

Economic Culturalism: A Comment on Dennis Mueller, Defining Citizenship

*Alon Harel**

In his short but rich article, Dennis Mueller explores the rules that should rationally govern the allocation of citizenship. Citizenship is, of course, a term that has different meanings.¹ Yet Mueller focuses exclusively on one particular sense of citizenship — political citizenship, namely, the allocation of the privileges of voting and, perhaps more broadly, of participation in the political process.

This comment distinguishes between three approaches to (political) citizenship, or, more specifically, three approaches to the relevance of culture to citizenship: the liberal, multicultural, and culturalist approaches. Each one of these approaches has important normative ramifications with respect to the principles that should govern the allocation of citizenship. Mueller, it will be shown, defends a specific version of the culturalist approach, a version I term economic culturalism. I conclude by arguing that economic culturalism needs to be refined in order to address the complexities of heterogeneous societies.

The liberal understanding of citizenship abstracts citizenship from any particularistic aspect — culture, religion, language, etc. Liberals conceive of citizenship in exclusively formal and abstract terms, highlighting the universalistic aspects of the citizen as a free agent. Joshua Cohen, a leading proponent of this stream, argues that, "To say that citizens are free is to say, *inter alia*, that no comprehensive moral or religious view provides a defining condition of membership or the foundation of the authorization

* Professor, Hebrew University Faculty of Law. I wish to thank Omri Yadlin for important suggestions. I also wish to thank Dana Rothman for her exceptionally superb editorial work.

1 For an analysis of the different meanings of this term, see Joseph Carens, *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness* 166-73 (2000).

to exercise political power."² To the liberal, therefore, cultural affiliation is not a component of meaningful citizenship and consequently also should be immaterial to the design of the principles governing the allocation of citizenship. Thus, cultural diversity within a single political unit is compatible with (and not a precondition for) the integrity of the political process.

In contrast to liberals, both the multiculturalist and the culturalist place determinative weight on cultural affiliation as a component of meaningful citizenship and, accordingly, regard cultural affiliation as highly relevant for the allocation of citizenship, albeit in different directions. Obviously, advocates of multiculturalism place high intrinsic value on cultural diversity, and their understanding of the concept of citizenship and the principles governing the allocation of citizenship reflect this conviction. A leading proponent of multiculturalism, Charles Taylor, posits that the political unit should acknowledge and even reinforce what he refers to as "deep diversity" — diversity in which plurality of ways of belonging are acknowledged and accepted. Reinforcing deep diversity has important implications for citizenship. Citizenship, in Taylor's view, is shaped by special affiliations and loyalties one has to one's cultural community. Members of different cultural communities are all equal citizens, but in contrast to the liberal understanding of citizenship, under the multicultural conception of citizenship, they are citizens in different ways that reflect their distinct cultural heritages. Thus, for instance, in describing the complexity of Canadian political life, Taylor argues that, "For Quebecers and for most French Canadians, the way of being a Canadian (for those who still want to be) is by belonging to a constituent element of Canada, la nation Quebecoise, or Canadienne-française."³ French Canadians living in Quebec are Canadians in a distinctly Quebecoise fashion, different from that of other Canadian citizens.

Finally, the culturalist approach to citizenship differs from both the liberal and the multiculturalist approaches in that it places importance on cultural homogeneity amongst the political unit's citizenry. To the culturalist, membership in the political community presupposes membership in one, unified cultural community.⁴

2 Joshua Cohen, *Procedure and Substance in Deliberative Democracy*, in *Deliberative Democracy: Essays on Reason and Politics* 407, 408 (James Bohman & William Rehg eds., 1997).

3 Charles Taylor, *Reconciling the Solicitudes: Essays on Canadian Federalism and Nationalism 182-83* (Guy Laforest ed., 1993), cited in Carens, *supra* note 1, at 172.

4 For a non-economic justification of a moderate form of culturalism, see Alon Harel, *The Boundaries of Democratic Pluralism*, in *Pluralism and the Law* 133 (Arend Soeteman ed., 2001).

In sum, the liberal regards cultural affiliation as irrelevant to the allocation of citizenship, whereas the multiculturalist cherishes cultural diversity and the culturalist favors a certain degree of cultural homogeneity in the political unit. Before exploring the culturalist view propounded by Mueller, it is important to point out that citizenship theorists can hold different hybrids of these perspectives. For example, one can apply liberal or multiculturalist insights to defend a certain degree of heterogeneity, while, at the same time, making use of culturalist arguments to justify imposing certain boundaries on the heterogeneity of the political unit's citizenry.

The culturalist conception of citizenship is often associated with romantic souls who understand culture as an idyllic concept, a concept best expressed in visionary poetry and romantic novels. Mueller, the strict economist, distances himself from such an understanding of culture. Culture for the economist is not a mysterious holistic entity, but, rather, a concept that can be rigorously characterized in terms of profiles of preferences. Under Mueller's view, the more similar the foreigner's preferences to the citizen's preferences, the more desirable (from the citizen's perspective) it is to grant the foreigner citizenship. This is because "[t]he foreign born resident ... could harm Utopians by voting, if his preferences are significantly different from that of Utopians. By not granting immigrants citizenship, Utopia's citizens enjoy the benefits ... without incurring the possible costs of allowing them to vote."⁵ Thus, Mueller, the economic culturalist, demonstrates that instrumental rationality mandates a culturalist, rather than liberal or multiculturalist, approach. The primary goal of citizens is to ensure that newcomers do not become citizens unless they adjust their preferences to those of the existing citizenry. In Mueller's view, numerous existing legal mechanisms operate to guarantee that individuals with eccentric preferences do not participate in the political discourse and that cultural adjustment be a prerequisite for citizenship. Loyalty oaths and citizenship tests guarantee that only immigrants who are culturally similar will be entitled to citizenship. Even two-party democracies and a simple-majority rule operate in a similar manner. Although these systems do not deprive people with eccentric preferences of formal citizenship, they do deprive them of effective citizenship: they can cast their votes as long as their votes do not count.

Before I embark on examining the validity of the economic-culturalist paradigm, I will first address some of its virtues.

There is perhaps one important historical observation that may lend support to the economic-culturalist paradigm. The enfranchisement of

5 Dennis Mueller, *Defining Citizenship*, 3 *Theoretical Inquiries L.* 151 (2002).

marginalized groups such as workers and women occurred in the West simultaneously with the great expansion in the accessibility of education to the population at large. Under Mueller's view, the entry of these groups into the education system facilitated the enfranchisement of these groups by homogenizing their preferences with those of the ruling elite. It seems reasonable to assume that this elite would not have shared its political power had it not known that the newcomers to political participation share their political preferences. Yet despite its apparent appeal, proponents of economic culturalism have several difficulties to contend with. Some of these difficulties relate to the normative assumptions of this paradigm, while others center on the paradigm's descriptive predictions. Below, I raise four different objections: the independence objection; the asymmetry objection; the objection of correlativity; and the narrow scope objection.

I. THE INDEPENDENCE OBJECTION

Economic culturalism views political preferences as stable and independent of the allocation of citizenship. Hence, under this view, the nature of the preferences of immigrants is independent of whether or not they are granted citizenship in their new home. If, however, this assumption is false and the nature of individuals' preferences does depend on whether they are granted citizenship, then economic culturalism leads inevitably to indeterminacy. If, for instance, immigrants' preferences begin to resemble those of native citizens once the former acquire citizenship, the economic-culturalist paradigm cannot be used to determine when immigrants should be granted citizenship.

To complete this objection, I will show that immigrants' political preferences may, indeed, depend upon whether or not they are granted citizenship rights. There are several arguments that can establish this interrelationship. Assume that there are two societies, S1 and S2. S1 grants citizenship to all residents after five years of residence, while S2 does not. Citizens of S1 have strong incentives to open up their educational system to foreigners, so that they will integrate successfully into the S1 political system. In contrast, citizens of S2 have no such desire. Consequently, it is likely that foreigners in S2 will develop preferences that are different from those of the citizens of S2. Moreover, sharing legal citizenship with immigrants is often accompanied by a sense of solidarity and affiliation on the part of the newcomers, while depriving immigrants of citizenship often

leads to their alienation.⁶ In addition, citizenship often provides economic and social opportunities, which may accelerate the process of integration and assimilation. These three factors suggest that immigrants in S1 (which grants citizenship to immigrants) are more likely to integrate than immigrants in S2. It should be noted, however, that it can also be argued that immigrants in S2 are likely to integrate and assimilate more quickly than immigrants in S1: the relative vulnerability of the former may lead them to try to assimilate quickly in order to escape the risks faced by non-citizens.

Similar arguments can be raised from the vantage point of native citizens. Granting immigrants citizenship could, in fact, change natives' political preferences. The opening up of opportunities and political participation for immigrants may contribute to a greater understanding and appreciation of the immigrants' values and their ways of life on the part of native citizens. Consequently, it is possible that native-born citizens' preferences in S1 would differ from those of native citizens in S2. In sum, it is important to acknowledge the relevance of the rules governing the allocation of citizenship to the formation of the preferences of immigrants as well as those of native citizens. The recognition of the existence of such interdependence between these rules and the preferences of citizens and non-citizens raises difficulties for economic culturalism. At the very least, it requires that economic culturalists take into consideration not merely the existing preferences of native citizens, but the future potential preferences of immigrants and citizens under legal rules differing from those currently prevailing.

II. THE ASYMMETRY OBJECTION

Mueller and, perhaps, advocates of culturalism in general find it easy to explain the prevalence of culturalist criteria for acquiring citizenship. Yet the very legal systems that insist on culturalist criteria for acquiring citizenship do not use culturalist criteria to strip citizens of their citizenship. Mueller is not unaware of this problem and justifies the asymmetrical practice on efficiency-based grounds. In his view, it is redundant to require citizens to undergo citizenship tests because of the high rate of success of native-born citizens in these tests.⁷ Moreover, Mueller argues that there

6 Mueller himself, *id.*, acknowledges this possibility, but does not recognize the difficulties it raises for his analysis.

7 *Id.* at 163-64.

are mechanisms for denying *effective* citizenship, for example, by excluding criminals from the vote⁸ or by designing the political process to discount eccentric preferences.⁹

These are interesting and valuable observations, but they seem to be evading a fundamental puzzle in the rules governing citizenship. The legal mechanisms for stripping citizenship are significantly less flexible than those mechanisms governing the acquisition of citizenship. Stripping a person of her citizenship rights raises serious constitutional and international concerns and is generally regarded as justified only in exceptional and rare cases. Mueller's economic culturalism does not provide the tools for understanding the asymmetry between the criteria for acquiring citizenship and the criteria for depriving a citizen of his citizenship rights.¹⁰

III. THE OBJECTION OF CORRELATIVITY

One great virtue of Mueller's analysis is that he does not shy away from legal and institutional realities. He is willing to examine prevalent practices in modern legal systems and to integrate them into his analysis.

However, this strategy is based on what I call the presupposition of correlativity of culture and political preferences. Mueller's analysis rests on the assumption of a correlation between cultural homogeneity and homogeneity in political preferences. But such a correlation is doubtful. Cultural homogeneity consists of uniformity in people's preferences regarding food, dress codes, etiquette, and fundamental values. Homogeneity in these respects is not generally linked to political preferences. In the U.S., the poor blacks of the South and inner city, the intellectual Jews in the Northeast, the Hispanic immigrants, and the urban blue-collar workers all tend to vote disproportionately for the Democratic Party. Liberal ideology or, perhaps, material interests seem to appeal to those diverse groups for different reasons and despite the great cultural differences among these groups. Similarly, in Israel, right-wing parties benefit from the support of poor Sephardic Jews, Russian immigrants, and the orthodox and ultra-orthodox religious communities.

Hence, if the culturalist factors are unrelated to political preferences,

8 *Id.* at 164.

9 *Id.* at 164-65.

10 For a discussion of the asymmetry, see Herman Van Gunsteren, *A Theory of Citizenship: Organizing Plurality in Contemporary Democracies* 91-101 (1998) (Chapter 8).

economic culturalism cannot explain or justify the culturalist citizenship rules and cultural criteria cannot be used (as suggested by Mueller) as a proxy for the conformity of the newcomers' political preferences with those of the native citizens.

Mueller could, of course, argue that if culture is not a suitable proxy for political preferences, newcomers should be asked directly what their political preferences are. While this may not be a practical solution because of the possibility of fraud, theoretically, identifying the political preferences of immigrants is what is required under Mueller's approach. It is interesting to note, however, that such an inquiry seems intuitively fundamentally wrong. Immigrants may be required to share certain fundamental convictions with natives as a prerequisite for citizenship, but it would seem iniquitous to examine their political preferences concerning controversial political questions.

IV. THE NARROW SCOPE OBJECTION

Culturalist criteria for granting citizenship are only one dimension of a much broader issue, namely, the privileges enjoyed by natives in political participation.¹¹ Since Biblical times, it has been common practice to preclude foreigners from serving as political leaders. The Old Testament dictates, "Thou shalt in any wise set him king over thee, whom the LORD thy God shall choose one from among thy brethren shalt thou set king over thee: thou mayest not set a stranger over thee, which is not thy brother."¹² Analogous practices limiting the meaningful political participation of foreigners can be found in modern societies. Campaign financing laws often strictly regulate, or even prohibit altogether, financial contributions from abroad.¹³ Other laws may

11 See Harel, *supra* note 4, at 135-37.

12 *Deuteronomy* 17, 15.

13 American federal law forbids "foreign nationals" from making any contributions, monetary or otherwise, in connection with any election to political office or committing to do so. 2 U.S.C. § 441e (1994). For a general discussion of these restrictions and their scope, see Bruce D. Brown, *Aliens Donors: The Participation of Non-Citizens in the U.S. Campaign Finance System*, 15 *Yale L. & Pol'y Rev.* 503 (1997); Note, "Foreign" Campaign Contributions and the First Amendment, 110 *Harv. L. Rev.* 1886 (1997). Other nations that prohibit foreign donations include Japan, Spain, Canada, Mexico, and China. See Jeffrey Powell, Comment, *Prohibitions on Campaign Contributions From Foreign Sources: Questioning Their Justification in a Global Interdependent Economy*, 17 *U. Pa J. Int'l Econ. L.* 957, 972 (1996).

limit in various ways the rights of foreigners to produce and disseminate political materials.¹⁴ Perhaps one of the most anachronistic yet revealing legal manifestations of suspicion of foreigners is the Fourteenth Amendment of the U.S. Constitution, which states in Article II, Section 5, "No person except a natural born citizen ... shall be eligible to the Office of the President."

It seems to me that all these rules and practices are interrelated: they all stem from fundamental culturalist sentiments. Yet, I am not sure whether *economic* culturalism could provide a justification for these practices. Economic culturalism as presented by Mueller can best explain the use of culturalist criteria for granting citizenship, because arguably, these criteria protect citizens from public policies that are incompatible with their preferences. Yet what is interesting about many of the rules and practices mentioned above is that they constrain the choices of native-born citizens. The limits imposed on the eligibility of foreigners for President, for example, and on their meaningful participation in the political discourse cannot easily be accommodated by the paradigm of economic culturalism, because by constraining foreigners from being elected, they constrain, rather than protect, citizens' political preferences.

As a final note, I would like to present an alternative approach to Mueller's perspective, which, although deviating from the latter in important respects, preserves its valuable insights. Citizenship does not require that citizens share political preferences. It does, however, require them to be capable of contending with conflicts resulting from differing preferences. Citizens need not have uniform first-order ideological preferences or interests, but, rather, must share a culture of dealing with pluralities, i.e., have a shared culture of accommodating differences.¹⁵ The American Founding Fathers insisted on the principle expressed in the slogan of "No taxation without representation." The principle of citizenship sketched here suggests "No representation without accommodation."

14 In the U.S., these limits are entrenched in the Foreign Agents Registration Act ("FARA"), 22 U.S.C. §§ 611-21 (2000). The Act limits foreign involvement in U.S. politics by requiring agents of foreign principles to register and disclose their identities when distributing political materials. While originally the Act was designed to contend with the threat of subversive activities, amendments passed in 1996 were designed to address non-subversive attempts to lobby for foreign interests. The restrictions withstood constitutional scrutiny in *United States v. Peace Information Center*, 97 F. Supp. 255 (1951). For a general survey, see Charles Lawson, Note, *Shining the "Spotlight of Pitiless Publicity" on Foreign Lobbyists? Evaluating the Impact of the Lobbying Disclosure Act of 1996 on Foreign Registration Act*, 29 Vand. J. Transnat'l L. 1151 (1996).

15 See Van Gunsteren, *supra* note 10, at 56.