassembled by policy decisions. The dynamic capabilities approach advocated here, then, is not only for the enforcement of human rights (understood through capabilities) as such, but for the development of a context in which individuals have assumed access to capabilities. This could include one in which the claim to noncitizen capability rights does not need to be made because the noncitizenship has not been activated. So long as noncitizenship is activated, a State built upon liberal democratic principles has a self-constructed obligation to address the vulnerability and challenge to which it gives rise through reinstating capabilities to function. This is as true for noncitizenship activated far away as it is for noncitizenship activated within a State's borders, even amongst its formal citizens.

While much discourse can be directed at urgent rights-enforcement, it is worth also exploring how to develop a context in which noncitizenship would not be activated in the way it currently is. This would contribute to the development of a society (at both State and international levels) with better future conditions for justice in relation to noncitizenship. But it would need the collected informal contribution of all those participating in it. It is a mistake, as Waldron for example has pointed out, to take 'the beliefs and preferences of individuals as given', as this risks 'ignoring the fact that forms of society may determine forms of consciousness and the structure and content of preferences'.<sup>41</sup> We can avoid this by seeing society as fundamentally changing, acknowledging that it is possible to affect this positively.

This means that one's own perception of what one can do and be can change according to time, society and policy, amongst other things, and that one can

40 Yael Tamir (1995) *Liberal Nationalism*, Princeton University Press; David Miller (2006) 'Nationalism', pp. 529–545 in John Dryzek and Bonnie Honig (eds) (2006) *The Oxford Handbook of Political Theory*, Oxford University Press; see also education in Kok-Chor Tan (2005) *Justice Without Borders*, Cambridge University Press, at p. 54 and Gillian Brock (2002) 'Liberal Nationalism versus Cosmopolitanism: Locating the Disputes', pp. 307–327 in *Public Affairs Quarterly* 16(4) at p. 308, for example.

41 Jeremy Waldron (1993) *Liberal Rights: Collected Papers 1981–1991*, Cambridge University Press p. 41.

even play a part in shaping it. Gillian Brock writes: ‘all nations are “works-in-progress”, and their characters change.’<sup>42</sup> By this, she means that new individuals, with new ideas and customs do not ‘harm’ or ‘dilute’ culture, but participate in its inevitable evolution. This notion of ‘works-in-progress’ can be usefully adapted to talk about the fundamental notion of the evolution of social rules and norms in terms of rights-satisfaction (*qua* capabilities).

A State based upon liberal democratic norms has an obligation, then, and an interest, in constructing and reconstructing itself to reduce the noncitizen challenge through a reduction of noncitizen-vulnerability (and so of the activation of noncitizenship). This includes the shaping of norms. Achieving this will require not only securing the capabilities of noncitizens, but also the development of a State society and an international society in which those capabilities *can* be operationalised (i.e. such that it is recognised not to be a zero-sum game) and indeed *are* operationalised. This book begins from the world as it is today because this is where we are now, not because the world today is magically different from at any other time.<sup>43</sup> The dynamic capabilities approach to noncitizenism acknowledges the need to generate a more just set of institutions if we start from where we are now.

### **A special relationship**

The capabilities of noncitizens as presented here are not only general moral rights. They are particular and they are institutional, arising within and because of the liberal State system. Moreover, failure to address the capabilities of noncitizens, including their dynamic capabilities, risks significant challenges to a liberal State, theoretically, practically and existentially. The dynamic capabilities approach also allocates correlative duties to States for the rights of specific noncitizens addressing the concern of those like Onora O’Neill that, in order for rights to make sense, they need duty-holders or, to use her language, that ‘a right that nobody is required to respect is simply not a right’.<sup>44</sup> The conception of noncitizen rights developed in this book is also translatable amongst theoretical and contextual traditions. As such, it could be incorporated into a citizenist approach, and one which currently requires that people consent to the State and frame State duties around the conditions of that consent (whether hypothetical or not). Susan Moller Okin criticises some of the work of the theorists discussed in this chapter for not genuinely making space for

42 Brock 2009 *ibid.* p. 197.

43 Hillel Steiner introduces the phrase, ‘magic dates’ to denote a phenomenon, for example, in terms of property-ownership, and group-membership, where, until some magic date, it was possible to join, or take ownership, but after some magic date, the relation is fixed; Steiner 1994 *ibid.*, p. 264.

44 This wording comes from Onora O’Neill’s writing in the context of bioethics, though it is a theme throughout her work. This particular quotation comes from: Onora O’Neill (2002) *Autonomy and Trust in Bioethics*, Cambridge University Press, p. 78.

the ‘silent voices’.<sup>45</sup> For Okin, in the cases she is discussing, those silent voices are the voices of women in so-called ‘developing’ countries. The dynamic capabilities approach addresses this directly, showing why this silencing is problematic and suggesting both how to address it and the potential implications of doing so.

While noncitizens are often silenced, they are also often far from silent. At the time of writing, the clearest way in which noncitizenship is becoming difficult to ignore for liberal States is through migration, making the noncitizen challenge real for liberal democratic States that have often tried to ignore it.<sup>46</sup> This has been driving a rethinking of migration governance frameworks.<sup>47</sup> It does not remove the problem of silence, but it shows that many of those who might seem silent are in fact shouting loudly. As will be shown, particularly in Chapter 11, the dynamic capability approach provides a way in which to frame this and the implications of the associated struggles. It also provides a means by which to look for voices that are currently made inaudible, and politicalities that are otherwise submerged within the liberal democratic State system.

The current reality of activated, unacknowledged, noncitizenship causes substantial problems for a State that wants to see itself as justified according to liberal democratic principles (broadly defined). This is in terms of the vulnerability of individuals to States and the State system and the challenge that this poses. If the liberal democratic State model is to be salvageable it needs to find a way to address this situation. One way in which to construct a solution is through the notion of dynamic capabilities. Sen develops his capabilities approach partly out of a need to address problems raised by feminist economics, but acknowledges that this can also pave the way for other changes based on ‘progress of social understanding’ and ‘the productive role of public discussion, social agitation, and open debates’.<sup>48</sup> A noncitizenist critique of existing systems provides just such an opportunity.

45 Susan Moller Okin (2003) ‘Poverty, Well-Being, and Gender: What Counts, Who’s Heard?’, pp. 280–316 in *Philosophy and Public Affairs* 31(2), p. 301.

46 And indeed, the economic and other costs to the States of maintaining this ignorance has been considerable.

47 This is developed in Chapter 11.

48 Amartya Sen (2004) ‘Dialogue: Capabilities, Lists, and Public Reason: Continuing the Conversation’, pp. 77–80 in *Feminist Economics* 10(3) (an interview), p. 80.

## 10 Learning from feminism

Feminism refers to a body of approaches that assert that women should be valued, and their needs and interests addressed, on an equal basis to men – and that this is not yet the case.<sup>1</sup> This includes the proposition that a woman can hold a political relationship with a State that is not mediated by a man. Some feminist approaches focus more directly on social aspects of female experience, others on person-to-person implications, but the interest here is particularly in the institutional relationships between individuals and States, with a focus on what this means in a liberal democratic context. Arising in response to sexism in a related way to that in which noncitizenism arises in response to citizenism or statusism, feminism is examined in this chapter as a methodological tool from which noncitizenism can learn. That is, this chapter analyses feminist critiques of liberalism, and in turn critiques of those critiques, in order to develop methodological insights for the development of noncitizenism.

Appropriately, terminology in this area is controversial. This chapter adopts the following conventions:<sup>2</sup> ‘sex’, ‘physical maleness’ and ‘physical femaleness’ are used here to refer narrowly to a person’s physical sex, including her/his organs and hormonal organisation. It is acknowledged that one person can be both physically female and physically male, or can transition between them. The words ‘gender’, ‘womanhood’ and ‘femaleness’ are used here to refer to much broader social and institutional constructions, including role allocation, for example.<sup>3</sup>

1 Some writers on feminism use the plural, ‘feminisms’. I agree that there is no singular feminist position. However, as I have adopted the singular ‘liberalism’ while acknowledging the diversity of liberalisms I will also adopt the singular ‘feminism’ to refer to the broad spectrum of positions that can be described in some form as feminist.

2 The terminology adopted broadly follows common usage found in contemporary feminist theory. It is set out, e.g. in Ann Oakley (2015) *Sex, Gender and Society* Revised Edition, Ashgate [first published 1972], at Chapter 6.

3 For example, Pierre Bourdieu (2001) *Masculine Domination*, Polity Press. See also Oyeronke Oyewami (1997) *The Invention of Women: Making An African Sense of Western Gender Discourses*, The University of Minnesota Press.



## Why learn from feminism?

It might seem arbitrary to draw upon feminism here rather than on movements responding to institutional and legalised racism, for example. There are obvious connections between (hyphenated) non-citizenship and racism today and the intersections of this with class and other factors. The focus here is on feminism because of the necessary structural challenges that it shares with noncitizenship. That is, it is theoretically inconsistent for a liberal State to lack a conception of noncitizenship. And it is currently physically inconsistent for it to lack a conception of physical femaleness (the question of whether baby-making machines might make recognition of sex unnecessary some time in the future is a topic for another book). In both cases, these inconsistencies risk translation into injustices when these relations are ignored or denied.

Race and class are not necessary in this way. It is theoretically and physically possible for there to be a just society without notions of race and class.<sup>4</sup> In developing a system of justice today it is crucial to acknowledge directly, and to address, the many-faceted institutionalised realities of race and class. They are currently pervasive and ignoring or denying these distinctions within contemporary societies risks injustice. Yet this is only contingently the case. For this reason, the very real structural implications of aspects like race, class and gender – understood beyond physical sex – need to be deconstructed as part of developing a dynamic route towards a just State society.<sup>5</sup> It is possible to imagine and maybe even work towards a context in which these distinctions are not made. Not so for noncitizenship.

There is also an important difference between noncitizenship and *all* these other relations. Absent these efforts at recognition, class, race, gender and other arbitrary distinctions will continue to be intersecting routes *through which* noncitizenship is activated, including amongst those who are formal citizens. It is important also to consider age here – both old age and young age – in terms of its implications for the activation of noncitizenship. In the history of liberal democratic theory, all of these factors have been part of writing people out of access to citizenship or consideration within the liberal nexus, and to discriminating also amongst formal citizens, from the outset.<sup>6</sup>

Feminism is examined here, then, because of its similarity in form in some ways with noncitizenship and the lessons which it can therefore teach (including through its mistakes) to nascent noncitizenship.

4 The unnecessary nature of race is presented, for example, in Kwame Antony Appiah (1992) *In My Father's House. Africa in the Philosophy of Culture*, Oxford University Press, from p. 28. That race is unnecessary, but currently very important to address, see for example Tendayi Marovah (2015) 'Using the Capability Approach to Conceptualise African Identity(ies)' pp. 42–57 in *Phronimon* 16(2).

5 Consider the institutional measures suggested by: Angela Davis (1998) 'Prosecution and Race: The Power and Privilege of Discretion', *Fordham Law Review* 13; other aspects for consideration are physical ability, settledness, age, for example.

6 This is presented in Chapters 3 and 9.

Some have tried to examine feminism as *parallel* to other -isms and this has not generally been successful. This is not the project here. Catharine MacKinnon for example explains how she had hoped to analyse feminism as a parallel to Marxism, such that feminism relates to gender as Marxism relates to class.<sup>7</sup> She explains that she found that this parallel was too simplistic. Geraldine Heng, meanwhile, presents how nationalisms that construct women as the perpetrators of a nation may not dialogue well with feminist movements that have developed alongside them (or even within them) as part of the same anti-colonial struggles.<sup>8</sup>

Attempts to model feminism as parallel to struggles against racism may be unable to take into account intersectional realities.<sup>9</sup> Where feminism is seen as *parallel* to the struggle against racism, the compounded struggle of people experiencing exclusion in both dimensions at the same time becomes difficult to analyse. A Black woman in the UK may well not only experience discrimination on the basis of being a woman and discrimination on the basis of being a Black person. She may well also experience additional discrimination on the basis of being a Black woman and this is difficult to analyse if feminism and the struggle against racism are seen as parallel. This chapter is instead using a study of feminism to inform the development of noncitizenship.<sup>10</sup>

The necessity in feminism and in noncitizenship are also of different sorts. Noncitizenship as presented here is a foundational relationship of a State built upon liberal democratic principles. It is as foundational as citizenship, but also meaningless in the absence of those liberal democratic institutions that created it. The necessity of physical femaleness is of a different sort. A just State must include a recognition of the core physical realities of maleness and femaleness including pregnancy and childbirth. This is not to suggest anything necessary about gender beyond that. And it is not to assume that maleness and femaleness are mutually exclusive or all-encompassing or to suppose them uncontested.<sup>11</sup>

7 Catharine MacKinnon (1989) *Toward a Feminist Theory of the State*, Harvard University Press.

8 Her focus is Singapore and Malaysia. Geraldine Heng (1997) ‘“A Great Way to Fly”: Nationalism, the State, and the Varieties of Third-World Feminism’, pp. 30–45 in M. Jacqui Alexander and Chandra Talpade Mohanty (1997) *Feminist Genealogies, Colonial Legacies, Democratic Futures*, Routledge. She also shows how the notion that feminism is ‘Western’ can be used against it by anti-colonial nationalist movements at p. 33.

9 bell hooks (1983) *Ain’t I a Woman: Black Women and Feminism*, Pluto Press.

10 This is not novel. Others have used the study of feminism to frame a discussion of other movements. For example, Charles Mills looks at the feminist approach to patriarchal liberalism to enrich his study of a racially organised liberal structure. Charles Mills (2015) ‘Race and Global Justice’, pp. 181–205 in Barbara Buckinx Jonathan Trejo-Mathys and Timothy Waligore (eds) (2015) *Dominated Global Political Justice: Conceptual, Historical, and Institutional Perspectives*, Routledge.

11 Indeed, in 1949, Simone de Beauvoir famously wrote ‘One is not born, but rather becomes, a woman’, in Simone de Beauvoir (1972) *The Second Sex*, Penguin [translated by H.M. Parshley]. Cynthia Fuchs Epstein (1988) *Deceptive Distinctions: Sex, Gender and the Social Order*, Yale University Press, provides a careful analysis of structural and cultural contexts that produce differences of gender sometimes thought to be scientifically based.

Much feminist work has argued that, while narrowly defined physical sex may be pre-institutional, gender roles are created by institutions and by society.<sup>12</sup> The rejection of binarity in this book was inspired by the work carried out in gender discourses that reject the traditional binary approach to gender identity and to gender roles.<sup>13</sup> The argument here is only that, as femaleness is minimally physically necessary, so noncitizenship is theoretically necessary in a liberal democratic State. Though they are necessary in very different ways and have very different implications for liberal State self-understanding, in both cases the necessity of two types of relation often leads to an assumption of binarity between these two categories of relationship, with one side normative and the other side represented as a lack.

Noncitizenship must navigate a path between a theoretical fact – that there is noncitizenship and there is citizenship – and the misappropriation of this as a binary in dominant interpretations of liberalism. That is, on the one hand there is the failure to recognise obligations that arise in the noncitizen relationship. On the other hand, there is the attribution to (unacknowledged) noncitizenship of arbitrary dimensions that do not derive from the theoretical necessity. Central to this is the non-recognition of (unhyphenated) noncitizenship and the construction of anything other than citizenship as an absence. This results in the assumption that some people are seen as appropriately citizens or quasi-citizens and that others have no political reality at all.<sup>14</sup>

Kum-Kum Bhavnani and Margaret Coulson raise a related concern – and identify a trap to be avoided. They argue that the broader sociological reality of gender, because it appears to be based on the physical reality of sex, can itself seem necessary. They argue that '[t]he problem with the concept of gender is that it is rooted in an apparently simple and "real" material base of biological difference between women and men'.<sup>15</sup> However, they argue that this misses the complex experiences of gender that arise from the realities of social constructions of power. This relates closely to the worry presented here in the case of noncitizenship.

In this chapter, as throughout the book, the emphasis is upon implications for liberal democratic thinking. As such, focus is upon the role of feminism within liberal democratic thought and other feminist thinking where relevant. The increasing inclusion of feminist considerations in liberal political theory and wider political and legal discourse has led to enriched theory. This is found

12 Catherine MacKinnon examines the relationship between the State's institutional power and the social and legal construction of 'woman'; Catherine MacKinnon (1991) *Towards a Feminist Theory of the State*, Harvard University Press; Suzanne J. Kessler and Wendy McKenna (1978) *Gender: An Ethnomethodological Approach*, University of Chicago Press.

13 Judith Butler (1990) *Gender Trouble: Feminism and the Subversion of Identity*, Routledge; Judith Lobber (2007) 'Beyond the Binaries: Depolarising the Categories of Sex, Sexuality, and Gender', pp. 143–159 in *Sociological Inquiry* 66(2).

14 This echoes the pre-fathers of modern liberalism, Aristotle and Plato.

15 Kum-Kum Bhavnani and Margaret Coulson (1986) 'Transforming Socialist-Feminism: The Challenge of Racism', pp. 81–92 in *Feminist Review* 23, at p. 84.

amongst those working in feminist thought directly and those who, though influenced by the new ways of thinking that feminist considerations have necessitated, might not see themselves as feminist political theorists.

As a result of a mainstreaming of feminism, the culture of political theory today, and the policy frameworks it proposes and critiques, are truer to the way societies function. They are better able to take into account more complex and nuanced social considerations (such as the family, childhood, periodic sickness and caring roles) that affect everyone in society, not only those identified as women. Such considerations were not adequately addressed until feminist analyses were applied to States' institutional structures – and did so, to coin a phrase, 'from the ground up'.<sup>16</sup>

### **The household writ large**

In the 1980s and 1990s, feminist liberal political theorists identified substantial problems with liberal political theory which, without argument, assumed the household to be the fundamental unit of human political organisation, thereby ignoring relationships *within* the household. John Rawls himself, in a passage published posthumously by Martha Nussbaum, can be observed to have remarked on the lack of work in this area:

Except for the great John Stuart Mill,<sup>17</sup> one serious fault of writers in the liberal line is that until recently none have discussed in any detail the urgent questions of the justice of the family, the equal justice of women and how these things are to be achieved. Susan Okin's contentions about this in *Justice, Gender and the Family* cannot be denied.<sup>18</sup> Liberal writers who are men should, with whatever grace they can muster, plead solo contender to her complaints.<sup>19</sup>

Some feminist theorists have argued that theories which have assumed the household as the core unit of society have been unable to take into account the different roles of individuals *within* a household and in particular the implications of this for females (with the physical sex and the gender categories conflated) more generally.

Perhaps the most famous part of Rawls's work is his thought experiment of the 'veil of ignorance'. In *A Theory of Justice*, published 20 years before he wrote the above comments, he asks his reader to imagine that everyone in society withdraws behind a veil. In that hypothetical space, they are ignorant of

16 For example, Mills 2015 *ibid.* p. 193.

17 For example, see John Stuart Mill (1869) *The Subjection of Women*, D. Appleton and Company (note that the full text of this essay is currently available through Google Books).

18 Susan Moller Okin (1989) *Justice, Gender and the Family*, Basic Books.

19 Reproduced and discussed in Martha Nussbaum (2003) 'Rawls and Feminism', pp. 488–520 in Samuel Richard Freeman (ed.) (2003) *The Cambridge Companion to Rawls*, Cambridge University Press, taken from an unpublished manuscript, 1994.

their positions in society. Behind this so-called ‘veil of ignorance’, Rawls asks us to imagine that people must decide upon principles of justice to which they could agree no matter their eventual social position. This thought experiment is central to Rawls’s work and motivates his conception of justice. However, Susan Moller Okin points out that for Rawls it is not all *people* that withdraw behind the veil, but all people, represented by *heads of households*.<sup>20</sup> This means that the organisation of society is not to be examined from the perspective of individuals, but households and, in particular, from the perspective of heads of households (however this is to be understood). This is not unique to Rawls.

In addition, while people are required to ignore arbitrary characteristics, sex is not explicitly given as one of the arbitrary attributes that people behind the veil are required to ignore. Rawls writes:

Amongst the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like. We shall even assume that the parties do not know their conceptions of the good or their special psychological propensities.<sup>21</sup>

This makes it difficult, using this thought experiment alone, to interrogate the household. And it makes it difficult to examine the relevance of physical sex and gender to justice in society more generally. Theorist Anne Phillips concludes that, ‘sex-blindness is compounded when Rawls simply assumes that the family is just’.<sup>22</sup> If this is so, it is not enough simply to re-include sex as an arbitrary characteristic *post hoc* or to open out the household in isolation. That said, in *A Theory of Justice*, Rawls does list ‘the monogamous family’ amongst the ‘major social institutions’ to be considered.<sup>23</sup> This suggests that he might have in mind some other mechanism for interrogating justice within the family. In any case, it is not clear.<sup>24</sup>

Subsequently, Rawls *does* acknowledge that sex should be one of the contingent characteristics in the theory, but he does not explain the implications of this.<sup>25</sup> New

20 Susan Moller Okin argues that this is not unique. Okin observes that ‘while liberal theorists claim to be writing about individuals, scratch the surface of any of their theories and you will find out that they are almost all actually talking about male heads of households’, Susan Moller Okin (2005) ‘“Forty Acres and a Mule” for Women: Rawls and Feminism’, pp. 233–248 in *Politics, Philosophy and Economics* 4(2), at p. 234.

21 John Rawls (2003) *A Theory of Justice*, Harvard University Press [first published 1971] at p. 11.

22 Anne Phillips (1992) ‘Universal Pretensions in Political Thought’, pp. 10–30 in Michèle Barrett and Anne Phillips (1992) *Destabilizing Theory: Contemporary Feminist Debates*, Stanford University Press, at p. 18; Susan Moller Okin (1991) ‘John Rawls: Justice as Fairness – For Whom?’ in Mary Lyndon Shanley and Carole Pateman (eds) (1991) *Feminist Interpretations and Political Theory*, Polity Press; Moller Okin 1989 *ibid*.

23 John Rawls (2003) *A Theory of Justice*, Harvard University Press [first published 1971]. p. 6.

24 See useful discussion in: Véronique Munoz-Dardé (1998) ‘Rawls, Justice in the Family and Justice of the Family’, pp. 335–352 in *The Philosophy Quarterly* 48(192).

25 Sex is mentioned in John Rawls (1975) ‘Fairness to Goodness’ pp. 536–554 in *Philosophical Review* 84(4) at p. 537.

theoretical approaches arising, such as the ethics of care,<sup>26</sup> acknowledge in different ways the complex network of roles within societies and challenge the traditional view that most human life could be structured around a life plan that merely starts and ends with vulnerability.<sup>27</sup> Instead, these traditions argue that people are vulnerable to, and dependent upon, each other in changing ways throughout their lives. Henry Odera Oruka goes so far as to suggest that it is in this way that we experience the world.<sup>28</sup>

In this way also, the crucial role of solidarity in liberalism can be seen. That is, while liberalism is often accused of being individualistic, in fact this is only in terms of value. It does not need to deny the deep connectedness between people, and the importance of this for their well-being. People experience periods of sickness and they rely upon each other for the satisfaction of basic needs, and they may well need each other and society in order to flourish. The way in which the institutions of society are structured can alter the implications of this for specific individuals, identified, for example, by sex.

This approach to sex shares elements with the citizenist global framing confronted in this book. One writer, Deborah Kearns, has proposed that Rawls might not have engaged directly with the justice or injustice of the family because he recognised that ‘the family is not necessarily a just institution’. It is for this reason, Kearns suggests, that he did not include it within the scope of his interrogation of justice.<sup>29</sup> The apparently indefensible illiberalism within the family structure could be seen as echoed in what philosopher Phillip Cole has presented as an intractable illiberalism of migration controls and closed borders, which he finds is passed over in liberal theoretical work.<sup>30</sup> The potential of Cole’s observation to unseat the whole liberal architecture can explain a reticence to address it directly within some mainstream liberal thinking. Perhaps this is because there are problems that have seemed so intractable that, as Kearns suggests in the case of the family, they are merely put to one side.<sup>31</sup>

When political theory and popular discourse automatically defines women as derivative in their political relationships with a State from men, it becomes difficult to analyse the household. As a result, violence within the household, and its implication for systems of justice, can be overlooked. Similarly, the structural and other

26 For example, see presentation of this in Virginia Held (2006) *Ethics of Care: Personal, Political and Global*, Oxford University Press.

27 Moller Okin 2005 *ibid*.

28 See Henry Odera Oruka 1989 *ibid*, and also Robert Sugden.

29 Deborah Kearns (1983) ‘A Theory of Justice – and Love; Rawls on the Family’, pp. 36–42 in *Politics* 18(2).

30 Phillip Cole (2000) *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Edinburgh University Press.

31 Perhaps there is something more to this. Grada Kilomba refers to the ‘ego defense mechanism’ found in the colonialist project which inverts ownership and responsibility in response to anxiety, both of the colonised and the coloniser, to create beliefs like ‘I have never experienced racism’ or ‘we had no colonies’. Grada Kilomba (2010) *Plantation Memories: Episodes of Everyday Racism* 2nd Edition, Unrast, at p. 18.

violence against (hyphenated) non-citizens can be difficult to analyse within a liberal democratic theory of States that sees noncitizenship only as hyphenated, and only as derivative from citizenship as the lack of a relationship rather than a relationship in its own right.

In the political and legal systems of States ostensibly built upon liberal democratic principles, it has taken identifying women as political actors in their own right, with a recognition of their own relationships with States, in combination with an increasing audibility of women's voices, for the associated rights claims and duties to be acknowledged and enacted more widely. Something similar could be the case for noncitizens. So long as the noncitizen relationship is insufficient for rights-claiming on its own, people experiencing activated noncitizenship will be assumed, to different extents, rightsless. Assuming noncitizens to have only a lack of a relationship with a State until proven otherwise allows substantial abuses. Feminism provides a model of how this can change – indeed, how it can change dramatically in liberal democratic thought in only a few decades. Feminism in theory and in practice has affected policy-making, popular discourse, and lives in States built upon liberal democratic principles.

Sociologist Christian Joppke has written much on the exclusions made by liberal States in terms of citizenship and at borders. He has observed that:

... the most significant development in the past half century has been the liberalization of access to citizenship, removing sexual and racial barriers to naturalization and upgrading territory over descent in the birth attribution of citizenship.<sup>32</sup>

I agree with Joppke's emphasis on a notion of citizenship that moves away from prejudice based on gender and race and other accidents of birth – though I would add that birth on a territory is itself an accident of birth. But this is not enough. As has been argued throughout this book, it is necessary also to recognise non-citizenship as a relationship in itself. This is in order to show that people have claims to rights as noncitizens, to enable individuals to claim rights without having to claim citizenships, and to prevent people from being excluded from rights arbitrarily on the basis of withheld citizenship, and to remove the coercion to seek citizenship even when it is contested.

## **Rejecting binarity**

The rejection of binarity in developing the notion of noncitizenship has its roots in discourses rejecting gender binarity. Such discourses spurn the idea that there are two mutually exclusive gender categories of 'man' and of 'woman', so that people

32 Christian Joppke (2007) 'Transformation of Citizenship: Status, Rights, Identity', pp. 37–48 in *Citizenship Studies* 11(1) at p. 38.

are either constructed as men or not men and if they are not men then they are women. This binary of construction conflates constructed gender roles with the narrow physical realities of biological reproduction (which are themselves not mutually exclusive). It also conflates the necessity of some aspects of physical sex with contingent institutional constructions of sex and gender. The complex interweaving of gender experiences, including so-called ‘queer’ narratives, has shown that a binary approach is inadequate for understanding how sex and gender function.<sup>33</sup> While seeking rights of women, then, feminism has helped to uncover the importance of avoiding reinforcing those restrictive constructions of womanhood that feminism itself challenges. Seeing how this has developed within feminist discourse will help in understanding how it could develop within noncitizenship.

Take the classic work of Germaine Greer who has been regarded to be of central importance to the production of contemporary feminist discourse, as well as connecting this to the real-world struggle for women’s rights. Her writing has been pivotal for the creation of feminist theory and for institutionalising feminist thinking in real-world activities, for example at the United Nations.<sup>34</sup> And yet there is a risk that some core assumptions in her work could impede the capabilities of some of those who bear the most burden from the existing bordering between genders.

Greer’s writings have been directed at identifying aspects of women’s experiences that are traditionally ignored or made taboo, such as unremunerated domestic work and female sexuality. However, the female experience that she identifies is, for Greer, peculiar to women identified physically at birth and in opposition to men. In her work, she identifies various institutionalised ways in which women *qua* non-men are discriminated against.<sup>35</sup> Read in this way, Greer could be seen as risking essentialising the category of female according to existing pervasive definitions. The implications of this for individuals for whom this essentialising is particularly problematic has played out publicly. For example, Greer has opposed acknowledgement of the femaleness of someone who had transitioned from male to female and was seeking appointment to the staff of an all-female Cambridge college.<sup>36</sup> This recalls Manuhua Barcham’s concern that Urban Maoris are forced into categories that do not reflect their complex realities.

33 Butler 1990 *ibid*.

34 For example, the roles of Margaret Mead and Germaine Greer at the controversial World Population Conference in August 1974 is mentioned in Stanley Johnson (1987) *World Population and the United Nations: Challenge and Response*, Cambridge University Press, at p. 117.

35 For example, see Germaine Greer (2007) *The Whole Woman*, Random House.

36 For example, discussed in Sarah Gamble (2015) ‘Gender and Transgender Criticism’, in Julian Wolfreys (ed.) (2015) *Introducing Criticism in the 21st Century*, Edinburgh University Press. Gamble cites a 2009 article in the *Guardian*, Germaine Greer (2009) ‘Caster Semenya sex row: What makes a woman?’, 20 August 2009. Greer restates this position as recently as 2016 in Calla Wahlquist (2016) ‘Germaine Greer tells Q&A her trans views were wrong, but then restates them’, in *The Guardian* 11th April 2016. Her position is that someone *qua* man has enjoyed the benefits of being a man in a world built for men irrespective of whether he now wants to relinquish some of those privileges.



It is then the individuals that most struggle with the existing assumptions and constructions of binarity that are made to carry the burden. This seems problematic from a liberal standpoint committed to equality and equal dignity. Perhaps there is a particular obligation to those who, in some particular context, are struggling less from the current framing, to use their position(s) to do the additional work of troubling it – to make space for those who are placed outside to enter into the discussion. There are lessons here to be learnt for noncitizenship – and for those who work to promote the rights of noncitizens.

### Acknowledging intersections

‘Second Wave’ feminist discourses arising particularly within the anglophone literatures of the US, UK and Australia in the 1980s and 1990s have been criticised for their failure to acknowledge the experiences of those whose experience of femaleness is compounded by other minority memberships. That is, ‘the violence that many women experience is often shaped by other dimensions of their identities, such as race and class’.<sup>37</sup> This can also involve non-recognition within struggles for recognition themselves. Consider Gloria Anzaldúa’s reflections on being queer, White, Catholic, Mexican and indigenous, living just on the US side of the border with Mexico.<sup>38</sup> Difficulties associated with unacknowledged intersectionality is illustrated particularly well – and in a different way – by the protagonist, Adah, in Buchi Emecheta’s *Second Class Citizen* who is shown to be seen as second class as a woman, as a poor woman, as a Black woman, and as a Black Nigerian woman in London.<sup>39</sup> And she is made second class in ways that none of the other characters in the book can understand, as none of them share all of these characteristics subject to discrimination.

This speaks to the noncitizenship presented in this book. Individuals subjected to these intersectional spheres of exclusion as ‘second class citizens’ can be seen to be experiencing noncitizenship activated in a number of dimensions, even in cases in which the individuals in question are formal citizens of the State under consideration. In Emecheta’s book, we follow Adah in her movement from Nigeria to the UK and the reader sees how the exclusions she experiences in Nigeria are continuous with, though different from, the exclusions she experiences in the UK. The language of noncitizenship provides a way in which to analyse how these interact and to examine implications for States’ obligations in their relationships with the individuals concerned.

In order to address this, it will be necessary to ensure that the frameworks developed take into account the many diverse ways in which individuals may interact with them. An important way in which to do this is for the perspectives

37 Kimberlé Crenshaw (1991) ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color’, pp. 1241–1299 in *Stanford Law Review* 43 at p. 1242.

38 Gloria Anzaldúa (1987) *Borderlands/La Frontera*, Aunt Lute Book Company. See also Chapter 8.

39 Buchi Emecheta (1994) *Second Class Citizen*, Heinemann [first published 1974].

of those affected by intersecting dimensions of noncitizenship to be part of the development of theoretical and institutional frameworks. Feminist theorist Audre Lorde argues that non-dominant (and non-dominated) difference is essential for the production of knowledge and understanding – and for dynamic capabilities to be possible at their fullest.<sup>40</sup> She emphasises that recognition of different perspectives alone is not enough. All perspectives need to be allowed to be part of the discussion neither as norms nor as contra-norms. This is easier said than done. For example, Chandra Talpade Mohanty provides an analysis of how feminist scholars themselves ‘codify others’ as being non-Western, non-urban, or in other ways ‘other’ with regard to how a particular scholar sees her/himself. She observes this in a wide variety of scholars who privilege their own (diverse) perspectives as ‘normal’ and identify others as different.<sup>41</sup> This provides an example of Lorde’s more general concern with regard to domination and barrier-drawing. It shows how spaces of domination can also be created within efforts specifically to challenge domination. This is also a risk in noncitizenship.

Feminism challenges systems of oppression and advantage. But, as Paula Rothenberg warns, people do not generally see the ways in which they are privileged themselves.<sup>42</sup> And by extension, people do not see the ways in which they themselves are dominating. Indeed, some have referred to a ‘Race to Innocence’, whereby there is almost a struggle to see oneself as the most subordinated.<sup>43</sup> This risks obscuring otherwise hidden perspectives. And it risks a situation in which feminist theorists accidentally develop inadequate and problematic theory which takes into account only the concerns of those who are in a privileged position in terms of creating the theory.<sup>44</sup> Phillip Cole’s ‘Insider Theory’ diagnosis was not directed at feminism, but at liberalism more generally and with regard to its inherent citizenship. He suggests that theorists tend to theorise the world as they know it. As such, Cole suggests that it could be that liberalism might be unable to theorise rights beyond the insider constituency that created it. As the discussion above shows, this is a risk even within a body of theory that explicitly tries to challenge the exclusions and dominations in existing approaches.

40 Audre Lorde (1983) ‘The Master’s Tools Will Never Dismantle the Master’s House’, pp. 94–101 in Cherie Moraga and Gloria Anzaldúa (eds) (1983) *This Bridge Called My Back: Writings by Radical Women of Color*, Kitchen Table Press.

41 Chandra Talpade Mohanty (2003) *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity*, Duke University Press, at Chapter 1.

42 Paula Rothenberg (2000) *Invisible Privilege: A Memoir About Race, Class, and Gender*, University Press of Kansas.

43 Mary Louise Fellows and Sherene Razack (1998) ‘The Race to Innocence: Confronting Hierarchical Relations among Women’, pp. 335–352 in *The Journal of Gender, Race and Justice*.

44 For example, Julie Rivkin and Michael Ryan have suggested that ignoring race, class, nationality, sexuality, means that whiteness, middle-classness, heterosexuality and women wanting to have children becomes the norm. Julie Rivkin and Michael Ryan (2004) ‘Feminist Paradigms’, pp. 765–769 in Julie Rivkin and Michael Ryan (eds) (2004) *Literary Theory: An Anthology*, 2nd Edition, Blackwell.

Noncitizenship might begin to offer a way in which to address some of these difficulties. A particular strength of this approach is its ability to examine the interrelationships of apparently distinct forms of discrimination and vulnerability-creation. It can enable a joined-up analysis and recognition of how exclusions operate in apparently very different individual experiences and how they flow into, and relate to, each other.

The three-fold exclusion of working-class Black women presented by Nira Yuval-Davis can, then, be seen as problematising a system which imposes and activates noncitizen-vulnerability in three dimensions, rather than only as stretching across distinct categories of exclusion.<sup>45</sup> The noncitizenist approach allows for this – and it allows for the recognition that such structural exclusions take place globally and that exclusions far away are continuous with exclusions close at hand. Unhyphenated noncitizenship is necessary to liberal democracy. Unhyphenated noncitizenship can be activated because of discrimination along racial, gendered, class or other grounds, including a mixture of several grounds. Failing to recognise unhyphenated noncitizenship and so categorising such individuals as hyphenated non-citizens has been a tool of justifying arbitrary exclusions from consideration within the liberal nexus.<sup>46</sup>

In practice, once someone has been excluded from such consideration, it is easy to lose sight of the arbitrariness of that exclusion, especially if it comes to seem legalistic. This can sometimes then be used to reinforce and deepen exclusions ('expulsions'). The non-binary understanding of citizenship and noncitizenship allows an analysis of noncitizen claims *alongside* a protection of citizenship. As such, individuals have rights even when institutional or social constructions suggest that they do not. In fact, this construction gives rise to *special* claims against the States in question and recognition of the intersecting ways in which individuals become noncitizen-vulnerable.

### **New ways of understanding rights and justice more broadly**

Feminist critiques of liberal political theory have nourished the development of work which can more accurately characterise human experience in ways that go well beyond physical femaleness. Recognition of the roles of care and dependency often associated with females has enabled a broader analysis of how care and dependency function in human life more generally – and a recognition that

45 For example, see Nira Yuval-Davis (2006) 'Intersectionality and Feminist Politics', pp. 193–209 in *European Journal of Women's Studies* 13(3) at p. 195.

46 Bhabha and Shutter's 1994 book provides a useful analysis of how this has played out in practice with regard to women's experience of UK immigration law. Jacqueline Bhabha and Sue Shutter (1994) *Women's Movement: Women Under Immigration, Nationality and Refugee Law*, Trentham Books.

these dimensions need to be part of a just institutional arrangement.<sup>47</sup> Rather than ‘looking at men as if they had just emerged from the earth like mushrooms and grown up without any obligation to each other’,<sup>48</sup> it is then possible to characterise humans as following a life-path that makes them intermittently vulnerable and dependent upon each other in various ways. This has enabled better analyses of sickness, disability and other factors. Recognition of complex social and other interests has driven new ways of thinking about human need and development. Attempts to understand structural discrimination against women and other minority groups have helped to uncover deeper inadequacies in existing political structures. Work on noncitizenship can be part of this process, contributing to the development of a more accurate and just theoretical institutional framework more generally.

Feminist theorists argue that traditional theories of rights and of justice are fundamentally flawed when they assume their jurisdiction principally to be that of those constructed as men (which may also exclude consideration of the caring roles of males, and their dependencies, as being non-male – consider for example the stigma still sometimes associated with paternity leave).<sup>49</sup> Restarting the analysis, taking into account aspects of the lives of females, and of those constructed as women, that cannot be characterised by these traditional accounts, generates theories acknowledging justice in family structures, the role of care, and the relevance of vulnerability and need at different life stages, for example. This has led such theorists to develop different, and more complex, notions of capability and need, and more complex ways of examining whether they are being met. In turn, this has made way for more nuanced theorisations more generally and has been part of what has cleared the way for the noncitizenship developed here.

Feminist thinking in political theory and beyond has enabled a deeper and more just understanding of human society more broadly, including a re-examination of the meaning of gender. In turn, this has enabled a critical approach to masculinity and the politics of maleness – and the ways in which femaleness and maleness overlap and interact – including how this plays out with regard to the State and its

47 For example, Eva Feder Kittay (1998) *Love's Labour: Essays on Women, Equality, and Dependency*, Routledge; see also essays in Catriona Mackenzie, Wendy Rogers and Susan Dodds (eds) (2014) *Vulnerability: New Essays in Ethics and Feminist Philosophy*, Oxford University Press.

48 This passage comes from Thomas Hobbes (2003) *On The Citizen*, Cambridge University Press [first published 1651], at p. 102. He offers it as a thought experiment in the establishment of just dominion, but does so by effectively defining family relations out of consideration. The phrase is discussed by Seyla Benhabib: Seyla Benhabib (1985) ‘The Generalized and the Concrete Other: The Kohlberg-Gilligan Controversy and Feminist Theory’, pp. 38–60 in *Praxis International* (4).

49 See Heening Thomsen and Helene Urth (2010) ‘Fully Paid Paternity Leave of 2 Weeks: Impact Assessment’, pp. 91–124 in European Parliament Directorate-General for Internal Policies (2010) *Cost and Benefits of Maternity and Paternity Leave*, particularly at pp. 97–101; Samsik Lee and Hyojin Choi (2015) ‘Lowest-Low Fertility and Policy Responses in South Korea’, pp. 107–123 in Ronald Rindfuss and Minja Kim Choe (eds) (2015) *Low and Lower Fertility: Variations Across Developed Countries*, Springer.

institutions. As such, feminism is not a movement only for the rights of women, but rather a movement for a better understanding of humanity that facilitates a more just construction of social institutions for everyone involved. Noncitizenism has the potential to do something similar.

This book on noncitizenism is then not only about those experiencing activated noncitizenship and it is not only interested in implications for the rights of noncitizens. Developing a better understanding of noncitizenship and of noncitizen claims (including those based on capability and on dynamic capability in particular), makes it possible to capture the fact that there is necessarily an element of non-consent in liberal democracy, and that this is not anomalous and can be analysed. This means that the position of such individuals can be considered, including the implications that their positionings have for the justifiability of the liberal democratic system and for citizenship. Liberal theory requires all humans to be understood as equal in dignity. But if citizenship is required for basic recognition, then it becomes necessary for everyone to be understood as a formal citizen somewhere somehow. This undermines citizenship as well as the rights of those who are thereby either excluded or stifled. If citizen-membership is separated from access to basic rights or recognition of personhood then it becomes possible also to examine *citizenship* more clearly. Noncitizenism, then, can learn from feminism in many dimensions.

# 11 Global challenges to citizenship

Some political movements today seem to challenge the hegemony of citizenship. Examining them under the lens of noncitizenship can help to interrogate this further. Doing this can also help to develop the way in which both noncitizenship and citizenship are understood. Several such movements have been introduced in this book, and have been important in building its notion of noncitizenship. Some of them will now be explored in additional detail. This includes both informal and formal processes. It includes high-level international processes, like that which led to the development of the Domestic Workers Convention 2011, for example. It also includes the mundane everyday realities of migration itself as a noncitizenist political movement. The language of noncitizenship can help to identify how these and other movements can simultaneously be seen as part of a larger noncitizenship and maintain their distinctive claims. Importantly, each of these movements has also emphasised the continuity between the different locations of noncitizenship activation.

Crucially, this analysis also contributes to a more detailed examination of State-individual obligations associated with activated noncitizenship, including the continuity between contexts and sites of activation. Throughout, it is important to emphasise that noncitizenship does not contradict movements to expand access to citizenship or to citizen rights. Noncitizenship, as has been presented throughout this book, calls for more rights, not less. While acknowledging the importance of liberal democratic citizenship, it also emphasises the reality of (unhyphenated) liberal noncitizenship as another foundational analytical category – and another way in which an individual relates to a State. While it does not contest that the citizen-State relationship carries special claims, this book has argued that the noncitizen-State relationship also carries special claims. Now let us turn to some global movements and explore how they challenge citizenship as well as ways in which they risk reinforcing the citizenist paradigm.

## **The domestic workers movement and the Convention**

I felt such pride, sitting there, waiting to go up to the podium, with all the flags of the world around me. Afterwards I sent the pictures home to our members,

and I heard that one broke down in tears. A domestic worker speaking at the UN – it doesn't happen! We were just so happy to be recognized.

(Shirley Pryce of the Jamaican Household Workers Association<sup>1</sup>)

In 2011 in the chamber of the International Labour Organization (ILO) in Geneva, an overwhelming majority of delegates from States, employers' organisations and unions voted in favour of the Domestic Workers Convention.<sup>2</sup> This Convention, and the process that led to it, are particularly relevant to the politics of noncitizenship and the challenges it poses to assumed citizenship. This is seen in the words of Shirley Pryce, quoted above. She presents herself as being recognised within a world that does not usually recognise her, or others like her. She presents herself as being given a voice within a world of States from which she is usually excluded, and within which, irrespective of her formal citizenship, she experiences, for the most part, activated noncitizenship as a result of her professional situation (and perhaps also intersections of gender, class, status and race).

Pryce's description is of being surrounded by the flags of recognised States, to speak before the representatives of the countries of the world. She does not argue against the world of States, but demands recognition within it.

Pryce acknowledges States and citizenships. And in doing this she demonstrates something important about the noncitizenship presented here. The noncitizenship she exhibits is a real and political relationship within that world of States, additional to, not in opposition to, citizenship. Noncitizenship is challenging to the current status quo, but it need not be problematic *per se*. Pryce's words are challenging because of the activated noncitizenship they represent. But her situation need not be challenging, if she and her strong political relationship with States are recognised and acknowledged.

The labour rights of those employed in various forms of domestic service, whether caring or cleaning, have long been difficult to enforce. In 2010, an ILO law and practice report on domestic work found that many States partly or entirely exclude domestic workers from their labour legislation,<sup>3</sup> with only an estimated 10 per cent of the world's domestic workers working in States which included them on a par with other workers, 29.9 per cent working in States which completely excluded them from labour law (this figure is skewed by the 99 per cent of domestic workers in the Middle East region excluded in this way).<sup>4</sup> Not least, persons

1 This quotation comes from Celia Mather (2013) '“Yes, We Did It!”: How the World's Domestic Workers Won their International Rights and Recognition', *Women in Informal Employment: Globalising and Organising (WIEGO) Report* at p. 57.

2 Discussion of this is developed further in Tendayi Bloom (2015) 'Is the Domestic Workers Convention a Triumph for Female Migrant Agency?', *UNU-GCM Policy Report* 03/02.

3 International Labour Organization (2013) *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, ILO at p. 46, using data from ILO (2010) 'Decent Work for Domestic Workers', Report IV(1) 4th agenda item, International Labour Conference, 99th Session, Geneva, 2010.

4 ILO 2013 *ibid.* at pp. 50, 51.

employed to perform tasks traditionally carried out for free by female family members have struggled for the recognition of their work *as work*.<sup>5</sup> This is related to the difficulty that women have experienced in achieving recognition for their individual-State relationships more generally (this was presented in Chapter 11).

Globally, changes in work patterns and gender roles, alongside the second-generation impacts of decreased birth rates in ‘post-dividend’ developed States (those which have enjoyed a period of relatively large working-age population in comparison to dependents and now face the period in which those younger dependants are adults and the larger former working population is in need of care, creating a larger ‘old-age dependency ratio’), make the global domestic workforce increasingly migrant-based and increasingly important. An increasing global dependence upon households headed by two wage earners has several implications. First, the care of children, the sick and the elderly can no longer, from a practical point of view, be assumed to be the sole activity of female family members of working age (irrespective of other considerations).<sup>6</sup> Second, women in some countries who are unable to find other forms of work increasingly find employment in domestic settings, often overseas.

In many cases, the employers of domestic workers may themselves be vulnerable members of societies, including those who themselves need care not available from family or State, and this may be their first experience of being employers.<sup>7</sup> In addition, their need for care, or help with caring responsibilities, may not be recognised within existing frameworks. Members of this vast and international domestic workforce may be exposed to extreme noncitizen-vulnerability, constructed by their unrecognised relationships with States.

This involves various intersecting dimensions of vulnerability. The constructed vulnerability of women in some States, especially to intimate violence, is compounded by assumptions relating to race and class, for example, and their implications for constructions of femaleness and maleness. This interplays with legal vulnerability to employers (who are often private families) for immigration rights, there is a risk that the vulnerability may become acute.<sup>8</sup> Like other groups introduced in this book, the population of domestic workers is also difficult to count, with additional implications for recognition and constructions of

5 For example, Peggie R. Smith (2012) ‘Work Like Any Other, Work Like No Other: Establishing Decent Work for Domestic Workers’, Washington University in St. Louis Legal Studies Research Paper Series, Paper No. 12-05-30; Kea Tijdens and Maarten van Klaveren (2011) ‘Domestic Workers: Their Wages and Work in 12 Countries’, Wage Indicator Data Report, Wage Indicator Foundation, Amsterdam, October 2011, p. 19. See also ILO 2013 *ibid*.

6 For example, see Einat Albin and Virginia Mantouvalou (2011) ‘The ILO Convention on Domestic Workers: From the Shadows to the Light’, UCL Labour Rights Institute On-Line Working Paper, [www.ucl.ac.uk/laws/lri/papers/EinatAlbin-VirginiaMantouvalou.pdf](http://www.ucl.ac.uk/laws/lri/papers/EinatAlbin-VirginiaMantouvalou.pdf) (accessed 13 April 2015) (also published in the *Industrial Law Journal*, March 2012); Joaquin Nieto, speaking in Barcelona, quoted in Bloom 2015 *ibid*.

7 Bloom 2015 *ibid*.

8 Shu-Ju Ada Cheng (2003) ‘Rethinking the Globalization of Domestic Service’, 166–186 in *Gender and Society* 17/2 at p. 168.



vulnerability.<sup>9</sup> A global estimate from 2010 suggests that there are at least 52.6 million domestic workers in the world, leading to the parallel observation that ‘[i]f all domestic workers worked in one country, this country would be the tenth largest employer worldwide’.<sup>10</sup> They reportedly represent 3.6 per cent of paid employees and 7.5 per cent of female wage earners globally.<sup>11</sup>

Spread throughout the world, largely living within the homes of their employers, often in foreign countries, the vulnerability of this international workforce is exacerbated by complex and restrictive immigration systems and citizen protectionism. Migrant domestic workers often routinely work extremely long hours,<sup>12</sup> struggle to claim holidays, rest time or maternity leave,<sup>13</sup> experience low and even withheld wages,<sup>14</sup> with per-hour pay further diluted by the long hours worked.<sup>15</sup> In addition, living within the homes of their employers makes domestic workers vulnerable to further forms of abuse and ill-treatment. This is commonly made worse by a lack of local language proficiency, confiscation of travel documents and multidimensional discrimination.<sup>16</sup>

In 1936, an ILO committee first recommended that labour conditions for domestic workers should be on the agenda.<sup>17</sup> While ILO resolutions drafted with the intention of protecting domestic workers date back to 1948, the reality is that domestic workers have mostly remained outside usual labour protection frameworks.<sup>18</sup> Often excluded from labour unions, members of this group have traditionally struggled to organise in usual ways because of the

9 ILO 2013 *ibid.*, for example, at p. 13. This also recalls other vulnerable populations addressed in this book who have been uncoun­ted and uncountable. See Chapter 4 and Chapter 6 in particular.

10 ILO 2013 *ibid.* at p. 19.

11 ILO 2013 *ibid.* at p. 20; HRW, ITUC and IDWN (2013) *Claiming Rights: Domestic Workers’ Movements and Global Advances for Labor Reform*, at p. 10. And this cannot take account of the full number of people doing this job irregularly.

12 Studies suggest women regularly work 15-hour days or 78–100-hour weeks: ILO 2013 *ibid.* pp. 57, 58 (NB it shows that in developed States the hours can actually be excessively short, where the preference is for part-time domestic workers, and this brings with it additional problems); HRW (2014) ‘“I Already Bought You”: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates’, Human Rights Watch Report, 2014, p. 15; HRW (2011) ‘The Domestic Workers Convention: Turning New Global Labor Standards into Change on the Ground’, Human Rights Watch Report, p. 13; Tjeldens and van Klaveren 2011 *ibid.* p. 29.

13 For example, see HRW 2011 *ibid.*; ILO 2013 *ibid.* – according to ILO data, in 2012, about 45 per cent of the world’s domestic workers were not entitled to a single day off per week.

14 Workers often earn less than half of the average wages in the country where they work. In some cases they earn less than 20 per cent of average local wages – see HRW 2011 *ibid.*, p. 13 and one report found that, in 2011, only 25 countries included foreign domestic workers in the national minimum wage – UNWomen (2013) *Contributions of Migrant Domestic Workers to Sustainable Development*, UNWomen, Bangkok, p. 18.

15 Tjeldens and van Klaveren 2011 *ibid.*, p. 19.

16 Ada Cheng 2003 *ibid.*

17 In 1936, the question of the working conditions of domestic workers became prominent through the debate over the 1936 Holidays with Pay Convention which controversially explicitly excluded domestic workers. ILO 2013 *ibid.*, at p. 1.

18 Smith 2012 *ibid.*, p. 165; Mather 2013 *ibid.*, p. 22.

peculiarities of their working arrangements (one union leader in Spain observed in 2015 that ‘domestic workers do not exist as a collective’ because they work within separate households).<sup>19</sup>

Migrant domestic workers can seem to exemplify noncitizen-vulnerability in these dimensions that have been discussed. And the recognition, including the forced recognition, of the vulnerability is also challenging to the liberal democratic principles of the States where they live and from which they have travelled (where those States are built upon liberal democratic principles). It troubles the relationship between immigration controls and human equality, liberty and individuality. And yet these noncitizens are not merely vulnerable. They participate in and make claims against States. And they have couched these claims within what appears to be an explicitly noncitizen-like challenge. Overwhelmingly, the call they make is for rights as workers and as humans, broadly challenging international and domestic citizenist systems. The leaders of the domestic workers movements directly criticise systems that construct them as vulnerable and that restrict the scope of those who are able to make use of global systems of movement and exchange. The challenge made by (mostly female, mostly migrant) domestic workers, then, provides a useful introduction to what real-world noncitizenist activism might look like.

Such individuals are not *inherently* vulnerable. Their vulnerability is a noncitizen one, constructed by the non-recognition of their relationships with States. These are predominantly working-aged people who have demonstrated their resilience through their movement and through their engagement in physically hard and psychologically demanding work. Yet, they have been made vulnerable through the systems they must navigate. Their decisions have been restricted initially by their territorially distant noncitizen-vulnerability. Their employment options are prescribed and their capabilities *in situ* are diminished by their territorially present noncitizen-vulnerability. That is, otherwise resilient individuals are made vulnerable by a structure that cannot adequately acknowledge their ways of relating to the States involved and so also to other individuals.

Migrant domestic workers are vulnerable to the State in which they work, and in this way they are made more vulnerable to other individuals such as employers and recruiters. Their legal right to be in the State and to have a recognised relationship with it may be based upon their work contracts. Their access to labour and other protections are based upon their ability to prove their right to be there. In turn, this can make such individuals very dependent upon individual employers, even in order to claim protection against those same employers. This all makes the political movement of global domestic workers especially important to understanding contemporary noncitizenism. This includes their engagement with an international engine which, though part of the State-based system, is *not* built primarily of Member States: the International Labour Organization (ILO).<sup>20</sup>

19 Raquel Gil, quoted in Bloom 2015 *ibid.* at p. 15.

20 See, for example, ILO (2013) ‘The collective organization of domestic workers: Decent work in action’, pp. 77–86 in ILO 2013 *ibid.*

Industrial action of washerwomen and other household workers is recorded in various countries since the nineteenth century.<sup>21</sup> In the 1980s and 1990s there was a sudden global increase in employment of *migrant* women as domestic workers.<sup>22</sup> Through the 1990s, organisations of domestic workers were developing across global regions. In 1995, at the UN 4th World Conference on Women in China, ‘domestic workers’ organizations from Latin America, South Africa, Trinidad and Tobago, and the Philippines, along with campaigners for women’s rights and “wages for housework”, met.<sup>23</sup>

While it has been suggested that there was initial resistance to getting involved in the campaigns of the domestic workers amongst some unions, in 2006 the first ever global conference of domestic workers’ organisations took place, reportedly driven by domestic workers’ organisations and well attended by national and global union representatives, as well as labour support networks, ILO staff and academics.<sup>24</sup> In 2008, an ILO working group reportedly began researching the legal situation for domestic workers globally.

The ILO Domestic Workers Convention was put to a vote in June 2011 and was adopted with 396 votes in favour, 16 against and 63 abstentions. Figures 11.1 and 11.2 show the banner lowered by domestic workers’ organisations at the back of the Assembly Hall (11.1), and then the same banner laid out in the entrance to the building, with some of those domestic workers who had campaigned for the Convention lined up behind it (11.2). The reactions of delegates within the hall, and the fact that, according to first-person accounts, they were unexpectedly invited to lay out their banner in the entrance, show the level of support there was for the Convention and for the movement of domestic workers that was behind it.

Initial ratifications came quickly and in only two years and three months after adoption, the Convention came into legal force. Irrespective of concerns relating to the efficacy of the final revision of the Convention, the support mobilised for it is interesting to observe, as is the way in which this support was mobilised. Commentators on the process remark on the achievements that were made by a movement largely driven by workers traditionally seen to lack collective agency, as ‘unorganizable’,<sup>25</sup> and subject to some of the most regressive unfreedoms. They clearly acted politically and exhibited some sort of relationship with States

21 Eileen Boris and Premilla Nadasen (2008) ‘Domestic Workers Organize!’, pp. 413–437 in *The Journal of Labor and Society* 11(4).

22 Stuart Rosewarne (2013) ‘The ILO’s Domestic Worker Convention (C189): Challenging the Gendered Disadvantage of Asia’s Foreign Domestic Workers?’, *Global Labour Journal* 4(1) at pp. 3–4.

23 Mather 2013 *ibid.*, p. 3.

24 Adelle Blackett (2012) ‘The Decent Work for Domestic Workers Convention and Recommendation, 2011’ pp. 778–794 in *The American Journal of International Law* 106/4, p. 786, drawing upon phrasing in Catherine Dauvergne (2008) *Making People Illegal: What Globalization means for Migration and Law*, Cambridge University Press, Cambridge. See also Mather 2013 *ibid.*, p. 12.

25 Boris and Nadasen 2008 *ibid.*



*Figure 11.1* Domestic workers lower banner in 2011 (International Labour Organization, 2011).



*Figure 11.2* Domestic workers celebrate in 2011 (International Labour Organization, 2011).

and with the State system, but their activity is not adequately captured through the lens only of traditional liberal democratic citizenship. To understand the domestic workers movement within a liberal democratic framework, it is helpful to adopt the terminology of noncitizenship.

By setting out in plain language the rights and protections to which domestic workers are entitled, the Convention highlights the many ways in which this group has, till now, been rightsless.<sup>26</sup> For example, Article 5 requires that a domestic worker be protected from ‘all forms of abuse, harrassment and violence’. The fact that it was felt necessary to put this in a Convention in 2011 is extraordinary. And it makes clear the levels of rightslessness of domestic workers. Cooking, cleaning and caring are vital to the healthy continuation of society and the claims made by domestic workers also form part of a wider struggle for recognition of these vital jobs, which have traditionally been seen as women’s work in the States under consideration here. In this way, as well as through the wider discourse of care, the Domestic Workers Convention also helps to show potential interactions between noncitizenship and feminism.

There is, though, a danger in applying the noncitizenist lens in this way. Members of the domestic workers movements discussed here have largely presented their struggle primarily as one of labour.<sup>27</sup> What they have sought is rights as workers – for domestic work to be recognised as work and for migrant domestic workers to be recognised as workers within existing frameworks. This is seen, for example, in the slogan ‘Work like any other, work like no other’,<sup>28</sup> and in Figure 11.3 of a domestic worker protester in India. The statement on the placard in the image is clear. Members of this movement explicitly seek solidarity amongst workers irrespective of considerations of citizenship and noncitizenship. As such, the presentation in this chapter could be accused of misrepresenting what the individuals themselves have been doing. This is not what this chapter is trying to do. The noncitizenist lens provides another way in which to see the struggle without denying the form in which it has proceeded.

This is for three reasons. First, these workers, who need not be especially vulnerable for any particular reason in themselves, are rendered particularly vulnerable by existing structures. This vulnerability arises in no small part because of the unacknowledged noncitizen relationship which they experience with the States involved. Their ability to engage *qua* workers is impaired because the State does not recognise its relationship to them insofar as they are noncitizens. It is this which makes them vulnerable – both to States and to individuals.

Second, the domestic workers movement is not based around citizenship or quasi-citizenship. While it includes calls for regularisation of status and access

26 Blackett 2012 *ibid.*, p. 786, drawing upon phrasing in Dauvergne 2008 *ibid.*

27 For example, WIEGO (n.d.) ‘Informal Workers in Focus: Domestic Workers’.

28 Peggie R Smith (2011) ‘Work Like Any Other, Work Like No Other: Establishing Decent Work for Domestic Workers’, *Employee Rights and Employment Policy Journal* 51(157).



*Figure 11.3* Domestic worker protester in India (International Labour Organization, 2011).

to citizenship, this is not fundamental, but instead presented as a means of securing rights and addressing vulnerability. The central concern is that individuals are rendered vulnerable with regard to their basic capabilities and their less basic ones, including dynamic capabilities to affect the system.

Finally, the conditions and claims of this group, however they are framed, challenge States' self-definition as liberal democratic and challenge a system of States that entrenches their vulnerability rather than enabling them. The main thrust of the campaign has focused on unapologetically claiming rights irrespective of an individual's officially recognised relationship with a particular State. This case provides an important example of empowered noncitizenship.

## Global movements of migrants and migrant movements

I am honored to stand before you today on behalf of the 244 million migrants all over the world. After years of being voiceless and invisible, we – the migrants – are finally welcomed here to speak for ourselves [...]. I speak before you today with a clear message. Do not talk about us without us. We have answers and have been voicing them. Listen and talk with us about migration, development and human rights. International conventions designed to protect us have been ratified, but they remain in a paper and not in action [...]. Let's work for a world without vulnerability, insecurity or invisibility. As people, as workers, as women, as migrants – we are ready to make this happen. Work with us.

(Eni Lestari Andayani Adi, Chairperson, International Migrant's Alliance (IMA) speaking at the Opening Session of the UN Summit on Large Movement of Refugees and Migrants 19 September 2016, New York City<sup>29</sup>)

Unable to realise capability-functioning, made noncitizen-vulnerable to the global State system, those experiencing a strongly activated noncitizenship may cross borders, forcing themselves – and their vulnerability – to be seen in those States with which they have a relationship. Migration itself can be interpreted, then, as a form of noncitizenship. Whether this recognition is the intention, or whether individuals are simply trying to access capability-functioning, including dynamic capabilities to affect the system, in any way they can, their capability-seeking is politicised and challenges the citizenist status quo.

This can be seen particularly in the events that led up to the High-level Summit on Large Movements of Migrants and Refugees in September 2016. Global migrant activism, through the movement of people, through the claiming of rights, and through engagement in local and international political processes, has been growing in importance, particularly since 2006.<sup>30</sup> Those bearing the burdens of a citizenist status quo, as Eni Lestari Andayani Adi observes in the statement above, are challenging their vulnerability and their invisibility within the existing international framework.<sup>31</sup> This is another important example of noncitizenship.

There have long been large-scale movements of people in different regions across the world.<sup>32</sup> However, from around 2011, this movement began to impact

29 Available here: <http://statements.unmeetings.org/media2/7660310/ima.pdf>

30 Tendayi Bloom (2017) 'The Critical Role of Civil Society in the Development of Global Migration Governance Frameworks', UNU-GCM Commissioned Policy Report; Tendayi Bloom (2014) 'Global Migration Governance: A Decade of Change?', UNU-GCM Policy Report 02/07.

31 Eni Lestari Andayani Adi was herself an Indonesian domestic worker. See for example *The Jakarta Post* (2016) 'UN speaker Eni learns migrant workers' rights the hard way', Sunday 28 August 2016.

32 Indeed, there has always been movement: Patrick Manning (2005) *Migration in World History*, Routledge.

more strongly upon those States built upon liberal democratic principles with particular power within the international system of States. It has become increasingly difficult for those States to ignore the movements of people and their causes and implications. States are confronted with all of the aspects of noncitizen-vulnerability that were presented in Chapter 8, and the three forms of noncitizen challenge.

Movement from States in poverty increased, and from those where wars were waging. This movement put pressure on liberal democratic States' systems of migration control and internal control measures. The liberalness of States built upon liberal democratic norms came increasingly into question, while fear in some States developed at the impact of immigration on 'liberal values'. This has come in two forms. One is the concern that new arrivals dilute or even subvert majority values. The other is that the behaviour of States with regard to migrants, especially in the context of fear, has subverted majority values.

Figures 11.4–11.7 were taken by a Syrian emigrant, Zakaria, somewhere between Turkey and Chios in 2015/2016. He had received a disposable camera from Kevin McElvaney on 8 December in Izmir in Turkey, and cannot share his surname or home town for reasons of personal security. He left a wife and two young children behind in Syria, but kept in touch with them as he travelled. He was hoping to bring his family to Germany or else to return to Syria. He took



*Figure 11.4* Exhausted woman, child and others on the dinghy (Zakaria, #RefugeeCameras, Kevin McElvaney, 2015/2016).





*Figure 11.5* A Greek fisherman escorts and guides the boat to a safe harbour (Zakaria, #RefugeeCameras, Kevin McElvaney, 2015/2016).



*Figure 11.6* Overcrowded dinghy: the view looking forwards (Zakaria, #RefugeeCameras, Kevin McElvaney, 2015/2016).



*Figure 11.7* Looking backwards at the motor (Zakaria, #RefugeeCameras, Kevin McElvaney, 2015/2016).

photographs of the dinghy ride from Turkey to Chios and then mailed them to Kevin McElvaney to develop. He wanted to let people know what it was like. He now lives in Berlin in Germany.

In the photographs, we can see the utter vulnerability of individuals migrating in these circumstances. Through Zakaria's lens we can see the power of the sea and the powerlessness of the people trying to cross it. While the sea is powerful irrespective of States, those who are safe within the structures of liberal citizenships in well-to-do States are mostly protected from this. They submit to the States that protect them, apart from other things, from the elements. The people pictured, and the man taking their picture, have been forced to make themselves vulnerable to the sea because of their vulnerability to States. They were unable to board planes or charter ships in the normal way because of their status. It is likely that they paid sums much larger than it would have cost to travel by 'regular' and less dangerous means.<sup>33</sup>

33 For example, see first-hand description in Iddrisu Wari (2016) 'You Make a Decision and You Start Your Journey: Reflections of a Ghanaian Economic Migrant and Founder of the NGO, CEHDA', pp. 194–217 in Belachew Gebrewold and Tendayi Bloom (eds) (2016) *Understanding Migrant Decisions: From sub-Saharan Africa to the Mediterranean Region*, Routledge.

These pictures also echo Gohar Dashti's staged image in Figure 3.1 and her description of it. While the couple in Dashti's photograph sought the shelter of the desert in the absence of the shelter of a State, the people in Zakaria's photographs seek the shelter of the waves when States are anything but protective. They are trying to function despite, rather than because of, States and the system of States. Through these images, Zakaria challenges States built upon liberal democratic norms that have constrained the liberties of such individuals by assumption, effectively forcing them, unnecessarily, to choose between unacceptable risks (either to stay somewhere racked by violence and poverty or to take to the sea in unseaworthy vessels). This is deeply challenging for States built upon liberal democratic norms.

In the 2010s, movement continued from the increasing number of countries where poverty and violence were making life untenable, and where popular protests expressed dissatisfaction with governments unable to protect their populations from economic shocks.<sup>34</sup> These have been described primarily as citizen movements, but we could also see them as movements of formal citizens protesting their activated noncitizenship. While most people moving in these contexts were going to neighbouring countries and others moved south, some moved northwards and westwards. They were making decisions for as many reasons as there were migrants. Some may have been driven solely by the need to arrive somewhere safe. For others, the movement was also in order to earn money to support family members or to pursue an ambition that could not be attained without movement. Movement may have been in order to better situate oneself within the global system.

Agreements brokered by the European Union and various European States with North African and Eastern Mediterranean States have included provisions intended to stop migrants from moving onwards to the countries of Europe, particularly to those of Northern and Western Europe, activating individuals' non-citizenship with more States in more dimensions.

With the increasing instability, both in some sub-Saharan countries and in some of those surrounding the Mediterranean, this became increasingly problematic. Reports emerged of people stranded in desert encampments and falling victim to dangerous gangs, for example.<sup>35</sup> Using the terminology developed in this book, these individuals were already in some form of an activated noncitizen relationship with those States trying to stop their movement. With the unrest in Libya, for example, this movement became particularly urgent as persons identified as being of sub-Saharan origin were targeted

34 Of course there were many and complex reasons why people protested across many sites. The economic situation represents one aspect of this. Marina Ottawa and Amr Hamzawy (2011) 'Protest Movements and Political Change in the Arab World', Carnegie Endowment for International Peace Policy Outlook, 28 January 2011.

35 Davide Gnes (2013) *Maghnia: Crossing the Uncrossable Border, Mission Report on the Vulnerability of sub-Saharan Migrants and Refugees at the Algerian–Moroccan Border*, Euro-Mediterranean Human Rights Network, Copenhagen.

by violent groups who blamed them for unrest in the country.<sup>36</sup> People became stranded in Libyan prisons and in scattered camps. This was not unique to Libya. And yet movement continued.

It was during this period that the situation in Syria was becoming increasingly violent and Syrians joined the Iraqis, Afghans and others east of the Mediterranean fleeing from their homes into neighbouring States, with some also travelling further westwards. These movements can be understood in terms of desperation, but they can also be seen as empowered. Individuals who could be perceived as having no options were finding a way to survive by moving, despite the barriers that were being put in their way. They were seizing capabilities that were otherwise being denied them. Their activated noncitizenship in relation to their country of formal citizenship was challenging to that State and to the international community. But the noncitizenship that was being activated with States far away was also challenging. Sitting in the centre of this particular movement dynamic was the Mediterranean Sea. Despite much NATO, FRONTEX, and other surveillance, in 2014, the Mediterranean region saw 75 per cent of all globally recorded migrant fatalities that year,<sup>37</sup> while more people were also taking land routes around the Mediterranean to try to reach the peaceful and prosperous liberal democracies of Western and Northern Europe.<sup>38</sup>

By 2015, the scenes in European border-zones were becoming increasingly troubling and the implications of activated noncitizenship at the borders were being pushed to the extreme. Images flashed around news networks and social media of police using tear gas, of people being thrown bread as you might feed ducks on a pond, of unaccompanied children being turned away from the richest countries of Europe.<sup>39</sup> There were reports of people living in Budapest station blocked from travel without access to proper sanitation, of people having to give

36 Ali Bilgic (2013) *Rethinking Security in the Age of Migration: Trust and Emancipations in Europe*, Routledge, Chapter 6; Frank Senauth (2013) *The Making And the Revolution of Libya*, Xlibris, pp. 91–92.

37 Tara Brian and Frank Laczko (2014) ‘Counting Migrant Deaths: An International Overview’, pp. 15–44 in Tara Brian and Frank Laczko (eds) (2014) *Fatal Journeys: Tracking Lives Lost During Migration*, IOM, p. 20.

38 The project, ‘Mapping and Documenting Migratory Journey and Experiences’, led by Vickie Squire, tracks these movements. See also Vickie Squire, Maria Pisani, Angeliki Dimitriadi, Dallal Stevens, Nick Vaughan-Williams, Nina Perkowski (2017) *Crossing the Mediterranean Sea by Boat: Mapping and Documenting Migratory Journeys and Experiences*, Warwick University.

39 The tear gas incident was reported as occurring along the Greece-Macedonia border. See, for example, Costas Kantouris (2016) ‘Migrants clash again with Macedonian police on Greek border’, Associated Press 13 April 2016. The bread incident was reported to have occurred in Rösztke 1 camp on the Serbia-Hungary border in September 2015. For example, see Jessica Staufenberg (2015) ‘“Inhumane” police throw food at crowds of desperate refugees in Hungary’ in the *Independent* 11 September 2015. The UK, for example, promised to resettle unaccompanied child migrants from the dismantled Calais camp but then introduced restrictions that excluded many. Those who managed to travel to the UK were met with additional abuse; for example, see Ashley Cowburn (2016) ‘Government efforts to resettle unaccompanied child migrants from Calais branded a “disgrace”’, *Independent* 16 November 2016.

up valuables, like wedding rings, to Danish officials, and lines of people trudging across highly developed liberal democratic States.<sup>40</sup>

Individuals made vulnerable by their activated noncitizenship with their countries of formal citizenship, then made vulnerable by activated noncitizenship from afar, were now made even more vulnerable at the border. And their vulnerability and the efforts they made to function and even flourish despite this were challenging. It challenged States built upon liberal democratic norms at all the levels of the noncitizen challenge.

Then came the death of a Kurdish infant, Alan Kurdi, who was washed up onto a Turkish beach.<sup>41</sup> For many, this was the rubicon. The recognition that something needed to change is seen in the decision that there needed to be a UN-level Summit to discuss the situation. And in 2016 the Summit was held.

The direct encounter of these movements helped to disrupt the belief that a State built upon liberal democratic principles could rely upon a compartmentalised global system, that its liberal credentials could be satisfied by internal systems of justice. 'European values' were increasingly being applied as measures for judging European activities overseas as well as activities within Europe. And this challenge to the comfortable status quo also came alongside decreasing support amongst those primarily identifying as citizens for the protection of those noncitizens who were arriving and hoping to arrive into the territories of their States, leading to increasing levels of xenophobia. The liberal democratic State was under threat by its own failure to recognise the reality of noncitizenship, to humanise noncitizens, and to give weight to their capabilities to function, including their dynamic capabilities to contribute to this framing. The people let down by the international system and now moving to find a better position within it were important actors (even if involuntarily) in challenging this failure.

Individuals who were being ignored while they were struggling and dying at home, and while they were struggling and dying in transit, were forcing themselves to be seen. The leaderships of those States built on liberal democratic principles that had been resisting acknowledging what was happening were forced to recognise that there was something wrong with the existing status quo. The disruption was mostly created by people seeking to satisfy their capabilities to function within a system that was constructing them out of doing so.

Migration itself, then, can be seen as a form of political noncitizenship. While the catalyst for the 2016 Summit was particularly the apparent inability of European countries to offer a coherent response to the migration, and the substantial

40 *The Economist* (2015) 'Migrants are thronging Budapest's train station. Germany beckons, but in Hungary the turnstiles have been shut', 2 September 2015. Lizzie Dearden (2016) 'Denmark approves controversial refugee bill allowing police to seize asylum seekers' cash and valuables', *Independent* Tuesday 26 January 2016.

41 Helena Smith (2015) 'Shocking images of drowned Syrian boy show tragic plight of refugees', *Guardian* Wednesday 2 September 2015.

pressure upon some Mediterranean countries in particular, its remit went well beyond the regional challenge. It sought to take a global approach. In the lead-up to the Summit and evidenced in the outcome document, the New York Declaration, there was an apparent commitment made to rethinking global governance in the areas of refugee reception and of migration management.<sup>42</sup> At the time of writing, it is yet to be determined whether this will continue to pursue the non-citizen challenge.

### **Maintaining noncitizenist focus? Human capital and human capability**

This institutional process did not come out of nowhere. There has been an increasing recognition of the relevance of migration to the global community, both through official and State-led processes and through popular migrant rights movements. Particularly symbolically, this can be seen in the two High-level Dialogues on Migration and Development in 2006 and 2013 and the increasing involvement of migrants and migrant civil society in global discussions of migration more generally.<sup>43</sup> This civil society movement has largely challenged the implicit citizenship that has dominated these discussions.

It has challenged, for example, the renaming of the discussion from one of 'migration' alone to one of 'migration and development', with a focus on potential material contributions of migrants to State development through remittances. Indeed, the international policy-making framework may have been made possible by the 'discovery' of remittances and the recognition that there might be a way to tap migrant contributions to State development more effectively. This was famously referred to by economist Devesh Kapur as 'the new development mantra'.<sup>44</sup> It can be characterised as an emphasis on human capital and its relation to the State rather than upon human capabilities and their relation to the individual-State relationship.<sup>45</sup>

In this debate, we can see one way in which citizenship and noncitizenship can play against each other in the consideration of a major international policy area like that of migration. We can see the key salient difference between the notion of 'human capital', and that of 'human capability' through a consideration of means and ends. Human capital is only ever a means and a by-product in liberal

42 UN (2015) New York Declaration for Refugees and Migrants, Seventy-first session, United Nations General Assembly A/71/L.1, see particularly Annex I: Comprehensive refugee response framework (pp. 17–22), and Annex II: Towards a global compact for safe, orderly and regular migration (pp. 22–25).

43 For example, Bloom 2014 *ibid.*; Bloom 2017 *ibid.*

44 Devesh Kapur (2005) 'Remittances: The New Development Mantra?', pp. 331–360 in Samuel Munzete Maimbo and Dilip Ratha (eds) (2005) *Remittances: Development Impact and Future Prospects*, World Bank.

45 For a critical view, see for example Hein de Haas (2005) 'International Migration, Remittances and Development: Myths and Facts', pp. 1269–1284 in *Third World Quarterly* 26(8).

democratic thinking that puts the individual at its centre. From a liberal perspective, then, human capital should be pursued insofar as it can achieve some other end; and it is valued insofar as it enables the achievement of some other end.<sup>46</sup> Human capability, and capability-functioning, as presented in Chapter 9, is good because it is good for people – and good for the people whose capability is being considered. In this way, while capital might be a good indicator of capabilities in some instances, and may also contribute to capabilities, it is not valuable in and of itself.

Examining the goods giving value to the human capital in the case of migration and development, it is possible to keep watch for methodological citizenism. This does not mean citizens should never be prioritised, but that this prioritisation, where appropriate, must be derivative from the theoretical structural implications of that citizen relationship. And that it sits alongside special claims also deriving from the theoretical structural implications of the noncitizen relationship. In the case of migration, it means that the claims of migrants should not only be considered in terms of the pay-offs of their human capital for others, for example.

Human capability and human capital are not irreconcilably separate. In fact, they may well intersect and mutually reinforce.<sup>47</sup> However they represent different fundamental understandings of the importance of the individual humans at their core. As such, they may give rise to very different policy frameworks and institutional structures. This can be summarised by considering three key elements in the role of capability:<sup>48</sup>

- 1 Direct relevance to well-being and freedom of people
- 2 Indirect role through influencing social change, and
- 3 Indirect role through influencing economic production (human capability as human capital).

The notion of ‘human capital’ ties easily into the idea of capability, as developing human capability enables and is enabled by developing human capital. But it remains different from, and derivative in importance from, human capability.

46 Sen refers to the distinction between means and ends for example in Amartya Sen (1997) ‘Editorial: Human Capital and Human Capability’, pp. 1959–1961 in *World Development* 25(12).

47 Katerina Tomasevski (2003) *Education Denied: Costs and Remedies*, Zed Books p. 33; discussed also in Phillipe Legrain (2007) *Immigrants: Your Country Needs Them*, Little Brown. See also Enrica Chiappero-Martinetti and Anna Sabadash (2014) ‘Integrating Human Capital and Human Capabilities in Understanding the Value of Education’, pp. 306–230 in Solava Ibrahim and Meera Tiwan (eds) (2014) *The Capability Approach: From Theory to Practice*, Palgrave Macmillan. This need not be individualistic, consider for example Severine Deneulin and Allister McGregor’s 2010 notion of ‘living well together’. The role of human capital (and the investment in human capital) in economic growth is set out in simple terms in Theodore Schultz’s 1961 paper, where he also sets out the problems of discrimination in hindering human capital (p. 14): Theodore W. Schultz (1961) ‘Investment in Human Capital’, pp. 1–17 in *the American Economic Review* 51(1).

48 Derived from Sen’s discussion in Sen 1999 *ibid.* p. 296.

The concern that has been raised with this discourse, then, is twofold. On the one hand, it risks impeding developments regarding the rights of migrants. On the other hand, it objectifies noncitizens, so that they are not seen as important in themselves, but only insofar as they contribute to the human development of others. The focus upon migration and development, then, risked focusing not on human capabilities and their importance for individual development, but on human capital and its importance for State development, which in turn may enhance access to capabilities for some. It has been argued that the introduction of discussion on ‘migration and development’ rather than on ‘migration’ alone is what paved the way for a global discussion to be possible. And yet it is important to be aware of the risks. The migration and development discourse risks falling short of noncitizenship. In this way, what could appear to be a noncitizenist movement could in fact be something quite different.

In the 2006 UN High-level Dialogue on International Migration and Development, while migrants were ostensibly the topic for discussion, migrants themselves were not officially facilitated to contribute in person to debate. This changed, symbolically at least, at the 2013 High-level Dialogue, which explicitly included representatives from migrant rights movements. Despite accusations of tokenism, this reflects a recognition of the need to enable noncitizens to participate in decision-making about their lives. This also played out in the 2016 Summit, at which members of the global migrant and refugee community spoke before the General Assembly, setting out what they saw as the priorities for action. And rather than being heard only as autobiographising victims, their presentations, like that of Andayani Adi quoted above, were expert and policy-focused. Yet it remains the case that such processes are driven primarily by those tasked with representing people insofar as they are formal citizens.

The recognition of the rights of migrants and the need to include migrant voices in international debate – especially when that debate is about migration governance – was then driven by a noncitizenist challenge. On the one hand, it was the challenge posed by people moving to claim capabilities that they were being written out of. On the other hand, it was the way in which this was picked up by ‘insiders’. However, there is a risk – as is seen in the conflation of human capital and human capability – that this discourse can slip away from noncitizenship, and instead try to preserve the status quo with quick fixes once immediate emergencies of the noncitizen challenge seem less pressing. Maintaining the noncitizenist lens offers one way in which to guard against this.

### **A potential noncitizenship**

Perhaps the heading for this final section is strange, since this book has argued that noncitizenship already exists: theoretically, experientially, and also as a movement. And yet there does not exist a theorised understanding of what noncitizenship, broadly understood, would look like. This book has tried to give an indication of how such an understanding could develop. Noncitizenship is an individual-State relationship, and should be recognised as such. In this way, it is



also a political reality, on the basis of which dynamic capability claims are generated. Failing to take this into account risks both reinforcing the vulnerabilities of already vulnerable people and constructing otherwise resilient individuals artificially into situations of vulnerability.

People relate to States as noncitizens for a variety of reasons. They may be far away, at States' borders, or within their territories. They may be stateless persons, migrants, formal citizens. They share a special sort of noncitizen-vulnerability to States built upon liberal democratic principles and to the State system. They also share the challenge that this represents for those States' consistency, legitimacy, and existence. Noncitizens are not anomalous or troublesome. In fact, they are fundamental to the reality of a State built upon liberal democratic principles. Such States and systems of States have been constructed by and for citizens. Liberal democratic analyses have focused on the justifiability of those systems to citizens. Noncitizens *qua* noncitizens have not had a look-in. Those approaches which define the boundaries of citizenship more widely or more deeply do important work, but they still do not answer the question of what is the nature of the noncitizen relationship and the nature of the obligations that arise as a result.

The core argument in this book is a noncitizenist one. It calls for a move away from the assumption that citizenship, or some quasi-citizenship, is the only way for an individual to have a recognised relationship with a State or with the system of States. In the hyphenated non-citizenship tradition, non-citizenship is seen as nothing more than citizenship's negation, and is completely understood as such. If it is presupposed that there is no way other than citizenship or quasi citizenship of having a political relationship with a State then it allows that some individuals in fact have no recognisable political relationships with any States or with the system of States, even in cases where they are clearly engaging politically.

Defined out of any relationship, some individuals become vulnerable to a system of law and politics that is not created for them, and within which they do not have recourse, or to which they have recourse only at the beneficence of the States in question. Noncitizenship provides a means by which to examine how these relationships interact, including how citizenships and noncitizenships intertwine through an individual, sometimes in her/is citizen and noncitizen relationships with one State, sometimes in her/is citizen and noncitizen relationships with more than one State. Indeed, it also helps us to look at how the relationships between States can play out in individual-State relationships, particularly when there are tensions between States, and sometimes even when an individual is a formal citizen of either or both of the States involved. This book has presented noncitizenship as a thick foundational individual-State relationship which generates dynamic capability obligations which are neither humanitarian nor derivative from some quasi-citizen status, but derive from the nature of the noncitizen-State relationship itself.

What would a noncitizenist movement look like in practice? We are already seeing it and the ways in which it intertwines with citizenship in many forms. It

is in the people travelling across borders, despite the barriers, and in the efforts of those who try to help them. It is in the struggle of domestic workers and migrant workers more generally, and in those who support them. It is in the rights-claiming of people in liberal democratic States around the world who, though formal citizens, suffer noncitizen-vulnerability and the rights-claims of those with no formal citizenship at all. These movements and the many others presented throughout this book often seem separate and perhaps even mutually conflicting. Examining the continuities between instantiations of noncitizenship could help liberal democratic thinking to address them. And it could contribute towards the urgent and long-term project of recognising the capabilities of noncitizens in a world of citizens.

# References

- Abizadeh, Arash (2008) 'Democratic Theory and Border Coercion: No right to Unilaterally Control Your Own Borders', pp. 37–65 in *Political Theory* 36.
- Abizadeh, Arash (2010) 'Democratic Legitimacy and State Coercion: A Reply to David Miller', pp. 121–130 in *Political Theory* 38.
- Ada Cheng, Shu-Ju (2003) 'Rethinking the Globalization of Domestic Service', pp. 166–186 in *Gender and Society* 17/2.
- Agamben, Giorgio (1998) *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press (tr. Daniel Heller-Roazzen).
- Akerlof, George A. and Rachel E. Kranton (2010) *Identity Economics: How our Identities Shape Our Work, Wages and Well Being*, Princeton University Press.
- Al Barazi, Zahra and Jason Tucker (2017) 'Challenging the Disunity of Statelessness in the Middle East and North Africa', pp. 87–101 in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.
- Albin, Einat and Virginia Mantouvalou (2011) 'The ILO Convention on Domestic Workers: From the Shadows to the Light', UCL Labour Rights Institute On-Line Working Paper, [www.ucl.ac.uk/laws/lri/papers/EinatAlbin-VirginiaMantouvalou.pdf](http://www.ucl.ac.uk/laws/lri/papers/EinatAlbin-VirginiaMantouvalou.pdf) (accessed 13 April 2015).
- Alexandrowic, Ra'anana (2003) *James's Journey to Jerusalem*, Lama Productions and Zeitgeist Films.
- Allsopp, Jennifer, Nando Sigona and Jenny Phillimore (2014) *Poverty among Refugees and Asylum Seekers in the UK*, IRIS Working Paper Series, No. 1/2014, University of Birmingham.
- Ambrosini, Véronique, Cliff Bowman and Nardine Collier (2009) 'Dynamic Capabilities: An Exploration of How Firms Renew Their Resource Base', in *British Journal of Management* 20.
- Amnesty International (2006) *Down and Out in London*, Amnesty International UK.
- Amrith, Megha (2010) "'They Think We Are Just Caregivers": The Ambivalence of Care in the Lives of Filipino Medical Workers in Singapore', pp. 410–427 in *The Asia Pacific Journal of Anthropology* 11 (3–4).
- Amrith, Megha (2017) *Caring for Strangers*, NIA Press.
- Anderson, Benedict (2006) *Imagined Communities: Reflections on the Origin and Spread of Nationalism* New Edition, Verso.
- Anderson, Bridget (2007) 'A Very Private Business. Exploring the Demand for Migrant Domestic Workers', pp. 247–264 in *European Journal of Women's Studies* 14(3).
- Anderson, Bridget (2008) "'Illegal immigrant": Victim or Villain?', ESRC Centre on Migration, Policy and Society Working Paper No. 64, University of Oxford.

- Anderson, Elizabeth (2011) *The Imperative of Integration*, Princeton University Press.
- Anderson, Joel and Axel Honneth (2005) 'Autonomy, Vulnerability, Recognition, and Justice', in John Christman and Joel Anderson (eds) *Autonomy and the Challenge to Liberalism: New Essays*, Cambridge University Press.
- Andzaldúa, Gloria (1987) *Borderlands/La Frontera*, Aunt Lute Book Company.
- Appiah, Kwame Antony (1992) *In My Father's House. Africa in the Philosophy of Culture*, Oxford University Press.
- Arendt, Hannah (1994) *The Origins of Totalitarianism*, Harcourt Books, New York.
- Arenll, Barbara (1996) *John Locke and America: The Defence of English Colonialism*, Clarendon Press, Oxford.
- Asouzu, Innocent I. (2004) *The Method and Principles of Contemporary Reflection in and Beyond African Philosophy*, University of Calabar Press.
- Attwood, Bain and Andrew Markus (2007) *The 1967 Referendum: Race, Power and the Australian Constitution*, Aboriginal Studies Press.
- Australian Government (2014) *Australia's Migration Trends 2013–14*, Commonwealth of Australia.
- Bancroft, George (1849) 'Letter to Lord Palmerson', 26 January 1849, cited in Rey Koslowski (2003) 'Challenges of International Cooperation in a World of Increasing Dual Nationality', in Kay Hailbronner and David Martin (Eds) (2003) *Rights and Duties of Dual Nationals: Evolution and Prospects*, Kluwer Law Publishers.
- Banner, Stuart (2005) 'Why Terra Nullius? Anthropology and Property Law in Early Australia', pp. 95–131 in *Law and History Review* 23 (1).
- Barcham, Manuhua (2000) '(De)Constructing the Politics of Indigeneity', pp. 137–151 in Duncan Ivison, Paul Patton and Will Sanders (eds) (2000) *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press.
- Barcham, Manuhua (2013) 'What Do You Mean the Culture is Different Here?!?' public talk at Ignire Seattle, 20 November 2013.
- Bauböck, Rainer (1991) 'Migration and Citizenship', pp. 27–48 in *New Community* 18(1).
- Bauböck, Rainer (1994) 'Changing the Boundaries of Citizenship: The Inclusion of Immigrants in Democratic Politics', pp. 199–232 in Rainer Bauböck (ed.) (1994) *From Aliens to Citizens: Redefining the Status of Immigration in Europe*, Avery, Vienna.
- Bauböck, Rainer (2008) 'Stakeholder Citizenship: An Idea Whose Time Has Come?', Transatlantic Council on Migration Paper, Migration Policy Institute, Washington DC.
- Bauböck, Rainer (2010) 'Migration and Citizenship', pp. 27–48 in *Journal of Ethnic and Migration Studies* 18(1).
- BBC (2016) 'Australian Aboriginal MP Linda Burney vows to fight for change' 31 August 2016.
- Beare, Margaret (1999) 'Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats?', pp. 11–41 in Phil Williams (ed.) (1999) *Illegal Immigration and Commercial Sex: The New Slave Trade*, Frank Cass.
- Beck, Ulrich (2004) 'Cosmopolitan Realism: On the Distinction between Cosmopolitanism in Philosophy and in the Social Sciences', in *Global Networks* 4(2).
- Beitz, Charles (1975) 'Justice and International Relations', pp. 360–389 in *Philosophy and Public Affairs* 4.
- Beitz, Charles (1979) *Political Theory and International Relations*, Harvard University Press.

- Beitz, Charles (2003) 'What Human Rights Mean', pp. 36–46 in *Daedalus* 132(1).
- Beitz, Charles (2009) *The Idea of Human Rights*, Oxford University Press.
- bell hooks (1983) *Ain't I a Woman: Black Women and Feminism*, Pluto Press.
- Bello, Valeria (2017) *International Migration and International Security: Why Prejudice Is a Global Security Threat*, Routledge.
- Belton, Kristy (2011) 'The Neglected Non-Citizen: Statelessness and Liberal Political Theory', *Journal of Global Ethics* 7(1).
- Belton, Kirsty (2013) 'Statelessness and Economic and Social Rights', in Lanse Minkler (ed.) (2013) *The State of Economics and Social Human Rights: A Global Overview*, Cambridge University Press.
- Belton, Kristy (2015) 'Rooted Displacement: The Paradox of Belonging Among Stateless People', pp. 907–921 in *Citizenship Studies* 19(8).
- Benhabib, Seyla (1985) 'The Generalized and the Concrete Other: The Kohlberg–Gilligan Controversy and Feminist Theory', pp. 38–60 in *Praxis International* (4).
- Benhabib, Seyla (1986) *Critique, Norm and Utopia: A Study of the Foundations of Critical Theory*, Columbia University Press.
- Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, Cambridge University Press.
- Benhabib, Seyla (2011) *Dignity in Adversity: Human Rights in Troubled Times*, Polity.
- Berlin, Isaiah (1958) 'Two Concepts of Liberty', in Isaiah Berlin (1969) *Four Essays on Liberty*, Oxford University Press.
- Bertossi, Christophe (2007) 'Ethnicity, Islam, and Allegiances in the French Military', in Christophe Bertossi (ed) (2007) *European Anti-Discrimination and the Politics of Citizenship: Britain and France*, Springer.
- Bhabha, Jacqueline (2003) 'The Citizenship Deficit: On Being a Citizen Child', pp. 53–59 in *Development* 46.
- Bhabha, Jacqueline (2011) *Children Without a State: A Global Human Rights Challenge*, MIT Press.
- Bhabha, Jacqueline and Sue Shutter (1994) *Women's Movement: Women Under Immigration, Nationality and Refugee Law*, Trentham Books.
- Bhavnani, Kum-Kum and Margaret Coulson (1986) 'Transforming Socialist-Feminism: The Challenge of Racism', pp. 81–92 in *Feminist Review* 23.
- Bilgic, Ali (2013) *Rethinking Security in the Age of Migration: Trust and Emancipations in Europe*, Routledge.
- Billig, Michael (2002) *Banal Nationalism*, Sage.
- Blackett, Adelle (2012) 'The Decent Work for Domestic Workers Convention and Recommendation 2011', pp. 778–794 in *The American Journal of International Law* 106/4.
- Blake, Jillian (2014) 'Haiti, the Dominican Republic, and Race-based Statelessness in the Americas', *Georgetown Journal of Law and Modern Critical Race Perspective* 6.
- Blake, Jillian (2017) 'Race Based Statelessness in the Dominican Republic', in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.
- Blake, Michael (2002) 'Distributive Justice, State Coercion, and Autonomy', pp. 257–296 in *Philosophy and Public Affairs* 30.
- Blinder, Scott (2015) 'Briefing: UK Public Opinion Toward Immigration: Overall Attitudes and Level of Concern', Migration Observatory briefing paper 20 August 2015.
- Blitz, Brad (2017) 'The State and the Stateless', in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (2017) *Understanding Statelessness*, Routledge.

- Blitz, Brad and Miguel Otero-Iglesias (2011) 'Stateless by Any Other Name: Refused Asylum-Seekers in the United Kingdom', pp. 1–17 in *Journal of Ethnic and Migration Studies* 37(4).
- Bloch, Alice (2013) 'Living in Fear', *Journal of Ethnic and Migration Studies* 40(10).
- Bloom, Tendayi (2014) 'Global Migration Governance: A Decade of Change?', UNU-GCM Policy Report 02/07.
- Bloom, Tendayi (2015) 'Is the Domestic Workers Convention a Triumph for Female Migrant Agency?', UNU-GCM Policy Report 03/02.
- Bloom, Tendayi (2015) 'London's Role in the Policy of Destitution of Asylum Seekers: The "Ghosts" in the British Migration Infrastructure', in Anne Kershen (ed.) (2015) *London the Promised Land*, Ashgate.
- Bloom, Tendayi (2015) 'The Business of Noncitizenship', pp. 892–906 in *Citizenship Studies* 19(8).
- Bloom, Tendayi (2016) 'Migration in a World of Citizens, Nonsensical Morality and Academia's Role in Addressing Hidden Poverty', in Helmut Gaisbauer, Gottfried Schweiger and Clemens Sedmak (eds) (2016) *Ethical Issues in Poverty Alleviation*, Springer.
- Bloom, Tendayi (2016) 'Privatised Migration Management in the Mediterranean Region and sub-Saharan Migration Decision-Making', in Belachew Gebrewold and Tendayi Bloom (eds) (2016) *Understanding Migrant Decisions*, Routledge.
- Bloom, Tendayi (2016) 'The Beginning of the End of Double-Offshoring? The Panama Papers, Asylum in Australia, and the PNG Supreme Court', *Border Criminologies*.
- Bloom, Tendayi (2017) 'Colonised Groups and the Right to Have Rights', in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.
- Bloom, Tendayi (2017) 'The Critical Role of Civil Society in the Development of Global Migration Governance Frameworks', UNU-GCM Commissioned Policy Report.
- Bloom, Tendayi and Verena Risse (2014) 'Examining Hidden Coercion at State Borders: Why Carrier Sanctions Cannot Be Justified', pp. 65–82 in *Ethics and Global Politics* 7(2).
- Borch, Merete (2001) 'Rethinking the Origins of Terra Nullius', pp. 222–239 in *Australian Historical Studies* 32.
- Boris, Eileen and Premilla Nadasen (2008) 'Domestic Workers Organize!', pp. 413–437 in *The Journal of Labor and Society* 11(4).
- Bosniak, Linda (1998) 'The Citizenship of Aliens', pp. 29–35 in *Social Text* 56.
- Bosniak, Linda (2006) *The Citizen and the Alien: Dilemmas of Contemporary Membership*, Princeton University Press.
- Bosniak, Linda (2007) 'Being Here: Ethical Territoriality and the Rights of Immigrants', pp. 389–410 in *Theoretical Inquiries in Law* 8(2).
- Bosniak, Linda (2008) 'Being Here: Ethical Territoriality and the Rights of Immigrants', pp. 123–138 in Engin Isin, Peter Nyers and Bryan Turner (eds) (2008) *Citizenship Between Past and Future*, Routledge.
- Bosniak, Linda (2010) 'Peasants and Citizens in Constitutional Thought', pp. 9–29 in *I.CONN* 8.
- Boswell, Christina (2008) 'The Elusive Rights of an Invisible Population', pp. 187–192 in *Ethics and International Affairs* 22(2).
- Bourdieu, Pierre (2001) *Masculine Domination*, Polity Press.
- Breslin, Emily (2009) 'The Road to Liability is Paved with Humanitarian Interventions: Criminal Liability for Housing Undocumented People Under 8 U.S.C. section 1324(A)(1)(A)(iii)', pp. 214–242 in *Rutgers Journal of Law and Religion* 11(1).

- Brian, Tara and Frank Laczko (2014) 'Counting Migrant Deaths: An International Overview', pp. 15–44 in Tara Brian and Frank Laczko (eds) (2014) *Fatal Journeys: Tracking Lives Lost During Migration*, IOM.
- Brian, Tara and Frank Laczko (eds) (2014) *Fatal Journeys: Tracking Lives Lost During Migration*, IOM.
- Brock, Gillian (2002) 'Liberal Nationalism versus Cosmopolitanism: Locating the Disputes', pp. 307–327 in *Public Affairs Quarterly* 16(4).
- Brock, Gillian (2009) *Global Justice: A Cosmopolitan Account*, Oxford University Press.
- Bronsted Sejersen, Tanja (2008) '“I Vow to Thee my Countries” – The Expansion of Dual Citizenship in the 21st Century', pp. 523–549 in *International Migration Review* 42(3).
- Browder, Greg and Leonard Ortolano (2000) 'The Evolution of an International Water Resources Management Regime in the Mekong River Basin', pp. 499–531 in *Natural Resources Journal* 40.
- Brown, April L. (2014) 'No Promised Land: The Shared Legacy of the Castle Bravo Nuclear Test', in *Arms Control*.
- Brown, Peter and Henry Shue (eds) (1983) *The Border That Joins: Mexican Migrants and U.S. Responsibility*, Rowman & Littlefield.
- Brownsey, P.F. (1978) 'Hume and the Social Contract', pp. 132–148 in *The Philosophical Quarterly* 28(111).
- Brubaker, Rogers (1994) *Citizenship and Nationhood in France and Germany*, Harvard University Press, Cambridge Mass.
- Buff, Rachel Ida (2012) 'Domestic Internationalisms, Imperial Nationalisms', pp. 123–140 in Sukyana Banerjee, Aims McGuinness and Steven Charles McKay (eds) (2012) *New Routes for Diaspora Studies*, Indiana University Press.
- Bummel, Andreas (2010) *The Composition of a Parliamentary Assembly at the United Nations*, Committee for a Democratic U.N.
- Butler, Judith (1990) *Gender Trouble: Feminism and the Subversion of Identity*, Routledge.
- Butler, Judith (2005) *Undoing Gender*, Routledge.
- Butler, Judith (2016) 'Rethinking Vulnerability and Resistance', pp. 12–27 in Judith Butler, Zeynep Gambetti, and Leticia Sabsay (eds) (2016) *Vulnerability in Resistance*, Duke University Press.
- Butler, Judith, Zeynep Gambetti and Leticia Sabsay (eds) (2016) *Vulnerability in Resistance*, Duke University Press.
- Cabrera, Luis (2010) *The Practice of Global Citizenship*, Cambridge University Press.
- Cabrera, Luis (2012) 'Unauthorised Immigration as Principled Resistance', Keynote Lecture at *Displacement, Resistance, Representation: Culture and Power in Contexts of Migrancy*, Conference at Queen Mary University of London 28–29 June 2012.
- Calloway, Colin (1995) *The American Revolution in Indian Country: Crisis and Diversity in Native American Communities*, Cambridge University Press.
- Caney, Simon (2001) 'Cosmopolitan Justice and Equalising Opportunities', pp. 113–134 in *Metaphilosophy* 32(1).
- Caney, Simon (2005) 'Cosmopolitan Justice, Responsibility, and Global Climate Change', pp. 747–775 in *Leiden Journal of International Law* 18, at p. 751.
- Caney, Simon (2009) 'Climate Change and the Future: Discounting for Time, Wealth and Risk', pp. 163–186 in *Journal of Social Philosophy* 40(2).
- Caney, Simon (2010) 'Climate Change and the Duties of the Advantaged', pp. 203–228 in *Critical Review of International Social and Political Philosophy* 13(1).

- Capton Marques, Nicole Terese (2011–2012) ‘Divided We Stand: The Haudenosaunee, Their Passport and Legal Implications of Their Recognition in Canada and the United States’, pp. 383–426 in *San Diego International Law Journal* 13.
- Carens, Joseph (1987) ‘Aliens and Citizens: The Case for Open Borders’, pp. 251–273 in *The Review of Politics* 49.
- Carens, Joseph (2008) ‘The Rights of Irregular Migrants’, pp. 163–186 in *Ethics and International Affairs* 22(2).
- Carens, Joseph (2009) ‘The Case for Amnesty: Time Erodes the State’s Right to Deport’, *Boston Review* 1 May 2009.
- Carens, Joseph (2010) *Immigrants and the Right to Stay*, MIT Press.
- Carens, Joseph (2013) *The Ethics of Immigration*, Oxford University Press.
- Casero Ripollés, Andreu (2007) ‘Discurso mediático, inmigración e ilegalidad: legitimizar la exclusión a través de la noticia’, pp. 69–90 in Ricard Zapata-Barrero and Teun A. Van Dijk (eds) (2007) *Discursos sobre la inmigración en España: Los medios de comunicación, los parlamentos y las administraciones*, Fundació CIDOB.
- Castles, Stephen (2005) ‘Hierarchical Citizenship in a World of Nation-States’, pp. 689–692 in *Political Sciences and Politics*.
- Chamarette, Christabel (2000) ‘Terra Nullius Then and Now: Mabo, Native Title, and Reconciliation in 2000’, pp. 167–172 in *Australian Psychologist* 35(2).
- Chiappero-Martinetti, Enrica and Anna Sabadash (2014) ‘Integrating Human Capital and Human Capabilities in Understanding the Value of Education’, pp. 306–230 in Solava Ibrahim and Meera Tiwan (eds) (2014) *The Capability Approach: From Theory to Practice*, Palgrave Macmillan.
- Cohen, Gerry (2009) *Why Not Socialism?* Princeton University Press.
- Cole, Phillip (2000) *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Edinburgh University Press.
- Cole, Phillip (2015) ‘At the Borders of Political Theory: Carens and the Ethics of Immigration’, *European Journal of Political Theory*.
- Cole, Phillip (2017) ‘Insider Theory and the Construction of Statelessness’, in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.
- Commander, Simon, Mari Kangasniemi and L. Alan Winters (2004) ‘The Brain Drain: Curse or Boon? A Survey of the Literature’, pp. 235–272 in Robert E. Baldwin and L. Alan Winters (eds) (2004) *Challenges to Globalisation: Analysing the Economics*, University of Chicago Press.
- Cowburn, Ashley (2016) ‘Government efforts to resettle unaccompanied child migrants from Calais branded a “disgrace”’, the *Independent* 16 November 2016.
- Crawley, Heaven, Joanne Hemmings and Neil Price (2011) *Coping with Destitution*, Oxfam Research Report, February 2011.
- Crenshaw, Kimberlé (1991) ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color’, pp. 1241–1299 in *Stanford Law Review* 43.
- Crisp, Roger (ed.) (2000) *Aristotle: Nicomachean Ethics*, Cambridge University Press.
- Cuarón, Alfonso (2006) ‘Children of Men’, Universal Pictures.
- Dauvergne, Catherine (2007) ‘Citizenship with a Vengeance’, pp. 489–508 in *Theoretical Inquiries in Law* 2(6).
- Dauvergne, Catherine (2008) *Making People Illegal: What Globalisation Means for Migration and Law*, Cambridge University Press.
- Davis, Angela (1998) ‘Prosecution and Race: The Power and Privilege of Discretion’, *Fordham Law Review* 13.



- Day, Gordon M. (1968) 'Iroquois: An Etymology', pp. 389–402 in *Ethnohistory* 15(4).
- de Beauvoir, Simone (1972) *The Second Sex*, Penguin [translated by H.M. Parshley].
- De Genova, Nicholas (2002) 'Migration "Illegality" and Deportability in Everyday Life', *Annual Review of Anthropology* 31.
- de Haas, Hein (2005) 'International Migration, Remittances and Development: Myths and Facts', pp. 1269–1284 in *Third World Quarterly* 26(8).
- Dearden, Lizzie (2016) 'Denmark approves controversial refugee bill allowing police to seize asylum seekers' cash and valuables', *Independent* Tuesday 26 January 2016.
- Délano Alonso, Alexandra and Benjamin Nienass (2016) *Borders and the Politics of Mourning*, special issue of *Social Research* 83(2).
- Deloria, Vine Jr and David E. Wilkins (1999) *Tribes, Treaties, and Constitutional Tribulations*, University of Texas Press.
- Deneulin, Severine and Allister McGregor (2010) 'The Capability Approach and the Politics of a Social Conception of Wellbeing', *European Journal of Social Theory* 13(4).
- Devarajan, Shantayanan and William Jack (2007) 'Protecting the Vulnerable: The Trade-off between Risk Reduction and Public Insurance', pp. 73–91 in *World Bank Economic Review* 21(1).
- Díaz, Junot (2008) *The Brief and Wondrous Life of Oscar Wao*, Faber & Faber.
- Doherty, Ben (2016) 'Doctors refuse to discharge "Baby Asha" because of fears for safety on Nauru', *Guardian* 12 February 2016.
- Doherty, Ben and Helen Davidson (2016) 'Self-immolation: desperate protests against Australia's detention regime', in *Guardian* 3 May 2016.
- Dorling, Kamena, Marchu Girma and Natasha Walter (2012) *Refused*, Women for Refugee Women.
- Dower, Nigel (2007) *World Ethics: The New Agenda*, Edinburgh University Press.
- Dundes, Alan (1971) 'A Study of Ethnic Slurs: The Jew and the Polack in the United States', *The Journal of American Folklore* 84(332).
- Dvorak, Greg (2008) "'The Marshall Islands": Making Marshallese Masculinities between American and Japanese Militarism', pp. 55–86 in *The Contemporary Pacific* 20.
- Dworkin, Gerald (1970) 'Acting Freely', pp. 367–383 in *Nous* 4.
- Dworkin, Ronald (1991) *Taking Rights Seriously*, Duckworth, London [first published 1977].
- Economist, The* (2010) 'The Iroquois and their passports: unfair play', *The Economist* 22 July 2010.
- Economist, The* (2015) 'Migrants are thronging Budapest's train station. Germany beckons, but in Hungary the turnstiles have been shut', *The Economist* 2 September 2015.
- Emecheta, Buchi (1994) *Second Class Citizen*, Heinemann [first published 1974].
- Engle, Patrice, Sarah Castle and Purnima Menon (1996) 'Child Development: vulnerability and resilience', pp. 621–635 in *Social Science of Medicine* 43(5).
- Esses, Victoria, Stelian Medianu, Andrea Lawson (2013) 'Uncertainty, Threat, and the Role of the Media in Promoting the Dehumanization of Immigrants and Refugees', pp. 518–536 in *Journal of Social Issues* 69(3).
- EUDO CITIZENSHIP (2016) 'Mode L01: Renunciation' in *Global Database on Modes of Loss of Citizenship*, San Domenica di Fiesole, European University Institute. Data correct as of 1 January 2016.
- Fabre, Cecile (2012) *Cosmopolitan War*, Oxford University Press.
- Fassin, Didier (2005) 'Compassion and Repression: The Moral Economy of Immigration Policies in France', pp. 362–387 in *Cultural Anthropology* 20(3).

- Feller, Erika (2005) 'Refugees are Not Migrants', pp. 27–35 in *Refugee Survey Quarterly* 24(4).
- Fellows, Mary Louise and Sherene Razack (1998) 'The Race to Innocence: Confronting Hierarchical Relations among Women', pp. 335–352 in *Journal of Gender, Race and Justice* 1.
- Finch, Tim and Myriam Cherti (2011) *No Easy Options*, Institute for Public Policy Research.
- Fine, Sarah and Lea Ypi (eds) (2016) *Migration in Political Theory: The Ethics of Movement and Membership*, Oxford University Press.
- Fiske, Lucy (2016) 'Self-immolation Incidents on Nauru Are Acts of "Hopeful Despair"', *The Conversation*.
- Fitzpatrick, Suzanne, Glen Bramley, Janice Blenkinsopp, Sarah Johnsen, Mandy Littlewood, Gina Netto, Filip Sosenko and Beth Watts (2015) 'Destitution in the UK: An Interim Report', Joseph Rowntree Foundation Programme Paper, March 2015.
- Fitzpatrick, Suzanne, Hal Pawson, Glen Bramby, Steve Wilcox and Beth Watts (2015) *The Homelessness Monitor, England 2015, Crisis*.
- Folbre, Nancy (2007) 'Measuring Care: Gender, Empowerment, and the Care Economy', pp. 183–199 in *Journal of Human Development* 7(2).
- Foley, Michael S. (2003) *Confronting the War Machine: Draft Resistance During the Vietnam War*, University of North Carolina Press.
- Freedman, Estelle (2007) *Essential Feminist Reader*, Random House.
- Fuchs Epstein, Cynthia (1988) *Deceptive Distinctions: Sex, Gender and the Social Order*, Yale University Press.
- Gajevic Sayegh, Alexandre (2016) 'Climate Justice and Carbon Pricing', paper presented at ESRC Seminar Series on Climate Ethics and Climate Economics, held at the University of Nottingham 13–14 April 2016, available from the University of Nottingham.
- Gajevic Sayegh, Alexandre (2016) 'Justice in a non-Ideal World: The Case of Climate Change', pp. 1–26 in *Critical Review of International Social and Political Philosophy* (published online).
- Gamble, Sarah (2015) 'Gender and Transgender Criticism', in Julian Wolfreys (ed.) (2015) *Introducing Criticism in the 21st Century*, Edinburgh University Press.
- Gammeltoft-Hansen (2011) *Access to Asylum: International Refugee Law and the Globalisation of Migration Control*, Cambridge University Press.
- Gardiner-Garden, John (2007) 'The 1967 Referendum: History and Myths', Research Brief no. 11 2006–07, Parliament of Australia, Parliamentary Library 2 May 2007.
- George-Kanentiio, Douglas M. (2006) *Iroquois on Fire: A Voice from the Mohawk Nation*, Praeger.
- Ghosh, Bimal (ed.) (1998) *Huddled Masses and Uncertain Shores: Insights into Irregular Migration*, Kluwer Law International.
- Gibney, Matthew (2004) *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*, Cambridge University Press.
- Gibney, Matthew (2008) 'Who Should Be Included? Noncitizens, Conflict and the Constitution of the Citizenry', in F. Stewart (ed.) (2008) *Horizontal Inequalities and Conflict: Understanding Group Violence in Multiethnic Societies*, Palgrave Macmillan.
- Gibney, Matthew (2009) 'Precarious Residents: Migration Control, Membership and the Rights of Non-Citizens', *Human Development Research Paper* 2009(10).
- Gibney, Matthew (2013) 'Should Citizenship Be Conditional? The Ethics of Denationalization', pp. 646–658 in *Journal of Politics* 75(3).

- Glenn, Evelyn Nakano (2004) *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor*, Harvard University Press.
- Glick Schiller, Nina, Linda Basch and Cristina Szanton Blanc (1995) 'From Immigrant to Transmigrant: Theorizing Transnational Migration', pp. 48–63 in *Anthropological Quarterly* 68(1).
- Glover, Jonathan (2012) *Humanity: A Moral History of the 20th Century* 2nd Edition, Yale University Press.
- Gnes, Davide (2013) *Maghnia: Crossing the Uncrossable Border, Mission Report on the Vulnerability of sub-Saharan Migrants and Refugees at the Algeria–Morocco Border*, Euro-Mediterranean Human Rights Network, Copenhagen.
- Goodin, Robert (1985) 'Vulnerabilities and Responsibilities: An Ethical Defence of the Welfare State', pp. 775–787 in *American Political Science Review* 79(3).
- Goodin, Robert (1986) *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities*, University of Chicago Press.
- Goodin, Robert (1988) 'What Is So Special About Our Fellow Countrymen?' pp. 663–686 in *Ethics* 98.
- Goodwin-Gill, Guy and Jane McAdam (2007) *The Refugee in International Law* Third Edition, Oxford University Press.
- Gordon, Ian, Kathleen Scanlon, Tony Travers and Christine Whitehead (2009) *Economic Impact on the London and UK Economy of an Earned Regularisation of Irregular Migrants to the UK*, LSE report for the Greater London Authority, London.
- Gorman, Daniel (2006) *Imperial Citizenship: Empire and the Question of Belonging*, Manchester University Press.
- Granness, Anke (2015) 'Is the Debate on "Global Justice" a Global One? Some Considerations in View of Modern Philosophy in Africa', pp. 126–140 in *Journal of Global Ethics* 11(1).
- Greenberg, Karen and Joshua Dratel (eds) *The Torture Papers: The Road to Abu Ghraib*, Cambridge University Press.
- Greer, Germaine (2007) *The Whole Woman*, Random House.
- Greer, Germaine (2009) 'Caster Semenya sex row: What makes a woman?', *Guardian* 20 August 2009.
- Hall, Catherine (2002) *Civilising Subjects: Metropole and Colony in the English Imagination 1830–1867*, Polity.
- Hall, Catherine (ed.) (2000) *Cultures of Empire: Colonizers in Britain and the Empire in the Nineteenth and Twentieth Centuries: A Reader*, Manchester University Press.
- Hammar, Tomas (1990) *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration*, Avebury.
- Hanjian, Clark (2003) *The Sovrien: An Exploration of the Right to Be Stateless*, Polyspire.
- Harding, Jeremy (2012) *Border Vigils: Keeping Migrants Out of the Rich World*, Verso.
- Hardoon, D., S. Ayele and R. Fuentes-Nieva (2016) 'An Economics of the 1%', Oxfam.
- Hart, HLA (1955) 'Are There Any Natural Rights?' pp. 175–191 in *Philosophical Review* 64.
- Hauptman, Laurence M. (1999) 'Eleanor Roosevelt and the American Indian: The Iroquois as a Case Study', in *The Hudson Valley Regional Review* 16(1).
- Hayes, Chris (2017) *A Colony in a Nation*, Norton.
- Haygood, Wil (2010) 'Iroquois National Lacrosse Team asks White House to honor sovereign passports', *Washington Post* 14 July 2010.
- Held, Virginia (2006) *Ethics of Care: Personal, Political and Global*, Oxford University Press.

## 200 References

- Heng, Geraldine (1997) ‘“A Great Way to Fly”: Nationalism, the State, and the Varieties of Third-World Feminism’, pp. 30–45 in M. Jacqui Alexander and Chandra Talpade Mohanty (1997) *Feminist Genealogies, Colonial Legacies, Democratic Futures*, Routledge.
- Herzog, Ben (2015) *Revoking Citizenship: Expatriation in America from the Colonial Era to the War on Terror*, New York University Press.
- Hobbes, Thomas (2003) *On the Citizen*, Cambridge University Press [first published 1651].
- Hoefler, Michael, Nancy Rytina and Bryan Baker (2012) ‘Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011’, Department of Homeland Security.
- Home Office and Foreign and Commonwealth Office (2007) ‘Managing Global Migration: A Strategy to Build Stronger International Alliances to Manage Migration’, HO and FCO June 2007.
- Home Office, UK (2007) *Enforcing the Rules*, Her Majesty’s Stationary Office.
- Honig, Bonnie (1993) *Political Theory and the Displacement of Politics*, Cornell University Press.
- Honig, Bonnie (2001) *Democracy and the Foreigner*, Princeton University Press.
- Hopkins, Katie (2015) ‘Rescue boats? I’d use gunships to stop migrants’, in the *Sun* 17 April 2015.
- Hornshoj-Moller, Stig (1998) ‘“The Eternal Jew” – A Blueprint for Genocide in the Nazi Film Archives’, Paper presented at the Genocide Studies Program Seminar, Yale University 15 October 1998.
- Hoyo, Henio (2015) ‘Apertura externa, exclusión interna: El nacionalismo Revolucionario y los derechos de migrantes, mexicanos por naturalización, y dobles nacionales en México’, Working Paper No. 87, desigualdades.net Research Network on Interdependent Inequalities in Latin America.
- HRW (2011) ‘The Domestic Workers Convention: Turning New Global Labor Standards into Change on the Ground’, Human Rights Watch Report.
- HRW (2014) ‘“I Already Bought You”: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates’, Human Rights Watch Report.
- HRW, ITUC and IDWN (2013) *Claiming Rights: Domestic Workers’ Movements and Global Advances for Labor Reform*.
- Hume, David (1971) ‘Of the Original Contract’, pp. 147–166 in Ernest Barker (1971) *Essays by Locke, Hume and Rousseau* Oxford University Press, p. 156 [essay first published 1748].
- Hursthouse, Rosalind (1991) ‘Virtue Theory and Abortion’, pp. 223–246 in *Philosophy and Public Affairs* 20(3).
- IAEA (1998) *Radiological Conditions at Bikini Atoll: Prospects for Resettlement*, International Atomic Energy Agency, Vienna.
- IAEA (n.d.) ‘Radiological Conditions at Bikini Atoll and the Prospects of Resettlement’, the International Atomic Energy Agency website [www-ns.iaea.org/appraisals/bikini-atoll.asp](http://www-ns.iaea.org/appraisals/bikini-atoll.asp).
- Ignatieff, Michael (2001) ‘Human Rights as Politics’, *Human Rights*.
- Ingram, Attracta (1994) *A Political Theory of Rights*, Oxford University Press.
- Institute for Economics and Peace (2016) *Global Peace Index 2016*, Institute for Economics and Peace.
- Inter-American Commission on Human Rights (2015) ‘Human Rights Situation of Refugees and Migrant Families and Unaccompanied Children in the United States of America’, Organisation of American States OAS/Ser.L/V/II.155 16 24 July 2015.

- International Labour Organization (2010) 'Decent work for domestic workers', Report IV(1) 4th agenda item, International Labour Conference 99th Session, Geneva, 2010.
- International Labour Organization (2013) *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, ILO.
- International Organisation for Migration (2010) *World Migration Report 2010*, IOM.
- Isin, Engin (2002) *Being Political: Genealogies of Citizenship*, University of Minnesota Press.
- Isin, Engin (2012) *Citizenship Without Frontiers*, Bloomsbury.
- Isin, Engin and Bryan Turner (2003) *Handbook of Citizenship Studies*, Sage.
- Iverson, Duncan, Paul Patton and Will Sanders (2000) 'Introduction', pp. 1–22 in Duncan Iverson, Paul Patton and Will Sanders (eds) (2000) *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press.
- Jagger, Alison (2014) *Just Methods: An Interdisciplinary Feminist Reader*, Paradigm.
- Jakarta Post, The* (2016) 'UN speaker Eni learns migrant workers' rights the hard way', Sunday 28 August 2016.
- Jamieson, Dale (2001) 'Climate Change and Global Environmental Justice', pp. 287–307 in Clark Miller and Paul Edwards (eds) (2001) *Changing Atmosphere: Expert Knowledge and Environmental Governance*, MIT Press.
- Jayal, Niraja Gopal (2013) *Citizenship and Its Discontents: An Indian History*, Harvard University Press.
- Jehan, Selim (2002) 'Evolution of the Human Development Index', *Handbook of Human Development*, Oxford University Press.
- Jiloty, John (2010) 'Iroquois Grounded but Future Looks Bright', *Inside Lacrosse* 16 August 2010.
- Johnson, Heather (2014) *Borders, Asylum and Global Non-Citizenship: The Other Side of the Fence*, Cambridge University Press.
- Johnson, Heather (2015) 'These Fine Lines: Locating Noncitizenship in Political Protest in Europe', pp. 951–965 in *Citizenship Studies* 19(8).
- Johnson, Samuel (1775) 'Taxation No Tyranny: An Answer to the Resolutions and Address of the American Congress', available from University of Alberta online at <https://babel.hathitrust.org/cgi/pt?id=aeu.ark:/13960/t6m04ps04;view=1up;seq=26>
- Johnson, Stanley (1987) *World Population and the United Nations: Challenge and Response*, Cambridge University Press.
- Joppke, Christian (1998) 'Why Liberal States Accept Unwanted Immigration', pp. 266–293 in *World Politics* 50(2).
- Joppke, Christian (2007) 'Transformation of Citizenship: Status, Rights, Identity', pp. 37–48 in *Citizenship Studies* 11(1).
- Joppke, Christian (2016) 'Terror and the Loss of Citizenship', pp. 728–748 in *Citizenship Studies* 20(6–7).
- Kabeer, Naila (2002) 'Citizenship and the Boundaries of the Acknowledged Community: Identity, Affiliation and Exclusion', *IDS Working Paper* 171, October 2002, Institute of Development Studies, University of Sussex.
- Kantouris, Costas (2016) 'Migrants clash again with Macedonian police on Greek border', *Associated Press* 13 April 2016.
- Kaplan, Sarah (2015) 'Exiled by nuclear tests, now threatened by climate change, Bikini islanders seek refuge in the U.S.' in *Washington Post* 28 October 2015.
- Kaplan, Thomas (2010) 'Iroquois defeated by passport dispute', *New York Times* 16 July 2010.

- Kapur, Devesh (2005) 'Remittances: The New Development Mantra?', pp. 331–360 in Samuel Munzete Maimbo and Dilip Ratha (eds) (2005) *Remittances: Development Impact and Future Prospects*, World Bank.
- Kearns, Deborah (1983) 'A Theory of Justice – and Love; Rawls on the Family', pp. 36–42 in *Politics* 18(2).
- Kessler, Suzanne J. and Wendy McKenna (1978) *Gender: An Ethnomethodological Approach*, University of Chicago Press.
- Khosravi, Shahram (2010) *'Illegal' Traveller: An Auto-Ethnography of Borders*, Palgrave Macmillan.
- Kidron, Perez (ed) (2004) *Refusenik! Israel's Soldiers of Conscience*, Zed Books.
- Kiernan, Ben (2008) *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*, Yale University Press.
- Kilomba, Grada (2010) *Plantation Memories: Episodes of Everyday Racism* 2nd Edition, Unrast.
- King, Iain (2014) 'Thinkers at War – John Rawls', *Military History Monthly*.
- Kingston, Lindsey (2011) 'Opting Out of Legal Nationality: Identity, Passports and the Iroquois National Lacrosse Team', Western Political Science Association 2011 Annual Meeting [unpublished].
- Kingston, Lindsey (2014) 'Statelessness as a Lack of Functioning Citizenship', pp. 127–135 in *Tilburg Law Review* 19.
- Kingston, Lindsey (2017) 'Worthy of Rights: Statelessness as a Cause and Symptom of Marginalisation', pp. 17–34 in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.
- Kiros, Teodros (1992) *Moral Philosophy and Development: The Human Condition in Africa*, Ohio University Press.
- Kittay, Eva Feder (1998) *Love's Labour: Essays on Women, Equality, and Dependency*, Routledge.
- Kolva, Brian (2012) 'Lacrosse Players, Not Terrorists: The Effects of the Western Travel Initiative on Native American International Travel and Sovereignty', p. 307 in *Washington University Journal of Law and Policy* 40.
- Koser, Khalid (2007) *International Migration: A Very Short Introduction*, Oxford University Press.
- Kostakopoulou, Dora (2008) *The Future Governance of Citizenship*, Cambridge University Press.
- Kostakopoulou, Theodora (2014) 'Mobility, Citizenship and Migration in a Post-Crisis Europe', *Instituto Affari Internazionali*, No. 9, June 2014.
- Krasodomski-Jones, Alex (2016) 'Talking To Ourselves? Political Debate Online and the Echo Chamber Effect', *DEMOS*.
- Kvisto, Peter and Thomas Faist (2010) *Beyond a Border: The Causes and Consequences of Contemporary Immigration*, Pine Forge Press (Sage).
- Kymlicka, Will (2002) *Contemporary Political Philosophy*, Oxford University Press.
- Kymlicka, Will and Wayne Norman (1994) 'The Return of the Citizen: A Survey of Recent Work on Citizenship Theory', pp. 352–381 in *Ethics* 104(2).
- Lahav, Gallya (2003) 'The Rise of Non State Actors in Migration Regulation in the United States and Europe: Changing the Gatekeepers or Bringing Back the State?' pp. 215–241 in Nancy Foner, Rubén Rumbaut and Steven Gold (eds) (2003) *Immigration Research for a New Century*, Russell Sage Foundation.
- Lanwi, Mary (2004) 'Mission School to National Mission', pp. 101–116 in Anono Lieom Loek, Veronica C. Kiluwe and Linda Crowl (eds) (2004) *Life in the Republic of the*

- Marshall Islands, Mour lo Republic eo an Majol* (written by Marshall Islanders), University of the South Pacific Centre.
- Layers for Human Rights South Africa (2014) *Belonging*, OneTwoDee.
- League of Nations (1930) Convention on Certain Questions Relating to the Conflict of Nationality Laws, *League of Nations Treaty Series* 179 (4137) 18 April 1930.
- Lee, Samsik and Hyojin Choi (2015) 'Lowest-Low Fertility and Policy Responses in South Korea', pp. 107–123 in Ronald Rindfuss and Minja Kim Choe (eds) (2015) *Low and Lower Fertility: Variations Across Developed Countries*, Springer.
- Legrain, Phillippe (2007) *Immigrants: Your Country Needs Them*, Little, Brown and Co.
- Lichtenberg, Judith (2014) *Distant Strangers: Ethics, Psychology, and Global Poverty*, Cambridge University Press.
- Lister, Ruth (2007) 'Inclusive Citizenship: Realising the Potential', pp. 49–61 in *Citizenship Studies* 11(1).
- Livingstone Smith, David (2012) *Less Than Human: Why We Demean, Enslave, and Exterminate Others*, St Martin's Press.
- Lobber, Judith (2007) 'Beyond the Binaries: Depolarising the Categories of Sex, Sexuality, and Gender', pp. 143–159 in *Sociological Inquiry* 66(2).
- Locke, John (1993) *Political Writings*, edited by David Wooton, Penguin.
- Loeak, Christopher J. (2015) President of the Marshall Islands speaking at the Opening of the UN Framework Convention on Climate Change's 21st Conference of Parties, Paris, France, 30 November 2015.
- Lomasky, Loren and Fernando Tesón (2015) *Justice at a Distance: Extending Freedom Globally*, Cambridge University Press.
- Long, Katy (2013) 'When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection', pp. 4–26 in *Migration Studies* 1(1).
- Lorde, Audre (1983) 'The Master's Tools Will Never Dismantle the Master's House', pp. 94–101 in Cherie Moraga and Gloria Anzaldúa (eds) (1983) *This Bridge Called My Back: Writings by Radical Women of Color*, Kitchen Table Press.
- Lorde, Audre (1984) 'Age, Race, Class, and Sex: Women Redefining Difference', pp. 114–123 in Audre Lorde (1984) *Sister Outsider: Essays and Speeches*, Crossing Press.
- Lorde, Audre (1984) 'Age, Race, Class, and Sex: Women Redefining Difference', pp. 114–123 in Audre Lorde (1984) *Sister Outsider: Essays and Speeches*, Crossing Press.
- Losurdo, Domenico (2014) *Liberalism: A Counter-History*, Verso [translated by George Elliott].
- Lugones, María (2010) 'Toward a Decolonial Feminism', pp. 742–759 in *Hypatia* 25(4).
- Lukes, Steven (2005) 'Liberal Democratic Torture', *British Journal of Political Science* 36.
- Lynch, Maureen (2010) 'Without Face or Future: Stateless Infants, Children and Youth', pp. 117–140 in Marisa Ensor and Elzbieta Gozdziaik (eds) (2010) *Children and Migration: At the Crossroads of Resiliency and Vulnerability*, Palgrave Macmillan.
- Maas, Willem (2009) 'Unrespected, Unequal, Hollow? Contingent Citizenship and Reversible Rights in the European Union', pp. 265–280 in *Columbia Journal of European Law* 15(2).
- MacKenzie, Catriona, Wendy Rogers and Susan Dodds (eds) (2014) *Vulnerability: New Essays in Ethics and Feminist Philosophy*, Oxford University Press.
- Mackie, John (1984) 'Can There Be a Right Based Moral Theory?' pp. 168–181 in Jeremy Waldron (ed.) (1984) *Theories of Rights*, Oxford University Press.

- MacKinnon, Catharine (1987) *Feminism Unmodified: Discourses on Life and Law*, Harvard University Press.
- MacKinnon, Catharine (1989) *Toward a Feminist Theory of the State*, Harvard University Press.
- Macklin, Audrey and Rainer Bauböck (2015) ‘The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?’, Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS 2015/14.
- Manby, Bronwen (2009) *Struggles for Citizenship in Africa*, Zed Books.
- Mandle, Jon (2006) *Global Justice*, Polity Press.
- Manning, Patrick (2005) *Migration in World History*, Routledge.
- Mantu, Sandra (2015) *Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives*, Brill.
- Marovah, Tendayi (2015) ‘Using the Capability Approach to Conceptualise African Identity(ies)’, pp. 42–57 in *Phronimon* 16(2).
- Marques, Nicole Terese Capton (2011–2012) ‘Divided We Stand: The Haudenosaunee, Their Passport and Legal Implications of Their Recognition in Canada and the United States’, pp. 383–426 in *San Diego International Law Journal* 13.
- Marshall, Thomas H. (1950) ‘Citizenship and Social Class’, reprinted in Jeff Manza and Michael Sauder (eds) (2009) *Inequality and Society*, W.W. Norton & Co.
- Mascitelli, Bruno and Simone Battison (2009) ‘Challenging the Australian Government Approach Towards Expatriate Voting: The Case of Italy’, pp. 513–519 in *Australian Journal of Political Science* 44(3).
- Maslow, Abraham H. (1989) ‘A Theory of Human Motivation’, pp. 20–35 in Harold J. Leavitt, Louis R. Pondy and David M. Boje (1989) *Readings in Managerial Psychology* 4th Edition, University of Chicago Press [first published 1964].
- Mason, Leonard (2001) ‘Foreword’, pp. xxxi–xxxix in Jack Niedenthal (2001) *For the Good of Mankind: A History of the People of Bikini and their Islands*, Bravo Books.
- Mather, Celia (2013) ‘“Yes, We Did It!”: How the World’s Domestic Workers Won their International Rights and Recognition’, Women in Informal Employment: Globalising and Organising (WIEGO) Report.
- McGregor, Russell (2011) *Indifferent Inclusion: Aboriginal People and the Australian Nation*, Aboriginal Studies Press.
- McNevin, Anne (2006) ‘Political Belonging in a Neoliberal Era: The Struggle of the Sans-Papiers’, pp. 135–151 in *Citizenship Studies* 10(2).
- McQuaid, Cate (2016) ‘“Stateless” photographs timely and timeless’, *The Boston Globe* 12 January 2016.
- Médecins Sans Frontières (2015) *Obstacle Course to Europe: A Policy-Made Humanitarian Crisis at EU Borders*, MSF December 2015.
- Melvin, Jess (forthcoming) *The Army and the Indonesian Genocide: Mechanics of Mass Murder*, Routledge.
- Mercer, David (2010) ‘“Citizen Minus”? Indigenous Australians and the Citizenship Question’, pp. 421–445 in *Citizenship Studies* 7(4).
- Michaels, Mark A. (1998) ‘Indigenous Ethics and Alien Laws: Native Traditions and the United States Legal System’, pp. 1565–1584 in *Fordham Law Review* 66(4).
- Mignolo, Walter D. (2000) *Local Histories/Global Designs*, Princeton University Press.
- Mill, John Stuart (1869) *The Subjection of Women*, D. Appleton and Company (note that the full text of this essay is currently available through Google Books).
- Miller, David (1995) *On Nationality*, Clarendon Press.



- Miller, David (2005) 'Immigration: The Case for Limits', pp. 193–206 in Andrew Cohen and Christopher Heath Wellman (eds) (2005) *Contemporary Debates in Applied Ethics*, Blackwell.
- Miller, David (2008) 'Nationalism', pp. 529–545 in John Dryzek and Bonnie Honig (eds) (2008) *The Oxford Handbook of Political Theory*, Oxford University Press, Oxford.
- Miller, David (2010) 'Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh', pp. 111–120 in *Political Theory* 38.
- Miller, David (2016) *Strangers in Our Midst: The Political Philosophy of Immigration*, Harvard University Press.
- Mills, Charles (2015) 'Race and Global Justice', pp. 181–205 in Barbara Buckinx, Jonathan Trejo-Mathys and Timothy Waligore (eds) (2015) *Dominated Global Political Justice: Conceptual, Historical, and Institutional Perspectives*, Routledge.
- Milman, Oliver and Mae Ryan (2016) 'Lives in the balance: climate change and the Marshall Islands', in *Guardian* online 15 September 2016.
- Ming Kam, Wei (2016) 'Beyond "Good" Immigrants', pp. 84–95 in Nikesh Shukla (ed.) (2016) *The Good Immigrant*, Unbound.
- Mitsilegas, Valsamis (2015) *The Criminalisation of Migration in Europe: Challenges for Human Rights and the Rule of Law*, Springer.
- Modood, Tariq, Anna Triandafyllidou and Ricard Zapata-Barrero (2006) *Multiculturalism, Muslims and Citizenship: A European Approach*.
- Moller Okin, Susan (1989) *Justice, Gender and the Family*, Basic Books.
- Moller Okin, Susan (1991) 'John Rawls: Justice as Fairness – For Whom?' in Mary Lyndon Shanley and Carole Pateman (eds) (1991) *Feminist Interpretations and Political Theory*, Polity Press.
- Moller Okin, Susan (2003) 'Poverty, Well-Being, and Gender: What Counts, Who's Heard?', pp. 280–316 in *Philosophy and Public Affairs* 31(3).
- Moller Okin, Susan (2005) "'Forty acres and a mule" for women: Rawls and feminism', pp. 233–248 in *Politics, Philosophy and Economics* 4(2).
- Moss, Jeremy (ed.) (2015) *Climate Change and Justice*, Cambridge University Press.
- Muller, Liesl (2016) 'South African Courts Confirm the Right to Nationality of a Stateless Child – 20-Year-Old Legal Principle Protecting Stateless Children Is Finally Implemented', *European Network on Statelessness* 13 September 2016.
- Munoz-Dardé, Véronique (1998) 'Rawls, Justice in the Family and Justice of the Family', pp. 335–352 in *The Philosophy Quarterly* 48(192).
- Murphy, Ann (2011) 'Corporeal Vulnerability and the New Humanism', pp. 575–590 in *Hypatia* 26(3).
- Mwangi, Oscar Gakuo (2017) 'Statelessness, Ungoverned Spaces and Security in Kenya', in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.
- Nagel, Thomas (2005) 'The Problem of Global Justice', pp. 113–147 in *Philosophy and Public Affairs* 33.
- Newton Thorpe, Francis (1909) *Colonial Charters and Other Organic Laws of the States, Territories and Colonies Now or Heretofore Forming the United States of America, Compiled and Edited Under the Act of Congress of June 30 1906, Government Printing Office, Washington DC*, see particularly Article 110.
- Noah, Trevor (2016) *Born a Crime*, Random House.
- Nobles, Melissa (2000) *Shades of Citizenship: Race and the Census in Modern Politics*, Stanford University Press.
- Nozick, Robert (1974) *Anarchy, State and Utopia*, Basic Books.

- Nussbaum, Martha (1987) *Nature, Function and Capability: Aristotle on Political Distribution*, UNU WIDER Working Paper WP31.
- Nussbaum, Martha (1992) 'Human Functioning and Social Justice: In Defense of Aristotelian Essentialism', pp. 202–246 in *Political Theory* 20(2).
- Nussbaum, Martha (1992) *Love's Knowledge: Essays on Philosophy and Literature*, Oxford University Press.
- Nussbaum, Martha (2000) *Women and Human Development: The Capabilities Approach*, Cambridge University Press.
- Nussbaum, Martha (2003) 'Capabilities as Fundamental Entitlements: Sen and Social Justice', pp. 33–59 in *Feminist Economics* 9.
- Nussbaum, Martha (2003) 'Rawls and Feminism', pp. 488–520 in Samuel Richard Freeman (ed.) (2003) *The Cambridge Companion to Rawls*, Cambridge University Press.
- Nussbaum, Martha (2006) *Frontiers of Justice: Disability, Nationality, Species Membership*, Harvard University Press.
- Nussbaum, Martha (2011) *Creating Capabilities: The Human Development Approach*, Harvard University Press.
- Nussbaum, Martha (2013) *Political Emotions: Why Love Matters for Justice*, Harvard University Press.
- Nussbaum, Martha and Amartya Sen (1993) *The Quality of Life*, Oxford University Press.
- Nyamu-Musembi, Celestine (2005) 'Towards an Actor-Oriented Perspective on Human Rights', pp. 31–49 in Naila Kabeer (ed.) (2005) *Inclusive Citizenship: Meanings and Expressions*, Zed Books.
- Nye, Catrin (2013) 'Glasgow's destitute asylum-seekers' BBC News Scotland.
- Nyers, Peter (2006) 'The Accidental Citizen: Acts of Sovereignty and (Un)Making Citizenship', pp. 22–41 in *Economy and Society* 35(1).
- Nyers, Peter (2010) 'Introduction: What's Left of Citizenship?' pp. 203–215 in *Citizenship Studies* 8(3).
- Nyers, Peter (2011) 'Alien Equality', pp. 471–486 in *Issues in Legal Scholarship* 9(1).
- Nyers, Peter (2012) 'Moving Borders: The Politics of Dirt', pp. 2–6 in *Radical Philosophy* 174.
- Nyers, Peter and Kim Rygiel (eds) *Citizenship, Migrant Activism and the Politics of Movement*.
- O'Neill, Onora (2002) *Autonomy and Trust in Bioethics*, Cambridge University Press.
- O'Neill, Onora (2005) 'The Dark Side of Human Rights', pp. 427–439 in *International Affairs* 81(2).
- Oakley, Ann (2015) *Sex, Gender and Society* Revised Edition, Ashgate [first published 1972].
- Odera Oruka, Henry (1989) 'The Philosophy of Foreign Aid: A Question of the Right to a Human Minimum', pp. 465–475 in *PRAXIS International* 1988(8).
- OHCHR (2006) *The Rights of Non-citizens*, United Nations.
- Ong, Aihwa (1999) *Flexible Citizenship: The Cultural Logics of Transnationality*, Duke University Press.
- Orwell, George (1989) *Homage to Catalonia*, Penguin Books.
- Ottawa, Marina and Amr Hamzawy (2011) 'Protest Movements and Political Change in the Arab World', Carnegie Endowment for International Peace Policy Outlook 28 January 2011.

- Oyewami, Oyeronke (1997) *The Invention of Women: Making an African Sense of Western Gender Discourses*, The University of Minnesota Press.
- Padarath, Ashnie, Charlotte Chamberlain, David McCoy, Antoinette Ntuli, Mike Rowson and Rene Loewenson (2003) *Health Personnel in Southern Africa: Confronting Maldistribution and Brain Drain*, EQUINET Discussion Paper No. 3.
- Papastavridis, Efthymios (2013) 'The "Left-to-Die Boat" incident of March 2011: Questions of International Responsibility Arising from the Failures to Save Refugees at Sea', Refugee Law Initiative Working Paper No. 10, School of Advanced Study, London.
- Phemister, Pauline (ed) (2008) *John Locke: An Essay Concerning Human Understanding*, Oxford University Press [first published 1690].
- Phillips, Anne (1992) 'Universal Pretensions in Political Thought', pp. 10–30 in Michèle Barrett and Anne Phillips (1992) *Destabilizing Theory: Contemporary Feminist Debates*, Stanford University Press.
- Pickett, Kate and Richard Wilkinson (2010) *The Spirit Level: Why Equality is Better for Everyone*, Penguin Books.
- Pogge, Thomas (1989) *Realizing Rawls*, Cornell University Press, Ithaca.
- Pogge, Thomas (1997) 'The Boundaries of Nationalism', *Canadian Journal of Philosophy* 26.
- Pogge, Thomas (2002) 'Can the Capability Approach Be Justified?', pp. 167–228 in *Philosophical Topics* 30(2).
- Pogge, Thomas (2002) *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, Polity Press, Cambridge.
- Pogge, Thomas (ed.) (2003) *Global Justice*, Blackwell Publishing.
- Pogge, Thomas (2008) *World Poverty and Human Rights* 2nd Edition, Polity Press.
- Pogge, Thomas (2010) 'A Critique of the Capability Approach', pp. 17–60 in Harry Brighouse and Ingrid Robeyns (eds) (2010) *Measuring Justice: Primary Goods and Capabilities*, Cambridge University Press.
- Pogge, Thomas and Krishan Mehta (eds) (2016) *Global Tax Fairness*, Oxford University Press.
- Ratha, Dilip (2013) 'The Impact of Remittances on Economic Growth and Poverty Reduction', *Migration Policy Institute Policy Brief* No. 8, September 2013.
- Rawls, John (1975) 'Fairness to Goodness', pp. 536–554 in *Philosophical Review* 84(4).
- Rawls, John (1999) 'Civil Disobedience', pp. 244–253 in Aileen Kavanagh and John Oberdiek (eds) (2009) *Arguing About Law*, Routledge [first published in *Collected Papers*, Harvard University Press].
- Rawls, John (1999) *The Law of Peoples*, Harvard University Press.
- Rawls, John (2003) *A Theory of Justice*, Harvard University Press [first published 1971].
- Rawls, John (2005) *Political Liberalism*, Expanded Edition, Columbia University Press.
- Refugee Action (2006) *The Destitution Trap*, Refugee Action, London.
- Refugee Council (2012) *Between a Rock and a Hard Place*, Refugee Council.
- Richter, Daniel K (1992) *The Ordeal of the Longhouse: The Peoples of the Iroquois League in the Era of European Colonization*, The University of North Carolina Press.
- Rickard, Clinton (1973) *Fighting Tuscarora: The Autobiography of Chief Clinton Rickard*, Syracuse University Press.
- Rivkin, Julie and Michael Ryan (2004) 'Feminist Paradigms', pp. 765–769 in Julie Rivkin and Michael Ryan (eds) (2004) *Literary Theory: An Anthology* 2nd Edition, Blackwell.
- Robertson, Shanthi (2015) 'Contractualization, Depoliticization and the Limits of Solidarity: Noncitizens in Contemporary Australia', pp. 936–950 in *Citizenship Studies* 19(8).

- Robeyns, Ingrid (2005) 'The Capability Approach: a theoretical survey', pp. 93–117 in *Journal of Human Development* 6(1).
- Robeyns, Ingrid (2008) 'Sen's Capability Approach and Feminist Concerns', pp. 82–104 in Flavio Comim, Mozaffar Qizilbash and Sabina Alkire (eds) (2008) *The Capability Approach: Concepts, Measures and Applications*, Cambridge University Press.
- Romero, Mary (2016) *Maid in the USA*, Routledge [first published 1995].
- Rorty, Richard (1993) 'Human Rights, Rationality and Sentimentality', reprinted at pp. 107–131 in Aakash Singh Rathore and Alex Cistelean (eds) (2011) *Wronging Rights? Philosophical Challenges for Human Rights*, Routledge.
- Rosewarne, Stuart (2013) 'The ILO's Domestic Worker Convention (C189): Challenging the Gendered Disadvantage of Asia's Foreign Domestic Workers?', *Global Labour Journal* 4(1).
- Rothenberg, Paula (2000) *Invisible Privilege: A Memoir about Race, Class, and Gender*, University Press of Kansas.
- Sammon, A. (2016) 'A History of Native Americans Protesting the Dakota Access Pipeline', *Mother Jones* 9 September 2016.
- Sanderson, Mike (2014) 'Key Threats of Statelessness in the Post-Secession Sudanese and South Sudanese Nationality Regimes', Open Research Exeter, University of Exeter.
- Sassen, Saskia (1996) *Losing Control? Sovereignty In an Age of Globalization*, Columbia University Press, New York.
- Sassen, Saskia (2000) *Guests and Aliens*, New Press.
- Sassen, Saskia (2014) *Expulsions: Brutality and Complexity in Global Economy*, Harvard University Press.
- Scheffler, Samuel (1997) 'Relationships and Responsibilities', pp. 189–209 in *Philosophy and Public Affairs* 26(3).
- Schotel, Bas (2012) *On the Right of Exclusion: Law, Ethics and Immigration Policy*, Routledge.
- Schroeder, Doris and Eugenijus Gefenas (2009) 'Vulnerability: Too Vague and Too Broad?' pp. 113–21 in *Cambridge Quarterly of Healthcare Ethics* 18(2).
- Schuck, Peter (2009) 'Response to "Forum: The Case for Amnesty"', initiated by Joseph Carens, *Boston Review* 1 May 2009.
- Schuck, Peter and Rogers Smith (1985) *Citizenship Without Consent: Illegal Aliens in the American Polity*, Yale University Press.
- Schuck, Peter and Rogers Smith (1996) 'Two Yale Professors Argue Against the Concept of ... Citizenship Without Consent', *The Social Contract* Fall 1996.
- Schuck, Peter H. (2011) 'Citizen Terrorist', pp. 61–73 in *Policy Review* 164.
- Schultz, Theodore W. (1961) 'Investment in Human Capital', pp. 1–17 in *American Economic Review* 51(1).
- Seglow, Jonathan (2009) 'Arguments for Naturalisation', pp. 788–804 in *Political Studies* 57(4).
- Sen, Amartya (1977) 'Rational Fools: A Critique of the Behavioural Foundations of Economic Theory', pp. 317–344 in *Philosophy and Public Affairs* 6(4).
- Sen, Amartya (1980) 'Equality of What?' in S. McMurrin (ed.) *The Tanner Lectures on Human Values* University of Utah Press.
- Sen, Amartya (1983) 'Development: Which Way Now?', pp. 745–762 in *The Economic Journal* 93.
- Sen, Amartya (1983) *Choice, Welfare, and Measurement*, Harvard University Press.
- Sen, Amartya (1992) *Inequality Re-examined*, Clarendon Press; Amartya Sen (1999) *Development as Freedom*, Knopf Press.

- Sen, Amartya (1993) 'Capability and Well-Being', in Amartya Sen and Martha Nussbaum (eds) (1993) *The Quality of Life*, Oxford University Press.
- Sen, Amartya (1995) *Inequality Reexamined*, Harvard University Press [first published 1992].
- Sen, Amartya (1997) 'Editorial: Human Capital and Human Capability', pp. 1959–1961 in *World Development* 25(12).
- Sen, Amartya (1998) 'Mahbub ul Haq: The Courage and Creativity of His Ideas', speech at the memorial meeting for Mahbub ul Haq at the United Nations.
- Sen, Amartya (1999) *Development as Freedom*, Oxford University Press.
- Sen, Amartya (2004) 'Dialogue: Capabilities, Lists, and Public Reason: Continuing the Conversation', pp. 77–80 in *Feminist Economics* 10(3) (an interview).
- Sen, Amartya (2005) 'Human Rights and Capabilities' pp. 151–166 in *Journal of Human Development* 6(2).
- Sen, Amartya (2009) *The Idea of Justice*, Allen Lane, London.
- Senauth, Frank (2013) *The Making and the Revolution of Libya*, Xlibris.
- Shachar, Ayelet (2009) *The Birthright Lottery: Citizenship and Global Inequality*, Harvard University Press.
- Shachar, Ayelet (2013) 'Earned Citizenship: Property Lessons from Immigration Reform', Article 2, *Yale Journal of Law and the Humanities* 23(1).
- Shachar, Ayelet and Ran Hirshl (2007) 'Citizenship as an Inherited Property', pp. 253–287 in *Political Theory* 35(3).
- SHSH (2007) Briefing paper on destitute refused asylum seekers, Still Human Still Here.
- Shue, Henry (1978) 'Torture', *Philosophy and Public Affairs* 7(2).
- Shue, Henry (1980) *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, Princeton University Press.
- Shue, Henry (1999) 'Global Environment and International Inequality', pp. 531–545 in *International Affairs* 75(3).
- Shue, Henry (2005) 'Torture in Dreamland: Disposing of the Ticking Bomb', *Case Western Reservation Journal of International Law* 37.
- Shue, Henry (2014) *Climate Justice: Vulnerability and Protection*, Oxford University Press.
- Sigona, Nando (2015) 'Campzanship: reimagining the camp as a social and political space', pp. 1–15 in *Citizenship Studies* 19(1).
- Sigona, Nando and Vanessa Hughes (2012) *No Way Out, No Way In*, Research Report, May 2012, ESRC Centre on Migration, Policy and Security, Hollywell Press, Oxford.
- Simpson, Audra (2000) 'Paths Toward a Mohawk Nation: Narratives of Citizenship and Nationhood in Kahawake', pp. 113–136 in Duncan Ivison, Paul Patton and Will Sanders (eds) (2000) *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press.
- Simpson, Audra (2014) *Mohawk Interruptus: Political Life Across the Borders of Settler States*, Duke University Press.
- Simpson, Gerry (1993–1994) 'Mabo, International Law, Terra Nullius and the Stories of Settlement: An Unresolved Jurisprudence', pp. 195–210 in *Melbourne University Law Review* 19.
- Singer, Peter (1971) 'Famine, Affluence, and Morality', pp. 229–243 in *Philosophy and Public Affairs* 1(3).
- Singer, Peter (1993) *Practical Ethics* 2nd Edition, Cambridge University Press.
- Singer, Peter (2009) *The Life You Can Save*, Random House.

- Skeldon, Ronald (2008) 'Of Skilled Migration, Brain Drains and Policy Responses', pp. 3–29 in *International Migration* 47(4).
- Smart, Brian (1978) 'Defining Civil Disobedience', pp. 249–269 in *Inquiry* 21.
- Smart, Kate (2009) *The Second Destitution Tally*, Asylum Support Partnership Policy Report.
- Smith, Adam (1982) *Lectures on Jurisprudence*, Liberty Classics.
- Smith, Anita (2007) 'Colonialism and the Bomb in the Pacific', pp. 51–72 in John Schofield and Wayne Cocroft (eds) (2007) *A Fearsome Heritage: Diverse Legacies of the Cold War*, Routledge.
- Smith, Peggie R. (2012) 'Work Like Any Other, Work Like No Other: Establishing Decent Work for Domestic Workers', Washington University in St. Louis Legal Studies Research Paper Series, Paper No. 12-05-30.
- Southwick, Steven, Brett Litz, Dennis Charney and Matthew Friedman (eds) (2011) *Resilience and Mental Health: Challenges Across the Lifespan*, Cambridge University Press.
- Soysal, Yasemin (1994) *Limits of Citizenship: Migrants and Postnational Membership in Europe*, University of Chicago Press.
- Spiro, Peter (2010) 'Dual Citizenship As Human Right', pp. 111–130 in *I.CONN* 8(1).
- Squire, Vicki (2009) *The Exclusionary Politics of Asylum*, Palgrave Macmillan.
- Squire, Vicki (2016) 'Unauthorised Migration Beyond Structure/Agency? Acts, Interventions, Effects', *Politics*, online view 1 December 2016.
- Squire, Vickie, Maria Pisani, Angeliki Dimitriadi, Dallal Stevens, Nick Vaughan-Williams, Nina Perkowski (2017) *Crossing the Mediterranean Sea by Boat: Mapping and Documenting Migratory Journeys and Experiences*, Warwick University.
- Srinivasan, T.N. (1994) 'Human Development: A New Paradigm or Reinvention of the Wheel?', pp. 238–243 in *American Economic Review* 84(2).
- Stanton, Gregory (2004) 'Could the Rwandan Genocide Have Been Prevented?', pp. 211–228 in *Journal of Genocide Research* 6(2).
- Staples, Kelly (2012) *Rethorising Statelessness: A Background Theory of Membership in World Politics*, Edinburgh University Press.
- Staufenberg, Jessica (2015) '"Inhumane" police throw food at crowds of desperate refugees in Hungary', in the *Independent* 11 September 2015.
- Steiner, Hillel (1994) *An Essay on Rights*, Blackwell.
- Stern, Nicholas Herbert (2007) *The Economics of Climate Change: The Stern Review*, Cambridge University Press.
- Stewart, Frances (2013) 'Capabilities and Human Development: Beyond the Individual – the Critical Role of Social Institutions and Social Competencies', Human Development Report Office Occasional Paper 2013/03.
- Straehle, Christine (2012) 'Global Justice, Temporary Migration, and Vulnerability', pp. 71–81 in *Global Justice* 5.
- Sugden, Robert (1993) 'Welfare, Resources, and Capabilities: A Review of *Inequality Reexamined* by Amartya Sen', pp. 1947–1962 in *Journal of Economic Literature* XXXI.
- Tagore, Rabindranath 'A Wife's Letter', pp. 604–619 in Fakrul Alam and Radha Chakravarty (eds) (2011) *The Essential Tagore*, Harvard University Press.
- Talpade Mohanty, Chandra (2003) *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity*, Duke University Press.
- Tamir, Yael (1995) *Liberal Nationalism*, Princeton University Press.
- Tan, Kok-Chor (2005) *Justice Without Borders*, Cambridge University Press.
- Teece, David (2009) *Dynamic Capabilities and Strategic Management: Organizing for Innovation and Growth*, Oxford University Press.

- Teece, David and Gary Pisano (1994) 'The Dynamic Capabilities of Firms: An Introduction', pp. 537–556 in *Industrial and Corporate Change* 3(3).
- Tesón, Fernando and Jonathan Klick (2012) 'Global Justice and Trade', pp. 217–260 in Chi Carmody, Frank Garcia and John Linarelli (eds) (2012) *Global Justice and International Economic Law: Opportunities and Prospects*, Cambridge University Press.
- Thompson, Geoff and Karen Michelmor (2014) *The Manus Solution*, ABC Four Corners.
- Thomsen, Heening and Helene Urth (2010) 'Fully Paid Paternity Leave of 2 Weeks: Impact Assessment', pp. 91–124 in European Parliament Directorate-General for Internal Policies (2010) 'Costs and Benefits of Maternity and Paternity Leave'.
- Tijdens, Kea and Maarten van Klaveren (2011) 'Domestic Workers: Their Wages and Work in 12 Countries', Wage Indicator Data Report, Wage Indicator Foundation, Amsterdam, October 2011.
- Tijdens, Kea, Tanja van der Lippe and Esther de Ruijter (2003) 'Working Women's Choices for Domestic Help: The Effects of Financial and Time Resources', Amsterdam Institute for Advanced Labour Studies Working Paper 2003–17.
- Tobin, Jack (1974) *Background Information Paper – The Bikini Situation*, Majuro, Marshall Islands, 5 April 1974.
- Tomasevski, Katerina (2003) *Education Denied: Costs and Remedies*, Zed Books.
- Tonkiss, Katherine (2013) 'Constitutional Patriotism, Migration and the post-National Dilemma', pp. 491–504 in *Citizenship Studies* 17(4–3).
- Tonkiss, Katherine (2013) *Migration and Identity in a Post-National World*, Palgrave Macmillan.
- Tonkiss, Katherine (2017) 'Statelessness and the Performance of Citizenship-As-Nationality' in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds) (2017) *Understanding Statelessness*, Routledge.
- Tonkiss, Katherine and Tendayi Bloom (2015) 'Theorising Noncitizenship: Concepts, Debates and Challenges', pp. 837–852 in *Citizenship Studies* 19(8).
- Tsuda, Takeyaki (2012) 'Whatever Happened to Simultaneity? Transnational Migration Theory and Dual Engagement in Sending and Receiving Countries', pp. 631–649 in *Journal of Ethnic and Migration Studies* 38(4).
- Tucker, Jason (2013) 'Challenging the tyranny of citizenship: statelessness in Lebanon', Doctoral thesis, University of Bath, September 2013.
- Tully, James (1982) *A Discourse on Property: John Locke and His Adversaries*, Cambridge University Press.
- Tully, James and Quentin Skinner (1993) 'Rediscovering America: The Two Treatises and Aboriginal Rights', pp. 137–176 in James Tully (ed.) (1993) *An Approach to Political Philosophy: Locke in Contexts*, Cambridge University Press.
- Turner, Bryan (1993) *Citizenship and Social Theory*, City of New York Press.
- Turner, Dale (2006) *This Is Not a Peace Pipe: Towards Critical Indigenous Philosophy*, University of Toronto Press.
- ul Haq, Mahbub (1976) *The Poverty Curtain: Choices for the Third World*, Columbia University Press.
- ul Haq, Mahbub (1995) *Reflections on Human Development*, Oxford University Press.
- UN (2015) *New York Declaration for Refugees and Migrants, Seventy-first session*, United Nations General Assembly A/71/L.1.
- UNHCR (2016) *Global Trends: Forced Displacement in 2015*, UNHCR.

- United States Department of Veterans Affairs (2015) *American Indian and Alaska Native Veterans: 2013 American Community Survey*, May 2015.
- UNWomen (2013) *Contributions of Migrant Domestic Workers to Sustainable Development*, UNWomen, Bangkok.
- van Waas, Laura (2009) *Nationality Matters: Statelessness Under International Law*, Intersentia Publishers.
- van Waas, Laura and Amal de Chickera (2017) ‘Unpacking Statelessness’, in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (2017) *Understanding Statelessness*, Routledge.
- Vanderheiden, Steve (2008) *Atmospheric Justice: A Political Theory of Climate Change*, Oxford University Press.
- Vargas, Jose Antonio (2011) ‘My life as an undocumented immigrant’, *New York Times Magazine*.
- Vargas, Jose Antonio (2013) ‘Documented’, Apo Productions.
- Vertovec, Steven (2001) ‘Transnational Challenges to the “New” Multiculturalism’, Paper Presented at ASA Conference held at the University of Sussex 30 March–2 April 2001.
- Vlastos, Gregory (1984) ‘Justice and Equality’, pp. 41–76 in Jeremy Waldron (ed.) *Theories of Rights*, Oxford University Press.
- Vlieks, Caia (2017) ‘Contexts of Statelessness: The Concepts “Statelessness in Situ” and “Statelessness in the Migratory Context”’, in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (2017) *Understanding Statelessness*, Routledge.
- Volpp, Leti (2007) ‘Citizenship Undone’, pp. 25–79 in *Fordham Law Review* 75.
- Vonk, Olivier (2012) *Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States*, Martinus Nijhoff Publishers.
- Wahlquist, Calla (2016) ‘Germaine Greer tells Q&A her trans views were wrong, but then restates them’, in the *Guardian* 11 April 2016.
- Waldron, Jeremy (1988) ‘Autonomy and Perfectionism in Raz’s Morality of Freedom’, pp. 1097–1154 in *South Carolina Law Review* 62.
- Waldron, Jeremy (1991–1992) ‘Homelessness and the Issue of Freedom’, *UCLA Law Review* 39.
- Waldron, Jeremy (1993) *Liberal Rights; Collected Papers 1981–1991*, Cambridge University Press.
- Waldron, Jeremy (2000) ‘Homelessness and Community’, *University of Toronto Law Journal* 50.
- Waldron, Jeremy (2009) ‘Community and Property – For Those Who Have Neither’, *Theoretical Inquiries into Law* 10.
- Walzer, Michael (1983) *Spheres of Justice*, Basic Books.
- Wari, Iddrisu (2016) ‘You Make a Decision and You Start Your Journey: Reflections of a Ghanaian Economic Migrant and Founder of the NGO, CEHDA’, in Belachew Gebre-wold and Tendayi Bloom (eds) (2016) *Understanding Migrant Decisions: From sub-Saharan Africa to the Mediterranean Region*, Routledge.
- Weil, Patrick (2008) *How To Be French: Nationality in the Making Since 1789*, Duke University Press.
- Weisgall, Jonathan M. (1980) ‘The Nuclear Nomads of Bikini’, pp. 74–98 in *Foreign Policy* 39.
- Weissbrodt, David (2008) *The Human Rights of Non-Citizens*, Oxford University Press.
- Wernerfelt, Birger (1984) ‘A Resource-Based View of the Firm’, pp. 171–180 in *Strategic Management Journal* 5(2).



- Westcott, Lucy (2014) 'Marshall Islands nuclear lawsuit reopens old wounds', *Newsweek* 1 August 2014.
- White House, The (2017) Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States, 27 January 2017.
- White, Stuart (2003) *The Civic Minimum*, Oxford University Press.
- WIEGO (n.d.) 'Informal Workers in Focus: Domestic Workers'.
- Wilkins, David E. and K. Tsianina Lomawaima (2001) *Uneven Ground: American Indian Sovereignty and Federal Law*, University of Oklahoma Press.
- Witkin, Alexandra (1995) 'To Silence a Drum: The Imposition of United States Citizenship on Native Peoples', pp. 353–383 in *Historical Reflections/Reflexions Historiques* 21(2).
- Wooding, Bridget (2003) 'Contesting Discrimination and Statelessness in the Dominican Republic', pp. 23–25 in *Forced Migration Review* 32.
- Wooding, Bridget (2008) 'Contesting Dominican Discrimination and Statelessness' pp. 366–375 in *Peace Review: A Journal of Social Justice* 20.
- World Bank, The (2010) *World Development Report 2010: Development and Climate Change*, The World Bank, Washington DC.
- World Bank, The (2016) *Taking on Poverty: Poverty and Shared Prosperity 2016*, International Bank for Reconstruction and Development/The World Bank.
- World Bank, The (2017) *World Development Indicators*, Washington DC, updated 1 February 2017.
- Xiu Woo, Grace Li (2003) 'Canada's Forgotten Founders: The Modern Significance of the Haudenosaunee (Iroquois) Application for Membership of the League of Nations', in *Law, Social Justice and Global Development* 2003(1).
- Yancy, George (2008) *Black Bodies, White Gazes: The Continuing Significance of Race*, Rowman & Littlefield.
- Yen-Fen, Tseng (2005) 'Permanently Temporary: Taiwanese Business "Nomads" as Reluctant Migrants', pp. 179–193 in Beatriz Lorente, Nicola Piper, Shen Hsiu-Hua and Brenda Yeoh (eds) (2005) *Asian Migrations: Sojourning, Displacement, Homecoming and Other Travels*, National University of Singapore Press.
- Ypi, Lea (2008) 'Justice in Migration: A Closed Borders Utopia?' pp. 391–418 in *Journal of Political Philosophy* 16(4).
- Yuval-Davis, Nira (2006) 'Intersectionality and Feminist Politics', pp. 193–209 in *European Journal of Women's Studies* 13(3).
- Zelizer, Viviana A. (2005) *The Purchase of Intimacy*, Princeton University Press.
- Zetter, Roger (1991) 'Labelling Refugees: Forming and Transforming a Bureaucratic Identity', pp. 39–62 in *Journal of Refugee Studies* 4(1).
- Zetter, Roger (2007) 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization', pp. 172–192 in *Journal of Refugee Studies* 20(2).
- Zornig Andersen, Lisbeth (2016) 'When Denmark Criminalised Kindness', *Granta* 7 December 2016.
- Zweig, Stephan (1964) *The World of Yesterday*, University of Nebraska Press.

# Index

Page numbers in *italics* denote tables, those in **bold** denote figures.

- Abizadeh, Arash 22–3, 124  
‘access to rights’ 27, 147–8  
‘accidental citizenship’ 90  
activated noncitizenship 1, 3, 118–37; and the capabilities approach 139; and the drive to migrate 111–15; four dimensions of vulnerability 125–31; noncitizen challenge 132–7, 188; noncitizen-vulnerability 6, 13, 42–3, 123–5, 124n15; non-recognition 5; non-relationship assumptions 120–3, 125; overseas and migration 100, 102, 104–5, 111–15; subjection of noncitizens 118–20; as term 6, 11, 14–15  
activism 174, 179  
‘adaptive preferences’ 129  
Agamben, Giorgio 29  
age: as dimension of discrimination 3, 13, 44, 157; of majority 94; old age dependency ratio 172  
agency 46, 75, 77, 136, 138, 142; collective 175  
agricultural workers, temporary 96–7  
Al Hussein, Zeid Ra’ad (OHCHR) 64  
Alexandrowic, Ra’anana, film *James’s Journey to Jerusalem* 74, **75**  
Algeria, military service and decolonisation 94–5, 94n52  
‘Allotment Policy’ (1887), USA 87  
Amrith, Megha 97  
Andayani Adi, Eni Lestari 179  
Anderson, Bridget 46  
Anderson, Joel 77  
anthropogenic climate change 100, 109–11, 120, 128–9  
Anzaldúa, Gloria 125–8, 165  
Arabian Gulf (Persian Gulf) 40, 62  
Aristotle 144, 146, 159n14  
Asouzu, Innocent I. 12n9  
asylum seekers 10n1, 27–8, 47, 52–7, 68–70, **69**, **180–2**  
Australia: colonial considerations 32; detained irregular immigrants and offshore detention centres 10n2, 11n5, 29, 30, 45–7, 47n19; claims of Australian first peoples 32, 85–7, 86n22; second-wave feminism 165; U.S. backpackers in 45–7, 75; voting rights of Italian citizens 92–3, 92n48  
autonomy: of individual 22, 58, 77–8, 111, 141, 148; of State 93  
backpackers 45–7  
banal dehumanisation 61–79; invisibility and nonsensical deprivation 54–5, 67–71; methods used 61–7; politicisation of ‘unwanted’ noncitizens and 78–9; shame, stigma and justification 42, 71–4; vulnerability and 70–2, 74–8; *see also* dehumanisation  
‘banal nationalism’ 61, 65, 152  
Bancroft, George 91  
Barcham, Manuhua 21, 164  
Bauböck, Rainer 13, 20  
Beitz, Charles 15, 34–5  
Belton, Kristy 28n7, 51, 62n4, 67  
Benhabib, Seyla 3, 35n31, 168n48  
‘benign neglect’ policy 56  
Berlin, Isaiah 129  
Bhabha, Jacqueline 140, 167  
Bhavnani, Kum-Kum 159  
Bible 90n35  
‘bidoon’ (‘without’) 62

- Bikini Atoll inhabitants and the United States (case study): climate change and 109–11; nuclear testing 30, 100–7, 102n7, **103**, 104n19, 104n20, 105
- Billig, Michael 61n1, 65, 152
- binarity 20–1; and banal dehumanisation 65; and gender 159, 163–4, 167; assumptions of 9, 21; rejections of 12, 20, 91, 98–9, 163–5
- Blake, Michael 23
- border zones and controls: alternative thinking on 38–9, 63; burdens of noncitizens and 28–9; dehumanisation and 63, 112; effects on citizenship 36–7; European (2015) 184, 184n39; noncitizen coercion and 22–3; and vulnerability 48, 127–8; US-Mexico 10n2, 125, 127–8, 165
- Bosniak, Linda 90, 122–3
- Bosnic, Denis, photograph by **59**
- Boswell, Christina 56, 115
- ‘brain drain’ 114; *see also* human capability and human capital
- Brock, Gillian 35, 154
- burden-bearing: homelessness 68; noncitizens 27–30, 125–6
- Burma *see* Myanmar
- Burney, Linda 85–6
- business migrants 97–8
- Butler, Judith 131, 133, 136
- Calais migrant camp 184n39
- Cambodia, Mekong river-sharing 108
- capabilities approach 138–45; capability-functioning 135–6, 146, 149, 179; noncitizen capabilities 145, 145–9; *see also* dynamic capabilities
- capability, human, and human capital 115, 186–8
- capital, human and capability 115, 186–8
- care 97n66, 162; and domestic work 172–7; roles 167–8, 172
- Carens, Joseph 22, 24, 39, 71, 119
- ‘caste-like rank of citizenship’ 36
- children 184; and citizenship at birth 50, 50n28; and migration **180**, 184n39; and noncitizenship 139–40; child development 124n15, 140; child soldiers 44, 66, 49–50, 50n28, 54n52, 59, 139–40, 184, 184n39; special vulnerability and support 54n52, 124
- China, Mekong river-sharing 108; 4th World Conference on Women
- Chinese immigrants in United Kingdom 66; in Australian detention 45
- citizen noncitizens 87–90; *see also* noncitizen citizens
- citizenship, global challenges to 170–90; domestic workers, movement and convention 170–8, 173n13, 173n14, **176**, **178**; human capital and human capability 186–8; migration and migrant movements 179–86; a potential noncitizenship 188–90; *see also* methodological citizenship
- citizenship 13–15; alternatives to 38–41; as concept 31; discrimination within 90, 90n35; effect of unrecognised noncitizenship on 57–60; enforced 87–8; *see also* noncitizenship; plural citizenship; transnational citizenship; unwanted and ambivalent citizenship
- ‘clandestine immigrants’ 43–4
- class 3, 13, 36, 52, 97–8, 157–8, 161, 164, 165, 167, 171–2
- climate change 2, 109–11; *see also* anthropogenic climate change
- coercion 144, 22–4, 73n44, 76, 82, 112, 114, 116, 124, 124n15, 127–8, 163
- Cole, Phillip 5, 5n16, 15–17, 22, 31, 121–2, 162, 166
- colonisation 4, 4n6, 4n7, 6–7, 31–3; and ambivalent citizenship 88–9; and anti colonial struggles 158; and decolonisation, effects of 50; and ‘spheres of influence’ 112, 112n39; in Marshall Islands 101, 105; *see also* decolonisation
- communitarianism 7–8, 36, 39
- Cook, James 32
- ‘cosmopolitanism’ 2, 8, 9, 20, 35
- Coulson, Margaret 159
- criminalisation of asylum-seeking 47; of irregular movement 71, 79
- Dadaab refugee camp, Kenya 134–6, **135**
- Dakota Access Pipeline (DAPL) 95–6
- Daniella (case study) 50n28
- Dashti, Gohar, photograph by 40–1, **41**, 49, 70, 183
- Dauvergne, Catherine 44–5, 63, 63n10
- De Genova, Nicholas 44
- death 10, 10n3, 26, 51, 112, 127, 185; worse than 27; *see also* suicide
- decolonisation 50, 94; France in Algeria 94–5

- dehumanisation 35, 42, 46–7, 54; *see also*  
 banal dehumanisation
- Delana, Iliesa 146–7, **147**
- delit de solidarité* (crime of solidarity) 58
- denationalisation 10n4, 28, 50–2, 62n4, 91
- denizenship 2, 13, 20, 123
- Denmark 4n6, 57–9, 185n40
- dependency 76–7, 76n48, 101, 124, 144, 167–8; old age dependency ratio 172
- deportation 10n4, 19, 28, 49, 51, 53, 55, 63, 77, 125
- deskilling 54
- destitution 10, 10n1, 52, 54–5, 70; *see also*  
 homelessness
- detainment, detention centres,  
 administrative detention 10, 10n2, 11n5, 29, 45–7, 47n19, 133; Guantanamo 73;  
 in Australia 30, 45–7, 75; in Democratic Republic of the Congo 68; in South Africa 48; Nazi Germany 71
- dignity 11, 17, 37, 75–7, 144, 149, 165, 169
- discrimination 2–3, 5–6, 13, 28, 164–7, 187n47; as a cause of statelessness 50–2; business migrants 97; citizenism and 36; within citizenship 90, 90n35, 157; and feminism 143, 164, 167–8; multidimensional 167–8, 173; stateless persons 51; *see also* exclusion; expulsion
- displacement 2, 4, 51, 52, 102; *see also in situ* displacement
- Dixon, Chicka 86
- domestic workers 18–19, 37, 73n44, 97, 134, 170–6, 173n13, 173n14; movement 175–8, **178**, 179n31, 190
- Domestic Workers Convention (2011), ILO 170–1, 175, **176**, 177
- domination 31, 166, 186
- Dominican Republic, denationalisation in 10n4, 28, 50–1, 67
- dual citizenship 91–6; *see also* plural citizenship
- Dworkin, Ronald 35n30
- dynamic capabilities 1, 6, 8, 94, 127, 138–55, 166, 169, 178–9, 189; background considerations 138–40; capabilities and dynamism, relationship between 154–5, 185; introducing dynamism 149–54; noncitizen capabilities 145–9; reasoning 140–4; as term 1, 6
- ‘earned citizenship’ 28n6
- ‘echo chambers’ on social media 64
- economic development 142–4
- Ecuador 89
- ‘ego defense mechanism’ 162n31
- Elena (case study) **59**, 127
- emancipation 80, 82, 87, 88, 140
- Emecheta, Buchi 36n40, 165
- empathy 65
- empirical cosmopolitanism 8
- empowerment 36, 134, 149, 152, 178, 184
- equality 6–8, 17, 31, 38, 77, 132, 165, 174; measurement 143; of citizenship 84; of liberty 11
- Esrafil (case study) 27–8, 30, 68
- Ethiopia 4n7
- ethnicity 13, 16, 29, 36, 43, 49, 51, 63, 92, 98, 150
- eudaimonia* (flourishing) 131, 136, 141, 144, *145*, 150
- European Union 183–6
- European Union Democracy Observatory (EUDO) on Citizenship 89–90
- ‘European values’ 185
- exclusion: assumptions of 14, 28, 34, 39, 52–6, 63, 70, 74, 121–2, 126, 171; and banal dehumanisation 11–12, 33, 35, 64, 72–4, 85, 100, 130; and feminism 167, 171; at borders 111, 112; by definition 16, 32, 66, 150, 163, 169; multiple dimensions of 158, 165–7; of formal citizens 2, 90, 163; ‘noncitizen insiders’ 51; the need to justify 116, 120–2; vs. human rights 4–5
- explanatory nationalism 37
- expulsion 4–5, 19, 52, 55–6, 73–4, 126, 167
- ‘extra-legal immigrants’ 44
- Farah, Khadija, photograph by 134–6, **135**
- ‘featherless bipeds’ 11, 11n6, 74
- Feinberg, Joel 73
- feminism 16–17, 38, 76, 156–69, 156n1; broadening ideas on rights and justice 167–9; and the capabilities approach 142–4; households and 160–3; intersectionality 165–7, 177; learning from 157–60; rejections of binarity 163–5
- feudalism 88, 119
- Filipino ‘semiprofessionals’ 97–8
- Fine, Sarah 39
- fingerprints 70, 136
- Finland 4n6, 83

- ‘firewall’ policy 56  
‘flexible citizenship’ 93, 97  
flourishing (*eudaimonia*) 131, 136, 141, 144, 145, 150  
France: Calais migrant camp 184n39; colonialism 31; *delit de solidarité* (crime of solidarity) 58–9; military service and decolonisation 94–5, 94n52  
Francis (case study) 76n48  
‘fraternity’ 7n21  
freedom *see* liberty
- gender 34, 36, 143, 157, 159–61; rejections of binarity 163–4, 164n36, 168; *see also* sex  
genocide 62, 64  
Germany 4n6, 180, 182  
Gibney, Matthew 2, 28n7, 38n46  
global justice theory 1–3, 13, 17, 34–6, 112–14, 119–20  
‘good’ migrants 55  
Goodin, Robert 124–5, 124n17  
*Granta* (magazine) 58  
Greenlar, Mike, photograph by 82, **83**  
Greer, Germaine 164, 164n36  
Guantanamo Bay 73–4  
*Guardian, The*, ‘The Nauru Files’ 29–30
- Haiti 89  
Haitian people in Dominican Republic 10n4, 28, 50–1  
Hammar, Tomas 20  
Hassan Ali, Muslimo (case study) 134–6, **135**  
Haudenosaunee 81–4, 81n3, 84n13, 85, 87–8; *see also* Iroquois National Lacrosse Team  
healthcare workers 97, 114  
Heath, Joe 82  
Heng, Geraldine 158  
Herzog, Ben 92  
hierarchies of capabilities 148  
hierarchy and equality 7, 61, 97  
hierarchy of citizenship 13n11, 90, 119  
Hinojosa, Maria 43  
homelessness 54, 55, 55n61, 67–71  
Honneth, Axel 77  
Hopkins, Katie 64  
Hoyo, Henio 89–90, 92  
human capital, and human capability 115, 186–8  
Human Development Index (HDI) 13, 138, 140, 140n5
- human rights 4–5, 14, 16, 22, 31, 35, 56–7, 62, 68, 123, 139, 179  
humanitarian exceptionalism 52–7  
Hume, David 119, 119n1  
Hursthouse, Rosalind 147n28  
hyphenated non-citizenship 2–3, 14, 19, 20, 21, 63–5, 85, 88, 98, 131, 167
- ‘illegal’/‘illegals’ (used as noun) 43, 63  
‘illegal’ migrants 43–4, 46, 63–5, 64n17  
immigrants, irregular *see* irregular immigrants  
immigration *see* migration  
imposition of citizenship 82, 87–90  
*in situ* displacement 28n7  
‘in transit’: noncitizens 1, 185; birth in Dominican Republic 51  
India, domestic workers 177, **178**; citizens in detention in Australia 45  
India, Partition of 4  
Indian Citizenship Act (1924), USA 87  
indigenous people 32–3, 83, 85–6, 87–8, 89, 165; in Australia 85–7, 86n22; in North America 87–8  
individual freedoms 77, 152  
individualism 6–8  
‘insider theory’ 5, 5n16, 16, 16n21, 17, 166  
International Atomic Energy Association (IAEA) 104  
International Labour Organization (ILO) 171, 173–6, **176**, **178**  
intersectionality 13, 17, 28, 157, 158, 165–8  
invisibility 15, 49, 54–5, 60, 67–71, 179  
Iroquois; *see* Haudenosaunee  
Iroquois National Lacrosse team (case study) 81–5, 81n2, 81n4, 81n5, **83**, 84n13  
irregular immigrants 6, 14, 24, 51; asylum seekers as 53–4; banal dehumanisation and 65; humanitarian exceptionalism 53–7; as ‘unwanted’ noncitizens 42–8  
Isin, Engin 12, 31  
Israel: pilgrimage to 74, 95; refusing army service 95  
Italy: Italian citizens voting rights in Australia 92–3, 92n48; stateless persons in **59**  
Italian Americans, slur 63
- James’s Journey to Jerusalem* (film) 74, **75**

- Japan and Marshall Islands 101, 105–6  
 Japanese descent, United States citizens of 92, 94  
 Johnson, Heather 3n4, 70, 136  
 Johnson, Samuel 31n19  
 Joppke, Christian 91, 163  
*jus domicile* 13, 38–9  
*jus nexi* 13, 38  
*jus sanguinis* 50, 90, 92, 163  
*jus soli* 44n4, 50–1, 89, 90, 94n52, 125, 163  
 justice 1–2, 14; and capabilities approach 141, 151; and dynamism 150–1; global justice literature 10; humanitarian exceptionalism and 56; new understandings of 167–9; theory and problems of 23, 32, 34, 34n26, 39
- Kapur, Devesh 186  
 Kearns, Deborah 162  
 Kenya, Dadaab refugee camp 134–6, **135**; stateless persons 48  
 Kilomba, Grada 162n31  
 Kiros, Teodros 145  
 Kostakopoulou, Dora (and Theodora) 13, 24, 28n6  
 Kurdi, Alan 185
- Lacrosse World Championships (2010) (case study) 81–5, **83**  
 language and terminology; *see* terminology and language  
 Laos, Mekong river-sharing 108  
 ‘liberal values’ 132, 180  
 liberalism 1, 3–7, 5n16, 11–13; activated noncitizenship and 118, 121; alternatives within 40; border controls 23; capabilities of noncitizens 148; challenge of noncitizens 132–3, 136–7, 188; contemporary developments 34–5; and dynamism 152–3; and feminism 159–60; humanitarian status in 52, 55; increased global migration and 180, 183–5; noncitizenship within 6–9; past considerations 31–4; statelessness and 49; universalism and noncitizenship 15–19; vulnerability and 75–8  
 libertarianism 7n18  
 liberty 6–8, 7n18, 17, 82, 104, 132, 143, 152, 174; and equality of liberty 7, 11, 31, 77; and slavery 31n19, 32; constriction 68, 114, 175; of citizenship 90; symbolic 82; to be moral 47, 75, 77; to flourish 136
- Libya 130, 183–4  
 Lichtenberg, Judith 150  
 Locke, John 25, 31–4, 144n22  
 Loeak, Christopher J. 109  
 Lorde, Audre 66–7, 166  
 Lyotard, Jean-François 68, 71
- Mabo, Eddie 86n22  
 MacKinnon, Catharine 158, 159  
 McElvaney, Kevin, #RefugeeCameras 180, **180–2**  
 ‘magic dates’ phenomenon 154n43  
 maleness 156, 158, 168–9, 172  
 Mandel, John 35  
 Maoris, urban 21, 165  
 Maria, Asti, ‘Home’ (photograph) **18**, 18–19  
 Marshall Islands: climate change and 109–11; nuclear testing 30, 30n15, 100–7, 102n7, **103**, 104n19, 104n20; *see also* Bikini Atoll  
 Maslow, Abraham H. 145  
 Mason, Leonard 102  
 Masoumali, Omid 47n19  
 Matayoshi, James 101  
 media, banal dehumanisation in 62n4, 63–4, 66, 184  
 Mediterranean Sea, migration across 64, 111–12, 129–30, **180–2**, 180–6  
 Mekong river (case study) 107–9, 107n27  
 Mercator Map 16n21  
 methodological citizenism 2, 10, 33, 35–8, 56, 65, 75, 187  
 methodological nationalism 37  
 Mexico 89–90; US-Mexico border 10n2, 125, 127–8, 165; unequal citizenship of 89–90  
 migrant rights movements 13, 113, 186, 188  
 migrant workers 2, 11–12, 190; marches in New York City **113**, 113–14; *see also* domestic workers  
 ‘migration and development’ 64, 113, 186, 188; *see also* human capital and human capability  
 migration discourse 39  
 migration justice 100, 112–13, 115, 136  
 militarisation of migration discourse 64–5  
 military service 34, 94–6  
 Millennium Development Goals 40  
 Miller, David 22, 29, 36–7, 124  
 Mills, Charles 17, 158n10  
 Milo of Croton 146, 146n27

- Ming Kam, Wei 66, 72  
 Moller Okin, Susan 154–5, 161, 161n20  
 moral cosmopolitanism 8  
 multiple citizenship 91–6  
 Myanmar (Burma); citizens in Australian detention 45; Mekong river-sharing 108; Rohingya 49
- Nagel, Thomas 23  
 National Health Service (NHS), UK 54  
 nationalism 7–8; and feminism 158; 'banal nationalism' 61, 65, 152; liberal nationalism 52; methodological nationalism 37, 122  
 naturalisation and naturalised citizens 20, 89–90, 92, 121  
 Nauru, Australian detention centres 10n2, 11n5, 29–30, 47, 47n19  
 Nazi concentration camps 71  
 New Zealand, urban Maoris 21  
 Ngubane, Khumbulani Frederik 48–9  
 Nicaragua 89  
 Nigeria, remittance system 115; citizens in Australian detention 45  
 'No One Is Illegal' campaign 63  
 nomadism 92, 96–8, 96n61  
 noncitizen capabilities, three types of 145, 145–6  
 noncitizen citizens 85–7; *see also* citizen noncitizens  
 'noncitizen insiders' 51  
 noncitizen politics, acknowledgment of and suppression 71, 79, 98–9, 134  
 noncitizenism 3, 10–11; as non-contractarian relationship 24–5, 141; as term 1, 10–12, 156, 169, 170, 186–90; coverage of the book 12–15; defining 11–12  
 noncitizenist movement 189–90  
 noncitizens 1–3; challenge of 132–7, 188; effect of inadequate theory on 27–30; subjection of 118–20; *see also* 'unwanted' noncitizens  
 noncitizens overseas and migration 100–17; activated noncitizenship and the drive to migrate 111–15; anthropogenic climate change 109–11; Bikinians and the United States (case study) 30, 101–7, 102n7, 103, 104n19, 104n20, 109–11; life made unsustainable 101–11; Mekong river (case study) 107–9; presence and the right to be present 115–17  
 noncitizenship 1, 12–15; contemporary developments 34–5; criticism of 19–21; inadequate theory and 27–30; within liberalism 6–9; noncitizens 1–3; past difficulties and 31–4; a potential 188–90; problems 3–6; problems and theoretical errors 26; as a special relationship 21–4; and transnational citizenship 93–4; unrecognised, and effect on citizenship 57–60; *see also* activated noncitizenship  
 'non-citizenship', as term (hyphenated) 2–3, 14, 20, 63–5, 85; as non-relationship and as in opposition to citizenship 14, 19, 21, 88, 98, 131, 167  
 'noncitizenship', as term (unhyphenated) 2–3, 6, 12, 19–21  
 'noncitizenship in situ' 11  
 noncitizen-vulnerability 6, 11, 13–15, 42–3, 51, 75, 100, 118–19, 123–5, 124n15, 132–6, 144, 157, 167  
 'normal migrants' 121–2  
 Nussbaum, Martha 6, 36, 65, 72, 129n29, 138–41, 143–4, 145n25, 146–8, 160  
 Nyamu-Musembi, Celestine 133, 134, 136  
 Nyers, Peter 39, 90
- obligations of State 1, 6, 12, 189; alternative theories on 39–40; examples of 108–11; identification of 139, 141–2, 144, 146, 148–54; from noncitizen challenge 132–4, 139; special, noncitizenship as 21–2; theories and problems of 30, 36–7; and vulnerability 77–8, 116, 132, 153–4  
 Odera Oruka, Henry 145, 162  
 O'Neill, Onora 154  
 'ordinary migrants' 121–2
- Papua New Guinea, Australian detention centres 29  
 Partition of India 4  
 people smuggling 47, 57–8  
 Persian Gulf (Arabian Gulf) 40, 62  
 Phillips, Anne 161  
 pilgrimage 74–5  
 Plato 11n6, 159n14  
 plural citizenship 91–6  
 Pogge, Thomas 34n26, 78  
 political disobedience 58–9, 78, 79  
 politicisation of 'unwanted' noncitizens 78–9; of citizens 58

- politics, noncitizen, acknowledgment of /  
 suppression 71, 79, 98–9, 134  
*Post-Standard* (newspaper) 82  
 poverty 3–4, 4n6, 4n8, 6, 27, 49, 183  
 presence and the right to be present 14,  
 27–8, 44–6, 93, 106, 115–17  
 ‘principle of asylum’ 47, 52  
 ‘proper’/‘improper’ migration 74  
 Pryce, Shirley 170–1
- quasi-citizenship 11, 19, 27–30, 40, 56–7,  
 75–6, 104, 112, 121–2, 189
- race and racism 3, 13, 17, 31, 34, 36, 38,  
 51–2, 92, 97, 150, 157–8, 162n31, 163,  
 165–6, 171–2  
 ‘Race to Innocence’ 166  
 Ramadan (case study) **59**, 127  
 Rawls, John 34, 34n26, 38, 72, 73, 78n54,  
 143, 160–2  
 Red Cross 55  
 #RefugeeCameras 180, **180–2**  
 refugees 11–12, 40, 52, 55; as political  
 actors 188; dehumanisation 64; in  
 Denmark 57; Kenya, Dadaab refugee  
 camp 134–6, **135**; reception 186; status  
 2, 11, 19, 52–3; *see also* asylum seekers;  
 #RefugeeCameras  
 ‘relationship of lack’ 123  
 remittances 115, 186  
 resilience 72, 110–11, 124n15, 174, 189  
 Rickard, Chief Clinton 87  
 right not to migrate 113  
 right to be present 115–17  
 right to exclude *see* exclusion  
 right to self-preservation 137  
 rights 40; access to 147–8; new  
 understandings of 167–9; *see also*  
 human rights  
 rights-claiming 133–6  
 rightslessness 10–11, 10n4, 26, 88, 163,  
 177  
 Robeyns, Ingrid 138  
 Rohingya 49  
 Romero, Mary 37  
 Rothenberg, Paula 166  
 Royal African Company 33
- ‘sans papiers’ (‘without papers’) 62  
 Sassen, Saskia 4, 52, 112  
 Scanlon, Thomas 143  
 Schengen area 28, 28n8  
 Schotel, Bas 22, 39, 121–2  
 Schuck, Peter 44, 44n4  
 securitisation of migration discourse 64–5  
 security: of State 5, 65, 83, 106; of persons  
 55, 70, 75, 137, 180  
 self-esteem 77  
 self-immolation 27–8, 29, 47, 47n19  
 self-respect 72–3, 76  
 Sen, Amartya 6, 36, 72, 138–40, 141,  
 143–4, 145, 147–9, 152, 155, 187n46  
 Senegal, remittance system 115  
 settledness, assumptions of 96–8, 157n5  
 sex 156, 158–9, 161–2; *see also* gender  
 sex work 70  
 sexism 7n21, 38, 129, 156, 157–64, 168  
 sexual intercourse 68  
 sexuality 3, 13, 150, 156, 164, 166n44  
 Shachar, Ayelet 13, 28n6, 38, 39, 90, 92  
 shame 42, 72–4, 125  
 Shibe, Siyabonga Melongise **75**  
 Shue, Henry 73–4  
 Sigona, Nando 29  
 ‘silent voices’ 155  
 ‘sin papeles’ (‘without papers’) 62, 125  
 ‘situationalism’ 150  
 slavery 6, 13, 20, 31–3, 31n19, 50  
 Smith, Adam 32  
 social media 64, 184  
 solidarity 3, 6–8, 7n21, 11, 13, 150, 162,  
 177; capacity for 77; crime of 58  
 ‘sour grapes’ 129  
 South Africa, stateless persons in 48–9,  
 50n28  
 sovereigntism 35n31  
 stakeholderism 13  
 Staples, Kelly 52, 90  
 State, the 1, 8–9, 14–15; *see also* border  
 zones and controls; institutions;  
 liberalism; obligations of the State  
 ‘Stateless’, photographs by Dashti 40–1,  
**41**, 49  
 stateless persons 6, 11–12, 43, 48n24;  
 Elena and Ramadan (case study) **59**,  
 59–60; as blind spot 57; as ‘unwanted’  
 noncitizens 42, 48–52, 120; de facto 53;  
 Dominican Republic 10n4, 50–2; in  
 detention 45; Khumbulani Frederik  
 Ngubane (case study) 48–9; Daniella  
 (case study) 50n28; Stefan Zweig 65–6  
 statelessness 43, 49; and banal  
 dehumanisation 65–6; and plural  
 citizenship 91; voluntary 89  
 statusism 28, 33, 156  
 Steiner, Hillel 154n43



- stigma 42, 65, 71–4; and paternity leave 168
- ‘Still Human Still Here’, photographs by Abbie Trayer-Smith 68–70, **69**
- Stoicism 144
- Strategic Management Studies 149, 151
- structural cosmopolitanism 8
- student visas 11–12
- subjecthood 7, 31; of citizens 23, 88; of noncitizens 118–20, 123, 136
- Sudan 50
- suicide 47n19; *see also* self-immolation
- Sun* (newspaper) 64
- Sustainable Development Goals 40
- swimming pool/members’ club metaphor 116
- Syria, migration from **180–2**, 180–4
- ‘tacit consent’ 119, 119n1, 141
- Tagore, Rabindranath 129
- Taiwanese business migrants 97–8
- temporary workers 2, 96
- terminology and language 3, 7n21, 21, 28, 30–1, 35, 49, 61–5, 74, 81, 90, 139, 156, 165, 170, 177
- ‘*terra nullius*’ (‘nobody’s land’) 86, 86n22
- terrorism 65, 91; as grounds for exclusion 28
- Thailand, Mekong river-sharing 108
- Thant, U 108
- Tonkiss, Katherine 13, 28n7, 39, 90
- torture 44, 73–4, 73n44
- transnational citizenship 91–6
- transnational migrants 93–4
- Trayer-Smith, Abbie (photographs) ‘Still Human Still Here’ 68–70, **69**
- Tsuda, Takeyaki 94
- Tucker, Jason 38, 38n46
- ‘tyranny of citizenship’ 38, 38n46
- ‘undocumented immigrants’ 44
- United Kingdom 4; agreement to stop nuclear testing 103n15; asylum seekers (including refused asylum seekers) 27, 52–7, 68–70, **69**, 136; Chinese immigrants 66; colonisation 86; destitution in 10n1, 28, 54–5; *Managing Global Migration* (2007) 64, 64n17; promises on Calais migrant camp 184n39; second wave feminism 165; UK citizens in Australian detention centres 45; World Lacrosse Championship 2010 (case study) 81–3
- United Nations 9, 101, 109, 113, 164, 171, 179, 185, 188
- United Nations Development Program (UNDP) 67, 142
- United Nations High Commissioner for Refugees (UNHCR) 4
- United Nations High Commissioner on Human Rights (OHCHR), Zeid Ra’ad Al Hussein 64
- United Nations High-level Dialogue on International Migration and Development (2006/2013) 113, 118, 186, 188
- United Nations Summit on Large Movement of Refugees and Migrants (2016) 179, 185–6, 188
- United States: and Marshall Islands 30, 100, 101–7, 111, 128; citizens of Japanese descent 92; citizenship of Indigenous North Americans 87–8; Dakota Access Pipeline (DAPL) 95–6; gap-year backpackers 45–7; irregular immigrants in 10n2, 14–15, 14n17; migrant domestic workers 37; minority groups 66–7; second wave feminism 185; US-Mexico border 10n2, 125, 127–8, 165; Viet Nam war draft 34, 95; *see also* Iroquois National Lacrosse Team; Haudenosaunee
- universalism 7–8, 15–19
- ‘unlawful non-citizens’ in Australia 45
- unsustainable, life made 30, 101–11
- unwanted and ambivalent citizenship 80–99; citizen noncitizens and imposition 87–90; Iroquois National Lacrosse team (case study) 81–5; nomadism 96–8, 96n61; noncitizen citizens and being counted 85–7; plural and transnational citizenships 91–6; rejecting binarity and acknowledging noncitizen politics 98–9
- ‘unwanted’ noncitizens 42–60, 74; dehumanisation and the politicisation of 62, 71–4, 78–9; humanitarian exceptionalism 52–7; irregular immigrants 43–8; non-relationship, assumptions of a 120–3, 125; stateless persons 48–52; unrecognised noncitizenship 57–60; vulnerability and 76–8
- Urban Maoris 21, 165
- ‘useless’, people feeling 54, 54n56

- 'veil of ignorance' 34n26, 160–1  
 Venezuela 89  
 Vertovec, Steven 98  
 'victim' categorisation 46–7, 55, 71, 188  
 Viet Nam, Mekong river-sharing 108; Viet Nam war, USA 34, 95; Vietnamese citizens in Australian detention centres 45  
 'villain' categorisation 46–7  
 violence 4, 31, 68, 70, 114, 162–3, 165, 172, 183  
 visa expiration 43, 45  
 visas 11–12, 19; expiration of 43, 5; not needed for Marshallese citizens in the USA 106  
 voice 17–18, 36, 74, 79, 155, 163, 171, 179, 188  
 voicelessness 71, 79, 155, 179  
 voting 90, 92–3, 92n48, 94–6  
 vulnerability 6, 19, 22–4, 28–30, 40, 107; as challenge 79, 85, 100, 105, 116, 118, 132–3, 136, 155; banal dehumanisation and 70–2, 74–8; domestic workers 172–4, 173n12, 177–9; four dimensions of 75, 111, 125–31; global migration and 29, 179–82, 185, 189; noncitizen- 6, 11–15, 19, 28, 40, 42, 48, 55, 57, 75–6, 118–19, 123–5, 134, 136, 144, 154, 180, 189–90; of children 140; river-sharing example 108–9; of 'unwanted' noncitizens 42–3, 46–7, 49; *see also* activated noncitizenship
- Waldron, Jeremy 67–8, 71, 134, 136, 153  
 Walzer, Michael 37  
 Ward, Marty 82–3, **83**  
 Wari, Iddrisu 129–30  
 water-sharing 107, 107n27; *see also* Mekong, river-sharing  
 Weil, Patrick 94–5  
 WIEGO 170–1  
 Wiesel, Elie 63  
 'womanhood' 156, 164  
 women (as group) 16, 142–3, 163–4; and domestic work 172–3, 173n12; and voice 155, 163, 171, 179; as political actors 163, 172, 179; within household 159, 162; *see also* feminism; intersectionality; sexism  
 'WOP' (ethnic slur) 63  
 work visas 11, 19, 55; expiration of 43, 45; not needed for Marshallese citizens in USA 106  
 World War One 34  
 World War Two 4, 30, 34, 92, 105–6
- Yen-Fen, Tseng 97–8  
 Ypi, Lea 39, 112, 130–1  
 Yuval-Davis, Nira 167
- Zakaria, photographs by **180–2**, 180–3  
 Zetter, Roger 61  
 Zornig Andersen, Lisbeth 57–9  
 Zweig, Stefan 65–6, 72