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Immigration, Citizenship, and Consent: What is Wrong with Permanent Alienage?*

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A migrant's path to citizenship involves two important steps. The first is immigration; the second naturalization. Each step corresponds to an important ethical question: 'Must foreigners be allowed to immigrate?'; 'Must immigrants be offered citizenship?' Liberal democratic states offer a different answer to each of these questions. While they continue to jealously guard their power to restrict immigration, they have come to recognise a norm of granting citizenship to legally resident immigrants after a period of residency, usually five to ten years. The borders can be closed, but citizenship must remain open for those who have already arrived. Philosophers too tend to separate the two questions. Those defending immigration restrictions acknowledge a duty to naturalise.[1] Even Joseph Carens, the most prominent advocate of open borders, treats the two questions as distinct. He makes his argument for naturalization while assuming, for the sake of argument, that immigration restrictions are permissible.[2]

There is then disagreement as to whether foreigners must be admitted but broad agreement that those foreigners who are admitted must, at some point, be offered citizenship. There is, moreover, a consensus that the immigration question and the naturalisation question can be decoupled: a right to citizenship does not presuppose a right to immigrate.

This article critiques that consensus view. It argues that if it really were the case that states had moral discretion to restrict immigration, then states would

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[1]David Miller, 'Immigrants, nations and citizenship', *Journal of Political Philosophy*, 16 (2008), 371–90; Christopher H. Wellman, 'Immigration and freedom of association', *Ethics*, 119 (2008), 109–41; Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), ch. 2.

[2]Joseph H. Carens, 'Citizenship and civil society: the rights of residents', *Dual Nationality, Social Rights and Federal Citizenship in Europe and the US*, ed. Randall Hansen and Patrick Weil (New York: Berghahn Books, 2002), p. 101.

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also be entitled to permanently exclude voluntary migrants from citizenship. Voluntary migrants are those who are not forced to migrate. Unlike refugees or desperately poor economic migrants, they could lead a reasonably decent life back home. Since they migrate voluntarily, their choice to do so could be taken to signal consent to the terms of their admission were there no right to immigrate. It is only because the idea of a right to immigrate is plausible that we have reason to object to permanent alienage even in the case of voluntary migrants.

Section I offers a working definition of citizenship. Sections II to IV consider three arguments for naturalization: from social ties, relational equality, and fairness to citizens. If these arguments were successful, they could ground a right to citizenship without recourse to the idea of a right to immigrate. However, as I shall show, all three arguments fail. Section V presents an alternative argument, which holds that long-term resident aliens should not be treated differently to native residents unless there is a relevant difference separating the two. Sections VI and VII show how this equal treatment argument is threatened by an objection from consent, at least in the case of voluntary migrants. Sections VIII and IX explain how the idea of a human right to immigrate offers a response to the consent objection.

I. WHAT IS CITIZENSHIP?

Citizenship is formal membership of a state. Within the context of the debates over naturalization, it has two essential elements. First, the title 'citizen'. As with 'marriage', the title matters. A lesser title, such as 'subject' or 'permanent resident', suggests a lesser status and is therefore not citizenship, even if all else remains the same. Second, citizenship entitles people to a bundle of rights. Which rights are in the bundle is not crucial to the definition of citizenship. There are rights that we expect to be there. One is the right to vote. Another is the right to hold a passport. But there are also rights that are part of the bundle in one country and absent in another. For instance, citizenship may entitle members to state health care in one country but not in another. What is more important than the identity of the rights within the bundle is the fact that there is a bundle, it is granted to all people called 'citizens', and it is the same bundle for all.

There are a number of things which citizenship is not. First amongst them is a 'right to have rights'. Carens is correct to insist upon this.[3] The most important rights people possess are arguably those that under international law everyone possesses. These are basic human rights to security, subsistence, liberty of religion, association, expression and so forth. To insist that long-term foreign

[3] *The Ethics of Immigration* (Oxford: Oxford University Press), pp. 93–4. The phrase 'right to have rights' comes from Hannah Arendt, *The Origins of Totalitarianism* (Orlando: Harcourt Brace, 1973), ch. 9. As Carens notes, Arendt uses the phrase to describe the situation in Europe during the interwar years, not as a definition of citizenship.

residents be awarded citizenship is not then to insist that their basic rights be respected.

Nor does citizenship guarantee anyone greater income, wealth, health, or happiness. A permanent alien could be a multi-millionaire living in luxury. There may be a contingent relationship between alienage and disadvantage, but we only have reason to predict this when there is a significant difference between the rights that citizens and foreign residents enjoy. There need be no such difference. Indeed, the trend in western liberal democracies is towards greater parity between citizens and residents.[4] Whatever one thinks of this trend, there is no conceptual incoherence in the idea of awarding residents almost all the rights of citizenship.

Having better understood citizenship, we have a better understanding of what the insistence that long-term residents be awarded citizenship involves. It is not an insistence that long-term foreign residents have their basic human rights respected, be emancipated from some quasi-slave status, or enjoy some basic level of well-being. Indeed, it is not an insistence that they be granted any particular right in the citizenship bundle. Rather, it is the demand that long-term residents be awarded the title of 'citizen' and whatever rights go along with that title.

With this much clear, we can already discount one argument for naturalisation: the argument that all long-term residents have a right to democratic inclusion in the country in which they reside. Perhaps democracy is incomplete if residents are disenfranchised.[5] Nevertheless, this argument fails as an argument for naturalization. Many countries allow foreign residents to vote in some or all elections.[6] The right to vote is one right in the citizenship bundle; it is not citizenship itself.[7]

II. SOCIAL TIES

A more promising argument, offered by Joseph Carens and Ayelet Shachar, holds that immigrants establish a right to citizenship on the basis of the social ties linking them to the host country.[8] When immigrants move to a country they are likely to establish ties through work, education, civic associations, and friendship groups. These ties will likely strengthen with time. At some point, immigrants have acquired such strong social ties that they have become members of the political community and deserve recognition as such. To be formally recognised as a member is to be granted citizenship.

This argument involves the following principle:

[4]Peter H. Schuck, *Citizens, Strangers, and In-Betweens* (Boulder, CO: Westview Press, 1998), pp. 163–75.

[5]Walzer, *Spheres of Justice*, pp. 56–61; Carens, *The Ethics of Immigration*, p. 50.

[6]Rainer Bauböck, 'Expansive citizenship: voting beyond territory and membership', *PS: Political Science & Politics*, 38 (2005), 683–7.

[7]Jonathan Seglow, 'Arguments for naturalisation', *Political Studies*, 57 (2009), 788–804, at p. 793.

[8]Carens, *The Ethics of Immigration*, especially chs. 2 and 3; Ayelet Shachar, *The Birthright Lottery* (Cambridge, MA: Harvard University Press, 2009), ch. 6.

> *P*: Citizenship should be open to everyone who has established social ties within a political community.

The problem with this argument is that it cannot support our considered judgements as to who is and who is not entitled to citizenship. *P* is both over- and under-inclusive. It is over-inclusive because social ties do not stop neatly at international borders. Some people will have established strong social ties in a foreign country without living there. Suppose an English person holidays in the same Italian village each year. He learns Italian and makes friends. Over the years, he gets to know everyone in the village and becomes part of village life. Is he owed Italian citizenship? Most people would say 'no'. But why not if social ties are the basis for citizenship?

It might be suggested that, as a tourist, the social ties that the English person has established are insufficient. But a long-term foreign resident may have established even weaker social ties. This is how *P* is under-inclusive. There are residents who do not speak the national language, have failed to make friends, and are not part of the community. Perhaps they never leave their home. The social ties argument cannot explain what is wrong with permanent alienage in such cases.

One response might be to argue that residency is the best proxy we have for social ties. On this view, at the level of principle, we want to offer citizenship to all and only those with strong social ties but, at the level of practice, we only offer citizenship to long-term residents since it is too difficult to identify socially isolated residents and socially engaged non-residents. But this suggestion is unconvincing in both its normative and empirical claims. Normatively, socially isolated residents seem entitled to citizenship; socially engaged non-residents do not. Empirically, it does not seem so hard to identify those with weaker or stronger social ties. For instance, applicants for citizenship could be asked for letters of reference from friends, employers, schools, and so on, to verify that the applicant is socially engaged. Any such system would not be perfect, but it would be a more accurate way to determine social ties than using residency as a proxy.

A second response, at least to the problem of under-inclusion, would be to argue that many of those foreign residents who are socially isolated would prefer not to be. Social isolation is foisted upon them whether by patriarchal repression (they are women forced to stay home) or mental illness. It would be pernicious to exclude the victims of unwanted social isolation from citizenship. This move would involve replacing *P* with something like the following principle:

> *P2*: Citizenship should be open to everyone who has established social ties within a country or would have done so had they not suffered unwanted social isolation.

But *P2* is also both over- and under-inclusive. It is over-inclusive because there will be many people living abroad who would have immigrated and established

social ties had they not suffered unwanted social isolation. Consider, for instance, women living in traditional societies who would like to immigrate (to join family members, perhaps) but cannot do so because repressive husbands keep them home. *P2*, like *P*, thus demands that citizenship be awarded to non-resident foreigners. This seems counterintuitive. *P2* is under-inclusive because there will be at least some long-term foreign residents who desire social isolation.

A final response involves biting the bullet. All and only those who have established the requisite social ties should be awarded citizenship. Gregarious tourists must be awarded citizenship; socially isolated residents can be permissibly denied it. This response, while consistent, is unlikely to attract many adherents. It is out of step both with current practice and with the views of philosophers writing on the issue. Moreover, this response accepts the permissibility of permanent alienage in the case of the socially isolated. It is not then a response that could be given by the scholars this article critiques: those who condemn permanent alienage while defending immigration restrictions.

When Carens defends the social ties argument, he relies upon none of these responses. He argues at the level of principle, not just at the level of practice, against leaving the socially isolated in a state of permanent alienage. Nor does he restrict the scope of his concern only to those who suffer unwanted isolation. For Carens, long-term residents should be awarded citizenship even if they have chosen to spur social connections.[9] Carens might well be right to make this claim, but in making it he is, quite simply, abandoning his social ties argument. If long-term residents are entitled to citizenship, whether or not they have established social ties, then it is not social ties that grounds entitlement to citizenship.

Settlement, it seems, is crucial to the distribution of citizenship. Carens implicitly acknowledges this, but he should have done so explicitly, replacing *P* and *P2* with something like:

> *P3*: Citizenship should be open to everyone who has settled within a state's territory for a certain number of years.

This principle will cover socially isolated residents but exclude gregarious tourists and other socially engaged non-residents. The principle thus supports our considered judgements regarding actual cases.

Of course, acknowledging the principle is not the same as justifying it. A puzzle still remains as to why mere settlement should be awarded such importance. I cannot hope to resolve this puzzle here, and in what follows I will simply assume that settlement is a morally relevant factor such that it is morally permissible to refuse foreigners citizenship if they have not settled within a country. What I shall focus on instead is explaining why foreigners who have settled are entitled to citizenship. I shall focus, in other words, on explaining what

[9]Carens argues that social isolation 'wanted or unwanted' should not be used as 'criterion justifying exclusion from citizenship'. Carens, 'Citizenship and civil society', p. 112.

is wrong with permanent alienage. I present my own argument in section V. First, however, let us consider two further arguments from the literature.

III. RELATIONAL EQUALITY

For Christopher Wellman, naturalization is necessary for the realisation of 'relational equality'. Wellman draws on the work of Elizabeth Anderson to argue that equality, properly considered, is a matter of achieving the right kind of human relationships: relationships governed by mutual respect rather than any form of oppression.[10] To have such relationships, one need not enjoy equal amounts of income, wealth, health, or happiness. Relational equality is not distributive equality.[11] Nevertheless, relational equality does make demands on resources. Oppression occurs when people are placed in vulnerable situations. Thus, to be secured against oppression, everyone must be guaranteed certain capabilities, including education, healthcare, and decent working conditions.[12] Wellman argues that permanent alienage leaves residents open to oppression. To secure them against oppression, they must be awarded citizenship.[13]

Whether or not Wellman is right that relational equality demands equal citizenship depends on how we define egalitarian as opposed to oppressive relationships. It will not do to simply define egalitarian relationships as involving equal citizenship rights. If the argument is to be more than stipulative, we need some independent idea of what constitutes oppressive/equal relationships. It is important then that Anderson and Wellman do provide examples of oppressive relationships, and that Anderson lists the capabilities people must have to live as equals. This lends us some criteria to judge whether permanent alienage and relational equality really are incompatible.

Anderson's primary examples of oppression are relationships governed by racist, sexist, and other prejudicial norms. In these relationships, Anderson argues, people are demeaned, exploited, marginalised, dominated, or subjected to violence.[14] They cannot pursue their claims without having to 'bow and scrape before others'.[15] Wellman argues that immigration policies too can be oppressive. His primary example is the European guest worker programmes, as depicted in Michael Walzer's *Sphere of Justice*.[16] According to Walzer, guest workers on these programmes were subject to low pay, social exclusion, fear, and racism.[17]

If migrants are to escape oppression of this kind, then they are certainly entitled to a set of basic rights. But it is far from clear that they must be awarded

[10]Elizabeth Anderson, 'What is the point of equality?' *Ethics*, 109 (1999), 287–337; Wellman, 'Immigration and freedom of association', pp. 121–6.
[11]Anderson, 'What is the point of equality?' pp. 317, 320, 335.
[12]Ibid., pp. 317–24.
[13]Wellman, 'Immigration and freedom of association', pp. 125–6, 133–4.
[14]Elizabeth Anderson, 'What is the point of equality?' p. 313
[15]Ibid.
[16]Wellman, 'Immigration and freedom of association', pp. 133–4.
[17]Walzer, *Spheres of Justice*, pp. 56–61.

citizenship. The capabilities Anderson lists are quite specific, designed to ensure that people do not sink below a basic threshold.[18] They include education, healthcare, and decent working conditions. They do not include all and every right that a society may wish to include in the citizenship bundle.

Consider, for example, the right to hold a passport of the host country. This right, so closely associated with citizenship, is distinct from both a right to a passport of any kind and a right to permanently remain in the host country. A migrant already has a passport (the passport of her home country) and she can receive the right to permanently remain without being awarded a new passport. A permanent residency visa suffices. A new passport might be useful, but it is inessential. One is not oppressed by others simply because one does not hold the same passport as them.

Further evidence that permanent alienage could be compatible with relational equality comes from an assessment of the case of privileged migrants, such as bankers, engineers, and professors. Unlike European guest workers, these people do not seem to suffer from oppression, nor struggle to be recognised as equals. It seems unlikely that this is due merely to the promise of citizenship. Rather, the rights and privileges they currently enjoy, in the absence of citizenship, seem sufficient to secure them against oppression.

Is there really no argument to be made from relational equality against permanent alienage? I have so far followed Anderson and Wellman in characterising relational equality as opposed to certain harsh forms of treatment. But perhaps relational equality is more demanding that this. Arguably, people do not relate to one another in the full spirit of equality if they subject one another to arbitrary forms of discrimination, however mild. To live as equals, people must commit to the principle that all should be treated alike, absent a justification for differential treatment.[19] Were we to regard the distinction between citizens and residents as an arbitrary form of discrimination, we would seem to have the basis for an argument against permanent alienage. This, indeed, is precisely the kind of argument I wish to develop below.[20]

[18]Elizabeth Anderson, 'What is the point of equality?' p. 320.

[19]For a conception of relational equality of this sort, see Christian Schemmel, 'Why relational egalitarians should care about distributions', *Social Theory and Practice*, 37 (2011), 365–90, at pp. 370–5.

[20]This section has questioned the link between relational equality and citizenship. Let me add here that there is a second problem with Wellman's argument: the assumption that immigration restrictions do not violate relational equality. While Wellman is particularly concerned with relationships within countries, he accepts that relational egalitarians should also be concerned with the relationships across borders ('Immigration and freedom of association', p. 124). Yet if we were to accept Wellman's claim that permanent aliens, no matter how privileged, are necessarily denied relational equality, it would seem strange to think that excluded migrants enjoy relational equality, given the coercion they are subject to. This combination of views becomes even more difficult to sustain once we recognize the strength of the reasons people have to migrate (see section VIII). Placing razor wire and armed guards in the way of peaceful people, preventing them from leading their lives as they please, seems, intuitively, like a better example of oppression that the mere denial of non-basic citizenship rights.

IV. UNFAIRNESS TO CITIZENS

Helder De Schutter and Lea Ypi present what is perhaps the most novel argument for naturalization. Permanent alienage, they argue, is unfair to citizens. The existing literature errs when it emphasises the benefits of citizenship and ignores the burdens. Their examples of burdens include conscription, jury service, voting, and a sense of shame for national wrongs. Citizens must bear these burdens; foreigners need not. Permanent alienage is thus unfair to citizens, allowing resident foreigners to reap the benefits of projects (national defence, criminal justice, democratic politics, and so on) that citizens are required to support.[21]

De Schutter and Ypi are certainly right that citizenship involves burdens as well as benefits. They are too quick, however, in assuming that the existence of burdens renders permanent alienage unfair to citizens. What matters, from the point of view of fairness, is not burdens but *net* burdens. Permanent alienage would only be unfair to citizens if the burdens of citizenship outweighed the benefits. There are two reasons to think this is not so.

First, the burdens De Schutter and Ypi cite are not particularly burdensome. Few citizens are called for jury service and those that are can appeal to be excused. Trials tend to be short (4–5 days is the US average) and jurors receive financial compensation.[22] While voting can take time away from other valuable activities, it seems strange to regard the right to vote as a net burden. The fact that millions of people have campaigned for their own enfranchisement, while few, if any, have requested disenfranchisement, suggests that the right to vote is, on balance, desirable.[23] Conscription is a severe burden, but in an age of professional militaries, it is increasingly rare. There are, moreover, strong arguments against conscription.[24] If it is wrong, it should not be extended but discontinued. If citizens sometimes suffer shame for national wrongdoing, there is an important flipside: the pride felt for national achievements. Permanent aliens may escape feelings of national shame, but they are equally unable to share in national pride.

Second, it is citizens, not foreigners, who determine immigration policy. It seems unlikely that citizens would vote for policies that impose unfair net burdens upon themselves. It is much more likely that they will remain mindful of their own interests and ensure that the benefits of citizenship outweigh the costs. Moreover, even if it were the case that foreigners were currently free riding, citizens could make corrections without extending citizenship to all. Corrections

[21]Helder De Schutter and Lea Ypi, 'Mandatory citizenship for immigrants', *British Journal of Political Science*, 45 (2015), 235–51.

[22]The Bureau of International Information Programs of the US Department of State, 'Anatomy of a jury trial', *eJournal USA*, 14 (2009), 4–42, available at <http://iipdigital.usembassy.gov>.

[23]In most countries, moreover, voting is voluntary. Those who resent voting are free not to vote. De Schutter and Ypi ('Mandatory citizenship', p. 241) claim that citizens are subject to strong social pressures to vote, but low voting rates in many democracies suggest otherwise.

[24]A. John Simmons, *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001), pp. 43–64.

could be made in one of two ways: foreigners could be asked to share the costs or, alternatively, citizens could be compensated with additional benefits.

In short, it seems unlikely that a policy of denying citizenship to long-term residents will unfairly burden citizens and, even if it did, such unfairness could be corrected without abandoning the policy. As common sense would suggest, whatever is wrong with permanent alienage, it is a wrong suffered by migrants not citizens.

V. EQUAL TREATMENT

Let us turn finally to an argument that, I think, can help to explain what is wrong with permanent alienage although, as we shall see, it requires an extensive defence. The argument holds that natives and foreigners should not be treated differently unless there is a relevant moral difference that can justify differential treatment. This is an important principle invoked not only in the literature on immigration but also in debates on global distributive justice. The principle is entailed by the more general principle of formal equality: like cases should be treated alike.

The native-born children of citizens who are raised and reside within their parents' country should be awarded citizenship of that country. If any claim is uncontroversial, this is.[25] Moreover, native-born children should retain their citizenship even if they are outcasts from society, do not share the majority identity, or choose to live in social isolation. Their right to citizenship is unqualified in this respect. Note, also, that most people fit this category of person: they are born, raised, and reside in their parent's country of citizenship. This is the standard case. As such, it is a good model when thinking about naturalization.

What is the difference then between this standard case and that of immigrants? In the case of tourists, students, and other short-term visitors, lack of settlement seems to be a relevant factor. That was our conclusion from section II. But what about long-term residents? What morally relevant difference is there between foreign long-term residents and native residents? They are both settled within the state on an on-going basis. Both are subject to its laws. Either one could be socially engaged or socially isolated. If there is no relevant difference between the two, long-term foreign residents and natives should be treated alike, the former enjoying the same citizenship status as the latter.

This is the equal treatment argument. To defeat the argument, one must find a relevant difference separating foreign long-term residents from natives. As we have intimated, this is not easy. What is contingently true of some portion of the native population is unlikely to be true of them all, let alone be morally relevant to the distribution of citizenship. There is, however, something that is necessarily

[25]Carens, *The Ethics of Immigration*, p. 22.

true of all native-born residents that points us in the direction of what might be a morally relevant factor: the fact that natives did not choose to enter their country but were born and raised there. Since they did not choose to enter, they cannot be said to have consented to their status. By contrast, many foreign-born residents did choose to enter the country voluntarily. If they had no right to enter the country then, arguably, they can be said to have consented to their status by choosing to migrate. Consent then may represent a relevant moral difference between some foreign-born long-term residents and natives, and a defence of permanent alienage.

VI. THE CONSENT ARGUMENT FOR PERMANENT ALIENAGE

Immigrants can be roughly separated into two camps: voluntary and involuntary migrants. Voluntary migrants have a reasonable alternative to migrating; involuntary migrants do not. Since most people in rich countries have a reasonable standard of living, most adults from rich countries who migrate, migrate voluntarily. Children, refugees and desperately poor economic migrants have no reasonable alternative.

There is, of course, no clean line separating voluntary from involuntary migrants. As with most distinctions, there are areas of grey and in some cases it would be difficult to determine which camp a migrant belongs to. But there are cases in which the right clarification is readily apparent. Governments, which already make determinations of age, wealth, and refugee status when processing asylum and benefits claims, would be able to identify a group of people who are clearly voluntary migrants.

The distinction between voluntary and involuntary migrants matters because involuntary migrants cannot be said to have consented to the terms of their admission. They had no genuine choice. Voluntary migrants, however, can be regarded as signalling consent, if, that is, we assume the traditional view that people have no right to immigrate. If people have no right to immigrate and states are permitted to admit or exclude whom they wish, why should states not also decide the terms of admission for voluntary migrants?

We can call this the 'consent model for just terms of admission'. It works as follows. A state voluntarily chooses to admit a certain number of voluntary migrants to its territory. It has no duty to do so, but nevertheless, it chooses to. It decides the terms of admission and publicises them. Voluntary migrants can then decide whether or not to immigrate under those terms. If they choose to immigrate, they can be taken to signal their consent. Having consented, they cannot complain later of being treated unjustly.

The consent model for just terms of admission should not be misunderstood. It is not a model for identifying the best immigration policies. A policy can be just without being the best policy. Perhaps a policy of permanent alienage is, in fact, inadvisable: benefiting no one, while creating social disharmony. Below, I will

question this view, noting some of the ways that citizens and migrants can benefit from permanent alienage. All I want to stress here, however, is that even if the policy were unwise, this would not, in itself, make it unjust. Justice represents a set of core moral requirements. States can satisfy these requirements and still make bad decisions.

There are various considerations that support the consent model for just terms of admission. Note first that, in a variety of contexts, consent is thought sufficient to prevent injustice. It is consent that makes the difference between theft and donation; rape and consensual sex; negligence and the voluntary assumption of risk. Law courts frequently invoke the principle *Volenti Non Fit Injuria*: to a willing person, no harm is done.

The idea that migrants can consent to fewer rights is also familiar. In *Multicultural Citizenship*, Will Kymlicka argues that while people ordinarily have a right to live within their 'societal culture', voluntary migrants do not. Their choice to migrate can be understood as a choice to waive this right.[26] But if voluntary migrants can waive their right to live in their societal culture, it seems no less plausible that they can waive rights included in the citizenship bundle.

Next, note that the idea that states are permitted to exclude foreigners from citizenship forms a natural corollary to the idea that states are permitted to exclude foreigners from their territory. If states are free to decide whether or not migrants are admitted, why should they not also decide the terms of their admission? Indeed, some of the main arguments for the permissibility of immigration restrictions also support the permissibility of permanent alienage as well.

Consider the argument that freedom of association permits citizens to exclude foreigners much like domestic associations, such as golf clubs, are permitted to exclude applicants.[27] Golf clubs, let us note, can do more than exclude applicants, they can also set the terms of admission such that new members are permanently denied the rights that current members enjoy. No one should be forced to join a two-tier golf club, but those who choose to join knowing the terms are not wronged.

Next, consider the argument that states own their territory in something like the way that people own their property.[28] While it is true that property owners have broad rights to exclude people from their property, they also have broad rights to set the terms of admission. If you invite me to live in your house, you can set the house rules. Even if I end up staying indefinitely, I do not thereby acquire the rights of a co-owner.

Finally, consider an economic argument for immigration restrictions. Unrestricted migration, it is contended, would overload welfare programmes and

[26]Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), p. 96.
[27]Wellman, 'Immigration and freedom of association'.
[28]Ibid., p.135; Hans-Hermann Hoppe, *Democracy—the God that Failed* (New Brunswick, NJ: Transaction Publishers, 2001), pp. 148–9.

expose domestic workers to fierce competition.[29] These considerations are advanced as reasons for awarding states the right to restrict immigration, but they could equally be advanced as reasons to deny voluntary migrants citizenship. Rights to certain welfare programmes and access to certain jobs could then be placed within the citizenship bundle, secured for citizens against newcomers.

In referring to these arguments, I do not mean to endorse them. There are important disanalogies between states, clubs, and property owners that render arguments from freedom of association and ownership unsound.[30] Similarly, the economic argument rests on questionable empirical assumptions and indefensible normative claims.[31] My opposition to these arguments will become clearer below. My point here is merely that were we to accept these arguments, we would find the idea of permanent alienage hard to resist.

VII. LEGITIMATE PATERNALISM

Carens's response to the consent argument is to note that, 'every plausible moral view sets some limits to consent'.[32] He is right. Some rights are inalienable and governments do enact just laws against certain forms of consensual behaviour. Enslavement is neither legal nor moral even when the victim consents. Health and safety legislation that prevents us from voluntarily dining at unsanitary restaurants seem justified, as do seatbelt laws. Many would also cite laws prohibiting drugs, prostitution, and organ sales. The list is limited, however. Ordinarily we should be allowed to do what we consent to do. A government that makes paternalistic law the rule rather than the exception is overbearing.

How can we determine whether certain conduct falls within or beyond the limits to consent? There are various factors to consider. The most important, perhaps, is the level of harm that may result. When the costs are minor, consent would seem to offer an adequate defence. After all, people routinely engage in permissible consensual activities that involve bearing minor costs. It is when costs are severe that we doubt whether consent is sufficient.

A second consideration is whether people have good reason to consent to the conduct in question. People do not seem to have good reason to suffer enslavement, drug addiction, or the risk of food poisoning. We may suspect that anyone who chooses these options does so due to ignorance, manipulation or

[29]Matthew J. Gibney, *The Ethics and Politics of Asylum* (Cambridge: Cambridge University Press, 2004), pp. 71–5, 83; John Isbister, 'A liberal argument for border controls: reply to Carens', *International Migration Review*, 34 (2000), 629–35, at p. 363.

[30]Sarah Fine, 'Freedom of association is not the answer', *Ethics*, 120 (2010), 338–56; Phillip Cole, *Philosophies of Exclusion* (Edinburgh: Edinburgh University Press, 2000), pp. 70–3.

[31]Arash Abizadeh, Manish Pandey, and Sohrab Abizadeh, 'Wage competition and the special-obligations challenge to more open borders', *Politics, Philosophy & Economics*, (2014), 1–15; Kieran Oberman, 'Poverty and immigration policy', *American Political Science Review*, 109 (2015), 239–51, at p. 245.

[32]Carens, 'Citizenship and civil society', p. 115.

some other factor that leaves them ill placed to engage in rational deliberation. When this is so, arguments from consent seem less persuasive.

Is permanent alienage beyond the limits to consent? We can certainly imagine cases in which the treatment of permanent aliens is impermissible. Permanent aliens should not be subjected to violence, slavery, quasi-slavery, starvation, or desperate poverty whether or not they consent. The European guest worker programmes of the 1970s (which became permanent alienage programmes since visas were routinely renewed) might also have been beyond the limits to consent given the severity of the harms involved. Yet as we saw above, permanent alienage need not involve any such harm. All permanent alienage necessarily involves is the denial of the title 'citizen' and at least some of the rights of citizenship. Permanent aliens can live in safety, comfort and security, protected by a many of the rights that citizens enjoy.

Thus in relation to the first consideration—the level of harm—we find no reason to think that permanent alienage always lies beyond the limits to consent. Let us turn to the second consideration: whether people have good reason to consent. Could migrants have good reason to consent to terms of admission under which they are permanently excluded from citizenship? Absolutely. There are other things in life besides citizenship rights. Migration can allow people to better advance their careers, pursue romantic relationships, be close to friends, or enjoy new surroundings. By migrating to a state in which they will become a permanent alien, voluntary migrants indicate that the goods that come with migration are more important to them than the good of living in a country in which they enjoy citizenship. It is not irrational to make this trade-off. The opportunity to migrate could leave migrants happier, richer, and healthier.

Of course, matters might be different if migrants had a recognised right to migrate. If the choice migrants faced were between migrating with the promise of citizenship or migrating without it, then it would seem doubtful that they could have good reason to make the latter choice. But we continue to work under the assumption that states are entitled to enforce immigration restrictions. When exclusion is the alternative to permanent alienage, permanent alienage can be in a migrant's best interests. The choice to become a permanent alien is thus nothing like the choice to become a slave, drug addict, or unsanitary restaurant diner. Our second consideration, like our first, suggests that permanent alienage can lie within the limits to consent.

VIII. A HUMAN RIGHT TO IMMIGRATE

Permanent alienage, in itself, does not overreach the limits that any plausible moral theory would place upon consent. What then could be wrong with the consent argument for permanent alienage? We have seen that the consent argument rests on the traditional assumption that people have no right to immigrate to other states. In this section, I wish to question that assumption. I

will argue that the idea of a human right to immigrate follows naturally from an appreciation of already recognised rights to basic liberties. I can only sketch that argument here. I cannot develop it or address every objection. My aim is not to offer an indisputable argument for a right to immigrate, but to show that the idea is plausible and can help to explain what is wrong about permanent alienage.[33]

International law recognises rights to freedom of movement, religion, association, expression, occupational choice, and marriage.[34] These rights entitle people to access the full range of options available within a country. The right to freedom of association, for instance, entitles people to associate with others who are willing to associate with them. The right to freedom of religion entitles people to join any religion that will have them as a member. A government restricted choice of options, however large, is not sufficient to satisfy these rights. The state cannot justify banning me from associating with a friend or practising a religion on the basis that there are other friends that I could associate with and other religions I could practise. Nor can it ban me from entering one area of a country on the basis that there are a significant number of options available in my own area of the country.

These rights are not only held by citizens. As is clearly stated in international law, foreigners too are entitled to freedom of movement, religion, association, expression, and marriage while they are legally resident within a state.[35] There is a good reason for this. Foreigners, as much as citizens, have an interest in the freedom to make basic decisions about their lives free from government interference. Foreigners, as much as citizens, should be able to decide where they live, whom they live with, which associations they join, with whom they communicate, which (if any) religions they practise, which job they take and whom they marry, without the government placing restrictions on the options available to them.

Yet if foreigners and citizens are entitled to make these basic decisions as they please, then the justifiability of immigration restrictions are immediately called into question. For immigration restrictions constitute government restrictions on the range of options available to people. Anyone who is prevented from entering a country is prevented from accessing the options available within its territory: she cannot live within the country or associate freely with people living there; she cannot join civic associations or religious congregations, take a job, give talks, or attend conferences with the country's territory; nor can she marry and settle down with one of its citizens, unless her partner can migrate instead. Immigration restrictions, in other words, infringe the exercise of all other rights to basic

[33]I have defended the idea at length elsewhere. See Kieran Oberman, 'Immigration as a human right', *Migration in Political Theory*, ed. Sarah Fine and Lea Ypi (Oxford: Oxford University Press, 2016).

[34]See, for instance, articles 13, 17, 18, 19, 23, and 16 of the *Universal Declaration of Human Rights*.

[35]Human Rights Committee, 'General comment no. 15: the position of aliens under the Covenant', HRI/GEN/1/Rev.9 (1986), para. 2. The one exception is freedom of occupational choice that is ordinarily and, in my view, mistakenly, conceived of as a right that only citizens possess.

liberties. If these rights protect the freedom of everyone, foreigners included, to make basic decisions regarding their lives, then it seems plausible to believe that everyone must have a right to cross international borders.

IX. IMMIGRATION AND CITIZENSHIP

Were we to accept this idea of a human right to immigrate, what implications would it have for permanent alienage? It might be thought that the human right to immigrate is compatible with permanent alienage. After all, on a straightforward understanding of what it means to violate a right, a right is violated when the right-holder is prevented from accessing the object of their right. Permanent aliens are not prevented from immigrating and so permanent alienage does not violate a human right to immigrate. However, we need to distinguish between the implications of the right to immigrate itself and the implications of the right when conjoined with the equal treatment argument. Even if the right itself does not provide an objection to permanent alienage, it does do so once combined with the equal treatment argument.

Let us then recall the equal treatment argument presented in section V. The argument holds that foreign and native residents should be treated alike unless there is a relevant moral difference that can justify differential treatment. If natives are granted citizenship and there is no relevant moral difference between natives and foreign residents, then the latter should also be granted citizenship. We found, however, that in the case of voluntary migrants there could be a relevant moral difference. If voluntary migrants have no right to immigrate, they could be taken to signal consent to the denial of citizenship.

The importance of the idea of the right to immigrate then is that it rescues the equal treatment argument from the consent objection. If a voluntary migrant has a right to immigrate, then one cannot infer a migrant's consent to the terms of her admission from the fact that she has chosen to migrate. Consent cannot be inferred from any action a person chooses to perform. Consent can only be inferred from a person's action when it is reasonable to expect the person to forego performing that action in order to signal their dissent. If a person has a right to immigrate, they cannot be reasonably expected to forego exercising it in order to signal their dissent to the terms of their admission.

To see this, it is helpful to consider a parallel case involving other human rights to basic liberties. Imagine the government sought to deny a certain public benefit to people based on how they chose to exercise their human right to freedom of religion, expression, or marital choice. Suppose, for instance, it sought to deny free dental care provided to other residents to those who worship certain religions, attend certain public meetings or marry people from a particular geographical area. If it advertised its policy in advance, could it infer consent to the denial of free dental care from those who chose these options? It seems clear that it could not. People have strong interests in the freedom to choose amongst

the available options when deciding such matters as which religion they practise, how they express themselves, and whom they marry. These interests are so strong, in fact, that they are protected by human rights. Because people have these strong interests, it is unreasonable to expect them to forego certain options in order to avoid consenting to unequal treatment. The effect of this is that someone's decision about whether or not to worship a particular religion, attend a public meeting, or marry a certain person must be assumed to be a decision about that religion, meeting or person, not a decision about whether to reject free dental care or any other unrelated matter. A government that acted in the manner described would be guilty of arbitrary discrimination and it could not appeal to notions of consent to deflect that charge.

Exactly the same is true in the immigration case. The argument for the right to immigrate is based upon people's interests in being able to make free choices about such basic matters as where they live, whom they live with, which associations they join, with whom they communicate, which (if any) religions they practise, which job they take, and whom they marry. A decision to immigrate must be assumed to be a choice about such matters, not about consent to permanent alienage. To expect someone to forgo certain options (a relationship, a career, an invitation to join a religious community, and so on) in order to signal their dissent is unreasonable given the strong interests at stake.

This not to deny that there are occasions in which people can consent to something by means of exercising a basic liberty. People can clearly consent to being married, for instance, by exercising their freedom of marital choice. But these are occasions in which the ability to consent to something forms part of the basic liberty itself. If people could not consent to being married, people could not enjoy freedom of marital choice. The ability to consent to the denial of free dental care, by contrast, forms no part of freedom of religion, expression, or marital choice. Likewise, the ability to consent to permanent alienage forms no part of the freedom to immigrate.

Note that while the argument I have advanced here condemns the imposition of discriminatory costs upon people exercising a basic liberty, it does not (absurdly) condemn the imposition of costs of any kind. In fact, it leaves space for two kinds of cost. First, there are the costs that are imposed uniformly on everyone, whether or not they exercise a basic liberty. If immigrants are forced to abide by the laws and taxes that are imposed upon natives, for instance, they cannot complain of unequal treatment. It is true that they did not consent to those laws and taxes, but nor did the natives. Second, even targeted costs can be justified as long as there is a morally relevant factor that can justify differential treatment. We found in section II that settlement does seem to be a relevant factor when it comes to naturalization. Tourists and other short-term visitors do not seem entitled to citizenship. Residency requirements may thus be permissible. It is in the case of long-term residents that we struggle to find any factor that can justify awarding them a different status to the native population.

What I am arguing for then, in relation to international migrants, is actually something similar to what internal migrants in the EU, US, and Canada currently enjoy. EU, US, and Canadian citizens who internally relocate to a new state or province do not instantaneously acquire all the rights that insiders possess. Nevertheless, in all three jurisdictions, people are entitled to move and do acquire equal rights after a period of residency.[36] A world in which the human right to immigrate was recognised would be similar to this. It would be a world in which there are still insiders and outsiders, but one in which outsiders are permanently excluded from neither territory nor citizenship.[37]

X. CONCLUSION

The question 'what is wrong with permanent alienage?' is surprisingly difficult to answer. Permanent alienage is not wrong because permanent aliens are disenfranchised, posses social ties, suffer oppression, or free ride upon the efforts of citizens. None of these things need be the case. The matter is further complicated by the fact that many migrants voluntarily choose to immigrate. On the traditional view, people have no right to immigrate. If we assume this traditional view, then the choice voluntary migrants make to immigrate would seem to signal consent to the terms of their admission.

The correct answer to the question 'what is wrong with permanent alienage?' depends then on the idea of a human right to immigrate. Because voluntary migrants have a human right to immigrate, they cannot be thought to signal consent to the terms of their admission. Since voluntary migrants cannot be said to consent, consent cannot be said to represent a relevant difference between foreign long-term residents and natives. If there is no relevant difference between the two and natives are awarded citizenship, foreign long-term residents should also be awarded citizenship.

A consequence of this conclusion is that we must reject the consensus that has grown up around the issue of naturalization. Naturalization cannot be decoupled from immigration. Those who defend immigration restrictions should endorse permanent alienage for if the former can be defended, so can the latter. Those of us who, on the other hand, condemn permanent alienage have further reason to question what should be questioned in any case: the justifiability of imposing immigration restrictions that curtail people's freedom to make basic decisions about their lives such as where they live, which job they take, and whom they marry.

[36]Willem Maas, 'Free movement and discrimination: evidence from Europe, the United States, and Canada', *European Journal of Migration and Law*, 15 (2013), 91–110.

[37]What about other naturalization requirements such as citizenship tests or the requirement that migrants renounce prior citizenship? Here to, the principle of equal treatment offers some guidance. For such requirements to be justified, it must be shown that they do not amount to arbitrary discrimination. If natives are allowed to be ignorant of their country's politics, history and culture, foreign long-term residents should not be required to be knowledgeable. If natives are permitted dual citizenship, long-term residents should likewise. Naturalization requirements are not then necessarily unjust, but they would be unjust if they subjected long-term residents to inequitable burdens.