

Human Rights Are Not Enough

Understanding Noncitizenship and Noncitizens in Their Own Right

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INTRODUCTION

Within liberal theory, human rights are often seen as pre-institutional, and so are not tied, by definition, to any particular state. This differs from citizen rights, which derive from the individual–state relationship. Yet, in practice it is common for individuals to have to prove some citizen or quasi-citizen relationship with a particular state in order to claim their human rights. Expanding citizenship to include more individuals may provide a useful interim measure for some, but it leaves others behind and does not challenge the idea and practice of making access to human rights contingent on citizenship or quasi-citizenship.¹ In this chapter, I suggest that while human rights are important, they are theoretically and practically insufficient to ensure everyone’s basic needs are met.² I argue that to address this, it is crucial to acknowledge that citizenship is not the only form of relationship that can exist between an individual and a state. It is also necessary in both theory and practice to recognize substantive relationships of “noncitizenship” as well as the rights claims that noncitizenship creates.

In this chapter, I offer noncitizen rights not as an alternative but as complementary to both human rights and citizen rights. I argue that noncitizenship is not a negation of citizenship, but another form of individual–state relationship produced

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¹ See also L. Kingston, *Fully Human* (Oxford: Oxford University Press, 2019).

² Chapters 9 and 12 by Serena Parekh and Jaya Ramji-Nogales in this volume share similar concerns and frame their proposed solutions differently.

by the construction and reconstruction of states. The noncitizen relationship thereby generates obligations that are tied, by definition, to specific states.³ Although human rights are conceptually important and have been useful in asserting rights for people who have struggled to access even the most basic rights in any other way, I argue that it is essential also to acknowledge the institutional, necessarily noncontractual, relationship of noncitizenship and the rights associated with it.

Noncitizenship rights arise from diverse existing philosophical theories for how a state is imbued with legitimacy. For example, state legitimacy may be thought to be founded on its ability to provide security and stability, protect human dignity, promote agency, and ensure coherent and self-governing national communities. States may appear to be justified insofar as they ensure these goods for citizens. However, in fulfilling these goals (to some extent) for some, states and the state system may also *actively impair* access to these goods for others. The way in which the provision of goods for some people harms those thereby excluded from those goods has implications for state legitimacy. It is, then, not enough to justify the state and the multistate system with respect to those who benefit from them. It is also necessary either to provide a justification for the state with respect to those who must bear the burden of its actions and find ways to live despite it or, at the very least, to explain why this justification is unnecessary.

Thus, I argue that relationships of both citizenship and noncitizenship are fundamental to most conceptions of state construction (whether acknowledged or not). Constructing and maintaining a modern state creates both types of relationship. They are not binary or opposites. Neither is derivative from the other. They represent different modes of relating to the state. This means that it is not possible to understand the state fully without understanding both noncitizenship and citizenship. As such, both must be part of the legitimation story of the state. On this basis, in this chapter I offer an alternative way of thinking about the relationship between rights and the institutions of states and of the multistate system. This framework could in turn drive a rethinking of institutional arrangements in ways that better recognize the rights claims of those who bear the heaviest burden of that system. Noncitizen rights are institutional and particular. They do not challenge, but complement (nonparticular) claims a person has to human rights by virtue of their humanity.

WHY NONCITIZEN RIGHTS

As Jaya Ramji-Nogales observes in Chapter 12, the lists of human rights as presented in existing international treaties represent the outcome of political negotiations

³ The notion of “noncitizenship” is developed in detail in T. Bloom, *Noncitizenship: Recognising Noncitizen Capabilities in a World of Citizens* (Abingdon: Routledge, 2018).

among parties with different normative frameworks and interests within particular political contexts.⁴ As she shows, despite the messiness with which they came into being, these treaties have been vital to establishing basic norms and are crucial in understanding how the claiming of human rights functions today. However, they are based on an understanding of human rights that is fundamentally state based.⁵

This is seen in the preamble to the Universal Declaration of Human Rights, where the Declaration is presented as a “common standard of achievement for all peoples and all nations.”⁶ That is, it is not directed toward individuals *per se* but rather as they are grouped into “peoples” and “nations,” governed by states with the power to protect, grant, or withhold rights. The underlying assumption that human rights are dependent upon formal membership in a particular state (“citizenship”) is pervasive in human rights literature. Most of the classic writers on the universality of human rights sometimes, if not as a matter of course, slip into the language of citizenship when they really mean personhood.

Thus, while human rights are theoretically pre-institutional, they are in practice institutionally derived and usually delivered through citizenship.⁷ Human rights are harder to enforce in the absence of a legally recognized relationship with a state because it is difficult to establish a duty-holder. On the face of it, while negative rights (like the right not to be tortured or arbitrarily killed) most obviously give rise to perfect obligations against everyone (everyone, including every state official, has an obligation not to torture or arbitrarily kill), it is harder to establish this in the case of positive rights (like the right to subsistence or shelter).⁸ However, even negative rights become more difficult to assign if they are associated with an underlying right to *be somewhere* un-tortured and thus become part of a community.⁹ This means that while human rights might be universal in principle, in practice many people do not have a route to claiming even the most basic rights.

⁴ Chapter 12.

⁵ Dominant debates regarding the underlying politics of international human rights, and their implications, often do not engage with this state focus. Two key ways in which these debates are framed are found, e.g., in D. Thomas, *The Helsinki Effect* (Princeton, NJ: Princeton University Press, 2001) and S. Tharoor, “Are Human Rights Universal?” (2002) 16(4) *World Policy Journal* 1–6, respectively.

⁶ Universal Declaration of Human Rights, December 10, 1948, United Nations General Assembly Res. 217A(III).

⁷ H. Arendt, *The Origins of Totalitarianism* (San Diego, CA: Harcourt Books, 1994); see also J. Ramji-Nogales, “‘The Right to Have Rights’: Undocumented Migrants and State Protection” (2015) 63 *Kansas Law Review* 1045–1065; B. Blitz, “The State and the Stateless,” in T. Bloom, K. Tonkiss, and P. Cole (eds.), *Understanding Statelessness* (Abingdon: Routledge, 2017).

⁸ O. O’Neill, “Rights, Obligations and World Hunger,” in F. Jiménez (ed.), *Poverty and Social Justice: Critical Perspectives: A Pilgrimage Toward Our Own Humanity* (Tempe: Bilingual Press, 1987), pp. 86–100.

⁹ This is presented in different ways by J. X. Fan, “On the Two Sides of Human Rights” (2003) 9 *International Legal Theory* 79–86, and C. Fabre, “Constitutionalising Social Rights” (1998) 6 (3) *The Journal of Political Philosophy* 263–284.

My primary intention here is not to critique human rights, but to put forward a case for the recognition of an *additional* type of rights. This is needed for two main reasons. First, assumptions about human rights often slip into assumptions about citizen rights. Second, states rely on relationships of noncitizenship for their existence and these relationships, I would argue, affect the state's legitimacy. In the construction and maintenance of states, relationships of both citizenship and non-citizenship are also constructed. That is, noncitizenship (not to be confused with the hyphenated "non-citizenship," as the negation of citizenship) is a real and foundational aspect of the modern state, and one which has thus far gone largely unacknowledged.

Some special statuses like refugee status, work visas, or residency have the same form as, but are not quite equivalent to, citizenship. I call these "quasi-citizen" statuses.¹⁰ Although these statuses represent relationships between individuals and a state of which they are not citizens, what is *relevant* about these relationships is that they demonstrate an individual's almost-but-not-quite citizenship claim against a particular state. Quasi-citizenship is also related to notions of "denizenship." Sometimes this term refers to people with quasi-citizen statuses. Sometimes it is used more broadly to include all those who have a strong relationship with a state or with a community in a state, but are unable to access citizenship.¹¹ Like quasi-citizenship, denizenship is also defined in deference to citizenship. This is not the case for noncitizenship.

People with quasi-citizen statuses and those understood as denizens may in practice *also* experience strong noncitizen relationships with the states in question. This is because their relationships with those states cannot only be understood through citizenship and associated terminology. Citizenship is theorized in a number of ways, for example, as political status or recognition,¹² as bound up in rights and duties,¹³ as membership connected with identity (variously

¹⁰ The language of "quasi-citizenship" is developed in more detail throughout Bloom, *Noncitizenship*.

¹¹ For analysis of different uses of the language of "denizenship," see T. Golash-Bosa, "Feeling Like a Citizen, Living As a Denizen: Deportees' Sense of Belonging" (2016) 60(13) *American Behavioral Scientist* 1575–1589; T. Hammar, *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration* (Beatty, NV: Avebury, 1990); R. Bauböck, "Migration and Citizenship" (1991) 18(1) *New Community* 27–48.

¹² E. E., "United Stateless in the United States: Reflections from an Activist," in T. Bloom and L. Kingston (eds.), *Statelessness, Governance, and the Problem of Citizenship* (Manchester: Manchester University Press, 2021); R. Lister, "Dialectics of Citizenship," (1997) 12(4) *Hypatia* 6–26.

¹³ T. H. Marshall, *Citizenship and Social Class* (1950), reprinted in J. Manza and M. Saunderson (eds.), *Inequality and Society* (New York: Norton, 2009); interrogated in Y. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994); J. Dunn, "Political Obligation," in D. Held (ed.), *Political Theory Today* (Stanford, CA: Stanford University Press, 1991); J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999).

defined)¹⁴ or shared values,¹⁵ as a practice,¹⁶ or, indeed, as some mix of these and other approaches.¹⁷ Overall, theorizations of citizenship assume that somehow the interests of the citizen (or, in this case, the quasi-citizen) and those of the state are affected by each other. There is the idea that the citizen/quasi-citizen gives up power or resources or labor to the state and gets some form of altered power or protection back, or a share in communal goods. Underlying these ideas is the notion that citizens/quasi-citizens live well, or live, in one way or another *thanks* to the state.

Like citizenship, noncitizenship has no meaning outside the institutional arrangement of states. And like citizenship, noncitizenship is a relationship that gives rise to vulnerabilities and rights claims. Yet, unlike citizenship, which includes by definition some form of mitigation of the vulnerability and power disparity that it creates, noncitizenship does not include this mitigation.

Noncitizenship and citizenship are not mutually dependent or mutually exclusive, but equally fundamental. This means that a person could be in a citizen relationship (including a quasi-citizen relationship) with a particular state and at the same time be in a noncitizen relationship with that same state. For example, people may be recognized as citizens but, because of poverty or discrimination, be unable to make full use of their citizenship in some dimension or dimensions.¹⁸ Such individuals struggle under the power of the state without citizen-mitigation of that power in key dimensions. They are, then, in both a citizen and a noncitizen relationship with that state. Others may be citizens of a state that they do not believe to be legitimate. They, too, can be described as being in both citizen and noncitizen relationships with the same state. This is clearest in the case of colonial states like the modern United States, in which there are populations for whom US citizenship is

¹⁴ The notion of membership and identity is explored from different angles. M. Mamdani, "Beyond Settler and Native as Political Identities: Overcoming the Political Legacies of Colonialism" (2001) 43(4) *Comparative Studies in Society and History* 651–664; K. Tonkiss, *Migration and Identity in a Post-National World* (London: Palgrave, 2013); Y. Tamir, "United We Stand? The Educational Implications of the Politics of Difference" (1993) 12 *Studies in Philosophy and Education* 57–70; K. Belton, *Statelessness in the Caribbean: The Paradox of Belonging in a Postnational World* (Philadelphia: University of Pennsylvania Press, 2017).

¹⁵ E.g., Tonkiss, *Migration and Identity in a Post-National World*; S. Sassen, "Towards Post-National and Denationalized Citizenship," in E. F. Isin and B. S. Turner (eds.), *Handbook of Citizenship Studies* (London: Sage, 2002), pp. 277–292; T. Miller, "Cultural Citizenship," in Isin and Turner (eds.), *Handbook of Citizenship Studies*; see also A. Shachar, *The Birthright Lottery* (Cambridge, MA: Harvard University Press, 2009).

¹⁶ Essays in E. F. Isin and G. M. Nielsen, *Acts of Citizenship* (London: Zed, 2008).

¹⁷ Joppke provides a way to frame this in C. Joppke, "Transformation of Citizenship: Status, Rights, Identity" (2007) 11(1) *Citizenship Studies* 37–48.

¹⁸ Consider, for example: C. R. Epp, S. Maynard-Moody, and D. Haider-Markel, *Pulled Over: How Policy Stops Define Race and Citizenship* (Chicago: University of Chicago Press, 2014); S. T. Russell, "Queer in America: Citizenship for Sexual Minority Youth" (2002) 6(4) *Applied Developmental Science* 258–263; T. Bloom, "Endometriosis and Noncitizenship: What Makes Suffering Relevant?" (2020) 81 *Discover Society*, <https://archive.discover society.org/2020/06/03/endometriosis-and-noncitizenship-what-makes-suffering-relevant/>.

the only internationally recognized rights-generating status available, who at the same time reject the United States as a colonial power.¹⁹

Noncitizenship is a mode of relationship between an individual and a state in which the individual must live and pursue their ends to some extent *despite* that state. Though this is understood in a variety of ways, theoretically states aim to promote the wellbeing of citizens. The idea is that insofar as a person relates to a state as a citizen, that person is better off than if there had been no state. I suggest that noncitizenship functions differently. Insofar as a person functions as a non-citizen in relation to a state, the wellbeing of that person is not designed into the construction of that state. Often the implications of this for the person's life may be minimal, particularly where the person in question also has strong citizen relationships. However, where the noncitizen relationship is the overriding relationship that person has with the state with most power over them, it may present a significant impediment to that person's life.²⁰ Although some people in a noncitizen relationship may find ways to flourish, they do so *despite* a state that has significant power over their lives. Indeed, thanks to their noncitizen relationship, some people may be prevented from enjoying even basic goods. This is problematic for any liberal theory of the state that relies for its justification on the idea that the state makes the lives of those affected better.

Noncitizenship is not contingent on citizenship, but looking at citizenship can be helpful in developing a picture of how noncitizenship functions. An individual may be in a citizen relationship with many states at once. They may live in the state of which they are a citizen, or live far away from it. Their citizenship might be all-important or it might not be particularly important to them or to their life. Similarly, individuals can be simultaneously in *noncitizen* relationships with more than one state, though these relationships may have more or less relevance to their lives. A person can be in a strongly felt noncitizen relationship even with a state that is far away, but they may also be in a noncitizen relationship that is barely felt, even with the state on whose territory they are standing. For example, person G, an employee of an international firm living happily within a closed compound of compatriots in country X may not feel their noncitizen relationship with X very much at all. On the other hand, consider person H, who lives in state Y, downstream from powerful state

¹⁹ See, e.g., K. Bruyneel, "Challenging American Boundaries: Indigenous People and the 'Gift' of US Citizenship" (2004) 18(1) *Studies in American Political Development* 30–43; N. T. C. Marques, "Divided We Stand: The Haudenosaunee, Their Passport and Legal Implications of Their Recognition in Canada and the United States" (2011) 13 *San Diego International Law Journal* 383–426; A. Witkin, "To Silence a Drum: The Imposition of United States Citizenship on Native Peoples" (1995) 21(2) *Historical Reflections/Réflexions Historiques* 353–383; T. Bloom, "Members of Colonised Groups, Statelessness and the Right to Have Rights," in Bloom, Tonkiss, and Cole (eds.), *Understanding Statelessness*.

²⁰ A person could potentially be in a noncitizen relationship with any state, but we are only interested here in the cases where that relationship has an impact on the way in which a person is able to live out their life.

Z that is syphoning or polluting their primary water source. H may feel their noncitizen relationship with Z strongly despite not being on its territory. In addition, although they are not *theoretically dependent* on each other, the noncitizen and citizen relationships that an individual has may *interact with and affect* each other. For example, perhaps G is also a citizen or quasi-citizen of a powerful country that can mitigate G's relationship with X, while Y is unable to do this for H.

A stronger noncitizen relationship gives rise to stronger claims. Consider the impact of CO₂ emissions and the global warming that results. Some countries produce significant levels of CO₂ emissions.²¹ Everyone who must live well, or even just live, *despite* this is in a noncitizen relationship with the states concerned. However, some people are not affected as strongly as others. They may experience slightly different weather, but barely notice the effects. They are in a weak noncitizen relationship and this does not, then, give rise to strong claims. However, some people are affected much more strongly. This includes those whose traditional way of life has been made impossible (e.g., because crops no longer grow in the same way or animals can no longer survive).²² It also includes those currently living in Kiribati, which is predicted to be the first state to be entirely submerged by rising sea levels.²³ In these cases, I suggest that affected individuals may have stronger noncitizen claims against polluting states. Even if it is true that the ability to select its citizenry is core to a state's sovereignty (which I'm not sure it is), recognizing noncitizenship means acknowledging that states have relationships with more individuals than those that they have selected as citizens.

Although there are similarities, noncitizenship functions differently to citizenship. Whereas notions of consent or reciprocity are built into various framings of citizenship, by definition noncitizenship functions differently. No matter your theory of citizenship or of the state, *noncitizenship* includes an element of the involuntary. This affects the rights that arise as a result. This involuntariness in the noncitizen relationship also applies to the state. In the world of modern states, I argue that even in *denying* an individual any formal relationship, a state is thereby creating a relationship with that individual, albeit one it would rather not have. And that this relationship gives rise to rights claims.

²¹ International Energy Agency, "Global CO₂ emissions in 2019," February 11, 2020, www.iea.org/articles/global-co2-emissions-in-2019. See also discussion in S. Caney, "Just Emissions" (2012) 40 (1) *Philosophy and Public Affairs* 255–301.

²² Presented already in the 1990s, e.g., in H. Le Houérou, "Climate Change, Drought, and Desertification" (1996) 34(2) *Journal of Arid Environments* 133–185; J. Snorek, "Contested Views of the Causes of Rural to Urban Migration amongst Pastoralists in Niger," in B. Gebrewold and T. Bloom (eds.), *Understanding Migrant Decisions* (Abingdon: Routledge, 2016), pp. 59–79.

²³ M. Loughry and J. McAdam, "Kiribati – Relocation and Adaptation" (2008) 31 *Forced Migration Review* 51–52; M. Risse, "The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth" (2009) 23(3) *Ethics and International Affairs* 281–300; K. Wilkinson Cross and P. Kingi, "Fonua Cultural Statelessness in the Pacific and the Effects of Climate Change," in Bloom and Kingston (eds.), *Statelessness, Governance, and the Problem of Citizenship*.

NONCITIZEN RIGHTS AND GLOBAL JUSTICE

Noncitizen rights provide a way to understand how particular rights claims may be allocated to individuals within the multistate system, contributing to the global justice tradition. Global justice thinking challenges state-focused justice thinking as parochial, but it rarely engages with the problem of citizenship directly.²⁴ A dominant branch of global justice theory emphasizes the implications of global interconnectivity, focusing on the material injustices arising from existing arrangements²⁵ or the shaky legitimacy stories of underlying structures.²⁶ I suggest that one way to understand the concerns of global justice is by challenging the presumption that citizenship is the only way of relating to a state or to the system of states.²⁷ Recognizing noncitizen relationships as substantive and rights-generating can help to show that global justice claims are specific and attributable.

I argue that the construction of noncitizenship is inherent in the construction of the state and can be generated by its activities. This means that implications for noncitizens must be part of the state's legitimacy story, whatever form that legitimacy story takes. Moreover, it is necessary to present that justification *within* the real and limited global state structure. For example, there is not an infinite array of alternative and welcoming states and citizenries. To be justified, then, the theory of noncitizenship requires that a nationalist acknowledges and addresses how nationalist statehood both constructs noncitizenship and undermines coherent national group politics. A liberal may need to engage with the noncitizen relationship of both those excluded from a particular polity and those rejecting liberalism itself. And so on. The world is messy and each state's self-justification must take place within this messy system of unfair power structures and contemporary realities affected by painful histories. Noncitizen rights provide a tool to ensure that those who bear the heaviest burdens of existing structures are taken into account in their own right.

²⁴ Early proponents include a variety of approaches, such as H. O. Oruka, "The Philosophy of Foreign Aid: A Question of the Right to a Human Minimum" (1989) 8 *PRAXIS* 465–475; H. Shue, *Basic Rights* (Princeton, NJ: Princeton University Press, 1980); C. Beitz, *Political Theory and International Relations* (Cambridge, MA: Harvard University Press, 1979). For a presentation of the global problem of citizenship, see T. Bloom, "The Problem of Citizenship in Global Governance," in Bloom and Kingston (eds.), *Statelessness, Governance, and the Problem of Citizenship*.

²⁵ Beitz, *Political Theory and International Relations*; C. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); T. Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002).

²⁶ E.g., K. Nkrumah, *Neocolonialism: The Last Stage of Imperialism* (New York: International Publishers, 1966). Note that this was first published in 1965, while Nkrumah was president of Ghana.

²⁷ In fact, I suggest that painting over noncitizenship may have been an intentional strategy in the political philosophy that justified colonial expansion and grounds contemporary liberalism, e.g., Bloom, *Noncitizenship*, p. 31.

My conception of *noncitizen* rights shares characteristics with some “political” approaches to *human* rights. That is, according to a political approach to human rights, such rights “confront the ideology of arbitrary power and inherited or exclusive privilege.”²⁸ My suggestion is that human rights as currently construed are also necessarily *tied up* with the arbitrary power and inherited or exclusive privilege that is the state and indeed the “nation state.” The notion of noncitizen rights explicitly challenges this in a way that human rights cannot. In acknowledging noncitizen rights, one acknowledges that the mechanisms that institute and protect citizen and state power and privilege give rise to obligations toward those who are thereby deprived of their own power and freedom. That is, those who must live *despite* states and the state system that affect them have claims on those states and on that system. The approach of noncitizen rights differs from political approaches to human rights, then, in deriving from foundational questions about the legitimacy of the state. It argues that noncitizenship is not other or abstract from the state but instead part of what constitutes the state. This underlying difference in rationale also gives rise to a practical difference: noncitizen rights identify particular obligation-holders.

Considering the realities of “statelessness” in this context can illustrate both how noncitizen rights work and how this approach could be used to ground new directions for the protection of rights.²⁹ A person is considered “stateless” according to international law if they are not recognized as a citizen of any country under the operation of its law.³⁰ People excluded from formal citizenship in this way are often unable to assert their claim to even basic human rights. Such individuals can be left without any citizenship because of problems of administration or conflicts between citizenship regimes; it can also be intentionally produced through discriminatory practices.³¹ However it arises, lacking citizenship can make it difficult for those affected to access their human rights either within the state in which they live or within the international community.

²⁸ M. Goodhart, “Human Rights and the Politics of Contestation,” in M. Goodale (ed.), *Human Rights at the Crossroads* (Oxford: Oxford University Press, 2013), p. 33.

²⁹ E.g., W. Conklin, *Statelessness: The Enigma of the International Community* (Oxford: Hart, 2014); K. Staples, *Rethorising Statelessness: A Background Theory of Membership in World Politics* (Edinburgh: Edinburgh University Press, 2012).

³⁰ This definition comes from the Convention Relating to the Status of Stateless Persons, September 28, 1954, 360 U.N.T.S. 117, art. 1(1), except that the Convention refers instead to “national.” As I do not have space here to enter into a discussion of the relationship between “national” and “citizen,” I will stick to the word “citizen” that I have used throughout this piece. For more on this terminological distinction in this sort of context, see K. Tonkiss, “Statelessness and the Performance of Citizenship-As-Nationality,” in Bloom, Tonkiss, and Cole (eds.), *Understanding Statelessness*.

³¹ Expanded, e.g., in L. van Waas, *Nationality Matters* (Antwerp: Intersentia, 2008); and in different ways in the essays in Bloom, Tonkiss, and Cole (eds.), *Understanding Statelessness* and Bloom and Kingston (eds.), *Statelessness, Governance, and the Problem of Citizenship*.

Although the noncitizen relationship I defend can pertain between a formal citizen and their state of citizenship, statelessness represents the apotheosis of noncitizenship. The deprivations currently associated with lacking any citizenship provide a limit case for what can happen when, on the one hand, citizenship is both assumed necessary for rights and left up to states to bestow and, on the other hand, no other form of individual–state relationship is recognized as rights generating. When individual states can effectively decide who they want to protect, people can theoretically be – and in reality are – stranded in the world of states without being able to claim any recognized rights-generating relationship anywhere within it, and thus struggling to assert their status as humans.³²

Recognition of noncitizen rights provides a way out of this, which is based, both theoretically and practically, upon how things are today. Among those working to end the rightslessness associated with statelessness, there is a strong tradition of promoting the expansion of access to citizenship or other statuses that would give individuals demonstrable claims against particular states. This is vital and urgent as part of a larger project. It can be seen, for example, in the academic literature³³ and in the United Nations High Commissioner for Refugees campaign to end statelessness by 2024.³⁴ There are many individuals whose lives could be made significantly better if they could just prove some sort of recognized rights-generating connection to the state with the most power over their lives. For these reasons, it is crucial that citizenships are made more accessible and protections against the revocation of citizenship made more secure.

But taken alone, the expansion of citizenship is inadequate for ensuring rights for everyone. It carries three major risks. First, focusing only on expanding citizenship and quasi-citizenship does not provide a solution for those who have no such relationship and have no clear route to obtaining it. That is, it is not enough to say “well, they *ought* to be citizens” if they are not. Second, it ignores cases where individuals are overwhelmingly affected by a state to which they have no obvious citizen claim. That is, it does not respond to the cases mentioned earlier of foreign occupation or of those affected by a polluting upriver state. Third, this approach does not allow for the political reality of individuals who want to *reject* the citizenship of the state(s) with overwhelming control over their lives without giving up their basic rights. Those who contest the existing constellation of states must currently do so while those states in fact mediate access to vital goods and even recognition.

³² This is expressed by various writers with direct experience of statelessness. See, e.g., S. Zweig, *The World of Yesterday* (Lincoln: University of Nebraska Press, 1964), and E., “United Stateless in the United States: Reflections from an Activist.”

³³ See, e.g., Shachar, *The Birthright Lottery*; T. Kostakopoulou, *The Future Governance of Citizenship* (Cambridge: Cambridge University Press, 2007); see also M. Walzer, *Spheres of Justice: A Defense of Plurality and Equality* (New York: Basic Books, 1984).

³⁴ United Nations High Commissioner for Refugees, *Global Plan to End Statelessness 2014–2024* (Geneva: UNHCR, 2013).

Instead, there needs to be recognition of noncitizenship and the rights it generates, and eventually a means to access to those rights without the need to demonstrate any citizen or quasi-citizen status.

The terminology and framing of noncitizen rights provide vital tools for thinking about global justice. They force a recognition that global justice considerations are not abstract and the obligations that arise are not general. Instead, a state has specific and institutional obligations toward those people who bear the burden of its existence and of its actions. Acknowledging noncitizens in their own right means acknowledging that a state cannot unilaterally absolve itself of considering a person's interests and wellbeing. Whereas human rights are general and arise from a person's humanity, noncitizen rights are particular and arise from a person's relationship with a particular state or states.

CONTEMPORARY CITIZENSHIPS AND FUZZY CITIZEN RIGHTS

Citizenship, whether formally recognized or not, comes with certain rights and duties, the content of which is generally based on the legitimacy story of a particular state and the real-world construction of its citizenship. In the past decade or so, some scholars have suggested that there has been a detachment of citizenship from territory, so that citizens are increasingly able to function as citizens from afar.³⁵ This has been discussed mostly with regard to voting, a particularly symbolic citizen right for democratic states, with the creation of emigrant constituencies in national parliaments, for example.³⁶ Other scholars over the same period have suggested that some countries have been gradually detaching territorially based rights from citizenship so that even voting and the right to abode have become tied not to citizenship but instead to sustained regular residence. These two sets of observations could seem at first glance to be in conflict. That is, the traditional rights of citizenship are both decreasingly and increasingly associated with living on the territory of a state, and increasingly and decreasingly associated with formal citizenship. However, understanding how these two observations interrelate (and indeed some theorists make both observations) will be helpful in the discussion of noncitizenship and noncitizen rights.

First, citizenship has never had meaning only within the state to which that citizenship is attached. A particularly iconic symbol of citizenship, the passport, is intrinsically linked to movement across international borders, and so to the space outside the territory of the state of citizenship.³⁷ Meanwhile, states have long offered

³⁵ E.g., G. Davies, "‘Any Place I Hang My Hat?’ or: Residence is the New Nationality" (2005) 11(1) *European Law Journal* 43–56.

³⁶ M. Collyer, "A Geography of Extra-Territorial Citizenship: Explanations of External Voting" (2014) 2(1) *Migration Studies* 55–72; R. Bauböck, "Expansive Citizenship – Voting beyond Territory and Membership" (2005) 38(4) *Political Science and Politics* 683–687.

³⁷ Consider, e.g., J. Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000, 2018) and M. Salter, *Rights of Passage: The Passport in International Relations* (London: Lynne Rienner, 2003).

a range of diplomatic and consular services to citizens outside their territories and are now increasingly extending voting rights to citizens living far away. As of July 2020, 75 percent of countries had had some form of overseas voting in their most recent elections.³⁸ States also offer a range of other social services and forms of assistance through their consulates.

In select cases, citizens of powerful states have even been excused from complying with local justice systems, thanks to consular intercession. Consider, for example, the case of Gillian Gibbons, a British teacher who was facing punishment for blasphemy in Sudan, having named a class teddy bear “Mohamed.”³⁹ Thanks to support from the government of the United Kingdom and intercession from the President of Sudan, Gibbons was eventually released and returned to the United Kingdom.⁴⁰ This suggests that in some cases citizens are able to access the rights of citizenship from afar and even be protected by the laws of their country of citizenship outside its territory, affecting the nature of their relationship with the countries on whose territories they stand. For the most part, the recognized rights of citizens *qua* citizens outside their states of citizenship are discretionary and dependent upon the interests and relative power of the states involved. In this case, Gibbons’ citizenship of the United Kingdom helped to neutralize her noncitizenship in relation to Sudan.

Meanwhile, some countries have specific forms of overseas citizenship that do not carry these benefits. Consider the United Kingdom, which intervened on behalf of Gillian Gibbons. During the process of disentangling itself from an empire (and so from a contiguous political space) that spanned a large part of the globe, the United Kingdom has constructed a variety of citizenships. This includes citizenships that do not provide the right to live in the country of citizenship, or which include specific constraints on children inheriting citizenship from their parents. These two elements came to a head in the case of the grandchildren of people displaced from the Chagos Islands. In 1965, the United States expressed a desire to build a military base on Diego Garcia, the main island of the Chagos Islands. At the time, the Chagos Islands was part of Mauritius, which was under UK control. The United Kingdom separated Chagos from Mauritius to create the British Indian Ocean Territory (BIOT), which was then lent to the United States for its military base. The people living in Diego Garcia were forcibly relocated, mostly to other parts of Mauritius. They had citizenship of the British Indian Ocean Territory but were not allowed to live in it. In 1968, Mauritius declared Independence from Britain.⁴¹ In 2002, an Act

³⁸ “Voting From Abroad Database – World,” *International Institute for Democracy and Electoral Assistance*, www.idea.int/data-tools/world-view/52 (last visited July 30, 2020).

³⁹ See, e.g., R. Crilly, “The Blasphemous Teddy Bear,” *Time*, November 26, 2007.

⁴⁰ J. Gettleman, “Calls in Sudan for Execution of British Teacher,” *The New York Times*, December 1, 2007; M. Weaver, “‘Muhammad’ Teddy Teacher to Be Freed,” *The Guardian*, December 3, 2007.

⁴¹ See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, International Court of Justice, February 25, 2019.

of the UK Parliament (along with some specific amendments) meant that those who had been displaced from the Chagos Islands were eligible for UK citizenship. Their children were also eligible for UK citizenship. Their grandchildren were not.⁴² As a result, Chagossians in exile potentially had citizenship of a country that they could not visit and citizenship of another that they could not pass on. Not only did these citizenships not neutralize noncitizenships in relation to other countries, they also did not neutralize noncitizenships in relation to the United Kingdom.

Alongside the literature on extraterritorial citizenship is a discourse relating to an increasing importance of residency over citizenship within a state. For example, scholars presenting what they refer to as “post-national” citizenship emphasize that an individual has rights and duties in relation to the state where they live because they are a resident, they engage in its daily life, and they are affected by its political structures.⁴³ Although some of these texts offer empirical claims, for the most part their claims are normative. The argument is that individuals *should* be able to relate to a state in this way, even if currently they cannot. Where rights *are* accessible in this way, they are mostly social or civil (access to health care, for example). Insofar as there are political rights associated with regular residence, they are mostly only on the local level (i.e., voting in local elections but not general elections or referenda). In addition, these rights of residents sit against a backdrop of liminality, since continued “regular” residence itself is not a given. They are citizen-like or quasi-citizen claims in a context where that relationship is contested or vulnerable.

Most residents in most states are citizens.⁴⁴ For those that are not, in order to be a “regular” resident a person must have some sort of special status that might derive from a work visa, refugee status, student visa, multilateral or bilateral agreement, or some other arrangement approved by the rights-granting state. That is, a quasi-citizen status. What is key is that these statuses approximate citizenship. This means that, while regular residence is important to rights and is often a precursor to citizenship,⁴⁵ for our purposes, it should not really be seen as *replacing* citizenship as the primary locus for rights claiming. These alternative routes to rights claims have gained more relevance, but only insofar as they represent some form of quasi-citizenship.

⁴² E.g., L. Jeffery, “‘Unusual Immigrants,’ or, Chagos Islanders and Their Confrontations with British Citizenship” (2011) 18(2) *Anthropology in Action* 33–44.

⁴³ Soysal, *Limits of Citizenship*; J. Bhabha, “Belonging in Europe: Citizenship and Post-national Rights” (1999) 51 *International Social Science Journal* 11–23; Tonkiss, *Migration and Identity*.

⁴⁴ There are exceptions to this. For example, according to data from the Government of Kuwait, in 2019 so-called non-Kuwaitis made up 70 percent of the Kuwaiti resident population. “Population Estimates,” *Central Statistics Bureau, Government of Kuwait*, www.csb.gov.kw/Pages/Statistics_en?ID=67&ParentCatID=%201 (last visited July 30, 2020).

⁴⁵ E.g., S. Robertson, “Contractualization, Depoliticisation and the Limits of Solidarity: Noncitizens in Contemporary Australia” (2015) 19(8) *Citizenship Studies* 936–950.

The changing relationship between residence and citizenship is tied also to a global shift in approaches to dual and plural formal citizenship. Arguably, this also represents a formalization of some aspects of the transnationalism identified in the 1990s,⁴⁶ as well as an attempt to control the messy and mixed feelings that many individuals, in fact, have of citizenship.⁴⁷ Dual and plural formal citizenship have long been seen as deviant and anomalous.⁴⁸ It was assumed that a person could not simultaneously have full allegiance to more than one country. The reality of international migration, the need for gender equality in nationality law, and the desire of states to engage with their diasporas have all contributed to a context in which dual and plural citizenships are now accepted by many states and are normalized on the international level, though this comes alongside localized concerns regarding the loyalty that can be expected from dual or plural citizens.

As shown, relevant also is the global context in which the relationships between states affect the nature of their citizenships and noncitizenships and the rights associated with them. This means that even if everyone in the international community were a formal citizen of a recognized state, this would still not be enough to ensure human rights for all. There are three main reasons.

First, in most states many formal citizens experience noncitizen relationships, in some dimensions at least, with respect to their states of citizenship. This may result from overt discrimination or from material poverty and other inequalities that make it difficult for individuals to assert their citizenship.

The particularity of these individual–state relationships can be seen through the illustrative case of Zambians in relation to other countries in the context of extracting Zambian copper. Since 2008, the government of Zambia has led a series of tax reforms to try to enforce higher tax burdens on copper mining companies operating in the country. While tax money received as a result of these reforms is higher than it had previously been, significant profits from copper extraction in Zambia are made and remain outside the country.⁴⁹ During the 1990s and early 2000s, and on the basis of recommendations from German and UK companies,

⁴⁶ R. Rouse, “Mexican Migration and the Social Space of Postmodernism” (1991) 1(1) *Diaspora: A Journal of Transnational Studies* 8–23; R. Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Cheltenham: Edward Elgar, 1994).

⁴⁷ A. Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* (Durham, NC: Duke University Press, 1999).

⁴⁸ E.g., C. Joppke, “Citizenship between De- and Re-Ethnicization” (2003) 44 *European Journal of Sociology* 429–458; T. Brondsted Sejersen, “‘I Vow to Thee My Countries’ – The Expansion of Dual Citizenship in the 21st Century” (2008) 42(3) *International Migration Review* 523–549.

⁴⁹ O. Lundstøl and J. Isaksen, “Zambia’s Mining Windfall Tax,” WIDER Working Paper 2018/51; G. Zucman, *The Hidden Wealth of Nations* (Chicago: University of Chicago Press, 2016). It is also interesting to consider this in the context of discourse relating to Chinese involvement in Zambian copper mining. See, e.g., H. Yan and B. Sautman, “‘The Beginning of a World Empire?’ Contesting the Discourse of Chinese Copper Mining in Zambia” (2013) 39(2) *Modern China* 131–164.

Zambia's extraction industry was privatized and its taxation rates reduced.⁵⁰ This period also saw a 24 percent rise in unemployment and a decrease in Zambia's position in the Human Development Index from 110th in 1990 to 166th in 2005. This led to a period of rethinking, including the *Zambian civil society report* "For whom the windfalls."⁵¹ The report expressed concern that Zambia's resources, and so also its ability to meet the needs of its citizens, were being lost to foreign companies. I propose that this put each Zambian citizen also into a relationship with the countries from which those companies operate and into which the wealth was being funneled. This relationship was one of noncitizenship. It is particular and it is rights generating.

Third, the language of noncitizenship helps to illustrate how citizenship itself can constrain rights. This is seen particularly clearly in colonial and post-colonial contexts. For example, while there are those in post-Soviet space who struggle for citizenship, others struggle against particular citizenships or cannot explain their relationships with existing states through citizenship alone.⁵² Consider, for example, citizenship dynamics in the Crimea. Most recently, the Crimea was an autonomous region of Ukraine until annexation by the Russian Federation in Spring 2014. Although Crimeans were forcibly made Russian citizens, some retained their Ukrainian citizenship. Officially, Ukraine does not allow dual citizenship (though its Citizenship Law includes a provision for those who have not taken foreign citizenship voluntarily). This has put individuals living in the Crimea at risk of losing their Ukrainian citizenship, even if against their wishes. Some in the region reject both Ukrainian and Russian citizenships in favor of citizenship of unilaterally declared republics such as Donbass and Donetsk, which are not internationally recognized, while others make strategic use of different citizenships in different contexts.⁵³ The terminology of noncitizenship alongside that of citizenship provides a more nuanced way to explain these complex relationships.

Noncitizenship can help us to understand aspects of the international system that cannot be easily described using the language of citizenship and of human rights alone. However, while noncitizen rights are a distinct institutional category of rights, in the world as it is, noncitizen relationships and citizen relationships interact and affect each other. It is the existing states that are able to grant or withhold citizenship from individuals. And it is the existing states that are able to recognize or not recognize the citizenship-granting statehood of other political entities. This means

⁵⁰ Lundstol and Isaksen, "Zambia's Mining Windfall Tax," pp. 5–8.

⁵¹ A. Fraser and J. Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines* (Lusaka, Zambia: CSNTZ/CCJDP, 2007).

⁵² K. Swider, "Why End Statelessness?" in Bloom, Tonkiss, and Cole (eds.), *Understanding Statelessness*.

⁵³ N. Kasianenko, "Internal Legitimacy and Governance in the Absence of Recognition: The Donetsk People's Republic," in Bloom and Kingston (eds.), *Statelessness, Governance, and the Problem of Citizenship*.

that a system of rights that is purely citizen based reinforces existing structures of international power and control and stifles dissent. Noncitizenship, then, and noncitizen rights are also needed in order to liberate human rights and citizenship from the risk of being coercive.

CONCLUSION: UNDERSTANDING NONCITIZENSHIP AND
NONCITIZENS IN THEIR OWN RIGHT

Human rights and citizen rights play important theoretical and practical roles in ensuring basic needs are met and protected in the world as it is. But they are not enough. This is because they fail to represent an important type of individual–state relationship that has largely been left unacknowledged. Noncitizenship is a relationship between an individual and a state that arises necessarily in the construction of the modern state in a world of states. It arises when people find themselves living – and flourishing – *despite* the state. This is theoretically important. It makes it possible to recognize a crucial dimension of how people relate to states, and to acknowledge the burden that this places upon them. It is also practically essential. It provides the terminology necessary for challenging the dominance of citizenship in framing basic rights and explaining that a relationship of contest between an individual and a state is still a relationship in its own right

Recognizing this relationship and its role in the construction of the state challenges state legitimization stories. It problematizes the idea of a multistate system constructed for those people who states wish to include in it, on terms set by states. It is necessary either to justify the state to people in noncitizen relationships with it or to defend why this justification is not needed. I suggest that this legitimacy challenge generates particular rights claims against states and can help to drive a framing of global justice that is based in relationships that are often obscured. The language of noncitizenship and noncitizen rights helps to show how an individual could have particular claims against a state even when either that state or the individual rejects any relationship. It also makes it possible to examine how citizenships and non-citizenships interact and the implications of this for rights. Finally, it provides a vehicle for considering the implications for rights when citizenship itself is seen not as emancipatory but as a constraint. A theory of noncitizen rights advocates holding states accountable to those who bear the greatest burden for their existence, without requiring those affected to contort themselves into citizen or quasi-citizen relationships. It provides a way to understand noncitizens in their own right.