

Defining Citizenship

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This article employs the methodology of public choice, or constitutional political economy, to the question of how citizenship should be defined in a constitution. All members of a community or an assembly representative of all members writes a constitution. Each participant in the constitution-drafting process is uncertain of his or her future identity under the constitution and thus chooses a constitution that maximizes the expected utility of all future citizens. The article describes the optimal conditions within this framework for: (1) granting citizenship to those born and raised in the country; (2) granting citizenship to those immigrating into the country; and (3) withdrawing citizenship from those who emigrate from the country. The article also discusses why it might be desirable to require that people pass certain tests and take a loyalty oath to the constitution before being awarded the privilege of voting.

INTRODUCTION

Virtually all of public choice implicitly assumes that the set of individuals who form the polity are defined exogenously prior to the beginning of the analysis. The one major exception to this statement is the literature on clubs and voting with the feet, but even this literature assumes that the pool of potential members of each club or local polity is predefined. The set of individuals who make up the largest political unit is known; only their distribution across local polities is unknown. In this paper, I take up the question of how a polity, which is autonomous from all other polities, should define its citizenship. There is some overlap with the club literature, but several separate issues are raised.

I first became interested in this question when I wrote *Constitutional*

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Democracy.¹ My goal in writing that book was to apply public choice analysis to all of the basic issues that arise when a constitution is written. The question of citizenship is certainly one of them, and thus I felt that I had to address it. Somewhat to my surprise, I found that there is not only very little written on this topic in the public choice literature, but also that very little has been written, recently at least, by political scientists.² Thus, I had to begin with first principles. I do so again in this paper, but also attempt to push the analysis somewhat further than I did in the earlier work.

To begin, I adopt the familiar starting-point of constitutional political economy. Individuals behind a veil of ignorance must write a constitution in which they define conditions for citizenship so as to maximize their expected utility at the constitutional stage. I then go on to consider non-utilitarian options.³

I. UTILITARIAN DEFINITIONS

To make the analysis simple, let us assume that the people living on Utopia, an isolated island in the Blissful Ocean, decide to create a state. The potential set of citizens is thus easily identified: all individuals currently living on the island.

A. Optimal Citizenship with Homogeneous Preferences

Consider first the case in which every individual on the island has the same preference function and income. The purpose in forming a state is to provide a single, lumpy public good, G . Since all potential citizens have the same preference functions, they realize that the optimal provision of the public good will involve equal tax shares. In the absence of crowding, each citizen's share of the public good's cost falls as the size of the polity increases, and its optimal size is infinity. Utopia is a small island, however, and therefore the possibility of crowding must be taken into account. Let each citizen's utility, U , be written as a function of her private good consumption; X , the public good; and the size of the polity, n .

$$U = U(X, G, n) \tag{1}$$

1 Dennis C. Mueller, *Constitutional Democracy* (1996).

2 *But see* Joseph H. Carens, *Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness* (2000).

3 I use the term *utilitarianism* simply to imply utility-maximizing behavior by rational individuals and not in any deeper, philosophical sense.

Since all individuals pay the same fraction of the public good's costs, we can define the prices of the public and private good to make $X = G/n$. Using this expression to replace X in (1) and maximizing with respect to n yields:

$$\frac{\partial U}{\partial X} \frac{G}{n^2} = -\frac{\partial U}{\partial n} \quad (2)$$

Utopians would maximize their expected utilities by limiting the size of the population on the island so that the marginal gain in terms of a reduced share of the public good's costs from adding another person to the island just equals the marginal costs in terms of increased crowding that this person causes.

If the n that satisfies (2) is less than the population of the island, then the task of individuals at the constitutional stage is simple. All current residents are made citizens. Moreover, it will be in the interests of the current residents to allow immigration up until the community reaches the optimal size. The situation is potentially more complicated when the optimal population size for Utopia is less than its current level.

One possibility here would be to make all current residents citizens and allow free emigration. If other islands like Utopia exist, upon which the population size is less than optimal, Utopians will have an incentive to migrate to them up until the point where the population of Utopia reaches its optimal level.

A second possibility is that no such attractive options for emigration exist. Utopians will then have no other alternative but to make everyone a citizen, prohibit immigration, and perhaps take additional steps to reduce the population of Utopia by discouraging births or encouraging emigration.

B. Optimal Citizenship with Heterogeneous Preferences

Consider now the consequences of citizens having different preferences. Let there be two groups, the Blues and the Greens. The sole public good that the new state will provide is a highway across the island, whose costs will be shared equally by members of both groups. It is technologically infeasible to prevent members of either group from using the highway once it has been built. Blues favor a high quality, four-lane highway, which will allow high-speed driving with minimal delays. Greens favor a low quality, two-lane highway, which will cause low-speed driving with many delays. Looking forward into the post-constitutional stage, both groups can see that if everyone on the island is made a citizen, the outcome of the political process will be a compromise in which some parts of the highway have

four lanes and other parts only two. Both groups can expect higher utility gains if they are free to construct the highway as they prefer. It would not make sense for the Greens to construct a two-lane highway alongside a four-lane one. Knowing this, the Blues have an incentive to form the state by themselves, that is, to define citizenship for only Blues, and build a four-lane highway. This is obviously true if individuals at the constitutional stage know whether they will be Blues or Greens in the post-constitutional stage. But it is also possible that all Utopians unanimously agree to form a state in which only Blues have citizenship from behind the veil of ignorance. A sufficient condition for such unanimous agreement would be, for example, that the Blues be in the majority and the utility gain for each Blue from choosing the type of highway equals the loss to each Green.⁴

If the Blues are in the majority, they could achieve the same outcome by granting Greens citizenship and simultaneously selecting the simple majority rule as the voting rule to be used for making collective decisions in the post-constitutional stage. Here we have reached an important result. For the majority group, the definition of citizenship and the choice of voting rule are substitutes. A group with an absolute majority of the population can ensure that it dictates all outcomes in the post-constitutional stage *either* by excluding members of the other group(s) from citizenship *or* by choosing a voting rule requiring a majority below that which they have, as say a simple majority. Buchanan and Tullock⁵ introduced the concept of *external costs of collective decisionmaking* and used it to define the optimal voting rule from the point of view of citizens at the constitutional stage. In our example, inclusion of the Greens in the collective decision process creates a negative externality for the Blues, an externality that they can eliminate either by excluding the Greens from the collective decisionmaking process entirely or by effectively excluding them through the choice of a voting rule.

The same two options do not exist for a minority group. If the Greens constitute 35% of the population, they cannot dictate outcomes in the post-constitutional stage by choosing a one-third majority rule at the constitutional

4 Let U_B and U_G be the utilities that a Blue and Green expect to experience, if only Blues have citizenship. Let V_B and V_G be the utilities that each expects to experience, if both Blues and Greens have citizenship. Then, from behind the veil of ignorance, sole citizenship for Blues will be unanimously preferred to citizenship for both groups if

$$pU_B + (1-p)U_G > pV_B + (1-p)V_G$$

where p is the probability of being a Blue. If $p > 1-p$, then this condition is satisfied when $U_B - V_B = V_G - U_G$.

5 James M. Buchanan & Gordon Tullock, *The Calculus of Consent* (1962).

stage, for the Blues would easily satisfy this requirement. The Greens' only option if they want their most-preferred outcomes to win would be to create a state in which only Greens have the right to decide for the combined community of Blues and Greens.⁶

Although limiting citizenship to only certain groups is a *possible* outcome from the constitutional process, when individuals have heterogeneous preferences, it is of course not an inevitable one. The possibility that both groups obtain citizenship and compromises emerge out of post-constitutional politics exists when individuals define citizenship from behind the veil of ignorance. The likelihood of this happening increases if we expand the number of post-constitutional collective choices and allow for more groups, so that every group has a chance of being part of the majority on some future issues. Although such assumptions increase the likelihood of inclusive definitions of citizenship, they do not guarantee it, when individuals choose definitions of citizenship that maximize their expected utility. With sufficient preference heterogeneity, the expected utility of an individual at the constitutional stage will be maximized — *even from behind the veil of ignorance* — by excluding some groups from affecting future collective choices. This can always be accomplished by excluding these groups from citizenship. When these groups constitute a minority of the population, they can be effectively excluded even when granted citizenship, by choosing the simple majority rule as the community's voting rule.

If one group of Utopians can create a state and exclude the other group from citizenship, it might, of course, be possible for this group to force the non-citizen residents to pay for all of the public good or even to become slaves of the dominant group. By appropriate choices of utility functions and group sizes, we could even show that both Blues and Greens would unanimously agree from behind the veil of ignorance that, say, the Greens would become slaves to the Blues in the post-constitutional stage. Such possibilities, however remote they might be in reality, have often caused some observers to reject utilitarian defenses of certain actions and institutions in favor of non-utilitarian options. We consider next one of these.⁷

6 Thus, the only way Whites could dictate outcomes in South Africa was by denying Blacks voting rights. Blacks, on the other hand, can dictate outcomes even when Whites are allowed to vote under the simple majority rule.

7 Among economists, Amartya Sen has been one of the most forceful opponents of "welfarism." Amartya K. Sen, *Rational Fools: A Critique of the Behavioral Foundations of Economic Theory*, 6 Phil. & Pub. Aff. 317 (1977); Amartya K. Sen, *Personal Utilities and Public Judgements: or What's Wrong with Welfare Economics?*, 89 Econ. J. 537 (1979).

II. A JUST DEFINITION OF CITIZENSHIP

John Rawls'⁸ contractarian alternative to utilitarianism is, perhaps, the most obvious place to begin to define criteria for citizenship that do not rely upon a utilitarian calculus. A *just* definition of citizenship is chosen instead of one that maximizes the expected utility of every person behind the veil of ignorance.

Rawls eliminates utilitarian calculations by denying individuals behind the veil of ignorance all information about both the preferences of future citizens and the probabilities of being any one of them. It would thus be a trivial extension of Rawls' reasoning to show that Utopians would choose to grant both Blues and Greens equal citizenship from behind a Rawlsian veil of ignorance.

Rawls defends his characterization of the veil of ignorance with the following arguments:

Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.

It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society... . More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve.⁹

And a bit further on,

Now the reasons for the veil of ignorance go beyond mere simplicity. We want to define the original position so that we get the desired solution. If knowledge of particulars is allowed, then the outcome is biased by arbitrary contingencies.¹⁰

8 John A. Rawls, *A Theory of Justice* (1971).

9 *Id.* at 136-37 (citation omitted).

10 *Id.* at 141.

Rawls spends considerable time discussing the implications of his theory for the issue of intergenerational justice, but it would seem rather obvious that the theory should apply equally to *where* one is born as to *when* one is born. Knowledge of the country in which one lives would seem to be one of the "arbitrary contingencies" that Rawls seeks to remove from the original position with the veil of ignorance. If "parties do not know the particular circumstances of their own society..., its economic or political situation, or the level of civilization and culture it has been able to achieve," they cannot know whether they have been born onto a rich and democratic island, to which many will wish to migrate, or on a poor and desperate island, from which many will wish to flee. The kind of liberal society that Rawls seeks to create would certainly allow Utopians to migrate to other islands and people from other islands to move to Utopia. Thus, someone behind the veil of ignorance *ought* to assume that she might be born on Utopia or born anywhere else in the world. Accidents of birth — including location — are just that — accidents — and thus have no place in determining the set of just institutions that emerge from behind the veil of ignorance. A person born on Utopia has no more right to the riches of this island than does a person born on any less well-endowed island. The just definition of citizenship in Utopia would make it available not only to all persons living on Utopia, but to all persons currently living anywhere else and, of course, to all future persons regardless of where they are born.

Application of the Rawlsian logic thus would lead to a definition of citizenship that would not only grant it to all current residents of the island, but would imply liberal criteria for new residents. If Utopia happened to be a very rich island, migration from poorer places could be expected. Such migration would continue until the average level of utility on Utopia were reduced due to crowding to that of the poorest island/country in the world.¹¹ If all countries adopted the same, just definitions of citizenship and all of the people of the world were free to migrate, migration could be expected to continue until the average level of welfare in every country of the world is the same.

If a rich country like Switzerland were to adopt such a just definition of citizenship, literally millions of people from the poor countries of the world would flock to it. Congestion costs would eventually mount and the Swiss standard of living would sink toward that of the poor countries supplying it with population. The equilibrium obtained would

11 See discussion in Frank Flatters et al., *Public Goods, Efficiency, and Regional Fiscal Equalization*, 3 J. Pub. Econ. 99 (1974).

not be Pareto-optimal, since the migrants would be ignoring the *marginal* impacts of their movements, but this alone would not necessarily overturn the justness of a liberal definition of citizenship, since under Rawls' theory it is only the possibility of improving the welfare of the worst-off person in the world that carries weight. Since the poor can always be expected to be better off in a rich country, application of the difference principle would always imply free migration between poor and rich countries.

Such a liberal definition of citizenship would seem likely to result in a great destruction of wealth in the process of redistributing it. Regardless of whether such an outcome is desirable or not, it is obviously never going to come about. No rich country like the United States or Switzerland is going to open its doors to unlimited immigration. Applying Rawlsian criteria, this may only go to show how unjust these countries are. Alternatively, we might conclude that the logic of Rawls' theory of justice is too demanding and continue our search for other criteria. In doing so, we must recognize, however, that we are taking a long step back toward the utilitarian position, for we are in effect rejecting a very liberal definition of citizenship on the grounds that no veil of ignorance could ever be thick enough to induce the current occupants of Utopia to adopt a definition of citizenship that would ensure that they are all made much worse off in the post-constitutional stage.

Thus, on pragmatic grounds, we are driven back to some utilitarian approach to defining citizenship and to the question of how those individuals who are not among the initial group of citizens as defined by the constitution can attain citizenship. In exploring this question, we again adopt the assumption that individuals from behind the veil of ignorance choose definitions of citizenship that maximize their expected utility, but we now grant them knowledge of the island upon which they are born and its state of economic and political development.

III. ACQUIRING CITIZENSHIP

A. By Place of Birth

It seems so obvious that the first generation of Utopians will wish to have their children and grandchildren become citizens, that we need not spend considerable time defending this assumption. We shall, however, come back to consider the *kind* of citizenship each child can claim.

Our first candidate for a criterion for acquiring citizenship in Utopia is, thus, that one be born in Utopia to parents who are already citizens of Utopia.

This criterion raises two obvious questions, however: (1) What should be the status of persons born in Utopia, if their parents are not citizens? (2) What should be the status of persons born outside of Utopia, if their parents are citizens?

When answering these questions from behind the veil of ignorance, the constitution-framers will again wish to consider the two criteria mentioned above: the size of the population relative to the optimal size and the effect of easy citizenship on the heterogeneity of the population. If Utopia's population were far below its optimal level, extremely liberal criteria for citizenship would be a possible way of expanding the population. Granting citizenship to babies born to temporary visitors might then be optimal. Presumably, the extreme imbalance between land and people in the United States at the end of the eighteenth century explains why it chose such a liberal policy. Absent an extreme shortage of population, however, it is not obvious why any country would choose such a policy today, since temporary visitors are not likely to have the same preferences for government policies as long-time citizens.

Citizens' views about government and preferences for government policies are formed by the education they receive from their parents, their schools, and churches and the other institutions in their community. In short, citizens' preferences are a product, at least in part, of the culture in which they grow up. Automatically granting citizenship to persons who happen to be born in a country risks increasing the heterogeneity of the citizenry and the attendant costs in terms of altered collective choice outcomes and higher decisionmaking costs. The writers of the constitution of a country that is not short of population would not find it optimal to grant citizenship solely based on the location of birth.

B. By Pedigree

To ensure freedom of movement, the constitution must grant citizenship to persons born to citizens who are temporarily outside of the country. What, however, should be the status of children of citizens who have taken up *permanent* residence abroad? What, moreover, should be the status of their parents?

If the constitution-framers do not wish to discourage mobility, they will not require that citizens living abroad forfeit their citizenship after living, say, x years abroad, but will strip citizens of their citizenship only if they acquire citizenship in the new country of permanent residence. If the constitution-framers were to withdraw citizenship from anyone who has

lived more than x years abroad, they would effectively be forcing all citizens living abroad to return within those x years.

The situation is somewhat different, however, for citizens who live abroad and acquire citizenship in their new country of residence. Their children will presumably also acquire citizenship in that country. Their children's preferences will be shaped by the culture in which they grow up and are likely to differ from those of the typical Utopian. Weighing from behind the veil of ignorance the cost and benefits of granting dual citizenship to such children living in another country who have citizenship in that country, those writing Utopia's constitution may well choose to deny Utopian citizenship to children of its citizens living abroad.

Indeed, the constitution-framers may wish to strip any citizen of Utopia of her citizenship once she acquires citizenship in a second country in which she permanently resides. Central to the modern conception of citizenship is the right to vote. Citizens of Utopia living abroad can be assumed to be allowed to vote in Utopia's elections, at least at the national level. A citizen living abroad who pays taxes to finance education, highway construction, etc., in Utopia is likely to have quite a different perspective on the optimal level of taxes and expenditures than a citizen living in Utopia. The citizen abroad experiences little, if any, benefits from such outlays, while bearing the full brunt of their costs. Including the votes of citizens residing outside of the country is likely to shift the chosen levels of taxes and expenditures downward from those that the resident Utopians would select and thereby lower the welfare of the latter. The expected utility of a citizen behind the veil of ignorance might well be maximized, therefore, by denying dual citizenship to persons living abroad. This would provide those abroad with the great benefit of not having to pay taxes in Utopia, but at the cost of not being able to vote in or retain a passport from Utopia.¹²

An alternative would, of course, be to exempt citizens abroad from paying taxes in Utopia, while allowing them to retain their citizenship. Tax exemption would eliminate their incentive to vote for very low government outlays. But what then would be their incentive to vote at all or to become informed about the issues if they do vote?

The specter of rationally ignorant voters deciding tax and expenditure policies has haunted normative justifications for democracy for over fifty

12 One might be concerned that a Utopian living abroad would lose her right to return to Utopia if she lost her citizenship after x years abroad. This cost could be removed by allowing x -citizens the right to re-attain citizenship quickly upon their return to Utopia.

years.¹³ A citizen living abroad who neither consumes most of the public goods provided by the country nor pays for them has far less incentive to become informed about the issues in an election than does the citizen who resides in the country. The citizen abroad also is much less likely to obtain information about the issues in an election inadvertently by reading newspapers, watching television, talking with friends, etc. Thus, it is difficult to see how the inclusion of the votes of citizens abroad could improve the collective outcome for Utopia. These votes must be regarded as, at best, white noise. Recognizing this, one can well imagine that the constitution-framers would, after x years, strip citizens living abroad either of their citizenship¹⁴ or, at a minimum, of their right to vote in Utopian elections.

The possible desirability of separating citizen voting rights from the other rights that accompany citizenship is an important implication of the analysis, for it raises the possibility of having different levels or degrees of citizenship, a point to which we shall return in the next section. But first, I take up a third possible criterion for citizenship.

C. By Length of Residence

Visitors to Utopia on business are concerned about the quality of police protection, public transportation, laws governing business transactions, the quality of the judiciary, and perhaps a few more governmentally-provided goods and services. They are not going to be concerned about the quality of public education and many other publicly-provided goods, however. Even if it were feasible to do so, it would not be in the interests of Utopians to grant visitors to Utopia temporary citizenship and rights to vote.

The same can be said, however, with respect to those immigrating from abroad and taking up residence in Utopia. These persons will, presumably, be consumers of the full spectrum of publicly-provided goods and services and will pay the same taxes as any Utopian citizen in a similar situation. Thus, a foreigner who is a permanent resident of Utopia might well desire the right to vote and the other rights that accompany citizenship, but it will typically not be to the advantage of the citizens of Utopia to grant foreign-born residents these rights — or at least not until they have resided in Utopia

13 See Joseph A. Schumpeter, *Capitalism and Democracy* 260-64 (3d ed. 1950); Anthony Downs, *An Economic Theory of Democracy* at chs. 11-14 (1957).

14 A possible opposite bias to the one just discussed is introduced when citizens abroad pay no taxes. They may now favor much larger outlays for foreign service, international organizations, development aid, etc., than resident, tax-paying citizens desire.

for a considerable length of time. The foreign-born resident who benefits Utopia's citizens through the taxes that he pays could harm Utopians by voting, if his preferences are significantly different from those of Utopians. By not granting immigrants citizenship, Utopia's citizens enjoy the benefits from the taxes paid by the immigrants, without incurring the possible costs of allowing them to vote. When Utopia's constitution is written, if its writers consider only the possibility of being descendants from the initial group of citizens and not from immigrants, they will not choose to grant immigrants citizenship.

There are three considerations that might change this calculus and lead to the initial constitution providing for immigrants to acquire citizenship after, say, y years of residence. First, there may be costs to Utopia's citizens from having long-time residents not possess full citizenship. Immigrant groups may become alienated, and this alienation may lead to frictions that impose costs on Utopia's citizens as well as on the immigrants.

Second, and related to the first point, Utopia's citizens may bear psychological costs from seeing their immigrant friends and neighbors devoid of citizenship. The utility functions of Utopians may have, or with time may come to have, the welfare of immigrants as an argument. Utopians may experience utility gains, therefore, from seeing immigrants made better off through the attainment of citizenship.

Third, the costs of granting immigrants the right to vote that arise due to heterogeneity of preferences should decline with time as immigrants absorb the culture of Utopia and their preferences become more like those of Utopia's citizens. All of these considerations suggest that the Utopians who write the constitution may find it optimal to include a provision that allows immigrants to obtain citizenship after some y years of residence.

IV. CITIZENSHIP TESTS

A. For Immigrants

If one drops a sponge into a bucket of water, it begins to absorb the water immediately and continues to do so until it becomes saturated. All sponges absorb water at about the same rate. All persons who are "dropped" into a country do not "absorb" its culture at the same rate, however. The speed of absorption will depend on whether the newcomer must learn a new language as part of absorbing the culture; the effort that she expends to learn the language and/or to absorb the culture; etc. Similar considerations apply to the newcomer's children. Thus, a policy of allowing immigrants to apply for citizenship after y years of residence, on the grounds that they should

be granted citizenship only after they have absorbed a sufficient amount of Utopia's culture so that their participation in the political process does not produce significant negative externalities for existing Utopian citizens, is likely to result in some persons receiving citizenship before they have fully adopted Utopia's culture, whereas other persons have to wait too long for their citizenship. An alternative to granting citizenship on the basis of years of residence, therefore, would be to require that immigrants pass a test before they can attain citizenship, a test to determine how much of Utopia's culture has been absorbed.

What would be the content of such a test? The language of Utopia is one obvious component, since language opens the door to the learning of all other aspects of a country's culture. Knowledge of the country's political institutions is another, since one cannot participate effectively in a political process unless one knows something about how it functions; knowledge of Utopia's history, its religion perhaps, if its people all practice a single religion, and so on. Obviously, the more criteria one includes in the test, the more difficult it will be to satisfy these criteria, and the harder it will be to acquire citizenship. It is equally obvious, however, that the easier Utopia makes it for immigrants to acquire citizenship, the greater the costs that its citizens will bear, because of the differences between their preferences for public goods and services and those of the immigrants. Different countries can be expected to resolve this tradeoff differently.

B. For Non-Immigrants

Once one recognizes that someone else's vote can cause a negative externality for a citizen, if the other person's preferences differ from those of the citizen, it becomes obvious that this is true, regardless of whether the other person was born outside of Utopia to parents who were not citizens or was born within Utopia to citizens. A person who favors the overthrow of Utopia's democracy poses a threat to its citizens that is more or less independent of her origin of birth and parentage. Should, then, persons who meet the normal criteria for citizenship in terms of place of birth and parentage *also* have to pass a test before they are allowed to vote? Should they have to pass the same test as immigrants seeking citizenship?

It is difficult to see how the answer to the first question can be anything other than a qualified yes. Costs are costs. If a country chooses to exclude persons from citizenship if they lack an understanding of the country's language, history, and culture, it should logically apply the same standard to persons who would otherwise qualify for citizenship, for the failure of the latter to meet the requirements demanded by the test imposes the same

costs on the rest of the community as would that of an immigrant. The qualification to this statement comes from the possibility that the education levels and cultural homogeneity of a country may be such that it would expect a very high percentage of those born and raised in it to be able to pass the required test. Transaction costs could thus be saved by not requiring those who would automatically obtain their citizenship by birth to take such a test. In countries where education levels are not uniformly high and cultural heterogeneity is significant, the participation of everyone in the political process is likely to impose significant costs on others. Those who weigh these costs from behind the veil of ignorance might well, therefore, choose to restrict citizenship to those who can demonstrate knowledge of the country's political system, history, and culture, *independent* of their origin of birth.

V. LOYALTY OATHS

In most countries, individuals convicted of serious crimes are not allowed to vote. Why? The social benefit from removing a bank robber from society for a period of time is clear, but what does society gain from denying him the opportunity to vote? Perhaps he has children and is interested in the quality of their education. Why should he not be allowed to express his preferences on this issue? Why should he not be allowed to express his preferences on national defense, foreign aid, and the treatment of the poor? He certainly has a strong interest in the quality of prisons and the treatment of prisoners. Communities do not forbid hospital patients from voting on issues related to medical care funding, nor students from voting on issues related to education spending, so why treat prisoners differently?

If there is a justification for denying prisoners the privilege of voting, it is presumably because their past actions have revealed them to be in a real and meaningful sense "enemies of the people." Their views as to what is good for society and themselves are sufficiently different from those of the average citizen, so that significant costs would be imposed on society from recording the preferences of prisoners with respect to public policies.¹⁵

But are convicted felons serving time the only enemies of the people? Is the neo-Nazi or anarchist who advocates the overthrow of the democratic

15 Given the minute probability that a prisoner's vote affects the outcome of an election, it is doubtful that many persons place sufficient value on the privilege of voting to be deterred from committing crimes for fear of losing this privilege.

state not just as much an enemy? Indeed, are they not greater enemies? In addition to demanding that people know something about the political institutions and history of a country before they are allowed to become full citizens, the writers of Utopia's constitution might wish to demand that they take some sort of oath of loyalty to its political institutions. At a minimum, such a requirement would help to ensure that those who are allowed to vote know something about these political institutions. In addition, it might just deter some of those who are opposed to these institutions from trying to undermine them.

VI. DISCUSSION

In his celebrated description of life in anarchy, Thomas Hobbes¹⁶ vividly illustrated the problems that arise when individual interests are in conflict. Hobbes' solution to these problems was to grant all individuals citizenship in a newly created polity, in which they became subservient to a monarch. In such a polity, conflicts of interests and heterogeneous preferences would not matter, since the implicit "voting rule" would only weigh the preferences of a single person.

John Stuart Mill,¹⁷ although a great champion of democracy and ardent advocate of proportional representation because of its greater inherent fairness than two-party government, was opposed to extending the franchise to those lacking in education and property, for fear that it would lead to "mediocrity."

Most advocates of two-party democracy place its greater stability high on their list of its advantages. To the extent that two-party systems are more stable, it is because they tend to limit the choices of voters to two, rather centrally positioned candidates or parties. Individuals with preferences that are far askew from those of the median voter have the right to vote, but are not offered parties or candidates who espouse their views on the major issues. Even in so-called proportional representation systems like those of Germany and Austria, groups with heterodox preferences are often denied representation in the legislatures by setting high minimum cutoffs for the percentage of votes that a party must win before it can claim seats. In Germany and Austria, these cutoffs are set at 5% of the vote.

The third and most commonly used way to deny groups with preferences that deviate dramatically from those of the "mainstream" is, of course, to employ the simple majority rule to decide issues in the legislature. Knut

16 Thomas Hobbes, *Leviathan* (1651).

17 John Stuart Mill, *On Liberty* at ch. 8 (1859).

Wicksell,¹⁸ writing at a time when most of the poor were not enfranchised, considered one of the important advantages of the unanimity rule to be that it increases the political power of the poor.

Thus, in practice, societies have recognized the costs of enfranchising individuals whose knowledge or preferences deviate dramatically from those of the bulk of the community and have implicitly, if not explicitly, tried to ensure that the enfranchisement of such groups does not place undue costs on the rest of the community, by choosing either electoral rules or a voting rule that effectively disenfranchises those with deviant preferences. In this paper, I have instead focused on the more fundamental question of whom to enfranchise.

It is clear from history that those who have created democracies have been aware of the costs of enfranchising people with preferences and interests that differ from their own. Thus, for many years the indigenous populations of Australia, South Africa, and the Americas were barred from voting by the European populations that migrated to these continents. In none of these cases were the political institutions that were put into place designed by people who had stepped behind the veil of ignorance and imagined that they had equal probabilities of being members of each group. Had they done so, it is unlikely that they would have created the kinds of institutions that they did. But it is also unlikely, given the vast cultural differences that separated the different populations, that constitutional conventions that fairly represented all communities would have been capable of drafting democratic constitutions that made citizens of all members of both communities. The European invaders and indigenous populations were effectively in a state of anarchy at the time that the Europeans first created democratic institutions for themselves, and they remained so for some time afterward.

We live in an increasingly mobile world. It is also a world in which democratic values are given increasing weight. More and more people can be expected to choose to live for long periods, if not permanently, in countries in which they initially do not possess citizenship. These migrants can be expected to seek citizenship in their newfound homes. Granting them citizenship can present costs and benefits for the existing population of citizens. One way to increase the cost-benefit ratio is to establish criteria and tests for citizenship. There are good reasons for also requiring that those who are born within a country and would ordinarily acquire citizenship automatically satisfy these same requirements for citizenship.

18 Knut Wicksell, *A New Principle of Just Taxation* (1896), *reprinted in Classics in the Theory of Public Finance* 72 (Richard A. Musgrave & Alan T. Peacock eds., 1967).